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Yair Baranes
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Handbook on the
Albanian Collateral Law
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To Romina, in Skanderbeg Square
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On October 18, 1999, Albania passed the *Law for Securing Charges*, which in many of its concepts and features has no precedent in prior Albanian law. This is a complex law, for it bears on the rights and conduct of creditors, debtors, and a range of other persons who can be affected by securing charges, and it provides for a modern, computer-based registry system. Therefore something more than the articles themselves should be available to persons affected by this new law. To that end, this book provides a detailed explanation of the *Law for Securing Charges* as well as of related legislation. In the view of the authors, this explanation is essential to the successful implementation of the *Law for Securing Charges*.

However, this book does not provide an exhaustive exposition of all aspects of the *Law for Securing Charges*. Rather, it concentrates on the issues central to the functioning of this new law. Because the book is intended for a wide audience—ranging from credit grantors (chargees) and credit users (chargors) to judges, lawyers, and law students—it relies on nontechnical language wherever possible to explain the various features of the *Law for Securing Charges* and the related legislation. In addition, it gives special attention to the new terminology introduced by the *Law for Securing Charges*. Thus it is important to refer to the definitions and the accompanying explanatory comments when reading each article of the *Law for Securing Charges* or related legislation. Some of these comments are extensive, others brief, and simple scenarios are used to the extent possible.

The largest part of this book deals with the *Law for Securing Charges* and *Regulations of Securing Charges*. It begins with a description of the context in which the *Law for Securing Charges* functions and an overview of the basic concepts contained in the *Law for Securing Charges*. This is basic information necessary for the reader to understand the policies and new approaches embodied in this new law.
Part A presents the Law for Securing Charges. Part B presents revised Article 605 of the Civil Code. The articles in both parts are accompanied by explanatory comments. Part C provides the annotated Regulations of Securing Charges applicable to the Registry of Securing Charges. It also includes a short commentary on the Albanian Government decision limiting its liability for damages caused as a result of malfunctioning of the registry system.

Appendix A, which comes next, includes the detailed instructions issued by the Chief Registrar Guide for completing registration notices and for obtaining searches from the Registry of Securing Charges. Appendix B contains two samples of securing agreements, one relating to specific goods and the other to general goods. Though these two samples are designed to help users of the new system draft proper securing agreements, they do not represent legal interpretation of the Law for Securing Charges (see Disclaimers).

The book also contains an index. For easy cross-reference, it shows the paragraph numbers of the explanatory comments in the text.

Throughout the book, Albanian alphabetic characters are used to permit direct reference to the corresponding provisions of the official Albanian text of the legislation and the Chief Registrar Guide. The book is published in both English and Albanian.
Introduction

Characteristics of the Albanian Secured Financing System

The Role of Law in the Credit Market

The Albanian economy clearly needs more access to development capital if it is to progress and expand. Though international private and public lenders can be of some assistance, much of this capital must come from private, domestic sources. However, those supplying it will need some assurance that their loans or grants of credit will be repaid. In other words, the risk associated with lending money or granting credit must be at a manageable level. Of the many factors considered in risk assessment and management, one of the most important is the state of the law. Without an adequate legal structure, capital suppliers will be very reluctant to make loans or credit available to anyone except the most reliable and creditworthy of borrowers. Hence they are likely to bypass small entrepreneurial businesses that have not established a credit record.

A Fundamental Change in Albanian Law

The Law for Securing Charges, Number 8537, passed by the Albanian Parliament on October 18, 1999 (hereinafter Law), represents a fundamental change in the way Albania deals with secured financing. The country’s legal system now embodies a modern system of secured financing law. While the basic concepts of the Law can be found in the legal systems of other countries, its primary source has been the secured financing laws of the provinces of Canada and states of the United States, which have had similar systems for many years.
The goal of the drafters of the Law was to create a system that would facilitate and encourage secured financing in Albania. They wanted the system to be efficient, predictable, and readily understood by persons affected by it. Legal predictability is a great facilitator of commercial activity. If parties can determine in advance what their legal rights will be when foreseeable problems arise, they are much more likely to enter into legal relations.

The Law has been designed to be as simple as possible. It brings together in one statute all transactions that perform the same function, without regard to their form. Hence all of the law applicable to financing where movable property is taken as security is contained in a single statute. The wording of the statute reflects the terminology of the market and not the legal jargon of traditional law. Contracts under which loans are made or credit is granted can be simple and need not meet highly technical requirements.

While the Law applies to consumer transactions (i.e., credit transactions providing for loans or credit facilities for personal consumption purposes and not for income generation or capital acquisition purposes), it concerns primarily transactions between commercial enterprises (incorporated or unincorporated) and commercial lending or credit-granting organizations. However, a commercial enterprise may be a single individual who acquires financing for the purposes of a small business.

The Law does not encompass real rights or priorities that arise under the general law of Albania. For example, it does not include any charge or priority given by law to a state agency to secure taxes or other statutory obligations a person owes to the state of Albania. However, the registry system has been designed to function in the context of the revised Article 605 of the Civil Code, Number 8536, passed by the Albanian Parliament on October 18, 1999, which does provide a priority structure for state claims.

**Asset-Based Financing**

The Law has been designed to facilitate asset-based financing. Asset-based financing is the lending of money or the granting of credit under the assumption that the risk of loss due to default in such a transaction can be substantially reduced. This can be accomplished if the credit grantor (chargee) can secure the indebtedness in whole or in part by taking a real right (securing charge) on the assets (collateral) of the borrower (chargor). In other words, the credit grantor is given an alternative source of repayment should the borrower fail to meet his or her obligations under the contract. The assets which are charged can be seized and sold, and the proceeds of sale can be applied to the undischarged portion of the obligation.
It is not enough to simply provide for securing charges on movable property and to give a right to have the property seized and sold. In order for asset-based financing to occur at an optimum level, chargors must be able to obtain seizure and sale of the collateral quickly and at reasonable cost. The collateral is the chargee's security. It is the asset in asset-based financing. If it is to fulfill this role, there must be no serious impediments in the way of the credit grantor when, upon default by the chargor, it becomes necessary to rely on the security. If, after default by the chargor, the chargee cannot have the property seized and delivered so that it can be disposed of in an expeditious manner, the value of the property as security is seriously diminished or lost. In practical effect, the grant of credit is unsecured. In other words, the securing charge is of little or no value.

However, a balance must be struck between the rights of chargees and a recognition that chargors may have property rights in the collateral that deserve protection. A securing charge is a real right held by the credit grantor on property of the borrower. Fairness demands that the interests of the chargor be protected even after default. Chargees should be allowed to enforce their securing charges only under circumstances in which those interests are not unnecessarily sacrificed. The Law has been designed to meet these goals. It recognizes the importance of giving chargees an efficient system for the enforcement of their securing charge. At the same time, it contains measures designed to ensure that the rights of defaulting chargors are not ignored.

Securing charges on movable property under the Law are real rights. When the property is left with the borrower, there is a considerable risk that other persons may be misled into believing that the borrower has the unfettered right to deal with the property. The law must at the same time recognize the real rights of the credit grantor in the property taken as security and protect other persons from loss resulting from fraud or deception on the part of borrowers. This is accomplished in the Law by priority rules and a registry system that requires public disclosure of the existence of securing charges and state claims on movable property. Persons who deal with a debtor in possession of the property are given the facility to determine the existence and extent of any prior securing charges and state claims on the property.

Terminology

A secured transaction is any contractual agreement (referred to in the Law as a "securing agreement") under which a person or a financial organization
(referred to in the Law as a “chargee”) provides a loan or credit to a borrower (referred to in the Law as a “chargor”) and acquires under the terms of the securing agreement a real right (referred to in the Law as a “securing charge”) in movable property (referred to in the Law as “collateral”) of the chargor. The securing charge provides the legal basis for recovering, in whole or in part, payment of the obligation through sale of the collateral. The chargor may be the borrower or a third party guarantor who agrees with the chargee that his or her property is to be charged to secure the debt owed by the person who received the loan or the credit.

The term “securing agreement” in the Law includes any form of agreement that creates a right in movable property that secures one or more obligations. In addition, it encompasses some types of transactions that technically do not create securing charges, but that are brought within the scope of the Law for functional purposes.

Securing Charges on All Kinds of Movable Property, including After-Acquired Property

The Law permits securing charges on any type of movable property that has commercial value. This includes tangible movable property (goods) and intangible movable property such as accounts, securities (shares), and intellectual property. However, the scope of a securing charge may be limited. For social policy reasons, securing charges may not affect property that a chargor needs for the continued maintenance of himself or herself and his or her family. The kind of property that cannot be subject to a securing charge is found in Article 529 of the Code of Civil Procedure.

The Law contains an important feature designed to facilitate commercial financing. It permits securing charges in property acquired by the chargor after the date the securing agreement is signed. This is very important when the property to be charged is inventory to be acquired, accounts to be created, or a crop to be grown in the future. Of course, a credit grantor cannot have a securing charge on property that the chargor does not own. However, the parties to a securing agreement must be free to design their arrangement so that any property falling within the specified kind or kinds of property described in the securing agreement and acquired by the chargor while the agreement is in effect is automatically charged. Without this feature, inventory financing becomes administratively and economically prohibitive except in cases when the volume of business of the chargor is very small. It is completely unrealistic to require a credit grantor and a merchant to execute a separate securing agreement
THE ALBANIAN SECURED FINANCING SYSTEM

with respect to each new item of inventory acquired by the chargor and
given as security to the credit grantor.

Accounts financing requires the same degree of flexibility. When a credit
grantor secures credit given to a merchant seller through a securing charge
on short-term debts (referred to in the Law as “accounts”) being created by
the merchant during his or her business with his or her clients, the Law
recognizes that the securing charge applies to such debts owed by the clients
when they arise at any time the agreement is in effect.

Non-Possessory Securing Charges in Movables
under the Law for Securing Charges

Under the Civil Code, the only form of secured financing arrangement in-
volving movable property that had some practical significance was the pledge.
Under a pledge, the chargor gives actual possession of the collateral to the
chargee to be held as security for performance of an obligation. This trans-
ferr of possession of the collateral has two important functions. First, it gives
notice to third parties that the property is subject to a charge that would
have priority over any interest acquired by a third party. Second, it facilitates
enforcement in that no seizure of the property from the chargor is neces-
sary. The chargee can proceed to dispose of it in order to obtain cash to
apply to the charger’s debt.

The Law allows not only possessory securing charges but also secur-
ing charges on movable property left in the possession or control of the
charger. The need for this is obvious. A charger who expects to repay a loan
using business income must have the capacity to earn that income. The
charger must have possession of his or her business assets (plant, machin-
ery, inventory, etc.) if he or she is to be able to do this. The charger will not
be able to use secured financing if he or she is required to surrender posses-
sion of those assets in order to obtain it.

Equipment Leasing

The Law applies to leases of movable property. Leases included within the
Law fall functionally into two categories: security leases and true leases. Se-
curity leases comprise leases that are, in effect, alternative methods of pro-
viding secured financing for the purchase of equipment. The commercial
outcome of the arrangement is that the lessee will have the equipment for
its full useful life. Under such leasing agreements, the lessee will pay the
lessor the equivalent of the capital cost of the equipment and a credit charge...
for deferred payment of the capital cost. The second category, true leases (or "renting"), provides for use of the equipment by the lessee for a period of time much less than its useful life. Consequently, the equipment will inevitably be returned to the lessor. Generally, the Law does not distinguish between the two types of leases. However, the articles of the Law that apply to default and enforcement of the securing charge do not apply to true leases.

**The Efficient Public Disclosure System under the Law for Securing Charges**

A problem endemic to non-possessory securing charges and leases is that a dishonest or desperate chargor or lessee in possession of charged or leased property may be tempted to offer the property for sale or as security to someone who is unaware of the existence of the securing charge on or lease of the property. If the third party is given a securing charge on the property, the law is faced with a dilemma: who, as between two innocent parties (the chargee/lessor or the third party), must suffer the loss?

Historically, two quite separate approaches have been adopted to address this dilemma. One is to adopt the principle that a person who, without notice of the interest, purchases the collateral from the person who possesses it, gets the property free of the earlier interest. (Under French law, this principle is described as *en fait des meubles, la possession vaut titre.*) This approach destroys the efficacy of non-possessory securing charges by subjecting the chargee to the loss of his or her security at any time the chargor who has possession of the collateral decides to dispose of it. The second, and by far the most efficacious solution to the dilemma, is to make public disclosure of the securing charge a precondition to recognition of the securing charge's priority over subsequent rights in the collateral acquired by third parties. This approach is contained in the Law. The existence of securing charges on property left in the possession or under the control of the chargor is disclosed to the public through registration of a notice of securing charge in a registry which is accessible to the public.

The Law provides a single, central registry for all non-possessory securing charges that is readily accessible to chargees and other persons who may deal with chargors. Accessibility in this context includes physical as well as financial accessibility. The cost of using the system should have little or no effect on the decision of the parties to engage in a secured financing arrangement. As a result of computerization, the registry system can be efficient, accessible, and affordable.
An Integrated Priority Structure

A very important goal of the designers of the Law was to provide a completely integrated and symmetrical priority structure to deal with competing claims to movable property. When this type of structure functions in the context of a readily accessible and efficient registry system, persons who deal with chargors in possession of property are in a much better position to predict the likely outcome of a conflict between rights they acquire in the property and prior or subsequent interests in it acquired by others. The result is a dramatic increase in the accuracy of legal risk assessment. In turn, this leads to greater willingness to grant credit.

Balanced Enforcement Mechanisms

The principal role of a securing agreement is to provide the chargee with an alternative method of recovering amounts owing to him or her in the event that the chargor fails to perform his or her obligations under the agreement. In order for the securing agreement to be of value to the chargee, the legal system that regulates the rights of the parties to it must provide expeditious and inexpensive methods of enforcing the securing agreement through seizure and disposition of the collateral. At the same time, it must provide reasonable assurance that the chargor's ownership in the collateral is fully protected.

The secured financing laws of many countries, particularly those with a civil law tradition, require court supervision of seizure and sale of collateral. Extensive judicial supervision of the enforcement of securing agreements need not be a problem for chargees if it is efficient and inexpensive. In many countries, however, this is not the case. Few states in the world have well-staffed courts that function in the context of highly efficient procedural rules. As a result, chargees in states that do not permit enforcement without court orders usually face very long procedural delays and significant court costs when seeking to enforce securing charges. When the collateral is movable property, there is a strong likelihood that it will depreciate significantly between the date of default and the date of ultimate disposition. As a result, the amount available to be applied to the debt is much less than it would have been had expeditious disposition been allowed. In some situations, the collateral may disappear or be destroyed, and thus no recovery is possible. Under these circumstances, the value of a securing charge is dramatically reduced or eliminated and therefore credit grantors are less willing to lend or grant credit.
The drafters of the Law recognized that some systems require a court order before seizure is allowed in order to protect the interests of defaulting chargors. However, they also recognized that this is not the only way to protect these interests. Adequate protection for chargors can also be provided through procedures that apply after the collateral has been seized. The Law employs this alternative approach.

The Law provides that a securing agreement constitutes an executive title and, after default by the chargor, is executed by the execution office upon order of the court. While an order of the court must be obtained, there is no requirement for a court hearing. The order is given without delay. The order directs the execution officer to seize the collateral and deliver it to the chargee or the person authorized by the chargee to receive it. A notice to the chargor of the execution officer's intention to execute the order need not precede the seizure.

The Law contains several measures designed to protect the chargor's interest in the seized property. The chargee must give the chargor notice before the sale of the collateral. This notice must inform the chargor of his or her right to "redeem" the property by paying the amount owing. The notice must specify this amount. The pre-sale notice has an additional function. The chargee must give the chargor information regarding any public sale of the property. This will allow the chargor to take steps to ensure that the property is sold at market value.

In addition, the chargee must give the chargor and any subordinate chargee an accounting of the sale: the amount received, the amount of the expenses, the way in which the proceeds were distributed, and the amount of any surplus. This information can be very important to a chargor or subordinate chargee who suspects that the sale was not carried out in a commercially reasonable manner.

The Law provides a special procedure under which, with the consent of the chargor and any other person with a securing charge or right on the collateral, the chargee can take ownership of the collateral or a part of it if the obligation secured or an agreed portion of it is canceled. This procedure will be important in situations where the value of the collateral is equal to or less than the amount of the obligation secured by the securing charge. In such a case, the chargor or a subordinate chargee has no economic interest in forcing sale of the collateral by the chargee. If the chargee is prepared to take ownership of the collateral in return for cancellation of the debt the securing charge secures, the costs and delay in sale are avoided. However, a chargor cannot be forced into agreeing to the transfer of ownership of the collateral to the chargee. A clause in a securing agreement that provides for
this remedy without consent of the chargor at or after the date of default is ineffective.

Rules of Private International Law

It is no longer sufficient for a state to have a modern system for regulating secured financing agreements executed only by persons domiciled within its borders. Neither is it sufficient for a state to have a system that provides for securing charges in property located only within its borders. Many types of property are highly mobile, with the result that an item of property may be taken temporarily or permanently by the chargor to another state. Furthermore, mobile property that is brought into Albania by a chargor may be subject to a securing charge created under the laws of another state. Persons who do not reside in the state where the chargor is located or where the securing charge has been taken may owe intangible collateral such as debts (accounts) to the chargor. In order to address issues that arise in these contexts, it is necessary to have a set of rules generally accepted by states within a region and prescribing what law is applicable to the validity and priority of securing charges taken in any one of the states.

The Law contains a set of private international law rules that are generally recognized in other states of the world.

Coordination with the Civil Code

Prior to the enactment of the Law, Albania's source of law applicable to secured financing transactions was the Civil Code. Since pledges of movable property and assignments of debts were for all practical purposes the only types of secured financing transactions recognized by the Civil Code, there is little conflict or overlap between the Law and the Civil Code. However, a number of provisions of the Civil Code had to be modified somewhat in order to ensure no conflict with the Law.

Balance between Securing Charges and State Claims

Designers of modern secured financing systems frequently have difficulty striking an appropriate balance between securing charges in business chargors' assets, on the one hand, and claims against such assets imposed by law, on the other. These claims are designed to protect state claims (e.g., taxes owing by the chargor or collected by the chargor on behalf of the state) or claims of employees of the chargor.
The Albanian secured financing system is designed to balance fairly the need to collect taxes and other debts owing to the state with the need to give credit grantors certainty regarding the extent to which collateral might be subject to such state claims. This is accomplished through Article 605 of the Civil Code as amended, which grants state claims priority over most of the chargees of the chargor who owes his or her debt to the state. However, this priority is given only when a public notice of the state claim is registered before the chargee registers his or her claim or before the chargee advances the credit. State claims are therefore protected, and information on these claims is available to creditors, who can use it to assess the creditworthiness of potential debtors.

Public policy in Albania clearly protects the interests of wage-earners. Since the availability of employees usually exceeds market demand, as is the case in Albania at present, wage-earners face a weakened bargaining position from the outset and typically cannot bargain for security for their salaries. Wage-earners who remain unpaid are typically forced to rely on public assistance. As a result, the state finances the chargor-employer to the extent that it supports the unpaid wage-earner. Under such circumstances, the employer might prefer paying other creditors, knowing public funds will compensate his or her employees for unpaid wages.

While the designers of the Albanian secured financing system recognized the importance of this public policy, they also endeavored to maintain the functionality of the system. As a result, Article 605 of the Civil Code was amended to provide special priority for wage-earners to the extent of 12 months of unpaid salary. This priority extends to most of the debtor's property, including property used as collateral. At the same time, the system's predictability is maintained through the limitation put on this priority.

Insolvency Law

When assessing the efficacy of asset-based financing in a country, it is necessary to take into account the extent to which the rights of chargees are abridged by insolvency law. If a securing charge is not effective when a chargor becomes involved in insolvency proceedings, the charge will have no commercial value. Consequently, secured financing law and insolvency law must be carefully coordinated to avoid any conflict in the public policies of both laws.

The proposed Albanian insolvency law provides for the recognition of the rights of chargees. It states that, except as otherwise provided in the law, chargees are entitled to separate satisfaction out of the collateral, in accor-
dance with provisions applying outside insolvency proceedings. However, the invocation of insolvency proceedings may substantially limit the freedom of action that the Law provides when a chargor is in default.

When the chargor is subjected to insolvency proceedings that lead to the liquidation of his or her assets, all of the chargor's nonexempt assets, including those that are collateral under securing agreements, but excluding those in the possession of the chargee, are seized by the insolvency administrator. Upon the opening of insolvency proceedings, the court has the power to prevent a chargee from seizing the collateral.

An insolvency administrator is given the power to dispose of collateral in his or her possession. This power extends to collecting any assigned accounts owing to the insolvent debtor. The proposed insolvency law provides measures through which the chargee is informed of the administrator's intentions with respect to disposition of the collateral. Cooperation between the administrator and the chargee is permitted, including surrender of the collateral to the chargee. If there is delay on the part of the administrator in disposing of the collateral, the chargee is entitled to interest on the debt from the first meeting of the creditors to the date of disposition. The administrator may elect to use the collateral but must make the current payments owing as of the opening of the insolvency proceedings. A court is given power to allow a chargee to take collateral under the control of an administrator if the chargee can prove that the collateral is not adequately protected by the insolvency administrator and is deteriorating in value.

A chargee's rights to have the collateral seized and sold upon default by the chargor can also be affected by reorganization proceedings (proposal of an insolvency plan). A proposed plan may affect chargees of the insolvent chargor. Thus, the plan must be accepted either by the creditors voting in classes or by the court. Chargees will be in a separate class of creditors for voting purposes. The creditors reject a plan unless a majority of creditors in each class holding at least half of the claims supports it. Under specified circumstances, however, a class of creditors, including chargees, is deemed to have accepted the plan even if they have not voted to accept it.

It is much too early to judge the effect the proposed insolvency law will have on securing charges. There is no doubt that the delay involved in insolvency proceedings will be detrimental to chargees. Most collateral depreciates in value, with the result that the longer the period of time between the date of default by the chargor and the date when the collateral is disposed of, the greater the likelihood that the amount realized from the disposition will be diminished. This period is necessarily lengthened if the
insolvency administrator in liquidation insolvency proceedings decides to dispose of or use the collateral. When a proposed plan involves chargees, the procedures necessarily result in a significant postponement of the rights of chargees to have collateral seized. During this time the collateral is likely to depreciate.
PART A

The *Law for Securing Charges*
I

Definitions and Scope of the Law

Article 1. Definitions

Definitions used in this Law have the meaning given in this Article for the purpose of this Law. The singular form of a noun includes the plural and the plural form of the noun includes the singular, unless the context requires otherwise.

EXPLANATORY COMMENT

1. The Law for Securing Charges, Number 8537, passed by the Albanian Parliament on October 18, 1999, uses terminology that is not found in the Civil Code or other Albanian legislation. Most of the new terms reflect commercial practices not recognized in existing laws largely because those practices are new to Albania. They refer to the fundamental concepts of a modern system designed to facilitate secured financing transactions.

ACCOUNT
is a monetary obligation that is not evidenced by an instrument or a security, whether or not the debtor has fulfilled the obligation.

EXPLANATORY COMMENT

2. An account is a subcategory of “intangible property” (defined below). The term derives from “accounts receivable,” which is used by the business community when referring to monetary obligations (debts) arising out of the sale of goods or services to clients. However, it has a broader meaning in the context of the Law in that it encompasses a monetary obligation that is a result of a loan transaction.
3. Under the definition, a right to be paid sometime in the future is an “account.” An account cannot exist until there is a legal relationship (e.g., a contract) under which the account can be created. However, as is generally the case under the Law, it is possible for a present contract to give a securing charge on future accounts. When the account is created (once the services or goods are provided), the securing charge automatically comes into existence and attaches to these accounts.

**ACCOUNT DEBTOR**

is the person who owes or who in the future will owe money to another person.

**EXPLANATORY COMMENT**

4. A securing charge on an account or a transfer of an account involves three parties: the seller or transferor of the account (generally referred to in the Law as the “chargor”), the buyer or transferee of the account (generally referred to in the Law as the “chargee”), and the person who owes or who will in the future owe the debt (that is, the account charged or transferred) to the chargor. This person is referred to as the “account debtor.”

**CHARGEEO**

is a person in whose favor a securing charge is created under Article 2, including a seller, lessor, and a consignor.

**EXPLANATORY COMMENT**

5. The central concept of the Law is the “securing charge” created when one person, the owner of movable property, charges that property to a creditor in order to secure performance of an obligation. The person in whose favor the securing charge is granted is the chargee. However, the term also applies to persons who are technically not creditors to whom a securing charge is given. It includes a seller under a title reservation sales agreement, a lessor under a lease for a term of more than one year, a person who consigns goods to another person for the purpose of sale, and a transferee (buyer) of an account. See Law, Article 2.
CHARGOR

is a person who owes the obligation and owns the collateral. When these are different persons, chargor means the owner of the collateral in any provision of this Law dealing with the collateral and the debtor in any provision dealing with the obligation. A chargor is a buyer, lessee, or consignee under transactions referred to in Article 2.

EXPLANATORY COMMENT

6. The person who grants a securing charge to a chargee is a chargor. However, the term also refers to persons who are technically not debtors who grant securing charges on their movable property. It includes a buyer under a title reservation sales agreement, a lessee under a lease for a term of more than one year, a person to whom another person consigns goods for the purpose of sale, and a transferor (seller) of an account. See Law, Article 2.

7. A chargor may include a person other than the person who borrows money or obtains credit and who gives a securing charge on his or her movable property. A person need not personally receive a benefit under a securing agreement in order to fall within the definition of a chargor. When one person has incurred the primary obligation and a second person has provided all or some of the collateral on which a securing charge is granted, the second person is also considered a chargor since that person "owes the obligation" to the extent that his or her property can be used as a source of repayment of the obligation. The term also applies to a guarantor who does not own the property charged but who, by guaranteeing performance of the obligation, becomes a person who "owes the obligation." To determine whether an article of the Law is referring to a chargor who owns the property charged or to a chargor who owes the obligation as a primary debtor or as a guarantor, or to both types of chargors, it is necessary to identify the purpose of the article. If the article referring to a chargor is a provision dealing with the collateral, it will include a person who owns the collateral. When the article relates to the obligation secured, it will include the principal debtor (the one who owes the obligation) and the guarantor. For example, Articles 35 and 36 apply to both types of chargors: the person who owes the primary obligation and the person who owns the property charged. However, Article 34 deals only with the collateral, so it applies only to the person who owns the collateral.
CHIEF REGISTRAR
is the Chief Registrar of the Registry of Securing Charges appointed under Article 25 of the Law.

EXPLANATORY COMMENT

8. The Registry of Securing Charges (hereafter Registry) is a central feature of the Law. The Chief Registrar's responsibility is to ensure that the Registry is totally reliable and efficient.

COLLATERAL
is movable property subject to a securing charge. Collateral may be in existence or may arise in the future and is not limited to movable property in which the chargor has any right or ownership at present. Collateral may be located anywhere, within or outside Albania. Collateral includes proceeds collateral.

EXPLANATORY COMMENT

9. The term "collateral" is used to refer to the movable property (including intangible property) that is charged under a securing agreement. When the purchaser of a truck gives a securing charge to a bank to secure the purchase price of the truck, the truck is the "collateral" subject to the securing charge. A securing agreement may provide for a securing charge on property that the chargor does not own at the date the securing agreement is signed. Of course, no securing charge arises at that point since there is no collateral. However, as soon as the chargor acquires the property described in the securing agreement, the collateral exists and the securing charge comes into existence (attaches). See Law, Article 5. The term also extends to movable property bought under a title retention sales contract, movable property leased for a term of more than one year, movable property consigned for sale, and an account that is transferred to a buyer.

DOCUMENT OF TITLE
is the writing issued by or addressed to a person who has goods in his possession. The writing describes the goods and specifies that the goods shall be delivered to the person designated in the writing, to someone designated by that person, or to the bearer of the writing.
PART A. THE LAW FOR SECURING CHARGES

EXPLANATORY COMMENT

10. A document of title is a standardized commercial document. It is issued by a depository warehouse operator, a ship operator, or other transporters of movable property under which the operator or transporter agrees to deliver the property described in writing to a person named therein or to someone designated by that person, or to the “bearer” of the writing. Documents of title are used to transfer ownership and the right to possession of stored or shipped movable property from one person to another.

Example:
A stores his or her wheat with a depository warehouse operator. The operator issues a negotiable document of title to A. The document will provide that the wheat will be delivered to A or “to the order of A.” This means that A can transfer the right to collect the wheat to someone else merely by “endorsing” the document to that person. If A wanted to sell the wheat to B, all A would have to do is endorse the document to B and give possession of it to him or her. If A wanted to create a securing charge on the wheat in favor of Bank C, all A would have to do is endorse the document to Bank C.

EXECUTION CREDITOR
is an unsecured creditor who has taken the necessary steps to have the collateral seized by an execution office pursuant to an order of the court obtained under the Code of Civil Procedure.

EXPLANATORY COMMENT

11. The definition of an execution creditor is included since the Law contains some priority provisions designed to protect unsecured creditors. The main provision dealing with this special priority is found in Article 12.

GOODS
are tangible movable things. They include movable things that are attached to other immovable or movable things. In the Law goods are divided into three kinds:
“consumer goods” are goods that are used or acquired for use primarily for personal, family or household purposes;

“inventory” refers to goods that are held by a person for sale or lease, or that have been leased by that person as lessor. It includes goods that are to be furnished or have been furnished pursuant to a contract of service;

“equipment” is goods that are used for the purpose of operating a business and that are neither consumer goods nor inventory.

EXPLANATORY COMMENT

12. The term “goods” is the basis for the system used by the Law to categorize tangible movable property. Under the Law, all tangible movable property (i.e., goods) must fall within one of three categories: “consumer goods,” “inventory,” or “equipment.” There can be no other category. This categorization system is a feature of the registration, the priority rules of the Law, and the provisions of the Regulations of Securing Charges (hereafter Regulations). Priority rules and registration requirements differ, depending on whether the collateral is consumer goods, inventory, or equipment. See for example, the special priority rule applicable to consumer goods outlined in Article 14, paragraph 3.

13. The definition of “inventory” extends the conventional meaning of the term to include leased goods and goods furnished under a service contract.

14. “Equipment” is a residual subcategory; that is, any goods falling outside the other two categories.

INTANGIBLE PROPERTY

is any property other than a thing, an instrument, or a security. Intangible property is intellectual property, accounts, and so on.

EXPLANATORY COMMENT

15. This definition is a residual category of collateral. Movable property that does not fall within the other five categories of collateral (goods, securities, documents of title, instruments, or money) is classified as an intangible. For example, rights arising under patent or copyright law are intangible property. An account is a separately defined subcategory of intangible.
PART A. THE LAW FOR SECURING CHARGES

INSTRUMENT

is a check or other writing that evidences a right for a payment. In the ordinary course of business, the instrument is transferred by delivery against signature under the law.

EXPLANATORY COMMENT

16. This definition includes documents that fall within the banking law. Instruments are property that can be charged. However, the Law includes a special priority rule that recognizes the element of negotiability associated with this type of property. See Law, Article 19.

KNOWLEDGE

Under this law, a person is considered to have knowledge about a matter when that person acquires information under circumstances in which a reasonable person would take notice of it; and a private or public legal entity or institution or government office is considered to have knowledge when information comes to the attention of an official or employee of the entity having control or management of the matter under circumstances in which a reasonable person would take notice of it or when information in writing is delivered to the headquarters or place where the legal entity operates, or to the institution or relevant governmental office.

EXPLANATORY COMMENT

17. This definition sets out the circumstances under which a person or organization is deemed to have knowledge of a fact. A person may be deemed to know a fact when he or she does not have conscious knowledge of it. A person is deemed to have such knowledge when the relevant information was communicated to that person under circumstances in which a reasonable person would take cognizance of it. Where an organization is involved, the information must come to the attention of an official or employee having control or management of the matter to which the information relates.

18. A distinction must be drawn between the acquisition of “knowledge” and the delivery of a notice. If a notice is delivered (for example, as provided in Article 35), it is not relevant that the recipient of the notice acquired knowledge of its contents. The fact that the person received the notice is sufficient.
NOTICE OF REGISTRATION

is a form prescribed by the Regulations of Securing Charges for use in transmitting information for registration, including an amendment to a registration, discharge of a registration, or subordination of a registration, and where appropriate it may be an electronic form.

EXPLANATORY COMMENT

19. This term is used in a broad sense to refer to the various forms used to effect, amend, discharge, or subordinate a registration. The details of the forms to which it refers and the information to be included in the forms are set out in the Regulations and in the Chief Registrar Guide (hereafter Guide).

PURCHASE-MONEY SECURING CHARGE

is a securing charge on goods taken or retained by a seller of the goods to secure all or part of their purchase price. A purchase-money securing charge is also a securing charge taken by a person other than the seller who, by making advances or incurring an obligation, gives value to enable the chargor to acquire ownership of the collateral.

A purchase-money securing charge includes the right of a seller, lessor, or consignor in transactions referred to in Article 2 of the Law.

A purchase-money securing charge also secures interest and charges for credits payable to a chargee.

A purchase-money securing charge is not created under a transaction when one party sells property to another party who then sells or leases the property to the seller.

EXPLANATORY COMMENT

20. This definition relates primarily to paragraphs 6-8 of Article 11 of the Law. It encompasses two types of secured transactions: a title retention sales contract, under which the obligation of the buyer is secured in whole or in part by a securing charge taken by the seller in the goods sold; and a loan transaction, where money or other value is given in order to enable the borrower (chargor) to acquire rights in property (collateral) and where the lender (chargee) is given a securing charge on the collateral. In order for a securing charge to qualify under this second category, it is necessary to establish that the loan was made for the purpose of acquiring ownership of

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the collateral and was in fact used for this purpose. A careful lender financing the buyer’s purchase of goods would therefore advance the credit directly to the seller of the goods rather than to the buyer.

21. The rights of sellers under title retention sales contracts, lessors under leases for a term of more than one year, and persons who consign goods for sale are treated as purchase-money securing charges.

**PROCEEDS COLLATERAL**

is the type of specific collateral that derives directly or indirectly from dealing with collateral. The definition extends to second-generation and later-generation proceeds collateral as well as insurance payments.

**EXPLANATORY COMMENT**

22. This term refers to collateral that is defined on the basis of its ancestry rather than its present form. To qualify as proceeds collateral, the property must be derived directly or indirectly from dealing with original collateral or must be recognizable as insurance payments resulting from loss or damages to the original collateral or proceeds collateral.

23. The definition extends to second-generation and later-generation proceeds (i.e., proceeds collateral derived from dealing with proceeds). However, in order to have a securing charge on later generations of proceeds collateral, it must be possible to identify the property as proceeds collateral. See Explanatory Comment to Article 10 of the *Law*.

**REGISTRATION**

is registration of data or data registered by means of a notice of registration.

**EXPLANATORY COMMENT**

24. This definition refers to the registration of securing charges or state claims in the Registry. For a full discussion, refer to the *Regulations* and the *Guide*.

**REGISTRY**

is the Registry of Securing Charges created under Article 25 of the *Law*. 
25. For a full discussion of the operation of the Registry, see the Regulations and the Guide.

SECURING AGREEMENT
is the agreement between parties for one or several transactions described in Article 2.

EXPLANATORY COMMENT

26. A securing agreement is a contractual agreement evidencing a securing charge in favor of a chargee on the property of the chargor. The term also includes a contractual agreement evidencing the right of a seller under a title retention sale transaction, the right of a consignor of goods, the right of transferee of an account, and the right of a lessor under a lease agreement for more than one year. The only way a securing charge can be created is through or as a result of a securing agreement.

SECURING CHARGE
is a real right on intangible property or tangible movable property, whether present or future, that secures one or more obligations that arise before or after the securing agreement.

EXPLANATORY COMMENT

27. Although the concept of "securing charge" is central to the Law, the term is defined in a very general manner. This is in line with the overall approach adopted by the Law, which is to treat securing charges generically. A transaction creates a securing charge if it in substance provides for an interest in movable property for the purposes of securing payment or performance of an obligation. It is clear, however, that a securing charge is a real right in property in the sense that, in its basic form, it is a right on movable property created by contract.

As a result of Article 2, the definition must be read as including the following:
PART A. THE LAW FOR SECURING CHARGES

- the ownership of a seller under a title retention sales contract;
- the ownership of a lessor under a lease for a term of more than one year;
- the ownership of a person who consigns movable property for sale; and
- the interest of a transferee (buyer) of an account.

SECURITY

is a document that evidences ownership of shares, participation in a company, or monetary obligation undertaking by the person who issues it, but the term excludes obligations secured with a hypothec.

EXPLANATORY COMMENT

28. This term includes two types of property: a share in a limited liability company (or partnership in the case of other companies) and a monetary obligation in written form (generally referred to as a bond or debenture). However, when the obligation is secured by a hypothec on immovable property, it does not fall within the definition.

29. Securities are subject to special priority rules contained in Article 19. This special treatment results from the fact that this type of property is often treated as being negotiable or near negotiable. This feature is fully discussed in the explanatory comment to Article 19 of the Law.

TRANSFEREE

is the person to whom the transferor transfers an account owing or to be owed by the account debtor. For the purposes of the Law, the transferee is treated as the chargee when the transfer is by way of a securing charge on the account or a sale of the accounts.

EXPLANATORY COMMENT

30. A securing charge on an account or a transfer of an account involves three parties: the seller or transferor of an account ("chargor"), the buyer or transferee of an account ("chargee"), and the person who owes or who will in the future owe the debt that is the account charged or transferred ("account debtor").
TRANSFEROR

is the person to whom the money is or will be owing by the account debtor and who transfers the account to another person. For the purposes of the Law, the transferor is treated as the chargor when the transfer is by way of a securing charge on the account or a sale of the accounts.

EXPLANATORY COMMENT

31. A securing charge on an account or a transfer of an account involves three parties: the seller or transferor of an account ("chargor"), the buyer or transferee of an account ("chargee"), and the person who owes or who will in the future owe the debt that is the account charged or transferred ("account debtor").

Article 2. Scope of the Law

The Law governs any transaction, whatever its form and however it is denominated, that creates, whether by transfer of ownership, by possession such as in the case of a pledge or otherwise, a securing charge in movable things, intangible property, or rights of their owner.

The rules applicable to securing agreements apply in the same way to the following transactions, which for the purposes of this law are considered securing agreements:

a) a contract for the sale of goods providing for reservation of title of the sold goods until payment of the purchase price and the fulfillment of any other obligation;

b) a transaction involving the sale of an account;

c) a transaction, called a consignment, involving the transfer of possession of goods from the owner to another person for the purpose of sale by that person; and

ç) a lease of goods having a term of more than one year.

The rules applicable to a chargee or to the rights and obligations of a chargee apply in the same way to the following: the seller under a contract for the sale of goods providing for reservation of title of the goods, the buyer of an account, the consignor under a consignment agreement, and the lessor under a lease of goods having a term of more than one year.
The rules applicable to a chargor or to the rights and obligations of a chargor apply in the same way to the following: the buyer under a contract for the sale of goods providing for reservation of title of the goods, the seller of an account, the consignee under a consignment agreement, and the lessee under a lease of goods having a term of more than one year.

EXPLANATORY COMMENT

32. This article states two things: the scope of the Law and the transactions that are regulated by it. The Law governs five distinct types of transactions:

- securing agreements (defined in Article 1 of the Law);
- contracts for the sale of movable property where the seller reserves the title to the property until full payment of the purchase price;
- transactions involving the sale of accounts;
- transactions under which the owner of the property gives another person possession of the property for the purpose of selling this property (these transactions are commonly known as consignments); and
- leases whose term exceeds one year.

33. The opening sentence prescribes a function test, which must be applied in order to determine whether an agreement is a securing agreement. When determining when the Law applies to a transaction, the form of the transaction and what the parties to it have called it are not conclusive. Of course, if the parties refer to the agreement as a “securing agreement” or a “pledge agreement” or a “charging agreement,” the presumption is that they intended the Law to apply. But if the transaction is referred to as a “sale” or some other type of agreement not obviously an agreement that creates a securing charge, it is necessary to look carefully at its provisions in order to determine whether or not the agreement is also a securing agreement since those provisions might also create a right in favor of the seller in order to secure the price of the goods.

34. What matters is the function of the securing agreement, in other words, what effect the agreement actually has or will have when it is fully performed. If the function of the agreement is to give one party (a creditor) an interest in movable property for the purposes of providing security for an obligation owing by the other party, a securing agreement is involved and the Law applies to it.
35. In the great bulk of cases, it will not be difficult to determine when the Law applies. Most securing agreements will expressly provide that a chargor-owner of the property (collateral) is granting a securing charge or a right on that property to a creditor-chargee in order to secure performance of an obligation owing by the chargor to the chargee.

36. When preparing a securing agreement providing for a securing charge to which the Law applies, all that is necessary is to state in clear terms that this is the intention of the parties to the securing agreement.

Example:
The following clause in a securing agreement would provide for the creation of a securing charge:

Agreement Clause: The Tirana Trucking Company hereby grants to the Alba Bank a securing charge on the following described trucks to secure a loan in the sum of 1,500,000 Lek by the Alba Bank to the Tirana Trucking Company.

Description of Trucks: Kind: MERCEDES. Serial Number: AB123CD.

Manufacturer: MERCEDES BENZ. Year of Production: 1999.

37. Clauses (a), (b), (c), and (c) enumerate four types of transactions that are treated as securing agreements even though they may not otherwise fall within the test of the first paragraph of Article 2.

38. Clause (a) provides that the right of a seller of goods who retains the ownership of the goods until payment of the purchase price is to be treated for all purposes under the Law as a securing charge. The seller is not treated as the owner; the buyer is the owner of the goods, and the seller has a securing charge on them. The decision to treat title retention sales contracts as securing agreements is based on both conceptual and practical considerations. Since the seller retains ownership in order to secure the purchase price of the movable property, that ownership is a real right that the seller has retained for the purpose of securing performance of the obligation (the payment of the purchase price of the goods). From a practical point of view, it would make little sense to provide for a secured financing law and exclude from it ownership reservation sales contracts. In many countries, ownership retention sales agreements are used to finance a wide range of goods. Under these agreements, the seller remains the owner and the buyer obtains possession. If third parties are to be protected from the fraudulent conduct
of these buyers, it is important that the public be notified of the seller's ownership through registration in a public registry. Since the buyer is incrementally paying the price of the goods, his or her interest in those goods should be protected. It would be possible to set up a quite separate system to deal with the priority position of sellers who reserve ownership but deliver goods to buyers. However, there is no need to do so if the same result can be obtained by extending the scope of the Law to include these types of contracts.

39. Similar reasoning applies to the type of transactions referred to in clauses (b), (c), and (ç). When a sale of an account is involved, the seller remains in a position to defraud other persons by failing to disclose that he or she has already sold the account to someone else. While the third party may seek to protect himself or herself by asking the account debtor whether or not the account has been transferred, this may be an unreliable source of information. The transferor may not have informed the account debtor. There is no requirement that this must be done in order to have a valid transfer. See Law, Article 24. In any event, the account debtor is under no legal obligation to disclose this information to a person making an inquiry. A lessor or a consignor is the owner of leased or consigned property, but the lessee or consignee is in possession of it and consequently is in a position to mislead other persons into believing that he or she is its owner. Commercial certainty is provided and the risk of loss through the fraud of a lessee or consignee is substantially reduced through the requirement that leases and consignments be treated as creating securing charges for the purposes of registration requirements and priority rules.

40. Not all leases are included, however. For purely practical reasons, leases of short duration (one year or less) are excluded from the scope of the Law. It is important in this context to mention that the Civil Code provides that the provisions of the Civil Code dealing with the transfer or sale of accounts (Article 499), pledges (Article 546), and sale with reservation of title (Article 749) do not apply when it comes to transactions that fall under the Law.

**Article 3. The Securing Charge and the Secured Obligation**

No securing charge can be taken on property of the debtor, or a spouse of a debtor, that is exempt from seizure under the Code of Civil Procedure.

An obligation may be conditional and need not be a monetary obligation but must be capable of being valued in money.

An obligation may be that of the owner of the property subject to the securing charge or the obligation of another person.
41. Under Article 529 of the *Code of Civil Procedure*, some property used by the debtors for basic necessities is exempt from seizure by the sheriff enforcing an order of the court. In other words, this property cannot be used as a source of repayment of unpaid obligations. Paragraph 1 of Article 3 of the *Law* provides the same protection as Article 529 of the *Code of Civil Procedure* to chargors. Article 5 of the *Law* allows a person to charge all his or her present and future movable property.

Without the exemption of goods considered basic necessities, a chargee who had been granted such a securing charge would have the legal right, in the event of default by the debtor, to seize all of the movable property of the debtor, including property that the debtor needed to sustain himself or herself and his or her family. This is socially unacceptable and commercially unnecessary.

42. A securing charge can secure one or more obligations. These obligations may arise at any time prior to or after the chargor and the chargee enter into the securing agreement. The obligation may be conditional; that is, it may be an obligation that comes into existence in the future when a condition is met. The fact that the condition is fulfilled at a future time does not prevent the securing charge from arising as soon as the securing agreement is signed. Of course, if the condition is never fulfilled, the securing charge does not continue.

43. Paragraph 3 of Article 3 of the *Law* makes it clear that a person who owes the obligation that is secured with a securing charge does not have to be the owner of the property that is charged. Another person, also referred to as a “chargor” in the definition of the term in Article 1 of the *Law*, can be the owner of the property charged.

*Example:*

When *A* owes money to *B*, and *C* gives a securing charge on his or her property to *B* to secure (guarantee) *A*’s obligation to *B*, both *A* and *C* are treated as Chargors under the definition of “Chargor” and paragraph 3 of this article. Should *A* default in performing the obligation to *B*, *B* can enforce his or her securing charge against the property of *C* that is charged. For further discussion of this feature of the *Law*, see the Explanatory Comment to the definition of “Chargor” in Article 1 of the *Law*. 
Article 4. Exclusions

This law does not apply to:

a) a transfer of a claim for compensation of an employee;
b) a sale of accounts as part of a sale of the business out of which they arose;
c) a transfer of a right to payment under a contract to a transferee that is also obliged to perform under the contract;
d) a transfer of a right to payment under a hypothec on immovable property or payments made under a lease of immovable property;
dh) a transfer of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral; or
e) a transaction governed by another law of Albania, including an international convention or treaty that governs the creation, completion, priority, or enforcement of a securing charge created by Albania or a political unit of Albania.

EXPLANATORY COMMENT

44. This article identifies the following transactions that are not subject to this law:

a. Wage Claims: Suppose X, an employee of E, owes money to Y. The wages earned by X are an account and, without this exception, would be within the scope of the Law. Under Article 30 of the Law, Y would be able to require E to pay X’s wages to Y as provided in the assignment. While clause (a) does not prohibit such transactions, it provides that they are not governed by this law since they are not of commercial significance and, for public policy reasons, should be discouraged.

b. Certain Sales of Accounts: X sells his or her entire business to Y. X has rights to payment from many customers, which constitute some of the assets of the business that are sold. Although Article 1 of the Law provides that this law governs the sale of accounts, this transaction is excluded when the sale of the accounts is done in the context of a sale of a business. It is unlikely that third parties would be misled into believing that the seller of
the business remains the owner of the accounts upon a change in control over the management of the business. Accordingly, there was no need to bring such transactions within this law so as to require the sale of the accounts to be registered and subjected to the rules of the Law.

c. Transfer of an Unearned Right: The article excludes a transfer of an unearned right to payment under a contract if the transferee must perform the transferor’s obligation under the contract. Because the transferee earns the right to payment upon performance of his or her obligation, there is little possibility that a third party would be deceived into thinking that the transferor has rights under the contract.

Example:
Assume that X agrees to sell and deliver property to Y in return for payment by Y. Before delivering the property, X transfers the contract to Z, who agrees to deliver the property. The transferor of the contract will also transfer the right to collect the payment from Y. This transfer is not one that falls within the scope of the Law.

c. Immovable Property: The article excludes the creation or transfer of a right to payment that arises in connection with a property right in immovable property. The exclusion is designed to avoid conflict between the Law and Albanian law dealing with rights in immovable property. While payments arising under a lease of immovable property can be treated as accounts, they are not within the scope of this law. Rights in such payments continue to be governed by the Civil Code. However, the Law does apply to securing charges on movable property that is annexed to immovable property. See Article 16 of the Law.

d. Agency: Sometimes transferees of accounts use collecting agencies to collect unpaid debts. The ownership of the debts is transferred to the collecting agency for this purpose. There is no need to require public notice of this transaction since the real owner of the account does not change, and third parties will not be misled. There is very little risk that the collecting agency will use the transferred account for the purpose of defrauding third parties. Once the debts are collected, the collecting company will transfer the money to its owner.
dh. *Judgments*: An execution order creates a property right in the movable property of the person subject to the order. The *Law* does not govern transfer of such right.

e. *Certain Other Laws or International Agreements*: The *Law* does not displace existing and future laws dealing with charges on specific types of property such as ships or aircraft. An existing or future law that creates a special type of charge applicable to a particular situation would apply to the extent that it deals with creation, priority, and enforcement of the charge it creates. In addition, if Albania should become a party to an international treaty or convention, such as the proposed Convention on the International Interests in Mobile Equipment (which will provide an international secured financing system for large aircraft and possibly other large items of equipment), the Convention and not the *Law* will be the law applicable to all charges (including securing charges) on the types of equipment falling within the scope of the Convention.
II

Effect of a Securing Charge on Parties to the Agreement

Article 5. Creation of a Securing Charge and Collateral

A securing charge attaches to collateral and becomes enforceable against the chargor and third parties only when the following conditions are met:

a) the chargor and the chargee sign a written securing agreement that provides a description of the collateral;

b) the chargor is the owner of the collateral or the person who made the securing agreement had the power to do so on behalf of the owner of the collateral, or the chargor is a buyer in a contract for a sale of goods with reservation of ownership, the seller of accounts, consignee, or a lessee under a contract for a lease of goods having a term of more than one year; and

c) the chargee has bound itself through a contract with the chargor to advance credit or loaned money to the chargor or another person or to perform any other obligation for or at the request of the chargor, or prior to execution of the securing agreement the chargee has allowed credit or loaned money to the chargor or a third person.

When the securing agreement provides for a securing charge on collateral to be acquired by the chargor after the agreement is executed, the securing charge arises without the need for further acts by the chargee or the chargor as soon as the chargor acquires ownership of the collateral or if the chargor is a buyer under a contract for sale of goods with reservation of title, consignee, or lessee under a contract for the lease of goods for a term of more
than one year, at the moment the chargor receives possession of the goods, or when the chargor is the transferor of an account, the securing charge arises at the moment when the account is created.

A securing agreement may relate to more than one securing charge and need not be evidenced by a single document.

A description of the collateral is sufficient if it reasonably identifies the collateral. A description may be specific or general and may refer to kinds of property to be acquired in the future by the chargor. A description is effective if it provides for a securing charge:

a) on all of the chargor's property owned at the time of the signing of the securing agreement and on all of the property acquired after the signing of the securing agreement; or
b) on all of the chargor's existing property and on all of the property acquired after the signing of the securing agreement, except specified items or kinds of property; or
c) on all of the chargor's specific existing property and on all of the specific property acquired after the signing of the securing agreement.

EXPLANATORY COMMENT

45. A securing charge is a real right in the movable property of the chargor that the chargee acquires under the securing agreement. A securing charge comes into existence (attaches) when the following three requirements of this article are met, regardless of the order in which they are met.

a) A written securing agreement containing a description of the property charged is signed by the chargor and the chargee. In order to qualify as a securing agreement under the Law, no particular form is necessary. All that is required is some indication that one person, the chargor, is granting a securing charge on his or her property to another person, the chargee, to secure performance of an obligation described in the agreement.

Example:
Agreement Clause: The Tirana Trucking Company hereby grants to the Alba Bank a securing charge on the following described trucks to secure a loan of 1,500,000 Lek by the Alba Bank to the Tirana Trucking Company.
Description of Trucks: Kind: MERCEDES. Serial Number: AB123CD.

Manufacturer: MERCEDES BENZ. Year of Production: 1999.

b) The Chargor owns the movable property or is someone who has been given authority by the owner to create the securing charge. This condition will also be fulfilled when the persons deemed to own the movable property are: a buyer under a contract of sale with reservation of ownership, a seller of an account, a person to whom movable property has been consigned for sale, or a lessee under a lease for a term of more than one year.

c) Value is given to the Chargor by the Chargee (or someone else at the request of the Chargor).

46. The last paragraph of Article 5 of the Law sets out three methods by which the collateral may be described in the securing agreement. The Law does not require an itemized description of the collateral in the securing agreement. It permits the parties to use generic descriptions and the labels for collateral set out in the definition section of the Law. However, persons who are drafting securing agreements must ensure that such agreements contain as detailed a description of the collateral as possible. Only in this way will disputes between chargors and chargees as to the terms of the agreement be avoided.

Example:
A securing agreement may describe the collateral as "automobiles" or "cattle." These broad descriptions do not inform a third party whether a particular automobile or cow is encumbered by the securing charge. Details of the collateral can be obtained through Article 7 of the Law.

47. Under the last paragraph of Article 5, it is sufficient to describe the collateral as all the debtor's present and after-acquired property. In addition, the collateral may be described as all present and after-acquired property other than specified items or kinds of movable property.

Example of proper descriptions:
1. all the debtor's present and after-acquired property;
2. all the debtor's present and after-acquired property excluding television sets.
48. Article 5 of the Law requires the parties to sign the securing agreement. Thus, the chargor must have signed a document containing the clause that specifically provides for the securing charge. The requirements of the article are not satisfied where the securing agreement is signed by employees of the chargor who do not have the authority to enter into securing agreements on behalf of the chargor.

49. When the primary chargor (the person who owes the obligation) and the owner of the collateral are not the same person (as is the case when the owner gives a securing charge on his or her property to secure the obligation of the primary chargor), the required signature is that of the owner and not of the primary chargor. The signature that is required is the signature of the person who is charging his or her property. Of course, it may be necessary for other purposes to get the primary chargor to sign an agreement as well. However, this is not a requirement of Article 5.

50. The chargor may wish to grant a securing charge on property that he or she does not yet own but that will be acquired in the future. It is fundamental to the proper functioning of modern secured financing that the law recognize that this can be done. This is particularly important where inventory financing is involved. It is commercially unrealistic for the law to require a new securing agreement to be executed each time an inventory seller obtains new inventory. Consequently, Article 5 permits a chargor to grant a securing charge on after-acquired property (property of which the chargor becomes the owner after the date of the signing of the securing agreement). The securing charge will come into existence immediately and automatically upon the chargor’s becoming the owner of the property.

Example:
If a securing agreement provides for a securing charge on all present and future accounts generated in a business, the securing charge will attach to all accounts that the business acquires while the agreement is in effect.

51. The time when a securing charge comes into existence can be significant for three reasons. First, it is important in determining the rights between the chargee and the chargor. If a securing charge has not been created in an item of property, the chargee will not be able to exercise the remedies set out in the Law when the chargor is in default. Second, time of creation may be significant in determining the rights of third parties. If a securing charge has not been created in an item of property of the chargor,
the chargor can transfer his or her complete right in the property to a
third party.

52. Third, the time of creation of a securing charge can be an impor-
tant factor in determining the law applicable to the validity and completion
of a securing charge. For example, Article 41 provides that the validity and
completion of a securing charge on certain goods is determined by the law
of the location of the property at the time the securing charge is created.

53. Explanatory Comment 51 is subject to an important qualifica-
tion: when the transfer of the property right to a third party is by way of
granting of a securing charge, the priority will generally be determined by
the application of the priority rules of the Law irrespective of when the se-
curing charge was created. Creation is a condition for priority, but time of
creation is not important in determining priority under the Law unless none
of the competing charges is completed. This feature of the system is de-
scribed in greater detail in the Explanatory Comment accompanying Ar-
ticle 8 of the Law.

54. One of the prerequisites for the creation of a securing charge is
that the chargee give value to the chargor. The value can be in any form and
can be given before or after the securing agreement is executed. Consequently,
a creditor who advanced a loan on an unsecured basis may thereafter secure
his or her claim with a securing charge by entering into a securing agree-
ment with the chargor. It is not necessary that money actually be advanced
to the chargor. A binding commitment to give credit at some later date is
sufficient. But if the making of the advance is completely at the discretion
of the chargee, the requirement of giving value will not have been met un-
less the chargee has committed himself or herself to give value to the chargor
in some other form. Value is given even if the commitment is subject to
conditions.

   Example:
   Condition for Credit: Credit will be advanced on the condition
   that the Chargor has assets equal to 125% or more of the total
   credit.

55. There is no requirement that the chargor himself or herself re-
ceive the value. A person may grant a securing charge on his or her property
to a chargee to secure a loan payable or credit granted to someone else (who
is also referred to as a “chargor”). If the primary chargor defaults, the char-
gee may proceed against the collateral on which the securing charge has
been taken.
Article 6. Rights and Duties of a Chargee in Possession of the Collateral

A chargee shall use reasonable care in the custody and preservation of collateral in his possession. The chargee shall keep the collateral identifiable unless the collateral is of a kind that can be mixed with other property.

Any necessary expenses for the protection of the collateral the chargee incurred and legal obligations related to it are to be charged to the chargor and are secured by the collateral.

Unless otherwise agreed by the parties, the chargee may hold as additional collateral any increase or profits, except money, received from the collateral. The chargee shall apply money to reduce the secured obligation, unless the money is remitted to the chargor.

EXPLANATORY COMMENT

56. Article 6 sets out the rights and liabilities of a chargee in respect of collateral that is in his or her possession. These will apply before default in the case of a securing charge completed by possession or when the chargee is in possession of collateral that has been seized by the enforcement officer and delivered to him or her as provided in Article 31 of the Law.

57. The article imposes a duty of care in respect of collateral in the possession of the chargee. One of the obligations under the duty of care is that insurance be purchased. Reasonable expenses incurred in the custody or preservation of collateral, including the cost of insurance and payment of taxes or other charges, are chargeable to the chargor and can be treated as part of the obligation secured by the securing charge.

58. The increase in value of collateral (e.g., shares or bonds) or profits derived from the collateral may be held as additional security. An exception is made in the case of money, which must be applied against the obligation secured or else be remitted to the chargor.

59. The chargee must keep the collateral identifiable, except that fungible goods may be commingled.

Example:

When the collateral is a quality of Grade 1 wheat, the chargee can store the collateral with other Grade 1 wheat he or she holds. In this context, the wheat is fungible. However, he or she cannot mix Grade 1 wheat with Grade 2 wheat that he or she owns, since the two quantities of wheat are not fungible.
Article 7. The Right to Request Information

A chargor, a chargee with a securing charge on the chargor's property, or an execution creditor has the right to request:

a) that a chargee approve or correct a list of the collateral securing the obligation;

b) that a chargee approve or correct a statement indicating what the chargee believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date in the demand; and

c) that the chargee be given a copy of the securing agreement.

The chargee shall comply with a request within two weeks after it is received. During any six-month period, a chargor is entitled to one response to a request without a charge. The chargee may require to pay an amount specified in the Regulations of Securing Charges for each response.

EXPLANATORY COMMENT

60. Article 7 provides a vital link with the Registry system created by the Law. The system provides for the registration of a simple notice rather than a copy of the securing agreement. Only a limited amount of information is contained in the notice and registered in the Registry (see the Regulations and the Guide). It is sufficient to put an inquiring party on notice that another person may be claiming a securing charge on specified kinds or items of movable property of the person named as chargor in the registration. Details of the securing agreement, such as the particular items of collateral (other than collateral that must be described by serial number), the amount of the indebtedness, and the terms of repayment are not in the Registry public record. This information must be obtained directly from the chargee. Article 7 provides a mechanism by which this may be accomplished.

61. This article provides that a chargor, another chargee, or an unsecured creditor who has an execution order may demand from the chargee information concerning a securing agreement between that chargee and the chargor. The inquiring party may also demand a copy of a securing agreement. A potential credit grantor who has not yet advanced any money to the chargor (so as to qualify as a chargee) or who does not have an attached securing charge does not have the right to demand information under this article. The potential credit grantor must obtain information concerning the extent of the securing charge through the chargor. This can be done by
requiring the chargor to demand the information and instruct the chargee to respond to the demand by sending the information directly to the potential creditor.

62. In addition, the inquiring party is entitled to a written approval or correction of an itemized list of collateral. In practice, this allows an inquiring party to prepare an itemized list of collateral and to send it with the demand. The chargee must then indicate whether or not he or she has a securing charge on any or all of the items identified on the list. The chargee must also provide the required information in response to a demand for information as to unpaid obligations that are secured by the collateral.

63. The costs of complying with one demand made by a chargor in any given six-month period are borne by the chargee. However, when an inquiring party is other than the chargor, the chargee may require payment in the amount specified in the Regulations. This will be enough to pay the clerical and administrative costs associated with responding to the demand.
III

Effect of a Securing Charge on Third Parties

Article 8. Completion of a Securing Charge

A completed securing charge is one that fulfills all the conditions provided in this article so its priority can be determined on the basis of the priority provisions of the Law.

A securing charge is completed when it has attached as provided in Article 5 and one of the following requirements has been complied with either before or after attachment:

a) a securing charge is registered in one of the manners provided in this Law;

b) the chargee, or agent of the chargee, who is not the chargor, has taken physical possession of goods, an instrument, security, or money pursuant to the securing agreement;

c) when there is a securing charge on goods in the possession of a bailee, the bailee issues a document of title under the name of the chargee, or the bailee agrees to keep the goods on behalf of the chargee; or

ç) a provision of the Law states that the securing charge is completed.

If a securing charge is originally completed pursuant to the Law and is again completed in some other way pursuant to this law without an intermediate period when it is uncompleted, the securing charge is continuously completed for the purpose of this law.
64. Article 8 introduces the concept of the completion of securing charges. A securing charge has two quite separate aspects. One aspect is the existence and the enforceability of the securing charge as between the chargor and the chargee through seizure and disposition of the collateral. The second aspect is the existence and enforceability of the securing charge against third-party claimants such as buyers, other chargees, and creditors who have obtained enforcement orders. Completion relates only to the second aspect. A securing charge that has attached as provided in Article 5 is enforceable against the chargor but may not be enforceable against a third-party claimant to the collateral because it is not completed or because the competing claimant holds a securing charge that was completed at an earlier time.

65. Inherent in the concept of completion is priority. A completed securing charge has priority over at least some third-party claims. What priority it has will depend on which of the priority rules set out in later articles of the Law apply to the particular situation. See in particular Article 11 of the Law.

66. A securing charge can acquire completion in one of four ways (depending to some extent on the type of collateral involved):

   - by registration of an appropriate notice in the Registry as provided in later articles and in the Regulations;
   - by the chargee or agent of the chargee taking possession of tangible movable property;
   - by a bailee issuing document of title to the chargee or holding the collateral on behalf of the chargee; or
   - as a result of the securing charge being given completion under the Law without the need for registration or possession by the chargee.

67. Registration or possession of the collateral by the chargee results in completion of a securing charge because these measures give third parties the opportunity to discover the existence of the securing charge. The third type of completion, completion given by the Law without the need for registration or possession of the collateral by the chargee, is restricted to a few, clearly defined situations in which commercial convenience requires it. See, for example, the Law, Article 9. In any event, third-party buyers or lessees are always protected in situations where registration or possession is not used for completion. See the last paragraph of Article 9; Article 41, clause (c); and the last paragraph of Article 10.
68. The last paragraph of Article 8 permits a chargee to change the method of completion without losing his or her priority if the change is done without an intermediate period where it is not completed. For example, a chargee with a securing charge that was initially completed by possession maintains the priority status he or she acquired by possession when the chargee registers a notice in the Registry and then releases the collateral to the chargor.

**Article 9. Temporary Completion with Respect to Collateral Returned to the Chargor**

A securing charge on an instrument that was completed by possession by the chargee or agent of the chargee remains completed without the need for registration for 20 days after the collateral comes under the control of the chargor for the purpose of sale, exchange, presentation, collection, renewal, registration, or transfer.

A securing charge in goods that was completed either:

a) by possession of the chargee; or
b) by issuing of a document of title in the name of the chargee; or
c) by a person who has agreed to keep the goods on behalf of the chargee

remains completed without the need for registration for 20 days after the goods come under the control of the chargor for the purpose of sale, exchange, or handling or any dealing in a manner preliminary to their sale or exchange.

After 20 days have expired, the securing charge ceases to be completed unless the chargee re-completes the securing charge by one of the methods provided in the Law.

A buyer or lessee who buys or leases the collateral during the 20-day period in this article takes free from the securing charge if he has had no knowledge of this charge at the time of the sale or lease.

**EXPLANATORY COMMENT**

69. Article 9 provides for temporary completion of a securing charge in certain types of collateral where the securing charge is initially completed by possession but commercial necessity dictates that the chargee surrender possession to the chargor. The temporary completion is automatic. If some other completion step is not taken before the 20-day temporary completion period expires, the securing charge is thereafter uncompleted.
Example:
A bank has possession of a document of title to secure advances to a customer to purchase the goods covered by the document of title. The bank will ultimately need to release the document to the customer-Chargor so that he or she can get possession of the goods (by submitting the document to the person who has the goods) and sell them. Article 9 eliminates the need to register the securing charge prior to the release of the document of title to the Chargor for a period of 20 days.

70. The temporary completion provided by Article 9 is sufficient to protect the securing charge from other securing charges and the chargor's unsecured creditors. However, it may not be sufficient to protect a securing charge on goods if the chargor sells or leases the goods to a third party. Under Article 9, a buyer or lessee without knowledge of the completed securing charge who acquires ownership or possession after release of the goods to the chargor and before the securing charge is registered takes free from the securing charge. For this reason, a chargee may not want to rely on Article 9 but may decide to register a notice before release of the collateral to the chargor. When the collateral is a negotiable instrument, the securing charge can be defeated if the collateral is transferred under the circumstances set out in Article 19 of the Law. This is so even though there was registration relating to the collateral. In such a case, the only way a chargee can protect his or her securing charge is to maintain possession of the instrument.

Article 10. Securing Charge on Guarantees and Proceeds Collateral

When an account is subject to a securing charge, the chargee has the same rights against a guarantor of the account that the chargor has.

Except as otherwise provided in the Law, a securing charge continues in the collateral notwithstanding the sale, lease, license, exchange, or other disposition thereof, unless the chargee, expressly or impliedly, authorized the disposition free of the securing charge.

A securing charge on collateral attaches to proceeds collateral that can be identified.

The completion and priority of a securing charge on proceeds collateral are the same as the completion and priority of the securing charge on the original collateral if:
a) the registration through which the securing charge on the original collateral was completed included a description of proceeds collateral or when the proceeds collateral is the same type of property as the original collateral; or

b) the proceeds collateral is money, a check, or a deposit with a deposit banking institution.

When this is not the case, a securing charge on the proceeds collateral that is completed by way of registration or possession no later than 20 days from the date the securing charge on the proceeds collateral arises has the same completion and priority as the securing charge on the original collateral.

A buyer or lessee who buys or leases the proceeds collateral during the 20-day period in this article takes free of the securing charge if he has had no knowledge of this securing charge at the time of sale or lease.

EXPLANATORY COMMENT

71. The first paragraph of Article 10 provides a special rule for situations in which an account that is transferred is also guaranteed.

Example:
A owes money to B. This debt is guaranteed by C under a contract providing that if A defaults in payment to B, C will pay the debt. The effect of the first paragraph is that, when B grants a securing charge on this account to D, D acquires the same rights against C that B has. In other words, should B default in paying D, D is entitled to collect the amount from A and C.

72. The remaining paragraphs of Article 10 provide a feature that is extremely important to modern business financing. This is the principle that a securing charge on the original collateral carries over to proceeds collateral. See the definition of this term in Article I of the Law. The right to assert a securing charge on proceeds collateral is important in inventory financing where the chargor is given an express or implied power to sell the original collateral or where buyers of inventory collateral take free from a securing charge as a result of Article 14. The chargee knows that the original collateral is to be sold and the securing charge on it will be extinguished. Consequently, he or she must look to the proceeds collateral in place of the original collateral.
73. The term "proceeds collateral" is defined in Article 1 of the Law. Essentially, the term refers to movable property of any kind obtained by the chargor in exchange for the original collateral and the right to insurance payments received from loss of or damage to the collateral. In effect, the Law provides for an automatic statutory securing charge on proceeds collateral when the collateral is dealt with by the chargor or is destroyed. The securing charge on the proceeds collateral arises whether or not the securing agreement, which creates a securing charge on the original collateral, provides also for a securing charge on the proceeds collateral. The securing charge on the proceeds collateral is an extension of the securing charge on the original collateral, and the priority status of the securing charge on the original collateral carries over to the securing charge on the proceeds collateral. Of course, the chargee and the chargor are free to agree that the securing charge should not extend to proceeds collateral.

74. In order to have a securing charge on proceeds collateral, the proceeds collateral must be identified as property received by the debtor when dealing with the original collateral. This will be a problem when the proceeds collateral is money and the money is put into an active deposit account at a bank into which money from other sources is deposited and from which withdrawals have been made by the debtor. In order to ensure that cash proceeds collateral does not lose its identity, the chargee should require the chargor to keep the cash proceeds separate from other cash. The chargee can do this by requiring the chargor to deposit cash proceeds in a special deposit account set up specifically for this purpose.

75. The following is an illustration of the effect of Article 10.

Example:
Assume that D, a retail seller of cars, has given a securing charge on his or her inventory of cars to Alba Bank. When D sells a car to a customer under a transaction providing that the customer will pay part of the price through a trade-in of his or her car and will pay the balance in 30 days, the securing charge on the new car sold to the customer transfers to the traded-in car and the debt owing by the customer to D. If D then sells the traded-in car to another customer on 60-day credit terms, the debt owing to D by this second customer is proceeds of the traded-in car (i.e., proceeds collateral of proceeds collateral). Alba Bank's securing charge automatically applies to this debt.

76. As between the chargor and the chargee, it does not matter whether or not a securing charge on proceeds collateral is completed. An uncompleted
securing charge on proceeds collateral can be enforced against the chargor as long as the proceeds collateral can be identified. However, if the securing charge on the proceeds collateral is to be enforceable against third parties, it must be completed in the manner set out in this article. If so completed, it is continuously completed. This means that the proceeds collateral is treated as an extension of the original collateral, and the securing charge on it has the same priority status as the original collateral.

77. The article contemplates three circumstances that might arise in the context of securing charges in proceeds collateral and prescribes the completion steps that must be taken for each.

- Where the notice of registration contains a description of the proceeds collateral (including serial numbers where the proceeds are a kind of collateral that must be described by serial number as required by Article 8 of the Regulations), the securing charge is completed as to both the original and the proceeds collateral.
- If the proceeds collateral is the same kind as the original collateral, it is not necessary to take any steps other than completing a securing charge on the original collateral. It is not necessary to indicate on the notice of registration that the chargee claims proceeds collateral. Accordingly, if the original collateral is an automobile held by the chargor as inventory, the securing charge on proceeds collateral in the form of trade-in automobiles would be automatically completed since the trade-in property is an automobile held as inventory. However, if the original collateral is an automobile held by the chargor as consumer goods and the proceeds collateral is also an automobile held by the chargor as consumer goods, registration of the serial number of the original collateral would not be sufficient to complete the securing charge on the proceeds collateral. In order to have a completed securing charge on the automobile taken in trade, the chargee would have to register a notice recording the serial number of the proceeds collateral.
- The article provides a period of temporary completion or “grace period” where the securing charge on the proceeds collateral is presumed to be completed without registration or without the chargee taking possession of it. Provided that the securing charge on the original collateral is completed, the securing charge on the proceeds collateral is presumed to be completed for 20 days after it attaches to the proceeds collateral. If the securing charge on the
proceeds collateral is completed during the 20-day period, the securing charge is continuously completed and its priority status is that of the original collateral. However, temporary completion under Article 10 does not give the securing charge priority over certain buyers or lessees. Consequently, if a person buys the proceeds collateral during the 20-day period of presumed completion when it is not in the possession of the chargee or there is no registration existing in relation to it, the buyer takes free from the securing charge if he or she is unaware of the existence of the securing charge on the proceeds collateral. The presumed completion provides protection only against other chargees and execution creditors.

- If the proceeds collateral consists of cash proceeds (i.e., money, checks, or a deposit in a deposit-taking institution), the securing charge on the proceeds collateral is automatically completed if the securing charge on the original collateral is completed. However, as with any securing charge on negotiable property such as checks or money, the securing charge on proceeds collateral that is negotiable will be defeated by a transferee of the property as provided in Article 19.

**Article 11. Priority between Securing Charges**

When no other method of determining priority between securing charges is provided by the Law, priority is determined as provided in this article.

A securing charge that is completed has priority over a securing charge that is not completed.

Priority between two or more completed securing charges is determined on the basis of the order in which the chargees registered their securing charges, took possession of the collateral, or the securing charges were otherwise completed.

When a registration has lapsed or has been discharged either in error or without authorization of the chargee, and the chargee transmits to the Registry a notice of reinstatement no later than 30 days after the lapse or discharge, the lapse or discharge does not affect the priority of the securing charge in relation to a competing completed securing charge that, prior to the lapse or discharge, had a subordinate priority. This does not apply when, as a result of a legally binding obligation, that competing securing charge secures advances made, or that must be made, after the lapse or discharge but prior to the reinstatement.
Priority between uncompleted securing charges is determined on the basis of the first securing charge to attach to the collateral.

A purchase-money securing charge on inventory or its proceeds collateral has priority over another securing charge on the collateral given by the same chargor if it is completed and the chargee with the purchase-money securing charge notifies the earlier chargee by the time the chargor obtains possession of the inventory.

The notification must state that the person giving the notification has or expects to take a securing charge on the inventory and must contain a description of the collateral by item or type.

A purchase-money securing charge on collateral or its proceeds collateral, other than intangibles or inventory, that is completed no later than 20 days after the day on which the chargor, or another person at the request of the chargor, obtains possession of the collateral, and a purchase-money securing charge on an intangible or its proceeds collateral that is completed no later than 20 days after the day on which the securing charge on the intangible attaches, has priority over any other securing charge on the same collateral given by the chargor.

All disputes concerning priorities with respect to the collateral are within the jurisdiction of the Court of Appeal.

EXPLANATORY COMMENT

78. The priority structure of the Law as it relates to competing securing charges consists of a set of priority rules dealing with specific situations and a residual priority rule for all other situations. Article 11 includes the residual priority rule of the Law and some of the special rules.

79. The priority system embodied in paragraphs 2, 3, and 4 of Article 11 is very simple. Priority between conflicting securing charges in the same collateral is resolved on the basis of a first-in-time rule. Priority is given to the chargee who is the first to take one of the three measures specified in Article 11 (see also Article 8):

1. make a valid registration of a registration notice as required by Chapter IV of the Law and the Regulations;
2. take possession of the collateral for the purpose of completing a securing charge on it; or
3. acquire a temporary, special completion under one of the articles of the Law that provide for it (for example, Articles 9 or 10 of the Law).
80. While attachment of a securing charge as provided in Article 5 of the Law is an essential feature of priority, priority is not based on the time of attachment of the securing charge except when none of the securing charges was completed. A securing charge may have priority even though it was not the first securing charge to attach. The operation of this aspect of the article is demonstrated in the following scenario:

*Example:*
Chargee 1 registers a registration notice relating to a securing charge on automobiles. This is permitted under Article 28, clause (c), even though Chargor has not executed a securing agreement giving a securing charge to Chargee 1. Chargee 2 enters into a securing agreement with Chargor providing for a non-purchase-money securing charge on automobiles owned by Chargor. Chargee 2 registers a registration notice relating to the securing charge and advances the money to Chargor. At this point Chargee 2's securing charge on the automobiles attaches and the securing charge is completed; however, Chargee 1 does not have a securing charge on Chargor's property since a securing agreement has not been executed between Chargee 1 and Chargor. Three days later, Chargee 1 enters into a securing agreement with Chargor in which Chargee 1 is given a securing charge on Chargor's automobiles and Chargee 1 advances money to Chargor. At this point Chargee 1 acquires a completed securing charge on the automobiles. In the event of default by Chargor under both securing agreements, Chargee 1 has priority over Chargee 2 since Chargee 1 was the first to take one of the steps enumerated in Article 11, in this case, registration of a registration notice relating to his or her securing charge.

81. Knowledge of the existence of a prior securing charge on the collateral does not affect priorities under this article. In the above scenario, Chargee 1's priority is not affected even though Chargee 1 knew of Chargee 2's securing charge when he or she took his or her securing charge so long as Chargee 1 was not acting fraudulently. While this would seem to be a very harsh rule, it is necessary in order to give certainty to business transactions and to avoid having to go to court to deal with very difficult problems of proof as to what was known and what was not known by a competing chargee.

82. A securing charge that is completed in one way does not lose the priority given to it by Article 11 because there has been a change in the
method of completion. The securing charge is treated as being continuously completed. See Article 8 of the Law.

83. Paragraphs 6 to 8 of Article 11 introduce a concept (i.e., purchase-money securing charge) that plays an important role in the priority system of the Law. The Law gives a special priority status to a chargee who has provided money or credit through which the chargor acquires the collateral in which the chargee has taken a securing charge. It also gives this special status to sellers under title retention sales agreements, persons who consign goods for sale by others, and lessors under lease agreements having a term of more than one year. See the definition of the term “purchase-money securing charge” in Article 1 of the Law.

84. The policy on which the special status given to suppliers of purchase credit is based is not difficult to identify or to justify. A creditor who has provided the money or credit needed by a debtor to acquire the property in which the chargee holds a securing charge should be given priority to that property. The same justification applies to sellers under title retention sales agreements, persons who consign goods for sale by others, and lessors under lease agreements having a term of more than one year.

85. The special purchase-money securing charge priority is very important as a result of two other special features of the Law. Under Article 5, a securing charge may attach to movable property that the chargor acquires after the securing agreement is signed. As noted in the explanation set out above, this article gives priority to a chargee who was first to register a registration notice. When these two features are put together, they create a special problem.

Example:

D, a debtor, signs a securing agreement giving a securing charge to Chargee 1 in all automobiles he or she will acquire in the future. Chargee 1 immediately registers at the Registry a notice relating to this securing charge. Assume that D decides to acquire an automobile by receiving credit under a securing agreement with Chargee 2. Without a special priority rule giving Chargee 2 priority over Chargee 1, Chargee 1 would have priority under paragraph 3 of this article since Chargee 1 was the first to have registered a notice in the Registry. This being the case, Chargee 2 would not finance the purchase of the automobile knowing that Chargee 1 would have priority to it in the event of default in payment by D to both Chargee 1 and Chargee 2.
The special priority rule set out in paragraphs 6 to 8 of this article gives priority to Chargee 2 and consequently permits debtors like D to obtain credit from additional sources in situations where a securing charge has been given in the chargor’s after-acquired property. This is an important feature of the system.

86. Four types of transactions fall within the definition of purchase-money securing charge:

1. a sales transaction under which the seller takes a right on the property that he or she sells;
2. a loan transaction under which the lender gives money (or other value) to the chargor to enable the chargor to acquire the collateral where the money is in fact used for this purpose;
3. a lease under a lease agreement referred to in Article 2 of the Law; and
4. a consignment referred to in Article 2 of the Law.

87. In an installment sales agreement where a seller takes a securing charge in the property sold (or retains ownership until the price is paid) to secure the unpaid purchase price, the seller will generally have a purchase-money securing charge. However, this is not always the case. A sale and repurchase transaction does not create a purchase-money securing charge. The test is whether the transaction enhanced the chargor’s asset pool through the acquisition of new collateral.

88. The requirements associated with category 2 are the ones most likely to create problems of proof. In order for a lender to have a purchase-money securing charge, the lender must establish that the loan was used by the chargor to acquire ownership of the collateral. It is not sufficient that the securing agreement contains a statement that the collateral was acquired as a result of the loan if this is not the case. It may be difficult to demonstrate that the loan was used for this purpose if the chargor mixes this money with money from other sources (i.e., deposits it into a deposit account containing other money). The safest course is for the chargee to make the payment directly to the seller of the property to be purchased with the loan or to draw an instrument payable to the chargor and the seller jointly.

89. Although it is generally the case that a purchase-money securing charge is not created if the chargor owns the collateral before the loan advances are made, there are instances in which this does not prevent a purchase-money securing charge from arising. For example, the requirement that the loan be used to acquire the property that is charged is satis-
fied if the chargee gave the chargor a binding commitment to extend credit prior to the acquisition of the property by the chargor. The requirement is satisfied since the binding commitment to extend credit provides a sufficient nexus between the loan and the acquisition of the collateral. That promise is itself value.

90. The definition of purchase-money securing charge in Article 1 makes it clear that credit and interest charges are also secured by the securing charge.

91. The requirements of paragraph 6 differ from the requirements of paragraph 8. Paragraph 8 gives the chargee who has taken a purchase-money securing charge on property other than inventory or intangibles a grace period of 20 days after the debtor obtains possession of tangible property, or 20 days after the securing charge on intangible property attaches, to complete the securing charge. No such grace period is provided under paragraph 6, which deals with purchase-money securing charges in inventory collateral. The stricter requirement of paragraph 6 is necessary in order to protect the earlier chargee who might otherwise make additional advances to a debtor in possession of new property on the mistaken assumption that such advances will be secured by a first securing charge. A chargee taking a purchase-money securing charge on inventory must complete his or her securing charge and must give an earlier chargee who has registered a notice relating to the same kind of inventory a notice of his or her intention to acquire a purchase-money securing charge before the chargor, or any other person at the request of the chargor, obtains possession of the collateral. If these requirements are not met, the special priority given to the purchase-money securing charge will be lost. This is so even though the earlier chargee did not make further advances to the debtor after the purchase-money securing charge was taken.

92. The purchase-money securing charge priority can be claimed only if the contest is with a securing charge on the same collateral given by the same chargor. This is illustrated in the following scenario:

Example:
Chargee 1 takes a securing charge on a Persian carpet, which belongs to Chargor. Chargor sells the carpet to Buyer outside of the ordinary course of Chargor’s business without obtaining authorization from Chargee 1. Chargee 2 makes a loan to Buyer to enable Buyer to acquire the carpet. Chargee 2 has a purchase-money securing charge on the carpet. However, Chargee 2 cannot claim priority over Chargee 1 because his or her purchase-money
securing charge is not in competition with a securing charge
granted by the same Chargor (Chargor rather than Buyer granted
the securing charge to Chargee 1).

93. The purchase-money securing charge priority on original collateral carries over to proceeds collateral.

94. Article 28, clause (f), sets out a basic rule: the renewal of a registration must occur before the registration expires. In other words, once a registration expires, it cannot be revived or continued. Any attempt thereafter to re-register a registration notice so as to continue the registration will fail. After the original registration expires, there must be an entirely new registration. The priority for the securing charge will take effect from the date of the new registration. (Reinstatement is an exception to this rule.)

95. A registration may prematurely cease to exist for reasons other than the lapse of the registration period. It may be inadvertently discharged by the chargee, it may be discharged by someone who did not have authority to do so but who acted honestly in so doing, and it may be discharged by someone acting fraudulently.

96. When the Registry receives a registration notice indicating the discharge of a registration or any other change to a registration that involves deletion or replacement of data, the Chief Registrar will require a notarization of such change. See the Regulations for the requirements in order to effect such transaction.

97. Paragraph 4 of this article is designed to avoid injustice in cases where there has been an inadvertent, fraudulent, or unauthorized discharge of a registration. The system permits a chargee to take measures to prevent a loss of priority status that would otherwise result from the discharge of his or her registration. The way the paragraph operates is demonstrated in the following scenario:

Example:
As of June 1, Chargee 1 and Chargee 2 have registered securing charges in collateral owned by Chargor. However, since Chargee 1 was the first to register, he or she has priority.

On July 15, Chargee 1's registration ceases to be valid because someone has fraudulently discharged it. (The result would be the same if the registration was inadvertently discharged or if it lapsed because of carelessness on the part Chargee 1. However, if a discharge were involved, Chargee 1 would be notified by the Registry).
On August 1, Chargee 3 registered a registration notice relating to a securing charge given by the Chargor in the collateral that is subject to Chargee 1’s and Chargee 2’s securing charges. On August 10, Chargee 1 registers a registration notice in compliance with the Regulations relating to re-registration after lapse or discharge.

As a result of paragraph 4 of this article, Chargee 1 can regain his or her priority position over Chargee 2 through re-registration no later than 30 days after July 15. However, Chargee 1 cannot gain priority over Chargee 2 to the extent that Chargee 2 made advances between July 15 and August 10. The effect of the provision is that Chargee 2 cannot take advantage of the discharge or lapse of Chargee 1’s registration and gain a windfall at the expense of Chargee 1. However, the regained priority position cannot affect another chargee (Chargee 3) who has registered a registration notice between the date of lapse or discharge and the date of re-registration.

Article 12. Priority over Uncompleted Charges

A claim of a creditor who becomes an execution creditor before completion of a securing charge has priority over this charge if the chargee has not registered a registration notice before the creditor becomes an execution creditor or if before this charge is completed the chargee had knowledge of the existence of the execution creditor.

The right of the buyer of the collateral who bought it without knowledge of the securing charge and before it is completed has priority over this charge.

The right of the lessee of goods that took possession without knowledge of the securing charge and before the securing charge is completed has priority over this charge.

EXPLANATORY COMMENT

98. Article 12 sets out the priority of claims that come into conflict with a securing charge that has attached but has not been completed. The article renders an uncompleted securing charge subordinate to three classes of claims:
1. a claim of an execution creditor;
2. a claim of a buyer of the collateral; and
3. a lessee of the collateral.

As to the priority of a completed securing charge over an uncompleted securing charge, see paragraph 2 of Article 11 of the Law. As to the priority of state claims over uncompleted securing charges, see Article 605 of the Civil Code.

99. Article 12 operates only in competitions between an uncompleted securing charge and the specified three types of claimants. An uncompleted securing charge remains valid and enforceable against the chargor. Article 11 of the Law and other articles containing special priority rules deal with a priority competition between securing charges.

100. The first class to which an uncompleted securing charge is subordinate is the class of execution creditors. See the definition of “execution creditor” in Article 1 of the Law. These are creditors who have obtained an execution order under the Code of Civil Procedure for enforcement of a court order for payment of money. The Law recognizes the time and costs invested by such creditors by granting them priority over uncompleted securing charges. However, this priority does not extend to situations where the chargor, who has registered his or her securing charge before the execution creditor obtains the execution order under which the collateral is seized, completes his or her securing charge without knowledge of the order.

101. This provision applies only to uncompleted charges. If the securing charge has been completed by registration, possession, or under one of the provisions of the Law providing for temporary completion before the execution order is obtained, the chargor has priority over the execution creditor.

102. Buyers and lessees of the collateral also have priority over an uncompleted securing charge when they acquire rights in the collateral without knowledge of the existence of the securing charge. See the definition of “knowledge” in Article 1 of the Law. Buyers and lessees are given priority over uncompleted securing charges since the Law guarantees that, if they search the Registry and find no registration against property that they purchase or lease, they need not be concerned by securing charges on the property. In the case of a lease, there is an additional requirement that the lessee must take possession of the leased property before the securing charge is completed. The justification for the distinction is that, generally, it is only when the lessee has obtained possession that there is any obligation to make
lease payments. In other words, the lessee is not likely to have paid any money to the lessor before obtaining possession. The situation is often very different with a buyer, who will often pay before getting possession.

103. Article 14 provides special protection to buyers or lessees in the ordinary course of business. Under Article 14, they take priority over both completed and uncompleted charges in the property they buy or lease.

Article 13. Priority of Securing Charges and Other Claims over Future Advances

The priority of a securing charge extends to all money loaned, whether present or future, under the securing agreement or a related agreement.

A completed securing charge does not have priority over the rights of an execution creditor with respect to money loaned after the chargee becomes aware of the execution creditor.

However, the chargee will have priority over a claim of an execution creditor whether or not the chargee has knowledge of the existence of the execution when:

a) the money is owed to someone other than the chargor;
b) the payment is required by the law; or
c) the chargee has incurred reasonable expenses for the preservation, maintenance, or repair of the collateral.

The chargee is not obliged to give the loan to the chargor if the chargee has knowledge that the collateral is subject to execution before the chargee gives the loan.

EXPLANATORY COMMENT

104. Article 13 provides a priority rule for what is often referred to as “future advances.” It is common for a securing agreement to provide that the money to be loaned to the debtor will be advanced by installments over a period of time. Problems arise when a second securing charge is taken in the collateral by another chargee or when a creditor obtains an execution order before all the advances have been made under the first securing agreement. The following scenario illustrates the source of the problem:

Example:
Chargee 1 enters into a securing agreement with Chargor providing for a securing charge on Chargor's inventory of stored
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The agreement provides for two advances of 10,000 Lek each. Chargee 1 registers a notice relating to the securing charge and advances 10,000 Lek to Chargor. Shortly thereafter, Chargor gives a securing charge on the grain to Chargee 2, who lends Chargor 10,000 Lek. Then, Chargee 1 makes the second 10,000 Lek advance under his or her securing agreement. Assume that the grain is worth 20,000 Lek at the time that Chargor becomes insolvent without having paid anything to either Chargee 1 or Chargee 2. There are 30,000 Lek in claims against grain worth 20,000 Lek. Either Chargee 1 or Chargee 2 must suffer a 10,000 Lek loss.

The effect of Article 13 is to give priority to Chargee 1 to the full amount of his or her 20,000 Lek claim if the securing agreement or a related agreement provided for the future advances. The assumption is that Chargee 2 had the means to be notified about the future advance through checking the information in the Registry. Before making an advance to the Chargor, Chargee 2 could have discovered through a search request to the Registry that Chargee 1 held a securing charge on the grain and also should have known that if Chargee 1 made a future advance he or she would have priority. Consequently, Chargee 2 would not make a loan to the Chargor unless he or she obtains a subordination agreement from Chargee 1 under which Chargee 1 agrees that any additional advances he or she makes to the Chargor will be subordinated to Chargee 2's claim.

105. The position of an execution creditor is very different from the position of Chargee 2 in the scenario set out above. Chargee 2 can obtain a search result and find Chargee 1’s registration before he or she decides whether or not to give a loan to chargor. In most cases, execution creditors are not in this position. They have already given credit before Chargee 1 registers his or her securing charge, or their claims are not based on a voluntary grant of credit but on some other basis of liability. It is quite unfair to allow Chargee 1 to grant an additional loan to chargor and then claim priority over an execution creditor of which he or she was aware at the time he or she made the additional loan. Consequently, Article 13 does not give priority to Chargee 1 over the execution creditor unless one of the exceptions set out in the Article applies.

106. There are three exceptional situations in which Chargee 1 can gain priority over an execution creditor of which he or she has knowledge:
1. when Chargee 1 is contractually obligated to advance the second installment of the loan to a person other than the chargor;
2. when the chargee is required by law to make the payment; and
3. when after the first installment of the loan has been made the chargee has incurred expenses for the preservation, maintenance, and repair of the collateral.

107. Under the final paragraph of the article, when a chargee cannot have first priority for the second installment of the loan because he or she is aware of an execution creditor, he or she is released from any contractual obligation to give such installment to the chargor. If the chargee cannot gain priority for this installment, it is unreasonable to hold him or her to a contractual obligation to make the installment payment to the chargor.

Article 14. Priority of Buyers and Lessees of Goods

A buyer in the ordinary course of the seller's business takes free of a completed or uncompleted securing charge on goods created by the seller of the goods even if the buyer knows of the existence of the securing charge.

A lessee in the ordinary course of the lessor's business takes free of a completed or uncompleted securing charge on the goods created by the lessor even if the lessee knows of the existence of the securing charge.

A buyer or lessee of consumer goods or goods to be used for farming purposes who buys or leases the goods without knowledge of a securing charge takes free of a completed or uncompleted securing charge if the purchase price of the goods or, in the case of a lease, the market value of the goods, does not exceed 40,000 Lek.

EXPLANATORY COMMENT

108. Article 14 contains a special set of priority rules under which buyers or lessees of property take free from securing charges on the property. To simplify the analysis, further reference is made only to buyers (who should be taken to include, where appropriate, lessees of property). Article 14 applies only to sales made by a person whose business purpose is the selling or leasing of such property.

109. Article 14 ensures that a buyer who buys the property from a seller under a transaction carried out as part of the seller's business need not be concerned about prior securing charges in the property created by the seller. The purpose of the provision is to avoid disruption of commerce and
PART A. THE LAW FOR SECURING CHARGES

110. A chargee who takes inventory as collateral is fully aware that the collateral must be sold by the chargor if the chargor’s business is to survive. While a chargee may want to put a restriction on the right of the chargor to sell the inventory (for example, a restriction in the securing agreement that the inventory will not be sold without the consent of the chargee or below a specified price), such restrictions cannot be allowed to affect the buyers who buy the inventory in the ordinary course of business. Consequently, a buyer is protected under this article even if the securing charge limits the right of the seller to sell the property. It does not matter that the sale was in violation of a limitation in the securing agreement.

111. The fact that the buyer is aware of the existence of a securing charge on the property of the seller does not disqualify the buyer from having the protection of this article. Many buyers are aware that the wholesale or retail sellers with whom they deal may have given securing charges on their inventory. It makes no commercial sense to require these buyers to discover the identity of the chargee and then contact the chargee to get a release of the securing charge on the property. Such a requirement would impede commercial activity.

112. Article 14 should be compared with Article 12 of the Law. Article 12 subordinates a securing charge that is not completed to the ownership right of a transferee who acquires the ownership right for value. Although these articles may overlap to some extent, for the most part each operates within its own distinct sphere. Article 14 applies where there has been a business sale. This is not a requirement of Article 12. Article 12 applies only when the securing charge is not completed and where the buyer does not have knowledge of the securing charge. Article 14 applies whether or not the securing charge is completed and whether or not the buyer is aware of the securing charge.

113. Sales in the ordinary course of business of a seller are those made by a person who has as that person’s business purpose the selling of such property. These are sales to the public at large. They are of the type normally made by sellers in the business of selling property of that kind when the business dealings between the buyers and sellers are carried out under normal terms and are consistent with general commercial practices. They do not include private sales between individuals or commercial sales made under very unusual terms. Whether or not a particular sale falls within the scope of this article is ultimately a question of fact, which may have to be
determined through a multifaceted inquiry into the business practices of the seller. The following are relevant factors:

1. **Transaction Type**: The transaction should be one that is a normal part of the seller's business.

2. **Place of Sale**: If the transaction takes place at the business premises of the seller, it is more likely to be in the ordinary course of business. If it takes place away from the business premises of the seller and the seller does not ordinarily sell in locations other than his or her premises, the sale is not likely to be in the ordinary course of business.

3. **Parties to the Transaction**: If the buyer is an ordinary, everyday consumer, the sale is more likely to be part of the ordinary course of business. If the buyer is not an ordinary consumer, then the sale is not likely to be part of the ordinary course of business.

4. **Quantity of Property Sold**: If only one or a few articles are being sold in the ordinary way, the court is more likely to hold this to be a sale in the ordinary course of business. On the other hand, if a large number of items are sold, many more than are sold in the ordinary course of business, and if they form a substantial proportion of the stock of the seller, then this is not a sale in the ordinary course of business.

5. **Price Charged**: If the price charged is in the range of the usual market price, the sale is more likely to be a sale in the ordinary course of business, whereas if the price is unduly low, this is considered evidence that a sale in the ordinary course of business has not occurred.

6. **Advertising**: If the seller advertises to the public, representing itself as conducting a certain business, then the transaction is more likely to be in the ordinary course of business.

114. Article 14 provides that a buyer of property takes free from any securing charge on the property created by the seller of the goods. It is very important to note that not all securing charges on the goods are defeated in a sale in the ordinary course of business. Article 14 does not shield the buyer from a securing charge on the property given by someone other than the seller. A buyer should not assume that the sale is protected simply because the property was bought from someone who ordinarily sells property of the kind purchased. There is a risk that the seller may have acquired property that was subject to a securing charge from an earlier party. Buyers of property, particularly used property, must take alternative measures to protect
themselves against the risk of loss even when they deal with a seller ordinarily in the business of selling such property. The following scenario demonstrates this point.

Example:
Assume that Chargor 1 gives a securing charge on his or her car to Chargee 1. This securing charge is properly registered. Chargor 1 then trades in the car as part of the purchase of a new car from a car dealer. The car dealer then gives a securing charge on his or her inventory of cars to Chargee 2. This inventory includes the traded-in car. Buyer purchases the traded-in car from the dealer in the ordinary course of business. Buyer takes free from the inventory securing charge held by Chargee 2 but not Chargee 1’s securing charge since this charge was not created by the seller (the car dealer). In order to protect himself or herself, Buyer must check the Registry using the serial number of the car he or she is purchasing as the search criterion. (A search using the dealer’s name will not reveal the securing charge held by Chargee 1.)

115. The protection provided by the last part of Article 14 is for buyers or lessees of tangible property of low value (that is, property having a value of 40,000 Lek or less). This protection is in some respects narrower, but in other respects broader, than that provided to buyers in the ordinary course of business under the first paragraph of Article 14. It is narrower in that the price of the property must not exceed 40,000 Lek. Furthermore, the buyer must acquire the property without knowledge of the securing charge. It is broader in that the sale need not have been carried out by a person whose business is the selling of such property. In addition, this paragraph protects the buyer from all securing charges whether created by the seller or someone else. The following scenario demonstrates how this aspect of Article 14 operates.

Example:
Chargee takes and registers a securing charge on Chargor’s computer. Chargor sells the computer to Buyer 1. The sale is not in the ordinary course of the Chargor’s business. Buyer 1 pays 50,000 Lek for the computer. Buyer 1 later sells the computer to Buyer 2 for 40,000 Lek. Buyer 2 is unaware of the securing charge of Chargee.
Chargee has priority over Buyer 1. This was not a sale in the ordinary course of Chargor's business, and the value of the computer was in excess of 40,000 Lek. However, Chargee lost priority to the computer once it was sold to Buyer 2. The last paragraph of Article 14 gives Buyer 2 priority over the Chargee. There is no requirement that the sale be in the ordinary course of business.

116. A buyer may also acquire protection under the second paragraph of Article 10 from a prior securing charge. Article 10 applies whether or not the sale is in the ordinary course of business of the seller. However, this protection is available only when the chargee consents to the disposition of the goods by the seller. The protection afforded by Article 14 is not based on an expressed or implied consent of the chargee. This article states priority rules that operate quite independently of the permission of the chargee.

117. There are situations in which a securing charge in goods is temporarily completed without registration and without the chargee's taking possession of the collateral. See, for example, Articles 9 and 10 of the Law. A basic policy of the Law is that a search of the Registry will provide reliable information to a potential buyer about the existence of securing charges registered against the name of the seller. This is subject to two qualifications. First, a Registry search can be relied on only if the chargee has completed the securing charge through registration (rather than possession). If the chargee completed his or her securing charge through possession, a search of the Registry will not assist a potential buyer. Second, as noted earlier in this comment, the buyer is open to the risk that the goods are subject to a securing charge granted by a previous owner. The policy therefore provides an assurance only that a search will reveal securing charges given by the person identified as debtor in the information obtained from the Registry. However, buyers need not be concerned about securing charges that are temporarily completed without registration or possession of the collateral by the chargee. The articles of the Law that provide temporary completion restrict the benefits of this completion to situations where the parties in conflict are persons other than buyers or lessees (that is, other chargees or execution creditors).

Article 15. Priority of Claims Arising by Operation of Law

If a person in the ordinary course of his business furnishes services or materials with respect to collateral, a right in the collateral given by law for the value of the materials or services has priority over a securing charge in the collateral whether the securing charge is completed or not.
EXPLANATORY COMMENT

118. Article 15 subordinates a securing charge to a claim on goods if the claim arose as a result of furnishing materials or services that were used in connection with the collateral in the ordinary course of business. Article 15 applies whether or not the securing charge is completed.

119. Three conditions must be met under the language of Article 15:

1. the nonconsensual charge must take the form of a claim provided by law;
2. the claim must be on goods; and
3. the claimant must supply materials or services in respect of the goods.

Article 16. Priority with Respect to Securing Charges on Goods Attached to Immovable Property

A securing charge may be created on crops or on goods that are or are intended to become attached to immovable property. The Law does not prevent the creation of hypothec on things that are attached to immovable property under the Civil Code or other laws.

A securing charge on crops or goods that are attached or are intended to become attached to immovable property has the rights and priorities provided in the Law, to the extent that they do not conflict with other laws that deal with hypothecs.

A completed securing charge on crops or goods that have been attached to immovable property has priority over the rights of the owner of the immovable property at the time the crop is planted or the goods are attached to the immovable property. This priority is, as well, over the rights of an execution creditor and a person who acquires ownership or takes a hypothec on the immovable property after the securing charge is completed.

Upon default, subject to Chapter V, a chargee who has priority under this article may remove the crops or goods from the immovable property. The chargee shall reimburse the owner of the immovable property to which the crops or goods have been united, other than the chargor, for the costs of physical injury to the immovable property resulting from the removal of the crops or goods. The chargee need not provide reimbursement for reduction in value of the immovable property resulting from removal of the crops or goods.
EXPLANATORY COMMENT

120. Under Part II, Title 1, Objects, the Civil Code states the fundamental principle that what is attached to immovable property may become a part of that immovable property depending upon how easy it is to detach the thing that is attached. This usually means that the owner of the immovable property becomes the owner of goods attached to the property. This tends to undermine the stability of commercial transactions by placing a substantial risk of loss on a secured financer of the goods. It also gives an unanticipated windfall to an owner of the immovable property.

121. Article 16 sets out a comprehensive system that governs securing charges in goods (including crops) attached to immovable property. It permits a chargee to have a securing charge on the goods or crops even though they are attached to immovable property owned by the chargor or someone other than the chargor. In addition, it sets out a procedure governing the removal of the crops or goods. These provisions attempt to achieve a reasonable balancing of interests between the financer of the crops or goods and the owner of the immovable property.

122. Article 16 covers two different situations. The first is when a chargee takes a securing charge in goods and the goods later become affixed to land. The second is when a chargee takes a securing charge in goods that are already affixed to land or that are grown on the land.

123. The article provides that a completed securing charge on goods which attaches before or at the time they become affixed to the immovable property has priority over the owner of the land. The operation of this provision can be illustrated in the following scenario:

Example:
Chargor owns immovable property on which a manufacturing plant is located. The land is subject to a hypothec in favor of Creditor. Chargee supplies manufacturing equipment to Chargor under a securing agreement and registers his or her right. The equipment is later affixed to the land.
Chargee has priority over Creditor and may remove the equipment from the land in case of default by Chargor.

124. The last paragraph of Article 16 governs the enforcement of the securing charge on crops or goods attached to the land. It is designed to achieve a fair balance between persons who have enforceable securing charges in crops or goods and persons who have property rights in the land to which the movable property is attached.
Article 17. Priority with Respect to Securing Charges on Goods Attached to Movable Property

Accession is goods that are attached to other goods in such a manner that they have not lost their separate identity and can be separated without substantial expense or without causing substantial damage. A securing charge on goods continues after the goods become an accession.

If a securing charge is completed when the goods become an accession, it remains completed in the accession.

A completed securing charge on an accession has priority over the rights of the owner of goods to which the accession is attached at the time the accession is attached to the goods and over the rights of an execution creditor and a person who acquires ownership or becomes a chargee of the goods or the accession after the securing charge is completed.

On default, subject to Chapter V, a chargee who has priority under this article may remove the accession from the other goods. The chargee shall reimburse the owner of the goods to which the accession has been united, other than the chargor, for the costs for the repair of any physical damage resulting from the removal of the accession. The chargee need not provide reimbursement for reduction in value of the goods resulting from removal of the accession.

A person entitled to reimbursement may refuse permission to remove the accession until the chargee gives adequate assurances of the obligation to reimburse.

EXPLANATORY COMMENT

125. Article 17 deals with situations in which one item of goods owned by a chargor that is subject to a securing charge is attached to another item of goods in such a way that the first item can be removed without substantial damage to the other item. An example of such a situation is where high-value truck tires that are subject to a securing charge given by a chargor to a chargee are installed on a truck that is subject to a securing charge in favor of another chargee or installed on a truck owned by someone other than the chargor. Under this article, the tires are considered an “accession.” (But it does not apply where paint is put on a vehicle, for example, since the paint cannot be removed without causing serious damage to the vehicle.)

126. This article enables a chargee with a securing charge on an accession to maintain his or her securing charge against a person who has property rights in the goods to which the accession is attached. This tends to increase the stability of commercial transactions by reducing the risk of loss.
of a financer of the accession. It also prevents an unanticipated windfall to a
prior owner of the goods to which the collateral is attached.

127. Under Article 17, a person with a securing charge that attaches
to goods before they become an accession has priority over any person with
property rights in the goods to which the accession is attached. This provi-
sion operates as follows:

Example:
Chargor gives a securing charge on a truck to Chargee 1. Char-
gee 1 completes the securing charge by registration. Chargee 2
finances the acquisition of new tires and takes a securing charge
on the tires. The tires are then installed on the truck.

In this scenario, Chargee 2 has priority over Chargee 1 and
may remove the tires from the truck. This priority is not depen-
dent on registration of the securing charge on the tires. How-
ever, completion of a securing charge on the tires is relevant when
a dispute over priority arises between the holder of the securing
charge on the tires and a person who subsequently becomes the
owner of the truck and tires. If the truck and tires were sold to a
third party, or if the debtor granted a securing charge in the whole
to another chargee, the failure to complete the securing charge
on the tires would result in loss of that securing charge to the
third person, as provided in Article 12 of the Law.

128. The last paragraph of Article 17 governs the enforcement of the
securing charge in goods that become an accession. It is designed to achieve
a fair balance between persons who have an enforceable securing charge in
such goods and persons who have ownership in the goods to which the ac-
cession has been attached.

Article 18. Priority of Securing Charges on Commingled Goods

In this article commingled goods are goods that are physically united
with other goods in such a manner that their identities are lost in a prod-
uct or unit.

A securing charge may not be created in commingled goods, except
that if collateral becomes commingled goods, any securing charge on the
original collateral attaches to the product or unit. A completed securing
charge in goods that become commingled goods remains completed as well
in the product or unit. The chargee may not enforce the securing charge on
the product or unit to the extent that the value of the product or unit at the
time of enforcement exceeds the value of the collateral at the time it be-
came commingled goods.

If more than one securing charge attaches to a product or unit, a se-
curing charge that is completed has priority over a securing charge that is
uncompleted at the time the collateral becomes commingled goods.

When there is more than one completed securing charge, the secur-
ing charges rank equally in proportion to the value of the collateral at the
time that it became commingled goods.

EXPLANATORY COMMENT

129. In a nontechnical sense, Article 18 is an extension of the concept
of securing charges on proceeds collateral. It addresses a situation in which
two or more items or quantities of goods, each of which is subject to a sepa-
rate securing charge held by different chargees, are merged through manu-
factoring, assembling, processing, or commingling into a single new item or
product. Commingled goods lose their identity and cannot be distinguished
from the other goods. A simple, although not necessarily practical, example
of a situation to which this article applies is when flour, subject to a securing
charge given to Chargee 1, is mixed with chocolate, subject to a securing
charge given to Chargee 2. The result is a chocolate cake.

130. Article 18 provides that, in effect, the separate securing charges
on the flour and chocolate are proportionally recognized in the cake if both
securing charges were completed when the goods charged became com-
mingled goods.

Article 19. Priority Relating
to Instruments under Other Laws

A securing charge of a person who acquires instruments in a manner pro-
vided by the banking law takes priority over an earlier completed securing
charge on the instruments.

A claim of a person who buys a security or takes a securing charge on
it has priority over a securing charge that is completed through registra-
tion, if this person acquires the security and possession of it for value with-
out having knowledge of the securing charge.

A claim of a transferee who gets a document of title has priority over
a securing charge on goods in possession of the issuer of the document of
title if:
a) the transferee gives value for the document of title;

b) the transferee takes possession of the document of title without knowledge of the securing charge; and

c) the transfer is done according to requirements that the document of title contains, which allows transfer of the document to the holder or according to his order.

A claim of a possessor of money has priority over a securing charge given on the money if the possessor acquired the money without knowledge that it was subject to this securing charge. When the possessor gave valuable property or assumed an obligation, the possessor has priority whether or not the possessor acquired the money with knowledge that it was subject to a securing charge.

A creditor who receives payment of a debt has priority over a securing charge on the money paid on this debt and on an instrument used to make the payment. This applies whether or not the creditor has knowledge of the securing charge at the time of payment and whether the payment was made by the chargor through the use of an instrument, an electronic funds transfer, a debit, an authorized transfer by him, or a similar way of payment.

EXPLANATORY COMMENT

131. A securing charge can be taken on negotiable property such as negotiable instruments and negotiable documents of title. See the definition of “instrument” in Article 1 of the Law. Such a securing charge can be completed by registration, by the chargee’s taking possession, or under one of the articles that provides short-term completion without registration or possession. (See, for example, Articles 9 and 10 of the Law.) However, the effectiveness of the completion is not the same in each case. Clearly, possession is the method that gives the best priority position.

132. This article has been designed to ensure that completion of a securing charge by registration or by short-term completion without possession or registration does not interfere with the basic laws of negotiability. For example, it is possible for a chargee to have a securing charge on all of a chargor’s present and future property. This would include negotiable instruments payable to the chargor. This securing charge can be completed by registration, and the negotiable instruments can be left in the possession of the chargor. If the chargor then negotiates one or more of the instruments as provided in the banking law, it is important to determine whether the
person to whom the instrument was negotiated must do a search of the Registry to determine whether or not the instrument is subject to a registered securing charge.

133. This, along with the banking law, makes it clear that such a search need not be done. So long as the person to whom the instrument is negotiated acquires it in a manner provided by the banking law, that person need not be concerned that the instrument is subject to an existing completed securing charge. The policy here is to permit securing charges on negotiable instruments, and at the same time to ensure that the free transfer of those instruments in accordance with the banking law is not affected. A chargee who wants to make sure that his or her securing charge will have priority must take possession of the instrument. When this is done, there is no chance that another person can acquire the instrument and defeat the securing charge on the instrument. Registration of the securing charge gives priority over execution creditors but not over a buyer of the instrument or another chargee who completes his or her securing charge by taking possession of it and who acquires his or her interest for value and without knowledge of the prior securing charge.

134. Under Article 19, the same approach that applies to negotiable instruments is extended to “securities.” In Article 1 this term is defined to include a document that evidences ownership of shares, participation in a company, or monetary obligation undertaken by the person who issues it. The document embodies these rights, and its transfer in the appropriate method is treated as a transfer of those rights.

135. The effect of Article 19 is to allow free transferability of securities without the need to do a search of the Registry each time a transaction takes place. This will be important with respect to securities that are bought on a stock exchange or a bourse. A chargee who wants to make sure that his or her securing charge on a security is fully protected must take possession of it or have it held by someone other than the chargee on his or her behalf. Registration of the securing charge gives priority over execution creditors but not over a buyer of the security or another chargee if:

1. the buyer or the chargee takes possession of the security;
2. the buyer or the chargee gives something valuable in exchange to the seller or the chargor; and
3. this was done without knowledge of the prior registered securing charge.

The knowledge referred to in the article is actual knowledge and not deemed or presumed knowledge resulting from the fact that the securing
When goods are stored in a commercial warehouse not owned by the chargor and the warehouser issues a warehouse receipt stating that the goods will be delivered to the holder of the warehouse receipt or to a person to whom the warehouse receipt has been transferred by endorsement, the warehouse receipt is generally considered to be "negotiable." The transfer of the warehouse receipt also transfers the ownership right on the goods to which the warehouse receipt refers. In commercial terms, the warehouse receipt is a "document of title" to the goods to which it refers. The term "document of title" is defined in Article 1. See also Civil Code, Article 1002. The same approach applies to a bill of lading (which is included within the definition of "document of title" in Article 1) issued by a carrier when the bill of lading provides that the goods to which the bill refers will be delivered to the holder or a person to whom the bill of lading has been transferred. The bill of lading is also treated as a "document of title" in the sense that the person who is in possession of it and who is named in it is treated as being entitled to delivery of the goods referred to in it. See Civil Code, Article 883.

The effect of this article is to treat a document of title in the same manner as a negotiable instrument. While registration of a securing charge on the goods to which the document of title relates is permitted (see Article 8 of the Law), if the document of title is transferred as provided by its terms to someone who acquires it for value and without knowledge of the registered securing charge on the goods or the document of title, the interest of the transferee of the document of title has priority over the registered securing charge. This is so whether the transferee is a buyer or another chargee. As with negotiable instruments and securities, if the chargee wants to make sure that his or her securing charge is fully protected, he or she must take possession of the negotiable document of title himself or herself.

A securing charge can be taken on money. This is most likely to occur when inventory collateral is sold and the chargor receives proceeds collateral in the form of money. It will also occur when the securing charge applies to all of the present and future movable property of the debtor. Such a securing charge can be completed in two principal ways: by possession or by registration. In addition, a securing charge on money as
proceeds collateral is automatically completed under Article 10 without the need for further steps.

140. Article 19 makes it abundantly clear that a securing charge on money that is completed by registration or that is temporarily completed under the Law does not have priority over the rights of a holder for value of the money. This is so since money is highly negotiable and it does not make sense to require persons who deal with money to conduct a search of the Registry before taking money in payment.

141. The last paragraph of the article provides that a creditor who receives payment of a debt takes free from any securing charge on the money or instrument used to pay the debt, even though the holder had knowledge of the securing charge. The article ensures that, when a debtor makes a payment to a creditor, the creditor need not be concerned that the money or negotiable instrument used to make the payment is subject to a prior claim of a chargee who has a securing charge in this property. A transfer under an electronic funds transfer system is also protected. Unless a debtor has this power, it would be impossible for him or her to carry on with business in situations where a broadly based securing charge has been given in his or her business assets.

142. The article has limited scope in this context. If a check is invalid or canceled, the creditor cannot claim priority on any money used for payment in the account that the check relates to. Article 19 protects the creditor only after he or she has received payment from the debtor.

Article 20. Priority Subject to Subordination

A person with a securing charge who has priority under the Law may agree to modify or forgo the priority in favor of some other person or group of persons. This is referred to as subordination agreement.

To be valid, a subordination agreement must be in writing.

EXPLANATORY COMMENT

143. Subordination agreements are very important. One reason for this is the ease with which it is possible under the Law to take and complete a fixed securing charge in a chargor's present and after-acquired property. Subordination by the holder of a securing charge under a securing agreement can be used to reverse the priority rules that would otherwise prevail in cases where a chargor is seeking nonpurchase financing from a credit grantor who is not the first to register a registration notice. Such agreements will be necessary because of the effect of the first-in-time priority rule in
Article 11 and the power to secure future advances as provided in Article 13 of the Law.

144. A subordination agreement may subordinate the debt of the subordinating creditor to the benefit of another creditor. It may postpone the subordinated debt from the outset, or it may provide that the postponement is effective only on the occurrence of a specified event. The subordination agreement may also limit the subordination to certain kinds of debts, such as debts arising out of a specific credit agreement, debt incurred prior to a specified date, or debt up to a specified amount. The parties are free to determine the nature and scope of the subordination.

145. Subordination does not affect the priority status of a securing charge in relation to another securing charge held by someone who is not party to the subordination agreement. The subordination may be registered in the Registry, but there is no requirement to do so and no priority consequences if it is not.

**Article 21. Transfer of the Chargor’s Right**

The ownership of a chargor on the collateral can be transferred, but only subject to the securing charge on the collateral, unless otherwise provided in the Law.

EXPLANATORY COMMENT

146. Article 21 recognizes a chargor’s power to dispose of his or her ownership in the collateral. The chargor need not get the permission of the chargee, even though the securing agreement requires this permission. However, a person who acquires the property from the chargor acquires ownership subject to the preexisting securing charge unless a priority rule on this law provides otherwise. A transferee of the chargor’s ownership will have to repay the chargee the outstanding balance of the chargor’s obligation. In effect, the chargor is free to deal with the collateral, while the Law protects the rights of the chargee.

**Article 22. Lack of Responsibility of the Chargee for Actions or Omissions of the Chargor**

The existence of a securing charge or authority given to a chargor only to dispose of or use collateral, without more, does not impose liability upon a chargee for the chargor’s acts or omissions.
PART A. THE LAW FOR SECURING CHARGES

EXPLANATORY COMMENT

147. Article 22 clarifies that no liability of a chargee for damage caused by the chargor during use of the collateral can arise unless the chargee specifically assumes such liability. Any liability that does exist is that of the chargor. This provision does not apply where the chargee is in possession of the collateral and the loss or damage occurs as a result of the conduct of the chargee.

Article 23. Agreement Not to Assert Claims against the Transferee

An agreement between an account debtor and a transferor of an account not to assert against the transferee any claim or defense that the account debtor may have against the transferor is enforceable by a transferee that takes the account. This applies only when the transferee received the account for compensation, in good faith and without notice of the agreement.

Such agreement is invalid when it is in contradiction of Article 92 of the Civil Code, or when the account debtor is overloaded with debts or obligations, or when bankruptcy proceedings have started.

EXPLANATORY COMMENT

148. This article applies to a situation in which a person to whom a debt (account) is owing transfers that debt to someone else (the transferor of the account is the chargor and the transferee of the account is the chargee), thereby creating a securing charge on the debt to which this law applies. The person who owes the debt is the “account debtor.” The article applies whether the transfer creates a securing charge or is a transfer of ownership of the account. Both types of transactions are governed by the Law. See the definitions of “account,” “account debtor,” “transferor,” and “transferee” in Article 1 of the Law.

149. It may happen that the account debtor has a defense against the chargor should the chargor decide to collect the debt. Under Article 24, the account debtor would ordinarily be able to raise this defense against the chargee should the chargee attempt to collect the debt.

150. The underlying assumption of Article 23 is that, without a specific agreement to the contrary, the account debtor does not waive his or her defenses, and that the transferor of the account (chargor) can pass to the transferee (chargee) only the right he or she has under the contract between the account debtor and the transferor of the account (chargor).
151. This article allows the account debtor to waive the defenses that he or she has against the chargor. As a result, when the debt is transferred to the transferee of the account (chargee), the transferee (chargee) can collect the debt without having to be concerned that the account debtor will raise those defenses against him or her.

152. The article sets out specifically, or by reference to Article 92 of the *Civil Code*, circumstances under which a transferee will be unable to use an agreement with the account debtor to enforce a waiver of defense. These circumstances include duress of the account debtor, lack of legal capacity of the account debtor, and illegality of the transaction or fraud.

153. An agreement to waive defenses is also not enforceable when the account debtor is overloaded with debt or is in bankruptcy proceedings. The policy of this feature is that the waiver should not be allowed when it unduly prejudices other creditors. If the account debtor can waive defenses, he or she is in effect surrendering value that otherwise would be available to his or her creditors. For the same reason, the waiver cannot bind a bankruptcy administrator.

**Article 24. Transfers**

A chargee may transfer his right in accordance with Article 499 of the *Civil Code* of the Republic of Albania.

Failure to notify the account debtor of the transfer of a right to payment has only the effects specified in this article. Notification of a transfer is not required for the creation, attachment, completion, or enforcement of a securing charge on an account.

If an account debtor did not make an enforceable agreement not to assert defenses or claims against the transferee, the rights of a transferee against the account debtor are subject to:

a) all the terms of the agreement between the account debtor and transferor and any defense or claim arising from the transaction that gave rise to the account or a related transaction; and

b) any other defense or claim of the account debtor against the transferor which accrues before the account debtor receives a written notice of the transfer signed by the transferor or the transferee.

The claim of an account debtor may be asserted against the transferee only to reduce the amount of the account.

A modification of or substitution for the contract between the transferor and the account debtor is effective against a transferee if it is made in
PART A. THE LAW FOR SECURING CHARGES

good faith and in accordance with reasonable commercial standards. The transferee acquires the rights of the transferor under any modified or substituted contract. This paragraph does not apply when the right under a transferred contract is obtained as a result of full fulfillment of the obligation and when the account debtor has received notification of the transfer.

An account debtor may discharge its obligation by paying the transferor until, but not after, the account debtor receives a notification that the amount due or to become due has been transferred and that payment is to be made to the transferee. After receipt of the notification, the account debtor may discharge its obligation by paying the transferee and may not discharge the obligation by paying the transferor. A notification is ineffective if it does not reasonably identify the account transferred.

If requested by the account debtor, the transferee must furnish within a reasonable period of time proof that the transfer has been made. Unless the transferee complies, the account debtor is discharged from his obligation by paying the transferor even if the account debtor has received a notification.

An account debtor who has received notification of a transfer of the account is entitled to receive from the transferee a record that releases the account debtor from any further obligation to the transferee, if there is no outstanding securing charge and the transferee has no commitment to make advances, incur obligations, or otherwise give value.

The release shall be sent as soon as reasonably practicable, but not more than three business days after the transferor receives a demand from the account debtor. This paragraph does not apply to the sale of an account.

EXPLANATORY COMMENT

154. Article 24 provides a set of rules dealing with the legal consequences of a transfer of an account. Excluding the last paragraph, it applies both to securing charges on accounts and to sales of accounts under which the transferee of the account becomes the owner of the account, since the Law applies to both types of transactions.

155. Paragraph 2 makes it clear that the validity of a transfer of an account is not dependent upon the notice to the account debtor. For example, even though the account debtor is not notified of the transfer, the transfer is effective and, if a securing charge arises as a result of this transfer, it can be completed and enforced. However, the lack of notification to the account debtor may result in loss of the right to collect the account. The circumstances in which this can occur are set out in the article.
156. Paragraph 3 provides that a transferee takes ownership subject to the terms of the contract between the transferor and the account debtor unless the account debtor has contractually agreed otherwise. In other words, the transferor of the account can pass to the transferee only the ownership he or she has under the contract. This is subject to Article 23 of the Law, which provides that in some circumstances the account debtor is free to waive as against the transferee of the account the defenses he or she has against the transferor of the account.

157. An account debtor who receives written notification that a securing charge (or transfer) exists on the account he or she owes cannot mount a defense against the transferee of the account if these claims arose as a result of dealings between him or her and the transferor of the account after receipt of the notice. The following example shows how these features of the article operate:

Example:
A enters into a contract to purchase goods from B. The goods are delivered to A. B gives a securing charge or transfers to C the debt (account) owing by A to B. The goods delivered to A are defective in a fundamental way, with the result that A owes nothing to B. As a result of this article, A can raise this defense when C attempts to collect the amount from A (unless, of course, he or she has made an enforceable agreement under Article 23 waiving his or her right to raise this defense). But he or she cannot sue C for damages resulting from B's breach of contract.

Assume that in the scenario above the goods delivered were not defective and A had no defenses to raise against either B or C. Assume that C informs A in writing that the account created by the sales contract has been charged (or transferred) to him or her. Assume that, thereafter, A and B enter into another contract under which B becomes indebted to A. Ordinarily, A could set off against the amount owing by him or her to B under the first contract the amount that B owes him or her under the second contract. However, since he or she has received notice from C that C has a securing charge on (or is the transferee of) the account arising under the first contract, A has lost this right of set-off.

158. The article also provides for modification of the contract between the transferor of the account and the account debtor after the right to payment arising under that contract has been charged (or transferred) and
the account debtor has been notified of this fact. This provision recognizes commercial reality. It is unreasonable for the law to freeze all aspects of the relationship between the account debtor and the transferor of the account as of the date that notice of the securing charge (or notice of the transfer) is given to the account debtor. For example, it might be necessary to change the specifications of the goods to be delivered by the transferor of the account to the account debtor under a contract of sale. It might also be important to make minor modifications in the price of the goods or the terms of payment. It should not be necessary to get the consent of the transferee of the account to minor changes of this kind, which do not significantly affect the rights of the transferee of the account. The provision dispenses with consent under these circumstances.

159. One of the risks an account debtor runs when an account is charged (or transferred) is that he or she may be forced to pay both the transferor of the account and the transferee of the account. Article 24 deals in detail with the notification that is given to the account debtor with respect to the securing charge (or to the transfer). This notification is designed to prevent a situation in which the account debtor will be obliged to pay the obligation more than once.

160. The article provides that an account debtor is not affected by a securing charge (or by transfer) until notified of it. In some cases, the account debtor may receive notice of a purported securing charge (or transfer) but may have doubts as to its validity. The account debtor is given the right to demand and obtain proof of the securing charge (or transfer) before being required to make payment to the transferee of the account.

161. The article removes the need for the account debtor to assume any risk as to the right of the transferee of the account to collect from the account debtor. As long as the account debtor has received the appropriate notice, the account debtor is free to make payment to the transferee of the account. Once the payment is made, the account debtor is discharged, even if it later turns out that the person claiming to be the transferee of the account did not have the right to collect from the account debtor.

162. Even after notification has been given to the account debtor by the transferee of the account, the transferee must provide proof (when this is demanded by the account debtor) that the securing charge (or transfer) took place. Without such proof, the account debtor may discharge his or her obligation by paying the person to whom the account is to be paid as provided in the contract under which the account arose.

163. Clauses prohibiting securing charges on (or transfers of) payment rights are found most often in contracts between small suppliers and large buyers with strong bargaining power. Buyers (account debtors) may
choose to include such clauses in order to avoid dealing with transferees of the debts arising between them and the sellers. If these clauses were given legal effect, crucial sources of financing would not be available to small suppliers. If suppliers cannot charge or transfer their accounts, their ability to remain in business may be jeopardized.

164. Article 499 of the Civil Code provides that a clause in an agreement between an account debtor and a transferor prohibiting the transfer of an account does not affect the transferee of the account unless the transferee is aware of the restriction at the time of the transfer. While this does not give complete freedom to creditors to transfer their account receivable, it does give validity to securing charges (or transfers) in cases where the transferee of the account is unaware of the restriction.
IV
The Registry of Securing Charges

Article 25. The Registry of Securing Charges

The Registry of Securing Charges shall be created for the purpose of registration of securing charges, claims, and rights pursuant to the Law and any other law that requires or permits registration in the Registry of Securing Charges.

The Registry of Securing Charges shall be an institute operated under the control of the Ministry of Finance.

The Minister of Finance may appoint a person as Chief Registrar of the Registry of Securing Charges and one or more persons as Deputy Registrars.

The Chief Registrar shall supervise the operation of the Registry of Securing Charges.

EXPLANATORY COMMENT

165. Registration is the most frequently used method of completing a securing charge. See Article 8, clause (a). Articles 25–28 and the Regulations (provided for in Article 26) provide the legal basis for the Registry.

166. The Registry is an office established and operated by the Ministry of Finance. The Minister of Finance appoints the Chief Registrar of the Registry and Deputy Registrars.

167. The Chief Registrar supervises the day-to-day operations of the Registry and is given limited power to deal with Registry matters. However, it is not the role of the Chief Registrar or any Registry employee or official to ensure that information on registration notices is accurate. For a further explanation of the functioning of the Registry, see the Regulations and the Guide.
Article 26. Regulations of Securing Charges

The Minister of Finance may make regulations to regulate and instruct the following matters:

a) the duties of the Chief Registrar;
b) the location and hours of operation of the Registry;
c) the fees payable for registry services of the Registry and the manner of payment of the fees;
c) prescribing the form, content, and manner of use of registration notices to be used to register securing charges;
d) the form, content, and the manner of use of any other notices mentioned in this law;
dh) the manner in which collateral, including proceeds collateral, is to be described on a registration notice and prescribing the kinds of goods that are to be described by serial number;
e) prescribing what constitutes a serial number;
e) prescribing the time, place, and all matters relating to searches of the Registry and the method of disclosure of registered information, including the form of search results;
f) prescribing the length of time during which a registration is effective;
g) prescribing the amount that a chargee is entitled for under Article 7; and
gj) prescribing any matter or thing that is required for the efficient functioning of the Registry.

EXPLANATORY COMMENT

168. The Regulations are used to prescribe much of the detailed features of the operation of the system, including the forms that must be used to register securing charges. For a detailed explanation of the requirements of the Regulations, see the explanatory comments to the Regulations.

Article 27. Liability of Council of Ministers

The Council of Ministers shall prescribe limits on the amounts that may be covered by the Council of Ministers for loss suffered as a result of an error in the operation of the Registry or malfunction of the Registry system.
169. Although the Registry is not likely to cause its users to suffer as a result of a malfunction in its operation, the Law takes into account the remote possibility that mistakes may occur. As a result, the Council of Ministers issued a decree designed to limit the liability the Albanian Government provides in the unlikely situation where damage is caused to a person as a result of a malfunction of the Registry. For a discussion of the decree, see the part dealing with limitation on the Government’s liability.

**Article 28. Registration in the Registry**

1. Notices in the form set out in the regulations shall be used to register a securing charge, amend a registration of a securing charge, discharge a registration of a securing charge, or subordinate a securing charge.

A registration, amendment, discharge of registration, or subordination of a securing charge is effective from the time information contained on the applicable notice is accepted by the Registry and can be found in the Registry system.

170. This article prescribes some of the central features of the Registry system.

171. A chargee seeking to register a securing charge in the Registry will submit a notice of registration in a form provided by the Regulations. The Regulations also specify what information a registration notice must include. Employees of the Registry will enter information from the completed form into the Registry’s database.

172. Clause (a) provides that a registration, amendment, or subordination is effective (that is, it is treated as having been legally registered) when a search of the Registry would reveal the registered information. A discharge is effective when a search would not reveal the registration. This is a very important feature of the system. The rationale behind this provision is clear. In order to protect persons who rely on the Registry when making business decisions, it is necessary to provide them with search results that would properly describe the creditworthiness of the chargor at the time they make their decisions.
173. Any delay between the date when a registration notice is submitted to the Registry and the date when the information in it is entered into the database of the Registry affects the chargee and not a person who searches the Registry. It follows that chargees should be careful not to release loans secured by a securing charge until they are satisfied that the information contained on their registration notices has been entered into the Registry database. They can do this by first determining from the Registry whether there is any significant delay between the date when the information was submitted for registration and the date that information was entered into the database of the Registry. In order to be totally safe, the chargee should not release the loan funds or other credit until he or she has obtained a search of the Registry, which discloses the date and time of his or her registration in relation to other registrations.

b. Registration and amendments to registrations shall be allocated numbers indicating the time in which the registrations or amendments occurred.

EXPLANATORY COMMENT

174. As a result of clause (b), there is no possibility that two or more securing charges relating to the same chargor and the same collateral will be registered at the same time. The clause provides a mechanism for determining the order of registration of the registration notices. Each registration notice must be assigned a number indicating the time of registration. No two registration notices relating to the same chargor and the same collateral can have the same number.

175. As soon as data from a registration notice are entered into the database of the Registry, a confirmation notice in the form set out in the Regulations is automatically produced and sent to the registering party, the chargee, and the chargor. Among other things, this document contains essential information concerning the registration, including the registration number (for future reference), the time of registration, the name of the chargee, the name of the chargor, and a description of the collateral. This information is presented in the form in which it is stored in the database and in the form in which it will be disclosed on a search.

176. The primary function of a confirmation notice is to give the chargee and the chargor an opportunity to compare the information in the Registry database relative to the registration with the information the registering person intended to register. For further details of the form and use of confirmation notices, see the Regulations and the Guide.
c. A registration notice may be registered before or after a securing agreement has been made or before or after a securing charge attaches.

EXPLANATORY COMMENT

177. Clause (c) of the article provides a very special rule. A registration notice can be registered at any time, including a time when there is no securing agreement with the person named as chargor in the registration notice. Clauses (l), (ll), and (m) deal with any abuse of this right. This provision is an essential element for the proper operation of the system. Modern business practices require flexibility and efficiency in such systems.

178. The advantage of this approach is that it allows chargees to determine their priority status before they advance credit. Without this rule, a chargee who advances credit or is under a legal obligation to advance credit would have to run the risk of losing to an intervening securing charge if the intervening securing charge was registered before his or her securing charge. The rule ensures that the chargee can register a securing charge first and only then advance credit based on the priority position determined by the registration. The operation of this feature is demonstrated in the following scenario:

Example:
D has decided to seek financing for business activity and approaches a commercial lender (Chargee). Chargee immediately registers a registration notice describing D as the chargor and specifying the kinds of property of D as collateral. The confirmation (which includes a search result based on D's name) displays the order of his or her registration. After a period of negotiation between the parties, an agreement is struck and a securing agreement is signed. Since Chargee has already registered his or her securing charge and can assess what his or her priority position is with respect to the loan, he or she can immediately release the money to D. In the absence of this feature, Chargee would be imprudent to advance funds until he or she had registered the securing charge and thus determined his or her priority status. This could delay the advancing of the funds.

c. A registration notice may relate to one or more securing charges and one or more securing agreements.
179. Clause (c) states a simple but important principle of the Registry system. A registration notice may relate to one or more securing agreements between the same parties. In other words, the registration of a single notice can complete securing charges arising under a series of securing agreements between the same parties. This provision is designed to avoid the necessity of registering a registration notice each time a new securing agreement is entered into between the same chargor and chargee. However, a registration is effective to complete more than one securing charge only as long as the chargor and chargee are the same persons and as long as the securing charges affect the type of property described in the registration notice.

d. Unless it is discharged, a registration remains effective for the period of time specified in the registration notice as provided in the Regulations.

180. Under a computerized system of the kind used in the Registry, it is possible to give the parties a great deal of flexibility in selecting or amending the period of time in which they want their securing charge registered.

181. Clause (d) of this article provides that a registration is effective for the period specified on the registration notice. This will be the period of time selected by the chargee, subject, however, to limits prescribed in the Regulations. Registering parties will be discouraged from choosing unnecessarily long registration periods since the registration fee is directly proportional to the length of the registration.

dh. A registration is invalid if it cannot be retrieved from the database of the Registry through the use of the name of the chargor or, in the case of a securing charge on serial numbered goods, through the use of the serial number of the goods.

182. A computerized registration system of the kind used by the Registry stores and retrieves information on the basis of registration search criteria (the name of the chargor or the serial number of goods, when this is required by the Regulations). These criteria are specified in detail in the Regulations.
183. This article provides a test of the validity of a registration. If the registration cannot be retrieved from the database of the Registry using the search criterion specified in the Regulations, it is not valid. The computer program of the Registry compares the search criterion with identical information in the database. If the person doing the registering has made an error in recording the debtor's name or the serial number of the goods on the registration notice, a search using the correct debtor's name or the correct serial number of the goods will not disclose the registration. The registration is valid only when it is disclosed using the correct search criterion.

184. Under this system, the bulk of registrations and search requests will be based on the name of the chargor. However, when specified types of goods are involved, registration and search requests will be based on the serial number of the goods. Without this feature, there could be situations in which the person doing the searching might not be able to find a registration. Securing charges granted by earlier owners of the property would not be found as they are registered under these other owners' names and not the present chargor's name. This is demonstrated in the following scenario:

> **Example:**
> A takes a securing charge on an item of collateral owned by B and registers his or her securing charge with B identified as a Chargor. B then sells the item to C, who then offers it as collateral to secure a loan from D. Unless D can use the serial number of the collateral as the search criterion, all that he or she can do is obtain a search result using C's name as the search criterion (assuming he or she does not know B's identity). Since B, not C, is the debtor identified in the registration registered by A, D's search will not reveal A's securing charge. If D can use the serial number of the collateral as the search criterion, his or her search will reveal A's securing charge if A complied with the requirement that this serial number be recorded on his or her application for registration.

> **e. The Chief Registrar may refuse to register a registration notice, amendment notice, discharge notice, or subordination notice when, in the opinion of the Chief Registrar, it does not comply with the requirements of the Law or the Regulations. The Chief Registrar shall give a notice in writing to the registering person setting forth the reasons for refusing to register a notice.**
185. This provision allows the Chief Registrar to refuse to register a registration notice or other prescribed notice when, in his or her opinion, the requirements of the Law or the Regulations have not been complied with. This is a necessary feature of the Registry system. The Registry system will work properly only if the requirements of the Law and the Regulations have been met. The registering person whose registration notice has been rejected has the right to receive and the Chief Registrar has the obligation to provide in writing the reasons why the registration was not in compliance with the requirement of the Law or the Regulations. Upon receipt of this notice, the registering person may correct the errors and submit a new notice.

186. However, it is not the role of the Chief Registrar or any Registry employee or official to ensure that information on registration notices is accurate. Rejection of a registration notice will occur only when the technical requirements of the Law and the Regulations have not been complied with. For a further explanation of the functioning of the Registry, see the Guide.

e. When, in the opinion of the Chief Registrar, circumstances are such that it is not practical to provide one or more Registry services, the Chief Registrar may refuse to register a registration notice, refuse to accept requests for search results, and otherwise suspend one or more of the functions of the Registry. This is so for the period of time during which, in the opinion of the Chief Registrar, those circumstances prevail.

187. As a result of labor disputes, power outages, or computer difficulties, it may be necessary to suspend the operation of the Registry. This clause gives the Chief Registrar the power to suspend some or all of the functions of the Registry when circumstances require. It is important to specifically provide for this power in the Law, since its exercise may affect the rights of users of the system.

f. A chargee may extend the registration period of a registration by transmitting to the Registry an extension notice, before the expiry of the registration.

188. A registration period can be extended beyond the original period by registering the appropriate notice required by the Regulations indi-
cating an additional period of registration. However, this must be done before the registration expires.

189. Article 11, paragraph 4, contains an exception to this rule. When a registration lapses or has been discharged, a chargee may renew the registration within 30 days after the lapse or discharge without loss of priority status in relation to most competing interests in the collateral, if these competing interests arose prior to the lapse or discharge. For further explanation of the operation of Article 11, paragraph 4, see the explanatory comment to Article 11.

190. When the period of registration is extended, the additional registration period is added to the end of the original registration period. This is illustrated in the following scenario:

**Example:**
Chargee registered a registration notice on October 1, 2000, with a five-year registration period. On October 1, 2001, Chargee wishes to extend the registration so that it will expire on October 1, 2007. Chargee needs to register an amendment notice renewing the registration for only a two-year period. The additional two-year period is added to the end of the original five-year period, which results in a seven-year registration period.

g. A chargee may discharge a registration in whole or in part by transmitting to the Registry a notice of discharge.

 gj. A chargee who has registered a securing charge and who has transferred his ownership in some or all of the collateral may amend the registration as to the collateral transferred. This is done by transmitting to the Registry an amendment notice stating the name of the transferee and containing a description of the collateral transferred. From the time the amendment is registered, the transferee shall be treated for the purpose of the Law as the person who registered the securing charge on the collateral transferred.

**EXPLANATORY COMMENT**

191. When a chargee transfers his or her interest to another person (who in law becomes the new chargee), an amendment notice may be registered adding or substituting the name of the new chargee as the holder of a securing charge in all of the collateral.
192. When a chargee transfers his or her interest, the article does not require the new chargee’s name to be recorded. Failure to amend a registration to reflect a transfer of a chargee’s interest does not invalidate a registration, since the original registration would not mislead a person who searches the Registry. The search criteria used to conduct a search are the debtor’s name, in some cases the serial number of serial numbered goods, and the registration number. Accordingly, the failure to amend the registration to disclose the identity of the transferee does not affect the search result. According to Article 7 of the Law, a person named as chargee in a registration who is served with a demand for information as provided in that article is under a legal obligation to disclose such information.

h. A chargee who has registered a securing charge and who has agreed to subordinate the securing charge to a securing charge of another person may transmit to the Registry a subordination notice. The registration relating to the securing charge shall be amended to indicate the subordination.

EXPLANATORY COMMENT

193. Article 20 of the Law permits one chargee (the subordinating party) to subordinate the priority status of his or her securing charge to the securing charge of another person (the beneficiary). This article permits the subordinating chargee to register an amendment notice that amends the original registration so as to disclose the existence of the subordination agreement.

194. Registration of an amendment notice disclosing subordination is not mandatory. Failure to do so does not have any effect on the validity of the securing charge or on the subordination agreement. The subordination does not affect the priority status of either party to the arrangement in relation to other parties.

i. A registration shall be removed from the database of the Registry by the Chief Registrar when:

- the registration is no longer effective;
- he receives a valid discharge notice relating to the registration; or
- a court order discharges the registration.

EXPLANATORY COMMENT

195. This clause permits the Chief Registrar to remove information from the records of the Registry if the registration lapses or is discharged. The computerized Registry system has been designed so that information recorded
under a registration is no longer displayed on a search result when the registration lapses or is discharged. In some cases, a party may wish to find out whether a securing charge was registered at some prior time. If the registration has since lapsed or been discharged, a search of the Registry will not reveal this information. This problem is demonstrated in the following scenario:

Example:
On May 1, Chargee registers a registration notice for a three-year registration period with a securing charge in a Chargor’s automobile. On August 1 of the same year, B buys the automobile from the Chargor. Three years later, after Chargee’s registration has lapsed, Chargee learns of the sale and claims priority for his or her securing charge over B. The subsequent lapse of the registration will not result in the subordination of Chargee’s securing charge as against B. B may wish to verify whether Chargee had properly named the debtor and described the collateral, that is, whether Chargee had a completed securing charge at the time of the sale. However, a search of the Registry will reveal this information before but not after the lapse of the registration.

196. When a valid notice of discharge of registration has been submitted to the Registry or when a court orders its discharge, the Chief Registrar shall discharge the registration. However, the Chief Registrar will take measures to notify the chargee and other parties that could be affected by a discharge of a registration about his or her intention to discharge the registration. The notified persons can subsequently use the reinstatement mechanism if the discharge was fraudulent or done in error. For a full discussion on reinstatement of registrations, see Article 11 of the Law and the Regulations.

j. A person may request a Registry certificate containing retrieved information from the Registry using the name of the chargor, the serial number of the collateral when applicable, or a registration number assigned to the registration by the Registry.

The Chief Registrar shall issue a certificate within two business days of the request as long as the person requesting the certificate tenders the required fees.

EXPLANATORY COMMENT

197. A person who wants to obtain information contained in the database of the Registry must request a Registry certificate or, in other words, a search result.
198. A request for a search result can be submitted in person at an office of the Registry, by mail, or by fax. For more information on how to request information from the Registry, see the Regulations.

199. This article permits the requisition of a search result on the basis of three criteria: chargor name, serial number of collateral, or a registration number. If the registration cannot be retrieved from the database of the Registry using the search criterion specified in the Regulations, it is not valid. The computer program of the Registry compares the search criterion with identical information (registration criterion) in the database. If the registering person has made an error in recording the debtor's name or the serial number of the goods on the registration notice, a search using the correct debtor's name or the correct serial number of the goods will not disclose the registration on the search result. The registration is valid only when it is disclosed as an exact match using the correct search criterion.

200. A registration number is assigned to a registration when it is entered into the Registry database. A search by registration number is feasible only when the searching person knows the precise registration number.

201. Registration number and chargor name are universal search criteria. This means that all registrations can be retrieved through the use of one of these search criteria. However, there are risks associated with their use. The risk associated with a registration number search is that an error may be made in recording the number on the search request notice. The computer program of the system is not designed to accommodate errors of this kind made by searching persons.

202. When using the name of the chargor as a search criterion, several factors must be kept in mind:

1. It is necessary to determine whether the chargor is an individual or an artificial body such as a company. If the chargor is an individual, the searching person must insert the chargor's name in the physical person field. If the chargor is an artificial person (juridical person), the chargor's name must be inserted in the field designated for it. This distinction is important because the computer program of the Registry uses a different coding and searching method for each.

2. A search result will not disclose the existence of a securing charge in specific items of collateral (other than serial numbered goods) unless the name of the chargor is used as a search criterion. It cannot be assumed that the person in possession of the collateral
or the owner of the collateral is the chargor. It is possible that a securing charge has been given by a prior owner (or possessor) of the collateral and that the registration is recorded at the Registry under the name of that person. In order to obtain the most accurate information from the Registry in such a situation, a serial number search should be conducted when serial numbered goods are involved.

3. When conducting a search using an individual chargor name, it is important to determine not only that the name is accurate, but also that it is recorded in the correct order. When in doubt as to the exact name, it may be necessary to conduct more than one search.

203. A search according to the serial number of goods is a powerful feature because such a search will retrieve registered securing charges granted by former owners of the collateral. Such registrations may still be valid.

204. Unlike registration numbers and chargor names, serial numbers are not universal search criteria: the Regulations specify only a narrow range of goods that when held as equipment or as consumer goods must be described by serial numbers in the registration.

205. The following matters should be kept in mind when requesting a certificate:

1. When the goods are of a kind that under the Regulations must be described by a serial number, a searching party should use the serial number of the good as a search criterion. As noted above, a search using the name of the person in possession or the current owner as the search criterion may not reveal an existing registration against the serial numbered good if it was granted by another person.

2. When the goods are of a kind that under the Regulations cannot be described by serial number, the searching party should use the name of the chargor as a search criterion.

3. Since it is possible to complete a securing charge in certain types of collateral by possession, the absence of a registration relating to the collateral does not mean that the collateral is not subject to a completed securing charge.

4. A securing charge on goods in the hands of a bailee can be completed by having the bailee issue to the chargee a negotiable
document of title or by acknowledging that the bailee holds the goods on behalf of the chargee. See Article 8. Such a securing charge need not be registered in order to be completed, but a search result will not disclose its existence.

5. Since there are some circumstances in which a securing charge is treated as completed for a 20-day period without registration or without the chargee taking possession of the collateral, a search of the Registry may not disclose the existence of a completed securing charge on property that is in possession of a chargor. See, for example, Articles 9 and 10. Buyers and lessees of the collateral are not affected by this type of completion. However, other chargees and unsecured creditors are affected by it.

6. Since a securing charge on collateral of the kinds enumerated in Article 41, clause (b), is completed as long as it is completed under the law of the location of the chargor, a search of the Registry will not disclose the existence of a completed securing charge in the collateral if the chargor is not located in Albania.

7. Since a foreign securing charge (that is, a securing charge governed by the law of another jurisdiction) on collateral of the kinds enumerated in Article 41, clause (a), may be temporarily completed in Albania without registration and without the chargee’s having possession of the collateral, a search of the Registry may not disclose the existence of a foreign securing charge on the collateral. However, 60 days after the collateral is brought into Albania, any securing charge related to this collateral must be completed under Albanian law.

k. A document in the form prescribed by the Regulations that purports to be a Registry certificate issued by the Registry is, unless there is convincing evidence to the contrary, proof that it has been issued by the Registry and of facts recorded on it, including the date of registration, an amendment to a registration, discharge of a registration or subordination of registration, and the order of registration.

EXPLANATORY COMMENT

206. The purpose of this clause is to remove the necessity of having to prove in every case authenticity of documents issued by the Registry by having the Chief Registrar or a Registry employee appear to give evidence in
court. Of course, if there is evidence that the document presented is a forgery, the court may require the presence of the Chief Registrar or a Registry employee.

I. When a registration relates to a securing charge on consumer goods, the chargee shall discharge the registration no later than 15 days after all obligations secured by the securing charge have been performed. A chargee who fails to do so must pay to the person named as chargor in the registration the sum of 13,000 Lek and compensation for the loss suffered.

The chargor or any person with ownership in property that falls within the collateral description in the registration may give a written demand to the chargee identified in the registration to request a discharge or to amend the registration when:

- all of the obligations pursuant to the securing charge have been performed; or
- the description of the collateral contained in the registration includes an item or kind of property that is not collateral pursuant to a securing agreement; or
- no securing agreement exists between the chargee and the chargor.

The chargee shall comply with the demand no later than 15 days after the demand is given.

II. When the registration is not discharged or amended pursuant to the demand referred to in clause (I), the person making the demand may apply to the court for an order requiring the chargee to discharge or amend the registration.

The court shall issue the order within 10 days from the date the request for the order is made.

When the order of the court is delivered to the Chief Registrar, the Chief Registrar shall discharge or amend the registration as required by the order.

A chargee against whom an order is made by the court must pay the person who has made the demand referred to in clause (I) the sum of 13,000 Lek and compensation for the loss suffered by such a person resulting from the failure to discharge or amend the registration pursuant to the demand in clause (I).

m. No fee or expense shall be charged, and no amount shall be accepted, by a chargee for compliance with a demand made pursuant to clause
(1) unless the parties agree to the fee or expense before the making of the demand.

EXPLANATORY COMMENT

207. When a registration relates exclusively to a securing charge on consumer goods and the obligations under the securing agreement are performed, the chargee is required by paragraph (1) to discharge the registration. A chargee who fails to meet this requirement is liable to pay the specified amount to the chargor as well as actual damages suffered by that person.

208. A registration should not be maintained in the Registry after the obligation that is secured by the securing charge is satisfied unless there are commercially valid reasons for doing so. If there is an ongoing relationship between a former chargor and former chargee that is likely to result in additional securing agreements, there is a commercial basis for retaining a registration after the securing charge ceases to exist. Often there are periods in the course of business relations between a financier and business enterprise during which the obligations of the business to the financier are discharged. The parties may wish to maintain a registration to facilitate future dealings between them and to maintain the priority status that the registration affords.

209. Clause (1) sets out the circumstances in which a chargor or person with an interest in property that falls within the collateral description in a registration is entitled to demand that the registration be discharged or amended. In particular, a demand can be made and enforced when:

1. a pre-agreement registration has been effected but no securing agreement has been concluded between the chargee and the chargor;
2. a securing charge ceases to exist but the chargee has maintained a registration relating to it; or
3. the collateral description in the registration is broader than the terms of the securing agreement between the parties. Clause (1) is designed to prevent abuse of the freedom and flexibility given to chargees by the Law.

The following scenarios show how clause (1) operates:

Example 1
Chargee is given a securing charge in Chargor's automobile and television to secure a loan. Chargee registers a registration no-
Example 2
Chargee 1 is given a securing charge on Chargor's water treatment equipment to secure a loan. Chargee 1 registers a registration notice, which describes the collateral as "all present and after-acquired movable property." Chargee 2 is given a securing charge on Chargor's accounts to secure a loan. Chargee 2 and Chargor have the right to make a demand requiring Chargee 1 to amend the registration to exclude items or kinds of property that are not collateral under Chargee 1's securing charge. In effect, Chargee 1 can be forced to reduce the collateral description in his or her registration to refer only to water treatment equipment and specified kinds of proceeds.

Example 3
Chargor owns several items of construction equipment, which are used in his or her business. He or she gives Chargee a securing charge in one of the items to secure a loan. Chargee registers a registration notice describing the collateral as construction equipment. Chargor can require Chargee to amend his or her registration to refer only to the item of construction equipment subject to the securing charge.

210. A person who fails to comply with a demand to discharge or amend a registration is liable to pay the chargor (or the person described as chargor in the registration) a penalty of the specified amount.

211. Clause (11) permits a person making a demand to obtain a court order requiring the registration to be discharged or amended, as the case may be. The order must be given within 10 days of the application.

n. When a securing charge has been completed by registration and the chargor sells the collateral or changes his or her name, the securing charge ceases to be completed 20 days after the chargee learns of the sale or change of name unless the chargee registers an amendment notice containing the
name of the new owner or the new name of the chargor before the expiry of the 20-day period.

When the chargee consents to the sale of the collateral before the sale occurs, the 20-day period begins when the ownership is transferred to the buyer.

EXPLANATORY COMMENT

212. Clause (n) facilitates public notice of a securing charge against property held by the transferee once the property was transferred. This is done in order to protect third parties who check the Registry when dealing with the transferee. The 20-day period the clause allows for recompletion runs from the moment the chargee learns of the transfer. When the chargee consents to the sale of the collateral, the period of 20 days begins when the transfer occurs. If the registration is not amended within the time specified, the charge becomes uncompleted. This means that it loses its priority in relation to all other competing interests, including securing charges that, prior to the sale, were subordinate to it.

n.j. Where appropriate, the clauses of this article apply as well to the registration of state claims that arise under any other law.
Chapter V governs all transactions covered by the Law except transactions which fall under clauses (b), (c), or (q) of Article 2.

When the chargor is in default under the securing agreement, the chargee has the rights and remedies provided in this law and in any other relevant law as well as rights and remedies provided in the securing agreement that are not inconsistent with the law.

When the chargee is in possession of the collateral, both the chargee and the chargor have in addition the rights and remedies stated in Article 6.

The chargor has the rights and remedies provided in the Law and in any other relevant law as well as rights and remedies provided in the securing agreement that are not inconsistent with the law.

When before default a chargor agrees to limit or waive the rights and remedies given by this law, the limitation does not apply if he decides to exercise these rights.

All rights, duties, and obligations that arise out of a securing agreement or prescribed by the Law must be exercised and discharged in good faith and in a commercially reasonable manner.

EXPLANATORY COMMENT

213. When a transaction falls within clauses (b), (c), or (q) of Article 2 of the Law, the transferee or buyer of an account, the person who consigns goods for resale, and the lessor of goods are not subject to the enforcement remedies in this law. They may proceed to enforce their right
in accordance with the relevant Albanian law. Chapter V applies only when a chargor has given a securing charge on his or her property to a chargee in order to secure the chargor's obligation under the securing agreement and when the transaction falls within clause (a) of Article 2 of the Law.

214. Chapter V prescribes a set of rules that, while not exhaustive, are for the most part mandatory.

215. In accordance with the final paragraph of this article, the obligations of a chargee arising under a securing agreement or under the Law must be exercised in good faith and in a commercially reasonable manner.

216. In the context of the exercise of the rights of a chargee under Chapter V, the requirement of good faith imposes on the chargee an obligation to look beyond strict compliance with the requirements of the Law. For example, a chargee who is required to give a notice to a person does not discharge his or her obligations under the Law through strict compliance with provisions of the Law dealing with delivery of notices if he or she knows that the person entitled to the notice will not in fact receive it and is also aware that if he or she had used another method, the person would have received the notice. However, he or she would not be acting with a lack of good faith if he or she were not aware of the more efficacious method of delivery. This is so even though someone else in his or her position would have been aware of this method of delivery.

217. The obligation to act in good faith is in contrast to the obligation to act in a commercially reasonable manner. What is commercially reasonable is determined by reference to objective factors. The standard of commercial reasonableness is the standard that is generally acceptable in the relevant market.

218. The chargee may bring an action on the debt before proceeding against the collateral. In other words, if the chargee feels that the collateral is insufficient to satisfy the unpaid obligation, he or she may proceed as an unsecured creditor under regular proceedings of the court.

219. The chargee may contract for additional rights or remedies in the securing agreement. However, these additional rights and remedies are not enforceable if they constitute an impermissible variation of statutory rights, remedies, and obligations set out in the Law. Thus, a chargee cannot obtain a contractual waiver of the duty to use reasonable care in the custody and preservation of the collateral in his or her possession. (See Article 6.)
Article 30. Collection of Accounts and Instruments by a Chargee

When the collateral is an account, instrument, or a security, the chargee may notify the account debtor or person obligated under the instrument or security to pay to the chargee the amount owing on the account or under the instrument or security and may apply any money received to the satisfaction of the obligation secured by the securing charge after deducting reasonable expenses of collection.

EXPLANATORY COMMENT

220. A securing charge may be taken in obligations (accounts) owed to a chargor by third parties (account debtors). For instance, when a retail seller (chargor) has granted a securing charge in all present and after-acquired movable property, the chargee will have a securing charge on accounts owing by customers who have purchased goods or services from the retail seller on an unsecured credit basis.

221. This article authorizes the chargee to notify the third party (account debtor) to make payment directly to him or her. Money recovered as a result of enforcing a securing charge on accounts may be applied in satisfaction of the obligation secured after the chargee reimburses himself or herself for the expenses he or she incurred during the process of enforcing the securing charge. Unreasonable expenses as a result of enforcing a securing charge may not be reimbursed under this article.

Article 31. Execution

A securing agreement shall constitute an executive title and, after default by the chargor, is executed by the execution officer upon order of the competent court.

An order of enforcement shall direct the execution officer to seize the collateral described in the securing agreement and deliver it to the chargee or the person authorized by him. The execution officer need not give prior notice of seizure to the person in possession of it.

The parties are obliged to pay fees and expenses in relation to enforcement of this order, which are provided in the Regulations of Securing Charges.

An execution office may refuse to make or continue a seizure unless the execution office has been furnished with security for fees in relation to the seizure.
222. This and the following articles dealing with enforcement of a securing charge (seizure and sale of the collateral) provide a special set of rules that apply in place of many (but not all) of the rules contained in Part 4 of the Code of Civil Procedure. The provisions of the Code of Civil Procedure dealing with execution are much too cumbersome to be suited to modern secured financing, which requires very efficient procedures to permit the collateral to be seized and sold expeditiously so that the maximum value can be obtained from the sale.

223. The first paragraph of this article deals with an important aspect of the efficiency of the new system. A securing agreement constitutes an executive title, and it falls under Article 510-sub (e) of the Code of Civil Procedure. Article 511 (c) of the Code of Civil Procedure applies to executive titles involving securing agreements.

224. The executive title (order of enforcement) is delivered by the chargee to the enforcement office for execution as provided in Article 516 of the Code of Civil Procedure. Article 31 expressly eliminates the need for the execution office to give a pre-seizure notice to the defaulting chargor. Consequently, Articles 517-19 of the Code of Civil Procedure do not apply to enforcement of a securing charge. However, other articles of the Code of Civil Procedure giving instructions and powers to the execution officer do apply.

225. Generally, the chargee, who obtains the enforcement order and who instructs the execution office to seize the collateral, will provide a guarantee to the execution office of payment of these fees and costs. Under Article 31 of the Law, an execution officer may refuse to proceed with the seizure until these amounts are paid or guaranteed. Ultimately, the chargee will recover these amounts from the sale of the collateral as provided in Article 34.

Article 32. The Rights of Parties to Protection

A chargor, chargee, or any other person whose rights are affected by the execution may apply to the court to:

a) determine whether the chargor is in default under the securing agreement;
b) make an order protecting the rights of any person in the collateral;
c) make an order to suspend the rights of a chargee to have collateral seized or sold;
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ç) make an order giving directions to a chargee or an execution officer regarding the seizure of collateral including, when appropriate, an order requiring the execution officer who has seized the collateral to return the collateral to the chargor;

d) make an order requiring a person to act in accordance with one or more procedural requirements for the execution of the securing agreement according to the Law;

dh) make an order for the seizure and sale of the collateral through other procedures when execution according to the Law is impossible or impracticable; and

e) make an order requiring a person to pay the expenses of execution as provided in the Regulations of Securing Charges.

The court shall issue the order within 10 days from the date the request is registered.

EXPLANATORY COMMENT

226. Article 32 is a very important feature of the enforcement system of the Law. It gives courts broad supervisory powers over enforcement in order to protect the rights of chargors, chargees, and third parties. However, these powers should not be exercised so as to substantially abridge the rights of the parties or to rewrite the contract between the chargor and the chargee. The powers should be exercised only in special circumstances when it is not commercially realistic to apply another provision of the Law or when to do so will produce substantial injustice or where the Law inadequately addresses the situation faced by chargees, chargors, or third parties. The decision to give such broad discretionary jurisdiction to courts entails some risk. If this power is not exercised with care, it may cause considerable disruption of business financing transactions. If exercised within the spirit of the Law, however, it can be a very constructive method of avoiding the difficulties that can arise when applying the enforcement provisions of the Law.

227. The article stipulates that an order shall be issued within 10 days from the date the request for the order has been registered. This indicates that the orders involved are ones that provide immediate protection of interests without a long period of complex litigation.

The following types of orders can be made:

a. An order determining whether the chargor is in default under the securing agreement. The right of the chargee to have the collateral seized and
sold is dependent upon the existence of default. If there is any question as to whether the conduct of the chargor amounts to default under the securing agreement, an expeditious court ruling on the matter can be obtained.

b. An order protecting the rights of any person in the collateral. There will be circumstances in which either the chargor or the chargee fears that his or her interest in the collateral is being threatened by the actions of someone else. The chargor may feel that the method used by the chargee to dispose of the collateral is not commercially reasonable and that the property will be sold for less than its market value. In such a case, the chargor may obtain a court order requiring the chargee to sell the collateral in a specific manner. The chargee may conclude that the conduct of the chargor is such that the value of the collateral is being threatened. In such a case, the court may order the chargor to desist from the objectionable conduct. A situation may develop in which some third party’s actions amount to a threat to the collateral. In such a case, the chargee or chargor can obtain a court order restraining the actions.

c. An order that suspends the right of the chargee to have the collateral seized and sold. When it is clear that the chargor could redeem the collateral if he or she were given a short additional period of time to get enough money to discharge the obligation secured by the securing charge, the court may order that the enforcement rights of the chargee be suspended. This power should be exercised with great restraint. If courts are willing to exercise this power frequently and in situations when it is not justified on commercial grounds, the policy of the Law to encourage asset-based financing will be thwarted, and credit grantors will lose faith in the system. Consequently, the power should be exercised only when a very short suspension of the chargee’s enforcement rights is clearly warranted.

c. An order giving directions to the execution officer and, when appropriate, requiring return of seized property to the chargor. In certain situations, the executing officer will need the guidance of the court when carrying out a seizure. At times, the court may deem that a seizure has been unjustified or inappropriate. However, the power to order return of the collateral to the debtor should be exercised very sparingly. The power should not be exercised so as to affect significantly the legitimate rights of the chargee to enforce the securing charge. The return of the collateral should be ordered for a very specific reason and for a short period of time. For example, a court may order that an item of farming equipment be returned when the chargor
needs it to harvest a crop that will otherwise be totally lost, with devastating economic consequences for the chargor. The sale of the harvested crop will produce funds that can be applied to the debt of the chargor.

d. An order requiring a person to comply with the procedural requirements of the Law. This power would be exercised when a person is not acting in accordance with the procedures set out in the Law. Generally, this will be the chargee.

dh. An order providing for some alternative method of seizure of the collateral. This power would be exercised when seizure by an executing officer is not feasible. For example, the order may permit the chargee to seize the collateral when, because an executing officer is unavailable owing to a strike or some other factor, seizure as otherwise provided by the Law will be delayed for a long period of time. The police may be ordered to conduct or assist in the seizure when it is feared that a disturbance might occur.

e. An order requiring either party to pay for the expenses of seizure. Ordinarily the expenses of seizure are initially paid by the chargee and then allocated to the chargor. Under this power, the court might order the chargee to pay all of the expense if, because the requirements of the Law have not been followed or for some other reason the expenses are greater than they should have been. This is a form of punishment of the chargee for noncompliance with the procedural requirements of the Law.

Article 33. Delivery of the Collateral to the Chargee after Seizure

On making seizure, the execution officer shall surrender possession of the collateral to the chargee or person designated in writing by the chargee.

EXPLANATORY COMMENT

228. This article makes it clear that the role of the execution officer is to seize the collateral and deliver it to the chargee. Unless ordered otherwise by the court under Article 32, clause (dh), of the Law, the execution officer does not have the obligation or power to sell the collateral. His or her role ends once the collateral is delivered to the chargee. As noted above, a court may order the execution office that has seized collateral to return it to the chargor.
Article 34. Seizure and Sale of Collateral on Chargor’s Premises

When the collateral is of a kind that cannot readily be moved from the chargor’s premises or is of a kind for which adequate storage facilities are not readily available, the collateral may be seized without removing it from the chargor’s premises and may be disposed of on the chargor’s premises.

The chargor must not sell the collateral on the chargor’s premises if this causes inconvenient circumstances or requires costs more than are necessary for the disposition.

The collateral may be sold by the chargee in its existing condition or after repair. The proceeds of the sale shall be applied to the fees of seizing as provided in the Regulations of Securing Charges, reasonable expenses for storage, repairing for the purpose of sale, and other reasonable expenses incurred by the chargee, and only the balance is used to fulfill the obligations in the securing agreement.

Any surplus after applying the proceeds as stated above shall be paid to any other chargee who has a subordinate securing charge who has notified the chargee prior to distribution or, if no such notice has been given, shall be paid to the chargor.

EXPLANATORY COMMENT

229. This article facilitates the seizure of collateral that cannot readily be moved from the chargor’s premises or collateral for which adequate alternative storage facilities are not available. In such a case, the chargee may dispose of the collateral on the chargor’s premises. However, if to do so results in significant inconvenience or results in unnecessary costs, this approach cannot be used.

230. An important question will arise as to whether the chargee should spend money on the collateral so that it can be sold for a higher price. This may involve nothing more than having the collateral cleaned. However, it could also involve major repairs. The article states that this decision is to be made by the chargee. However, the chargee is not totally free from constraints when making this decision. He or she is required by Article 29 to act in good faith and in a commercially reasonable manner. Consequently, if he or she decides to incur costs that cannot be considered commercially reasonable, those costs cannot be recovered. Only reasonable costs are treated as part of the secured obligation and are payable out of the proceeds of the disposition of the collateral.

231. The third paragraph of the article specifies the way in which the proceeds of the sale of the collateral are to be distributed. First priority goes
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to the cost of seizure, payable or paid to the execution officer. The second priority is for reasonable costs of storage and repair of the collateral. Only after the costs are paid is the balance allocated to the obligation secured. This paragraph makes the reasonable costs and expenses part of the obligation secured by the securing charge even though this may not have been specified in the securing agreement.

232. The final paragraph of the article makes it clear that a securing charge gives only accessory rights. The only role of the securing charge is to secure the obligation. Consequently, the chargee must pay out of the proceeds of the sale the costs and the amount owing to him or her. If there is a surplus thereafter, it must be paid to any chargee who has a securing charge on the collateral that has a subordinate priority position and who has given notice of his or her securing charge prior to the distribution. If no notice has been received by the chargee in possession of the surplus, the money must then be paid to the chargor.

233. It is very important that a subordinate chargee give notice of his or her securing charge to a chargee with a superior priority status. This should be done as soon as the securing charge is taken or registered. Unless the notice is given, the subordinate chargee's position can be placed in jeopardy. Under Article 39, the disposition of the collateral by the prior chargee extinguishes any subordinate securing charges on the collateral. Consequently, if there is a surplus and the prior chargee is not notified of a subordinate securing charge, the surplus will be paid over to the chargor and the buyer will take the collateral free from any subordinate securing charge.

234. This article does not alter the priority rules set out elsewhere in the Law. If another person who has an interest in the collateral is entitled to priority over the person to whom the surplus was paid by the chargee, that priority status prevails and the amount can be recovered from the recipient.

Article 35. Notification of the Sale

Not less than 10 days prior to disposition of the collateral, the chargee shall give a notice of sale to the chargor and to any other person with a securing charge in the collateral subordinate to that of the chargee, but only if the securing charge is registered in the Registry before the chargor is given a notice for the disposition.

The notice of sale shall contain:

a) a description of the collateral;

b) the unpaid amount of the obligation secured under the securing agreement;
c) the amount of the applicable expenses or, where the amount of
the expenses has not been determined, a reasonable estimate;

c) a statement that, on payment of the amount due, a person who is
entitled to receive the notice may redeem the collateral;

(d) a statement that, unless the collateral is redeemed, the collateral
will be disposed of and the chargor may be liable for any of the
obligations that have not been paid out of the amount recovered
from the sale; and

dh) the day, time, and place of any sale by public auction, the place to
which closed tenders may be delivered, and the day after which
closed tenders will not be accepted, or the date after which any
private disposition of the collateral is to be made.

Collateral may be disposed of in whole or in part, by private sale, by
public sale, including public auction or closed tender, as a whole or in units,
but always in a commercially reasonable manner.

The chargee may purchase the collateral or any part of it only at a
public sale and only for a price that is close to the commercial value of the
collateral.

The notice of sale is not required when:

a) the chargee believes that the collateral will decline substantially
in value if it is not disposed of immediately after default;

b) the cost of care and storage of the collateral is disproportionately
large in relation to its value;

c) after default, each person entitled to receive a notice consents in
writing to the disposition of the collateral without compliance
with the notice requirements of this clause; or

ç) the court is satisfied that a notice is not required.

EXPLANATORY COMMENT

235. Following the seizure, the chargee must notify the chargor and
other chargees with subordinate securing charges on the collateral who have
registered their securing charges before the chargor is given a notice of
disposition. The notice must conform to the requirements of this article.

236. The notice has several functions. Its primary function is to give
to persons who are entitled to “redeem” the collateral (as provided in Article
38) notice of their right to do so. The person receiving the notice is informed
of the amount of the obligation that is still owing, the amount (or a reason-
able estimate) of the expenses payable, and that, if these amounts are paid, the collateral may be redeemed (that is, the securing charge is extinguished and the collateral is returned to the chargor or is given to the person who redeemed it). The notice also gives the date and place of a public sale or the date after which any private disposition of the collateral is to be made or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted. This assists the chargor or other persons notified who wish to take measures to police the disposition or to purchase the collateral.

237. The Law does not set out a formal scheme regulating the advertising of the sale or the method by which the sale is to be conducted. It leaves those decisions to the chargee but subjects the chargee to the duty of acting in a commercially reasonable manner. Thus, if the chargee has sold by public sale but has not advertised sufficiently, he or she may be liable for the diminished return caused by this failure.

238. There are circumstances in which it is not reasonable to require the chargee to give notice of disposition. These are enumerated in the final paragraph of the article. Generally, these are all situations in which the chargor or a subordinate chargee will not be affected by the lack of notice or in which a delay in disposing of the collateral will result in loss because of its deterioration or depreciation.

Article 36. Report after Disposition

The chargee shall give the chargor and subordinate chargees no later than 30 days after receipt of a written request from them a written accounting of:

a) the amount received from the disposition of collateral;
b) the amount applied to expenses;
c) the distribution of the amount received from the disposition; and
ç) the amount of any surplus.

EXPLANATORY COMMENT

239. If a chargor or a subordinate chargee is to be able to question the honesty or commercial reasonableness of a sale of the collateral, he or she must be given an accounting of the proceeds of the disposition of the collateral. This includes the items mentioned in Article 36.

240. The chargee is required to provide this accounting only after receiving a written request by the chargor or a subordinate chargee.
Article 37. Payment of the Obligation and Retaining the Collateral

After default, the chargee may propose to the chargor to take the collateral or a portion of it in satisfaction of all or a part of the chargor's obligations under the securing agreement. The chargee must give notice of this proposal to:

a) the chargor; and
b) a person with a securing charge on the collateral whose securing charge is subordinate to that of the chargee and, who prior to the day on which the notice is given to the chargor, has registered notice in the Registry.

If any person who is entitled to a notice gives the chargee a notice of objection within 15 days after receiving the notice, the chargee shall dispose of the collateral.

If no notice of objection is given, the chargee is, at the expiration of the 15-day period mentioned above, deemed to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it as provided in the proposal and is entitled to hold or dispose of such collateral free from all the ownerships of the chargor and any subordinate chargee who was given a notice.

EXPLANATORY COMMENT

241. This article provides a mechanism by which a chargee may foreclose the chargor's interest (that is, the chargee would retain the collateral in full satisfaction of some or the entire obligation). This will occur when the amount of the obligation is equal to or greater than the value of the collateral and the chargee is prepared to take it in satisfaction of some or all of the obligation.

242. The process is initiated by the chargee who gives notice to the persons listed in Article 37. This notice may not be given until the chargor is in default. A clause in the securing agreement giving this right is not enforceable. See Article 29 of the Law.

243. If no objection is made, the chargee is treated as having irrevocably elected to take the collateral specified in the notice in satisfaction of the portion of the obligation specified in the notice.

244. The chargor or other person with an interest in the collateral may object to the chargee's proposal. The primary ground for objecting is the possibility that there would be a surplus available if the collateral was
sold instead. If a notice of objection is given, the chargee will have to sell the collateral pursuant to Articles 35–37 of the Law.

**Article 38. The Right of the Chargor to Redeem the Collateral**

At any time before the chargee has disposed of the collateral or a contract for its disposition has been made or before the chargee is deemed to have irrevocably elected to retain the collateral pursuant to Article 37, the chargor or subordinate chargees may redeem the collateral against fulfillment of the unpaid obligation. In this case, they are obliged to pay a sum equal to the reasonable expenses of seizing, holding, repairing, and preparing the collateral for disposition.

The chargor may waive in writing the right to redeem the collateral only after default.

**EXPLANATORY COMMENT**

245. The chargor is given the right to “redeem” the collateral at any time before the chargee has disposed of the collateral or contracted with a purchaser for its disposal. The chargor may waive the right to redeem by giving a post-default agreement in writing surrendering such right. The agreement must be entered into after the default: a term in the securing agreement waiving the debtor’s rights to redeem is unenforceable. See Article 29 of the Law.

246. The right to redeem is not restricted to the chargor; it is given as well to subordinate chargees. Accordingly, a subordinate chargee may take over the realization of the collateral by exercising the right to redeem the collateral.

247. The collateral can be redeemed by paying the amount of the obligation and costs incurred.

248. The right to redeem ceases to exist in three situations:

1. when the chargee has disposed of the collateral or has contracted for its disposition;
2. when the chargee is deemed under Article 37 to have irrevocably elected to take the collateral; or
3. when the person entitled to redeem has entered into a written post-default agreement waiving his or her right to redeem.

249. The most common situation in which the right will terminate is when the chargee has disposed of the collateral. This may involve a sale of
the collateral to a third party or a sale to the chargee pursuant to public sale. It is not essential that the disposition be carried out in compliance with the requirements of the *Law* in order to terminate the right to redeem. It is enough that it is one under which the buyer acquires the collateral free from the interest of the chargor and any other interests subordinate to that of the chargee or the chargor, as provided by Article 39 of the *Law*. However, any other noncomplying disposition or contract of disposition will not result in termination of the right of redemption. Similarly, the right of redemption can be exercised against a chargee still in possession or control of the collateral if he or she does not comply with the voluntary foreclosure requirements of Article 37 of the *Law*.

### Article 39. Protection of Buyers of Collateral

When a chargee disposes of the collateral to a buyer in good faith, the buyer who takes possession of it acquires the collateral free from the claim of the debtor, any claim subordinate to that of the debtor and to subordinate chargees, even if the requirements of the *Law* have not been complied with.

**EXPLANATORY COMMENT**

250. A right of a buyer of collateral will cut off subordinate claims to the collateral if the criteria of this article have been met. The buyer must be acting in good faith, must give value, and must take possession of the collateral. The buyer takes free of the interest of the chargor and any claim subordinate to that of the chargee or the chargor even if the requirements of Articles 35 or 37 have not been complied with.

251. The buyer is not protected from the claim of a chargee with a priority over the chargee who conducts the sale unless the chargee who has priority has consented to the sale. Similarly, the sale will not cut off a claim of an owner or other person with a superior right to that of the chargor.

252. This article operates only when the buyer acts in good faith. Collusion between the chargee and the buyer may take the form of an improper attempt to benefit the buyer at the expense of the chargor by selling the collateral at an undervalue. A buyer might be found to lack good faith even though his or her conduct is not fraudulent. However, the fact that the buyer knows of the noncompliance with the *Law* does not necessarily mean that he or she acted in bad faith.

253. To acquire protection, the buyer must have taken possession of the collateral. Accordingly, if the chargor redeems the collateral or is able to
obtain a court order against the chargee before possession of the collateral is transferred to the buyer, the protection of the article is not available to the buyer.

Article 40. Recovery of Damages

When a chargee does not comply with the Law and causes damage, he must pay compensation for the damages in accordance with the provisions of the Civil Code.

EXPLANATORY COMMENT

254. A person who has suffered loss or damage because a chargee has not complied with the requirement of the Law can recover damages from the chargee in accordance with the Civil Code.
Article 41. The Applicable Law

a) The validity, the completion, and priority of a securing charge on an account, an instrument, or money completed by registration or a securing charge on a motor vehicle that is not consumer goods, an aircraft, or railway car that is not inventory are governed by the law where the chargor is located when the securing charge attaches. A chargor is located at his principal place of business, if any, or his residence if there is no place of business. A company is located where it was incorporated.

b) The validity, the completion, and priority of a securing charge on a motor vehicle that is consumer goods and on goods not referred to in clause (a) of this article, and of a securing charge on an instrument or money when the instrument or money is in possession of the chargee, are governed by the law of the state where the collateral was located when the securing charge attaches.

c) When the collateral, which is goods, is taken to Albania from another state, a securing charge continues to be completed in Albania if it is completed in Albania no later than 60 days after the date on which the collateral was brought into Albania. A buyer or lessee of the collateral takes free from the securing charge if the sale or lease occurred before the securing charge is completed in Albania.

EXPLANATORY COMMENT

255. This article deals with a very important matter: the validity and priority of securing charges on movable property in situations where more
than the law of Albania may be involved. For example, how will an Albanian court address a priority dispute involving a truck that is collateral under a securing charge taken while the truck was in Greece when the truck was brought to Albania and a securing charge was taken on it by an Albanian bank? In this context, three issues must generally be addressed. Does Greek or Albanian law apply to:

1. the validity of the Greek securing charge;
2. the registration requirements for the Greek securing charge in Albania; and
3. the relative priority positions of the Greek and Albanian securing charges?

These questions are answered in this article.

256. The article puts forth two approaches, depending upon the type of movable property involved. Clause (a) states what law governs validity, completion (generally registration), and the priority of securing charges on an account, an instrument, or money completed by registration or a securing charge on a motor vehicle that is not consumer goods, an aircraft, or railway car that is not inventory. What these types of property have in common is that they either cannot have a location because they are intangible or they have no set location (they are the kinds of property that move from one country to another) and any location they have at a particular time is generally temporary.

257. The first clause provides that the validity, completion, and priority of a securing charge in the enumerated kinds of collateral are governed by the law of the jurisdiction where the debtor is located when the securing charge attaches. For example, a transfer of accounts due or yet to arise out of contracts between the chargor and the chargor’s customers located in one or several jurisdictions is governed by and is to be completed under the law of the jurisdiction where the chargor is located at the date of attachment of the securing charge. This is so even though the chargor’s performance under the contracts out of which the accounts have arisen has occurred entirely outside the jurisdiction where the chargor is located at the date of attachment and even though payment of the accounts is to be made outside that jurisdiction. For example, the law of Albania (Law for Securing Charges) will apply to the validity, completion, and priority of a securing charge in accounts given by a chargor located in Albania. This is so even if the accounts are payable by his or her Italian customers to his or her Italian branch office. However, Italian law will govern a securing charge on accounts
payable by account debtors in Albania to a chargor located in Italy when the securing charge was created.

258. Clause (b) deals with securing charges on property that is less likely to move from one country to another or that is of a kind that is likely to be acquired by persons who could not be expected to search a registry in another country. In this case the location of the property and not the location of the chargor at the time the securing charge attaches will determine the law applicable to validity, completion, and priorities (subject to what is set out in clause (c)).

259. The rules set out in clause (c) provide exceptions to the rule set out in clause (b). In other words, when the law governing completion and priorities is not Albanian, this law must be recognized by an Albanian court as provided by clause (b) but subject to the requirement that the foreign securing charge be registered in the Registry within the time specified in clause (c).

260. Clause (c) was designed to protect persons who deal with the collateral in Albania. Under this clause, a foreign completed charge that is not completed in Albania within the 60-day grace period after the collateral is brought to Albania loses its completion and becomes subject to Articles 12 and 13. The 60-day grace period does not apply, however, to buyers or lessees of the collateral. The article gives complete protection to buyers or lessees of the collateral if they acquire rights in the collateral before completion occurs.
Article 42. Transition

The Law does not apply to a transaction executed before this law comes into force. However, Articles 12, 13, 14, and 19 and Chapter IV apply to an interest that would be a securing charge if it had been created after this law comes into force when the interest conflicts with a securing charge created after this law comes into force or another interest mentioned in this law.

An interest referred to in the last paragraph is considered to have been completed before any interest created after the Law comes into force when one of the steps referred to in (a), (b), or (c) in Article 8 above has been taken no later than 90 days after this law comes into force.

EXPLANATORY COMMENT

261. This article addresses the very difficult problem of how to deal with securing charges and pledges that were created under the prior law but that still exist when the Law comes into force.

262. The basic approach of this article is to leave to prior law questions of validity, enforcement, and priority disputes involving securing charges or pledges created under prior law. However, when a priority dispute is between a securing charge created under prior law and a securing charge created under this law, the priority rules and completion requirements of this law apply to both securing charges.

263. The second paragraph contains a special rule for the types of transactions that fall within the scope of the Law but that were created before the Law comes into force. If any of these transactions is entered into before this law comes into effect, the interest involved is treated as a com-
pleted securing charge if any one of the completion steps is taken no later than 90 days after this Law comes into force.

264. In most of the cases, since prior interest would be pledges, and since under the Civil Code in order to have a valid pledge the pledgee must take possession of the pledged property, any pledge in existence at the date the Law comes into force will be completed. This is so because possession of the collateral is one of the methods provided in Article 8 of the Law for completion of a securing charge. The holder of a pledge is subsequently free to replace the method of completion from possession to registration in accordance with the Law.
PART B

Priorities among Creditors:
The *Civil Code*, Article 605
The *Civil Code*, Article 605

I. Introduction

A central feature of the *Law for Securing Charges*, Number 8537, passed by the Albanian Parliament on October 18, 1999, is its recognition of a secured creditor's (chargee's) rights (the securing charge) in a debtor's (chargor's) property. These rights gain particular significance when chargors default on their obligations. In most circumstances of default, not all creditors will be fully repaid since the debtors are very likely to be insolvent. The property rights of chargees are given priority over unsecured claims with respect to the collateral. This priority constitutes the true economic security that chargees have under modern secured financing. In Albania, Article 605 of the *Civil Code*, Number 8536, passed by the Albanian Parliament on October 18, 1999 (along with the special priority rules in the Law), regulates relative priorities among the debtor's various creditors.

Granting absolute priority to chargees over unsecured creditors of a defaulting debtor may not be justified or commercially reasonable in some cases. A modern secured financing system must balance the rights of secured creditors against claims that do not arise out of private loans or credit transactions. Such transactions can arise by operation of law or from situations where the creditor (such as an employee) has little or no bargaining power and, consequently, no ability to require the debtor (such as an employer) to give security for any obligation that might arise between them. These claims are protected through special priority rules. Under Albania's former system, such unsecured claims had priority over all secured claims, whether the unsecured claims arose before or after the secured claims arose. For example, under the former Albanian Article 605 of the *Civil Code*, state claims were given priority over claims of secured parties. Under the same legislation, wage-earners had priority over secured
creditors. While the protection of unsecured claims is based on sound policy considerations, modern secured financing systems offer predictability by placing limits on the claims of unsecured creditors. The following paragraphs describe the priority system embodied in amended Article 605 of the *Civil Code*.

II. Article 605 of the *Civil Code*: Before and after Amendment

From the point of view of chargees, prioritizing creditors' claims is the most important element of secured financing. Priorities are significant when the debtor fails to repay creditors the debts owed and it becomes necessary for creditors to enforce their claims on the debtor's property. Debtors typically conduct business with more than one creditor, and the debts of a defaulting debtor typically exceed the value of the debtor's assets. In such circumstances, the question arises: which creditor should be compensated first, which second, and so on? The lower the priority of the creditor's claim, the more unlikely it is that the remaining debtor's property will be sufficient to cover this claim.

In modern secured financing systems, secured creditors normally need not worry that collateral will be used to satisfy claims of unsecured creditors, as collateral typically lies beyond the reach of unsecured creditors. This follows from the recognition of the proprietary nature of the secured claim on the debtor's property.

The former structure of Article 605 of the *Civil Code* could not support a modern system of secured financing. Rights of secured creditors were given low priority in the list of priorities. The practical effect of this was to nullify the value of any security taken for debt. In the event of default by the debtor, the value of the property taken as collateral would be used first to pay unsecured claims that were given priority status above that of secured claims.

Amended Article 605 of the *Civil Code* provides a more predictable system allowing chargees to assess collateral available to enforce securing agreements providing for securing charges. Unsecured creditors are not forgotten in this scheme, and their rights not lost. Rather, the scheme allows chargees to assess the real value the chargee will have in the collateral after unsecured claims with priority are factored in the calculation. By granting a special priority status to purchase-money securing charges, amended Article 605 places chargees in a position of being able to determine with considerable accuracy their position in relation to other claims against the property of the debtor. The current system therefore offers greater certainty.
The following paragraphs describe the content of the priority list in the *Civil Code* Article 605. The description follows the order of priorities as it appears in that article.

III. The List of Priorities in Article 605

The following claims are paid according to the following priority order:

a. claims that arise from financial transactions secured with a purchase-money securing charge on a specific object;

EXPLANATORY COMMENT

Priority (a) is reserved for purchase-money securing charges completed in accordance with the *Law*. See the definition in Article 1 of the *Law*. The priority extends only to the specific item purchased with the credit advanced by the purchase-money chargee.

Example:

Purchase-money chargee (Bank) advances money to Chargor to purchase a Mercedes-Benz car. Bank properly completes the purchase-money securing charge by registering it in the Registry of Securing Charges. Chargor defaults on the securing agreement with Bank. Assume the chargor also fails to pay tax obligations when they become due.

According to amended Article 605 of the *Civil Code*, Bank will have priority in respect of the Mercedes-Benz car. Only after the debt owed to Bank is repaid can the tax claim, which Article 605 ranks below the purchase-money securing charge, be satisfied by any remaining value of the car.

The priority of the completed purchase-money securing charge does not diminish claims of unsecured creditors such as wage-earners who are not paid their salaries. The reason is that the money advanced by Bank was an additional credit provided to the Chargor. Consequently, the Bank’s purchase-money securing charge is referable to this extra credit and is not taken from the pool of the Chargor’s assets. In other words, the money was used to buy an additional asset.

One condition placed on the priority of purchase-money securing charges is that such securing charges must have priority over ordinary securing charges in accordance with the rules of the *Law*. The holder of the
purchase-money securing charge must meet the requirements of the Law if that holder is to have priority under Article 605. In circumstances falling outside this condition, the priority of purchase-money securing charges is ranked within priority (e).

b. claims as a result of unpaid salaries in connection with employment relations or services and obligations for food, but not for more than 12 months;

EXPLANATORY COMMENT

Second on the priority list are wage-earners' claims for a maximum of 12 months' unpaid salaries and claims that arise out of an obligation for food. Claims within priority (b) are satisfied from a debtor's property, including property used as collateral. The priority of unpaid salaries has two distinctive features: first, the public policy of protecting wage-earners (who are typically in a weak bargaining position), and second, the 12-month time limit.

The public policy of protecting the interests of wage-earners is not difficult to understand, since the availability of employees usually exceeds market demand, a circumstance well illustrated in Albania at present. Consequently, wage-earners stand in a weakened bargaining position from the outset and typically cannot bargain for security for their salaries. Wage-earners who remain unpaid are typically forced to rely on public assistance, as a result of which the state must finance the chargor-employer to the extent that the state supports the unpaid wage-earner. Such circumstances could provide an incentive to the chargors-employers to prefer paying other creditors, since they know that public funds will compensate their employees for unpaid wages.

Priority (b) limits the priority of unpaid wages to 12 months of salary. This defined period is significant for secured financing since, by calculating the amount of wages with priority, chargees can assess the value of collateral needed to fully secure their right.

Example:
Bank loans 400,000 Lek to Manufacturer, who employs 10 employees. Each employee earns a monthly salary of 10,000 Lek. Bank takes a securing charge on Manufacturer's equipment worth 1,600,000 Lek. Manufacturer falls into insolvency after failing to pay the 10 employees salaries for the preceding 14 months.
Under former Article 605, Bank would be able to recover collateral worth 200,000 Lek to satisfy the 400,000 Lek unpaid debt. This is so since the former article had no limitation on the amount that could be recovered by an employee whose salaries were not paid. Therefore, in the above example, each employee could recover the full 14 months' unpaid salary totaling 140,000 Lek.

Under amended Article 605, each employee would be paid 120,000 Lek since the limitation is for a maximum of 12 months of unpaid salaries. Consequently, Bank would have 400,000 Lek worth of collateral to recover the unpaid 400,000 Lek debt. Because amended Article 605 of the Civil Code defines the amount recoverable by wage-earners, chargees can assess in advance the value of collateral available to satisfy the obligation owed to them in case of default.

Employees are unlikely to suffer from this limitation, since rarely would employees continue to work for an employer for more than 12 months without being paid. They would likely need to find other sources to provide for their needs.

The priority for obligations for food relates to the need to protect dependents who rely on the chargor (or debtor) for food. An example would be the children of the chargor (or debtor) or his or her spouse. The provision guarantees that the money necessary for providing for food for such individuals would actually be given to them. The 12 months' limitation applies as well to claims that arise out of obligations for food.

The end result is a fair, predictable, and effective priority to employees and claimants of food obligation that also provides a predictable environment for chargees to assess their rights in collateral in case of default.

c. claims as a result of unpaid social security contributions and fees, as well as the claims of the employees for the damages caused by the non-payment of these contributions;

EXPLANATORY COMMENT

Priority (c) of amended Article 605 is for unpaid social security payments. In some cases, debtors who are also employers may fail to make the social security payments to the state. Hence the state becomes an unsecured creditor. The state's claim for these unpaid amounts falls within priority (c). The priority does not affect the ability of credit grantors to assess the extent of credit they should advance to their borrowers, since these amounts are usually not significant and can be estimated based on public information from appropriate state institutions.
claims as a result of compensation for death or health problems;

EXPLANATORY COMMENT

Priority (c) is for claims that arise from claims because of death or health problems. This priority is not limited for several reasons. First, such claims, if they arise, tend to be small in volume and therefore are insignificant to the chargee's consideration of whether or not to advance credit. Second, from a public policy point of view, persons who have claims against chargors for loss of life or damage to health caused by the actions of chargors should be given priority. Otherwise, these claims may not be paid and the persons or their families that are affected may become destitute.

d. claims of authors and their heirs for compensation deriving from full or partial transfer of their intellectual property for obligations that arose during the preceding two years;

EXPLANATORY COMMENT

Priority (d) goes to claims of authors and their heirs for rewards deriving from full or partial transfer of their rights and intellectual property during the two years prior to the date in which distribution of the debtor's assets is to take place in accordance with this article. As in the case of priority (c), such claims are rare and in any event usually minor and therefore are unlikely to affect creditors' decisions as to whether or not to advance credit. Article 605, priority (d), preserves the public policy of protecting authors' rights and encourages them to produce and sell their work.

dh. claims of the state that arise from obligations to the budget and the claims of the state security institute for the mandatory insurance as provided by the law;

EXPLANATORY COMMENT

Priority (dh) relates to state claims. This priority has to be read alongside the paragraph appearing below the list of priorities. Essentially, state claims are given the status of securing charges when registered in the Registry. These claims gain priority over non-purchase-money securing charges that are unregistered or were registered after the state claim was registered. In addition, state claims under priority (dh) are ranked above the priority of a credit
PART B. PRIORITIES AMONG CREDITORS

granted under a non-purchase-money securing charge when such credit is
given after the state claim is registered.

The clause fairly balances the need to collect debts owing to the state
and the need to give credit grantors notification regarding the fact that the
collateral might be subject to state claims.

e. claims arising out of financial transactions that are secured by a
securing charge according to the law;

EXPLANATORY COMMENT

Priority (e) is for claims of chargees who have a securing charge against the
debtor. Although, like any provision in the Civil Code, the provision uses
generic language, it is obvious that the term “the law” refers to the Law for
Securing Charges.

The priorities between more than one securing charge are determined
in accordance with the Law. This includes priorities between a purchase-
money securing charge and an ordinary securing charge. Article 605 em-

d_ploys a priority system parallel to the one the Law uses for resolving priority
issues among securing charges. While under the Law a purchase-money
securing charge has priority over an ordinary securing charge, Article 605
subjugates claims that fall under priorities (b)–(dh) to the purchase-money
securing charge. However, Article 605 raises them above the ordinary se-
curing charge in priority (e). When according to the Law the purchase-
money securing charge loses its priority over the ordinary securing charge,
both are ranked within priority (e), below priorities (b)–(dh). The result
is that the Law is fully sustained by the priority system that amended Ar-
ticle 605 provides.

It is important to clarify the relationship between priority (e) (secur-
ing charges) and priority (dh) (state claims). The last paragraph of Article
605 together with the two priorities provides the explanation. A chargee
who seeks priority over a state claim needs to fulfill two conditions:

1. the securing charge is registered at the Registry before the state
claim is registered; and
2. the credit that comprises his or her claim was granted or had to be
granted in accordance with Article 5, clause (c), of the Law before
the state claim is registered at the Registry.

In practice, chargees will likely check the Registry, and if no state claims
are registered they will register their claim and then give credit. If the state
claim was not registered up to this point, the chargee will have priority over the state claim.

If a chargee registers first, then discovers a registered state claim but the chargee did not yet give credit, he or she should not advance the credit since the state will have priority over any credit advanced after the state claim was registered.

e. claims as a result of unpaid salaries in connection with employment relations or services and obligations for food which are not covered by priority (b).

EXPLANATORY COMMENT

Under priority (e), employees can recover the balance of their claims beyond the 12-month limit in priority (b). As mentioned earlier, amended Article 605 preserves existing public policies to the extent the system allows. The old system considered repayment of unpaid wages to be a high moral obligation on the part of employers. Under priority (e) of amended Article 605, employees can recover the balance of their unpaid wages beyond 12 months without sacrificing predictability of the Albanian system of secured financing.

Payments under priority (e) are allowed out of the collateral once the claims of the debtor’s chargees are satisfied.

The remaining claims are ranked below securing charges. Such claims do not affect the rights of chargees, as they are subordinate to them.

When there are several claims mentioned in (a) and (e) of this article, the order of priority is defined according to the criteria provided by the special law. When the special law does not give priority to a claim mentioned in (a) over the credit mentioned in (e), the claims mentioned in (a) have priority according to (e).

Excluded from the priority order provided by this article are claims mentioned in (e) that arise as a result of credits already advanced. Such claims will have priority over claims mentioned in (dh) in the following cases:

- the claim mentioned in (e) is registered according to the law, whereas the claim under (dh) is not registered;
- the claim mentioned in (e) is registered according to the law, prior to the registration of the claim under (dh).
IV. Conclusion

Amended Article 605 of the Civil Code introduces into the Albanian legal system concepts necessary for the proper operation of the Albanian secured financing system. It provides a high level of predictability, allowing creditors to make credit decisions on the basis of predetermined factors. It reduces the high risk of credit-granting they faced under the former system. While reduced risk is a positive development for the Albanian secured financing system, fairness toward unsecured creditors is maintained by protecting state claims and the claims of vulnerable unsecured creditors. Credit therefore is more easily advanced to borrowers while providing predictability to all chargees who are engaged in secured transactions.
PART C

Secondary Legislation
The Regulations of Securing Charges

Introduction

The Regulations of Securing Charges provide detailed rules for the operation of the Registry of Securing Charges. They have the same status as the Law for Securing Charges, Number 8537, passed by the Albanian Parliament on October 18, 1999. The power to make regulations is given to the Minister of Finance by Article 26 of the Law.

In addition to the Law and the Regulations, the Chief Registrar Guide (hereinafter, Guide) provides a description of how the notice forms are to be completed. The Guide is part of the Regulations. See Article 3 of the Regulations.

Article 1. Definitions

Terms used in the Regulations have the meaning provided in this article unless otherwise provided by the Regulations.

AGRICULTURE MACHINE

means a machine according to the description provided in Article 57 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

EXPLANATORY COMMENT

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration
notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms "consumer goods" and "equipment" are defined in Article 1 of the Law.

**AIRCRAFT**

means any machine capable of deriving support in the atmosphere from the reactions of the air.

**EXPLANATORY COMMENT**

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the Law.

**AIRCRAFT ENGINE**

means the engine of an aircraft.

**AUTOMOBILE**

means a machine as described in Article 54 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

**EXPLANATORY COMMENT**

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of
the *Regulations* must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the *Law*.

**BOAT**

means a vessel that is designed for transporting persons or things on water and that is propelled primarily by any power other than muscle power and that is more than 6 meters long.

**EXPLANATORY COMMENT**

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the *Regulations*. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the *Regulations* must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the *Law*.

**CHARGEE**

means chargee as defined in Article 1 of the *Law for Securing Charges* and when appropriate refers also to a state agency.

**CHARGOR**

means chargor as defined in Article 1 of the *Law for Securing Charges* and when appropriate refers also to a debtor under a state claim.

**EXPLANATORY COMMENT**

The terms “chargor” and “chargee” are defined in the *Law*. The purpose of these extended definitions is to make the *Regulations* applicable to state claims under Article 605 of the *Civil Code*, which provides for the registration of state claims in the Registry.
CHIEF REGISTRAR
means the Chief Registrar as defined in Article 1 of the Law for Securing Charges.

EXPLANATORY COMMENT

The Chief Registrar supervises the operation of the Registry. He or she is appointed by the Minister of Finance as provided in Article 25 of the Law. For further information on the role of the Chief Registrar, see the Guide.

CONSTRUCTION (SERVICE) MACHINE
means a machine as described in Article 58 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

EXPLANATORY COMMENT

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the Law.

ID NUMBER
means an identification number the Chief Registrar assigns to a chargee or to a registering party.

EXPLANATORY COMMENT

An identification number (ID number) is given by the Chief Registrar to any person who requests one. The ID number is linked to the chargee's or the registering party's details. For further explanation of ID numbers, see Article 6 of the Regulations and the Guide.
PART C. SECONDARY LEGISLATION

MOTORCYCLE means a machine as described in Article 52 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

EXPLANATORY COMMENT

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms "consumer goods" and "equipment" are defined in Article 1 of the Law.

MOTOR VEHICLE means a machine as described in Article 53 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

EXPLANATORY COMMENT

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms "consumer goods" and "equipment" are defined in Article 1 of the Law.

NAME OF A PERSON means the first name followed by the patronym and the family name in the case of a physical person; means the registered name as it appeared in the court decision in the case of a juridical person.
REGISTRY
means the Registry of Securing Charges as defined in Article 1 of the Law for Securing Charges.

SECURING CHARGE
means securing charge as defined in Article 1 of the Law for Securing Charges.

EXPLANATORY COMMENT
For commentary, see Article 1 of the Law.

SERIAL NUMBER
means the identification number permanently marked on or affixed to the body or frame of the serial numbered good by the manufacturer. It includes only alphanumeric characters but not punctuation, hyphens, or other markings. When the goods are an aircraft, the serial number is the number affixed by the manufacturer to the airframe. When the goods are an aircraft engine, the serial number is the number affixed by the manufacturer to the engine.

EXPLANATORY COMMENT
This definition relates to the definition of "serial numbered goods." See also Article 8 of the Regulations.

SERIAL NUMBERED GOODS
mean the following goods: agriculture machine, aircraft, aircraft engine, automobile, boat, construction machine, motorcycle, motor vehicle, trailer, trolley bus.

EXPLANATORY COMMENT
This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration.
PART C. SECONDARY LEGISLATION

notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the Law.

TRAILER
means a machine as described in Article 56 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

EXPLANATORY COMMENT

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the Law.

TROLLEY BUS
means a machine as described in Article 55 of the Roads Code of the Republic of Albania, Number 8378, of July 22, 1998.

EXPLANATORY COMMENT

This definition is relevant in the context of the requirement that, in specified circumstances when goods are taken as collateral, the goods must be described on the registration notice using the serial number. See Article 8 of the Regulations. Not all types of goods must be described in a registration notice by serial number. Only the types of goods described in Article 1 of the Regulations must be described in this way when, at the date of creation of the securing charge, the chargor acquired or was using the goods as consumer goods or equipment. The terms “consumer goods” and “equipment” are defined in Article 1 of the Law.
Article 2. Registration

Registration notices shall be in the following forms:

Notice A: Registration of a Securing Charge and Schedules
Notice B: Amendment of a Registration and Schedules
Notice C: Registration of a State Claim
Notice D: Search Request Form

Notices and Schedules must be completed as instructed in the Chief Registrar Guide issued by the Chief Registrar as provided in Article 3.

The registering person is responsible for ensuring that a notice is fully and accurately completed and is in accordance with the Law for Securing Charges, Regulations of Securing Charges and the Chief Registrar Guide.

EXPLANATORY COMMENT

The effect of this article is to require that all registration information be submitted to the Registry on prescribed forms. See also Article 28, clause (a), of the Law. These forms can be obtained from the Registry office as specified by the Guide. Registration information submitted on any other form will be rejected.

The person who submits information for registration has the obligation to ensure that the information is correct and that the forms have been completed fully and accurately, as required by the Regulations and the Guide. Incomplete forms will be rejected by the Chief Registrar. Power to do so is given to the Chief Registrar by Article 28, clause (e), of the Law.

The registration process begins with the delivery of a completed registration notice either by mail, fax, or in person to the Registry office. When the registration notice is received by the Registry, it is examined to determine whether all essential fields have been completed and whether the information is in the form required by the Regulations. Once the information on a registration notice is considered acceptable for entry into the database, it will be entered, and the system will assign a registration number and time of registration. At this point the registration becomes legally valid.

Article 3. Chief Registrar Guide

The Chief Registrar may issue instructions for completion of registration notices and may from time to time amend, supplement or delete the instructions as, in his discretion, is warranted.
EXPLANATORY COMMENT

The Guide is designed to provide a single source of information on how to register and search for information in the Registry. The Guide includes information and instructions for each of the forms used in the Registry system, examples to guide the reader in ensuring the accuracy of registration, the process of searching the Registry once the information has been recorded, and the fees for registering and searching the database of the Registry.

**Article 4. Duration of Registration**

A registration of a securing charge is effective for the period between 1 and 25 years or infinity as indicated on the registration notice unless discharged before the expiry of this time.

A registration of a state claim is effective until it is discharged.

A registration is effective from the time it is entered into the database of the Registry and is searchable as provided in subparagraph (dh) of Article 28 of the Law for Securing Charges.

A reinstatement of a registration is invalid when the following two events happen before the time of reinstatement:

a) any of the requirements mentioned in Article 8 (a)–(c) of the Law for Securing Charges that is related to a competing securing charge was complied with after the discharge or lapse; and

b) any of the requirements mentioned in Article 8 (a)–(c) of the Law for Securing Charges that is related to a competing securing charge was complied with before the discharge or lapse.

The Chief Registrar shall operate the Registry in such a way as to ensure that each registration or amendment to registration will have a unique registration number.

EXPLANATORY COMMENT

This article describes several essential features of the Registry system. The first of these is that the registering person may choose the period during which he or she wants a registration to be effective. See Article 28, clause (d) of the Law. A person may choose any number of years up to 25 years or may choose infinite registration. At the end of the period chosen, the registration will be automatically discharged unless, prior to that time, the period of registration has been extended. An infinite registration will continue to exist
until it is discharged voluntarily or pursuant to a court order under Article 28 of the Law. Registrations of state claims are treated as being effective for infinity and will also continue to be effective until discharged.

The period of registration initially selected can be extended by registering an appropriately completed Notice B. However, this must be done before the initial registration period has expired.

The second important feature of the Registry indicated by this article of the Regulations is that registration and searchability are coterminus. See Article 28, clause (a), of the Law. This approach places the risk of loss associated with a delay in entering registration information into the database on the chargee. In other words, if a registering person submits a registration notice to the Registry and, for some reason, such as a computer breakdown or excessive workload, registration containing that information does not take place for a period of time, there is nothing in the Law or the Regulations that deems the registration existed during that period. Therefore, in order to exist, a registration must be in the database of the Registry so that it is searchable. The chargee can control this risk by refusing to advance credit or release possession of sold or leased goods until a search result is obtained demonstrating that the registration has taken place.

The third important feature deals with reinstatements. In order to avoid situations where priority disputes cannot be resolved logically as a result of reinstatements, Article 4 of the Regulations provides that a reinstatement of a registration that was discharged is invalid if it is in competition with two other securing charges. This situation applies only when one of the competing chargees takes one of the steps required under Article 8 of the Law before the reinstatement while the other one takes one of the steps required under Article 8 of the Law after the reinstatement.

Because of this provision, the safest way to renew a discharged registration is to register it as a new registration. Of course, the disadvantage of this approach is that the date and time of the registration will be the new date and time rather than the original one. However, if the chargee is convinced that his or her reinstatement would not become invalid, for example, if there is no other chargee who took one of the completion steps required under Article 8 of the Law, he or she will be able to maintain the original date and time of the registration by reinstating it.

The final paragraph of this article sets out a rule designed to ensure that no two registrations have the same priority status. If all registrations and amendments to registrations are numbered in sequence (as they are entered into the database of the Registry), priority will be determined on
the basis of that sequence. A registration or amendment with a lower number will have priority over one with a higher number. See also Article 28, clause (b), of the Law.

Article 5. Amendments

Notice B shall be used to amend a registration.

The following are amendments:

a) extension of a registration;
b) discharge of a registration;
c) reinstatement of lapsed or discharged registration;
c) subordination of a registration;
d) addition of a chargee;
dh) deletion of a chargee;
e) change of chargee’s information / transfer of chargee’s right;
e) addition of a chargor;
f) deletion of a chargor;
g) change of chargor’s information / transfer of chargor’s right;
gl) addition of collateral;
h) deletion of collateral;
i) change of collateral’s information / substitution of collateral;
j) other changes / court order;
k) Registry correction.

EXPLANATORY COMMENT

Notice B form must be used when changes in registration information are required and permitted by the Law. See Article 28, clause (a), of the Law. For a description of the amendments in Notice B, see Article 28 of the Law.

Article 6. Signature

A notice must be signed by or on behalf of the chargee.

An electronic signature approved by the Chief Registrar or identification number allocated by the Chief Registrar is sufficient.

Unless the Chief Registrar is convinced that all the chargees recorded under the registration to be amended gave their authorization, the Chief Registrar should not process the following amendments to that registration:
a) discharge of registration;
b) deletion of chargor;
c) change or transfer of chargor;
d) deletion of collateral;
e) change or transfer of collateral.

Unless the Chief Registrar is convinced that a chargee recorded under the registration to be amended gave his authorization, the Chief Registrar should not:

a) delete the name of this chargee from a registration;
b) change or transfer the right of this chargee or change the details of chargee.

The Chief Registrar may register a notice without having proof that the signature on it is that of the chargee or a person acting with the authority of the chargee.

EXPLANATORY COMMENT

The chargee or an agent acting on behalf of the chargee must sign all notices submitted. However, the Chief Registrar has no obligation to ensure that a signature that appears on a notice is the signature of the chargee named in the notice or an agent acting with full authority of the chargee. When special arrangements are made with the Chief Registrar, an electronic signature or ID number can be used. An ID number is a number allocated to a chargee or a registering party. This number can be used in place of the signature.

An important aspect of the proper operation of a secured financing system is its reliability. This is the policy underlying the provision in Article 6 of the Regulations that requires the Chief Registrar to take reasonable steps to ensure that any deletion of information that could affect the rights of people who rely on the system is done with their consent. The Chief Registrar is therefore expected to require written approval from all chargees before effecting amendments to registrations that involve deletions of information. When the amendment to the registration involves deleting the chargee’s name, only the authorization of this particular chargee is required and the Chief Registrar is expected to require notarized approval from this chargee. Other steps that are not required by the Law will also be taken to inform the persons whose rights could be affected by such amendments.
PART C. SECONDARY LEGISLATION

Article 7. Chargor’s and Chargee’s Name

If the chargor or chargee is a physical person, the name of the person is to be specified in the notice.

If the chargor or chargee is a juridical person, the name of the person is to be specified in the notice.

If the chargor or chargee is a physical person who carries on business with a name that is different from his name and this business is not a juridical person, the name of the physical person is to be specified in the notice.

If the chargor or chargee is a partnership that has a registered name, the name of the partnership is to be specified in the notice, but when the partnership does not have a registered name, the names of the partners are to be specified in the same registration.

If the chargor or chargee is any other type of person not mentioned in the previous paragraphs of this article, the name to be specified on the notice is the name used by the chargor or chargee in the securing agreement. When no securing agreement exists at the time of registration, the name ordinarily used by the chargee or chargor during business transactions is to be specified in the notice.

EXPLANATORY COMMENT

The name of the chargor (first name, father’s name, and family name in the case of a physical person, or the name in the case of a juridical person) is a crucial feature of a registration. In all registrations, the Registry system uses the chargor’s name as the principal search criterion. A search criterion is a factor the program uses to store and retrieve data. Supplementary search criteria are the serial numbers of serial numbered goods and the registration number allocated to a registration by the Registry.

When there are two or more chargors, each of whom has an interest in the collateral, the notice must contain the correct names of both chargors. This rule is fundamental to the proper functioning of the Registry system.

Example:
If two persons, A and B, are owners of the collateral and are Chargors under the securing agreement, it is not sufficient that only A is described in the registration as the Chargor. In order for C to get the protection that the public expects from the system, a search of the Registry using either B’s or A’s name as the search criterion should disclose the securing charge.
When the collateral is of a kind that is required to be described by serial number on the registration notice, it is not sufficient for the registration notice to contain the chargor’s name alone. The serial number of the collateral must be accurately recorded on the registration notice.

If the chargor’s name is not correctly recorded on the registration notice and consequently is entered into the database incorrectly, the registration cannot be retrieved in a search using the correct name. As a result, the registration is invalid. See Article 28, paragraph (dh), of the Law. Chargees should take special care to verify the spelling of the chargor’s name. Official records (for example, birth certificates in the case of a physical person or court decisions in the case of a juridical person) should be used to verify the correctness of such information. When there is any doubt about the exact name of the chargor, two or more versions of this information should be included in the registration notice. Each version should be included as a separate chargor.

The Regulations require that the name of individuals be included in the following order: first name, patronym, and family name. The order in which this information is recorded on the registration notice is very important.

Some individuals carry on business using a business name or trade name. When such a person is a chargor, the individual’s name must be recorded on the registration notice. The business name may be included, but it is not mandatory. The business name alone is not sufficient.

When the chargor is a juridical person or a partnership with a registered name, the registered name in its exact form as it appeared on the court decision must be recorded on the registration notice.

**Article 8. Description of Collateral**

When a registration relates to goods that are serial numbered goods that are not inventory, the description shall include:

a) the types of goods set out in Table III of the Chief Registrar Guide;

b) the last 25 characters of the serial number of the goods;

c) the name of the manufacturer as displayed on the goods; and

c) the model year of the goods.

When the registration relates to collateral other than serial numbered goods or relates to serial numbered goods that are inventory, the collateral may be described, when applicable, as “inventory,” “account,” “instrument,” or “money,” and, in the case of goods, in specific or generic terms.
A description of goods as "consumer goods" or as "equipment" may not be used unless there is a further reference to indicate the kind of consumer goods or equipment. For example, the description may be "farming equipment" or "consumer goods, televisions."

A description of goods as "inventory" ceases to be valid when the goods cease to be inventory.

Proceeds collateral is to be described in the same way as original collateral of the same kind.

Except in the case of serial numbered goods that are equipment or consumer goods, the following collateral descriptions, where applicable, may be used:

a) on all of the chargor's property owned at the time of the signing of the securing agreement and on all of the property acquired after the signing of the securing agreement; or

b) on all of the chargor's existing property and on all of the property acquired after the signing of the securing agreement, except specified items or kinds of property; or

c) on all of the chargor's specific existing property and on all of the specific property acquired after the signing of the securing agreement.

EXPLANATORY COMMENT

When describing the collateral that is in the form of goods, it is necessary to distinguish between serial numbered goods and other goods. The following rules apply to the description of goods:

1. When the goods are serial numbered goods as defined in Article 1 of the Regulations and, at the time the securing charge attaches to those goods, the goods are being used by or have been bought by the chargor for use as consumer goods or equipment (both terms are defined in Article 1 of the Law), a special description is required. The serial number (defined in Article 1 of the Regulations) and other detailed features of the description of the serial numbered good as referred to in this article of the Regulations must be included in the registration notice. Without the serial number, the registration is invalid, even though the chargor's name or the last name (in case of a physical person) is correctly recorded on the registration notice.
2. When the goods are serial numbered goods as defined in Article 1 of the Regulations and, at the time the securing charge attaches to those goods, the goods are being used by or have been bought by the chargor for use as inventory (this term is defined in Article 1 of the Law), no special description is required. The serial number (defined in Article 1 of the Regulations) and other detailed features of the description of the serial numbered goods as referred to in this article of the Regulations need not be included in the registration notice.

3. When the goods are not serial numbered goods, one of the methods of description set out above that do not involve the serial number may be used. The goods can be described generically (e.g., as automobiles, cattle) or specifically (e.g., as a 1986 Mercedes-Benz SL500 automobile). It is also possible to use one of the much broader descriptions that encompasses all of the chargors present and after-acquired property or all of the property other than specified kinds of property or specified items of property.

4. When the goods are serial numbered goods that at the time the securing charge attaches are held by the chargor as inventory, one of the methods of description set out above that do not involve the serial number may be used. The goods can be described generically (e.g., as automobiles, cattle) or specifically (e.g., as a 1986 Mercedes-Benz SL500 automobile). It is also possible to use one of the much broader descriptions that encompasses all of the chargors present and after-acquired property or all of the property other than specified kinds of property or specified items of property.

The Law divides goods into three categories: consumer goods, inventory, and equipment. See the definitions of these terms in Article 1 of the Law. These categories are not descriptive of the essential nature of the goods but are based on the charger's use of the goods at the date of attachment. Accordingly, to describe goods as "consumer goods" only discloses that a securing charge has been taken in property used by the debtor for personal, family, or household purposes. It does not indicate whether that property was an automobile, a refrigerator, or a sofa. To describe collateral merely as equipment can be deceiving. A dairy cow is classified as equipment when it is used to produce milk that is sold by the debtor. Hence this article of the Regulations provides that, without more detail, a description of goods as consumer goods or equipment is inadequate.
A partial exception to the rule above is set out in the Law. This exception applies to inventory. Article 8 of the Regulations permits collateral to be described as inventory, but only while it is held by the chargor as inventory. If the use of the collateral changes from inventory to consumer goods or equipment, the goods will thereafter fall outside the “inventory” category and the securing charge on the goods will become incomplete.

Example:
A supplier may make a securing agreement that describes the collateral as “all inventory” of an automobile dealership. The use of such a description on the registration notice satisfies the requirement of the Regulations so long as the automobiles are actually held as inventory by the Chargor. If, however, the Chargor withdraws one of the automobiles from the inventory and begins to use it as a demonstrator (which would be characterized as “equipment”), the description of this automobile would become inadequate. Consequently, the securing charge on this automobile would become incomplete and would be lost. For this reason, Chargees should take the appropriate supervision measures in order to remain informed of the way the debtor uses the property.

Proceeds collateral description requirements are specified in Article 10 of the Law. See the comment to that article.

Article 9. Confirmation

When a securing charge or a state claim is registered, or a registration is amended, the Chief Registrar will send a confirmation statement to the chargor, the chargee, and registering person by ordinary mail or by any other method determined by the Chief Registrar.

EXPLANATORY COMMENT

When a registration number is assigned by the Registry, the system will prepare a confirmation statement that will be sent to the chargee, chargor, and registering party. This document contains the essential information that has been entered into the database concerning the registration, including the registration number (for future reference to the registration), the time and date of registration, the name of the chargee, the name of the chargor, and
the description of the collateral. This information is presented in the exact form that is stored in the database and that will be disclosed on a search result.

The primary function of a confirmation statement is to provide a chargee with an opportunity to compare the information contained in the Registry database with the information the registering person intended to register. If the registering person discovers a discrepancy between the information in the database and the information he or she intended to include in the registration, he or she will present an amendment notice indicating the changes he or she wishes to make in the registration.

In addition, each chargee and registering person will receive a search result for each chargor and serial number recorded under the registration. This feature is designed to assist chargees in making their credit decisions after they examine the position of their registration in relation to other registrations in case others are recorded under the chargor or serial number.

Article 10. Search of Information

A person may request information based on one of the following criteria:

a) the chargor’s name;

b) the serial number of serial numbered goods; or

c) a registration number.

Information provided by the Registry shall include data actively maintained in the Registry database corresponding to the chargor’s name, registration number and, when applicable, the serial numbered goods. It shall also include the time and date of the registration and the registration number assigned to the registration.

Information will be sent by the Chief Registrar to the person who submitted the search request by ordinary mail or by any other method determined by the Chief Registrar.

EXPLANATORY COMMENT

Under Article 28 of the Law, the term “search result” is used in two ways: to refer to information disclosed in response to a request for a search, and to denote a document issued by the Registry that contains information requested by a searching party. For a full explanation of search results and the proper approaches in searching the Registry, see the explanatory comments to Article 28 of the Law.
Article 11. Registry Errors

The Chief Registrar, on his own initiative or upon a request by a chargee, may correct any error made by the Registry relating to a registration of a securing charge.

Corrections made by the Chief Registrar are effective only from the time that changes are made and have no retroactive effect.

EXPLANATORY COMMENT

On rare occasions, an error may be made in entering data taken from registration notices into the Registry database. When this occurs, the Chief Registrar can use the power given by this article to correct the data. However, this power cannot be used to correct errors made by persons who have submitted information for registration. When this occurs, the person must submit a Notice B containing the correct information.

Article 12. Submission of Notices and Other Matters

A registration notice may be delivered to the Registry in person, by mail, or by any other method determined by the Chief Registrar.

A registration or a search of information may not be carried out unless the applicable fee is paid as provided in the Chief Registrar Guide.

The Chief Registrar may enter into an agreement with any person regarding the method of payment of fees for Registry services. This agreement may include arrangements for deposit of an amount to be held by the Chief Registrar against which fees for Registry services are debited.

Registry services may be provided only upon payment of the fees set out in the Chief Registrar Guide.

The hours of operation of the Registry shall be 09:00 to 17:00 Monday to Friday, except official holidays.

EXPLANATORY COMMENT

Services of the Registry are not subsidized by the Government. Users of the system (persons who submit registration notices and persons who request search results) pay fees for these services. This article empowers the Chief Registrar to collect the necessary operating fees. This article also empowers the Chief Registrar to make special arrangements with high-volume users of the system for the payment of fees. While the Registry does not permit
deferred payment for Registry services, it permits deposit accounts. Under a
deposit account system, the user deposits with the Registry an amount of
money in advance of requesting Registry services. Each time a service is
provided, the account is debited by the cost of that service.

**Article 13. Maintenance of Registry Documents**

The Chief Registrar shall retain registration notices, copies of search re-
sults, and copies of Chief Registrar’s certificates in original, digital, or other
form for a period of not less than 10 years after the expiry of the registra-
tion to which the documents relate.

**EXPLANATORY COMMENT**

The purpose of the requirement set out in Article 13 is to ensure that all
necessary documents associated with a registration are retained for the pur-
poses of litigation involving the Registry.

**Article 14. Coming into Effect**

The *Regulations of Securing Charges* come into effect on the first day of
operation of the Registry of Securing Charges, that is, February 1, 2001.
Limitation on Government Liability:
The *Decision on the Council of Ministers’ Limited Liability for Errors of the Registry of Securing Charges, Number 24, January 20, 2001*

The amounts covered by the Council of Ministers for losses as result of an omission or a malfunction in the operation of the Registry of Securing Charges shall not exceed 1,500,000 Lek.

EXPLANATORY COMMENT

The Registry of Securing Charges is a modern computerized registry designed to work accurately in order to encourage chargees as well as others to rely on the system. While the system provides users with reliable modern facilities to register and retrieve information from its computerized database, a possibility, although extremely unlikely, exists that the system will suffer from error or malfunction.

The *Decision on the Council of Ministers’ Limited Liability for Errors of the Registry of Securing Charges* Number 24, passed by the Council of Ministers on January 20, 2001 (hereafter the *Decree*), has two functions:

1. to limit the amount that can be recovered by a person who suffered loss because of an error or malfunction of the Registry; and
2. to reduce the chances for loss by encouraging chargees to verify that the information recorded at the Registry is correct.
The amount that can be recovered for loss as a result of an error or malfunction of the Registry is limited to 1,500,000 Lek. However, compensation for such claims will be given only if the error is not disclosed on the confirmation statement or the search result that the Registry sends to the chargee. If the confirmation statement or the search result shows that mistaken information was recorded or used as search criteria, there will be no liability on the part of the Council of Ministers. (However, the Registry will correct such mistakes upon request without charging regular fees for such amendment.)

The following examples illustrate how the provision operates:

Example 1:

January 1: Beta Bank submits a registration notice requesting registration of a securing charge against debtor: PASHE SH. P. K. Beta Bank submits the 500 Lek fee together with Notice A.

January 2: The Registry sends a confirmation statement to Beta Bank with the following information:

THE FOLLOWING INFORMATION WAS ENTERED:
NAME OF CHARGOR: PASHA SH. P. K.

instead of:

THE FOLLOWING INFORMATION WAS ENTERED:
NAME OF CHARGOR: PASHE SH. P. K

The Council of Ministers will have no liability for any damage caused to Beta Bank as a result of the information disclosed in the confirmation statement. This is so because it was possible for the chargee to check the information by comparing it to the information he or she submitted to the Registry.

Example 2:

January 1: Credit Bank submits a search request using as the search criterion serial number: 1 ABC123. Credit Bank submits the 500 Lek fee together with Notice D.
January 2: The Registry sends a search result to Credit Bank with the following information:

NUMBER OF REGISTRATIONS FOUND
ACCORDING TO:

2 888JKL is 0

instead of:

NUMBER OF REGISTRATIONS FOUND
ACCORDING TO:

1 ABC123 is 1

The Council of Ministers will have no liability for any damage caused to Credit Bank as a result of the information disclosed in the search result. This is so because it was possible for the chargee to check the information by comparing it to the information he or she submitted to the Registry.

Example 3:

January 1: Alba Bank submits a registration notice requesting registration of a securing charge.

January 2: The Registry sends a confirmation statement to Alba Bank confirming registration of a securing charge with registration number: A-20010102155959777.

March 1: Asia Bank submits a search request using as the search criterion the registration number: A-20010102155959777.

March 2: The Registry sends a search result to Asia Bank with the following information:

NUMBER OF REGISTRATIONS FOUND
ACCORDING TO:

A-20010102155959777 is 0

instead of:

NUMBER OF REGISTRATIONS FOUND
ACCORDING TO:

A-20010102155959777 is 1
In this case, the search result sent to Asia Bank on March 2 did not disclose the fact that a registration with registration number A-20010102155959777 is recorded in the Registry database. Therefore, the Council of Ministers will be liable in case there are damages as a result of such a mistake. The liability will be limited to the amount provided in the Decree.

The best approach for chargees is to ensure that the information recorded in the Registry database is correct before advancing the credit. This means that chargees should postpone the advancement of credit until they examine the confirmation notice and search result from the Registry. In case of mistakes by the Registry, a chargee can inform the Registry and the Registry will correct the mistake after examining the original notice submitted by the chargee. Only after the chargee is satisfied that the information recorded in the Registry database is correct should he or she grant the credit. Article 5 of the Law for Securing Charges supports this approach by allowing the chargee to sign the securing agreement after he or she registers his or her securing charge.
I. Purpose of the Guide

The purpose of the *Chief Registrar Guide* (hereinafter, *Guide*) is to provide a single source of information about the registration and subsequent searching of information in the Registry of Securing Charges. It includes:

- information and instructions for each form used in the Registry of Securing Charges system;
- examples to guide the reader in ensuring the accuracy of registration;
- the process of searching the Registry of Securing Charges system once the information has been recorded; and
- the fees for registering and searching the Registry of Securing Charges system.

**NOTE:** The *Guide* is intended to be of assistance to the user and is not a legal reference or legal interpretation to the *Law for Securing Charges*.

The *Guide* may be ordered from:
Regjistri i Barrevë Siguruese
Rruga "Dora D'Istria", Nr. 2 (pranë Degës së Tëtim – Taksave)
Kutia Postare 8362
Tiranë, Shqipëri

II. The Registry of Securing Charges

The Registry of Securing Charges is an office of the Ministry of Finance, created under the *Law for Securing Charges*, Number 8537, passed by the Albanian Parliament on October 18, 1999. The Registry is regulated under
the Regulations of Securing Charges. Refer to these sources for further information about the Registry system.

DESCRIPTION

The Registry is a comprehensive registry of securing charges and state claims against all types of debtors, for example, companies and individuals.

Example:
- A lender can register his or her securing charge against a company that borrowed money from him or her.
- The state can register a claim against an individual that failed to pay his or her income tax.

Registration of securing charges in the Registry relates to any type of movable property (including both tangible and intangible property) but NOT to immovable property.

Example:
- tangible movable property (goods), such as motor vehicles, equipment, boats, aircraft, farm machinery; and intangible movable property, such as accounts, securities (for example, shares), and intellectual property (trademarks, copyright, etc.).

FUNCTION

The Registry has two functions:

1. to provide a means for chargees (creditors) to register a securing charge on the tangible movable and intangible property of chargors (debtors)—registration is one method of determining the relative priorities between competing claims on the debtor’s property; and
2. to provide an inquiry system with accurate and timely information for parties interested in purchasing or lending money on the security of tangible or intangible property.

WHY REGISTER AT THE REGISTRY OF SECURING CHARGES

The registration of the notice serves as a warning to the public of the existence of a securing charge or a state claim. The general rule in the Law is that an unregistered securing charge does not have priority over another regis-
tered securing charge or over other interests in the charged property, such as the interest of a buyer of the property or of an execution creditor (Law, Article 11). Therefore, a person MUST register his or her claim against the property of the debtor in order to maintain the claim’s priority. Failure to register may result in the loss of the securing charge to another claimant.

WHO SHOULD REGISTER AT THE REGISTRY OF SECURING CHARGES

A person who is considered a chargee under the Law should register his or her claim at the Registry. A chargee may authorize an agent to register for him or her. The term “registering person” is used to refer to the agent when he or she registers.

The Law applies to all transactions creating a securing charge on movable or intangible property—whether in the form of a possessory or nonpossessory pledge.

In addition, several other transactions such as a sale of goods with retained ownership by the seller, leases for more than one year, consignments, and sale or transfer of accounts fall within the scope of the Law and therefore MUST be registered in order to protect the priority position of the seller, lessor, consignor of goods, buyer, or transferee of an account (Law, Article 2). The following persons are considered chargees for the purposes of the Registry and need to register their claims:

• lender who took a securing charge on property of the borrower in order to secure the repayment of the loan;
• seller of goods under a sale of goods contract that provides for retained ownership by the seller until the purchase price is paid;
• lessor under a lease of movable property for over one year;
• consignor of goods; and
• buyer or transferee of accounts.

WHY SEARCH AT THE REGISTRY OF SECURING CHARGES

A chargee will search the Registry database prior to granting credit in order to determine whether the property he or she intends to use as security has a claim against it and to determine the creditworthiness of the debtor.

A buyer of certain types of goods that are not inventory will search prior to buying the goods to see if the goods he or she is purchasing are subject to registered claims.

An unsecured creditor will search the Registry in order to determine whether there is good reason to obtain an execution order against the movable property of the debtor.
Registration is very simple. All that is required is to register a notice of an existing or future securing charge or of a state claim. The securing agreement creating a securing charge is not registered.

There are several ways to register notices at the Registry. Since the Chief Registrar must have a hard copy of the notice, there can be no registration via telephone.

The Chief Registrar allows registration forms and search requests to be submitted by the following methods:

1. Mail, Courier, or in Person

Completed Notices A, Notices B, Notices C, or Notices D and the schedules may be mailed, sent by courier, or submitted in person together with the applicable fee (no cash should be sent by mail) to:

Regjistri i Barrive Siguruese
Rruga “Dora D’Istria”, Nr. 2 (prarë Degës së Tatim – Taksave)
Kutia Postare 8362
Tiranë, Shqipëri

When registering or searching, use ONLY original forms supplied by the Registry and their schedules issued by the Registry can be used. Each form (Notice) has a unique number called “Document Number.” If the documents submitted are not original, they will be rejected.

A confirmation statement will be sent back to the registering person, chargee, and chargor showing the registration details that were recorded in the system. If the delivery of the registration notice was made in person by the chargee, chargor, or registering person, this person may be given the confirmation statement by hand or it may be mailed later.

In case of a search request, a search result will be sent to the searching person showing information available under the search criteria mentioned on the search request (Notice D). If the delivery of the search request was made in person by the chargee, chargor, or searching person, this person may be given the search result by hand, or it may be mailed later.

2. Fax

The Registry accepts registrations and search requests via facsimile as well. Here again, only faxes of original forms and their schedules issued by the Registry will be accepted.
The confirmation statement or search result will be sent back to the registering person, chargee, and chargor, or searching party in case of a search request (Notice D), by fax if a fax number for these parties is mentioned on the form the Registry receives. When no fax number is mentioned, the confirmation statement will be sent by mail.

To register or search information by fax, a person MUST have an account at the Registry or prove that he or she has made the payment in some other way in accordance with this Guide.

3. Electronic Mail

To register or search information by e-mail, a person MUST first contact the Registry to arrange for this service.

III. Registry Account, Fees, and Hours

Any person who conducts business with the Registry may apply for an account and a password. Clients of the Registry can use this account to pay the registration and search fees instead of having to send or deliver payment to the Registry each time a registration or a search is requested. This will also reduce the chances that a registration or a search request will be rejected because insufficient funds were submitted for the transaction. The Registry does not charge for setting up an account.

FEES

The Registry will be unable to register or search information unless full payment of the fees is submitted. The account at the Registry MUST always have sufficient funds to cover the fees of the registrations or searches. If a person does not have an account at the Registry, he or she can submit payment in person or by mailing a check (drawn to: Registry of Securing Charges).

The check must be from one of the banks in which the Registry has an account.

Users can also use electronic bank transfer to the Registry account.

HOURS OF OPERATION

The Registry office operates Monday through Friday, from 0900 to 1700 (but not during official holidays). It is open to the public between 0930 and 1600.
IV. The Registry Forms

The Registry uses four kinds of forms: Notice A, Notice B, Notice C, and Notice D (Notice A and Notice B have schedules). All forms and schedules are available at the Registry and can be obtained for a fee during regular hours of business.

Users who have an identification number may also purchase a diskette with the notices in digital form.

1. NOTICE A: REGISTRATION OF A SECURING CHARGE

Notice A is most frequently used to register a securing charge under the Law. It is also used to register the claim of a seller under a sale contract of goods with retention of ownership, a consignor under a consignment agreement, a buyer or a transferee of an account, and a lessor under a lease agreement of over one year. If there is not enough space in Notice A to record all the information, the following schedules can be used:

- Schedule A1: This schedule is used for additional chargees or chargors.
- Schedule A2: This schedule is used for additional collateral.

2. NOTICE B: AMENDMENT TO A REGISTRATION

This notice is used to make changes to an existing registration in the Registry database. Fifteen types of changes can be made. Four schedules are used in addition to Notice B:

- Schedule B1: This schedule is used for subordination of a securing charge.
- Schedule B2: This schedule is used to add, delete, change information of, and transfer the right of the chargees or chargors.
- Schedule B3: This schedule is used to add, delete, change information of, and substitute collateral.
- Schedule B4: This schedule is used for authorization by a chargee or on his or her behalf to process some amendments to an existing registration.

3. NOTICE C: REGISTRATION OF A STATE CLAIM

This notice is used ONLY to register a state claim. This form is to be used ONLY by a state agency.
4. NOTICE D: SEARCH REQUEST

This notice is used for retrieving information from the database of the Registry. Any person may retrieve information in the Registry that is recorded under any of the following: Chargor Name (physical or juridical person), Serial Number of serial numbered goods (see list), and Registration Number.

5. CONFIRMATION STATEMENT

This statement is used by the Registry to confirm details of the registration of Notice A, Notice B, or Notice C.

6. REJECTION STATEMENT

This statement is used by the Registry to inform the registering person or chargee of the reason or reasons why the Registry was unable to record the information on Notice A, Notice B, or Notice C. Rejection statements are also used to inform the searching person of the reason or reasons why the Registry was unable to conduct a search based on the search request submitted to the Registry.

7. SEARCH RESULT

This document is used by the Registry to show the result of a search conducted after a Notice D was submitted to the Registry.

8. APPLICATION FOR AN ACCOUNT/ID NUMBER

A person who wishes to open an account with the Registry and to receive an ID number may do so free of charge by submitting to the Registry a completed application form. This form is also used if a user wishes to change details recorded under his or her account number and ID number.

NOTE: Carefully check any Document, Confirmation, and Search Result you received from the Registry. You should notify the Registry immediately of any error in the information recorded. Failure to do so may affect the priority of your claim.

V. General Instructions for Completing the Forms

Use the following general guidelines when completing the forms either by a typewriter, by a computer, or by hand.
1. CASE

Enter all information in CAPITAL LETTERS. This will reduce the possibility of having the characters misinterpreted.

2. PUNCTUATION AND ABBREVIATIONS

The following punctuation marks may be used on Registry forms:

<table>
<thead>
<tr>
<th>TYPE</th>
<th>SYMBOL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ampersand</td>
<td>&amp;</td>
</tr>
<tr>
<td>Colon</td>
<td>:</td>
</tr>
<tr>
<td>Comma</td>
<td>,</td>
</tr>
<tr>
<td>Dollar sign</td>
<td>$</td>
</tr>
<tr>
<td>Hyphen</td>
<td>-</td>
</tr>
<tr>
<td>Parentheses</td>
<td>( )</td>
</tr>
<tr>
<td>Period</td>
<td>.</td>
</tr>
<tr>
<td>Plus sign</td>
<td>+</td>
</tr>
<tr>
<td>Quotation marks</td>
<td>« »</td>
</tr>
<tr>
<td>Semicolon</td>
<td>;</td>
</tr>
<tr>
<td>Virgule</td>
<td>/</td>
</tr>
</tbody>
</table>

The following abbreviations of business types may be used on Registry forms:

<table>
<thead>
<tr>
<th>BUSINESS TYPE</th>
<th>ABBREVIATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHOQËRI ME PËRGJEGJËSI TË KUFIZUAR</td>
<td>SH.P.K.</td>
</tr>
<tr>
<td>SHOQËRI ANONIME</td>
<td>SH.A.</td>
</tr>
<tr>
<td>SHOQËRI KURSIM KREDITI</td>
<td>SH.K.K.</td>
</tr>
<tr>
<td>SHOQËRI BASHKËPUNIMI</td>
<td>SH.B.R.</td>
</tr>
<tr>
<td>RECIPROK</td>
<td></td>
</tr>
<tr>
<td>COMPANY</td>
<td>CO.</td>
</tr>
<tr>
<td>CORPORATION</td>
<td>CORP</td>
</tr>
<tr>
<td>INCORPORATED</td>
<td>INC.</td>
</tr>
<tr>
<td>LIMITED</td>
<td>LTD.</td>
</tr>
<tr>
<td>LIMITÉE</td>
<td>LTEE.</td>
</tr>
</tbody>
</table>
3. ALIGNMENT

Align information on forms carefully so that the characters are placed within the fields. Do NOT insert characters outside the fields.

*Example:*
The name XHEMOLLARI SH.P.K. will be written as follows:

X H E M O L L A R I SH.P.K.

4. CHARACTERS PER LINE

There is a maximum number of characters allowed per each field. Refer to Table IV.

VI. Detailed Instructions for Completing the Forms

Use the following specific guidelines when completing the forms either by a typewriter, by a computer, or by hand. In addition to providing general instructions, this part sets out specific instructions on how to complete each of the following forms correctly:

- Notice A: Registration of a Securing Charge (including schedules)
- Notice B: Amendment of a Registration (including schedules)
- Notice C: Registration of a State Claim
- Notice D: Search Request

The instructions are accompanied by examples designed to help the user avoid making mistakes so submissions to the Registry are not rejected. The instructions in this part are accompanied by brief explanations of each item. For additional information, the user should refer to the *Law* and the *Regulations*.

**NOTICE A: REGISTRATION OF A SECURING CHARGE**

This form is used for the original registration of securing charges. Use Notice A to register a securing charge, a sale of goods with retained ownership by the seller, a lease for more than one year, a consignment of goods, and a purchase or transfer of an account.
Schedules: Should you require extra pages for additional information, complete the schedules A1 and/or A2 using the same instructions as for Notice A. The appropriate schedules for Notice A are:

Schedule A1: Additional Chargee/Chargor
Schedule A2: Additional Collateral

**NOTE:** You can use as many schedules as you need for each registration. For example, you can register four chargees under a single registration. You will then need to use TWO Schedules A1. Additional information carries additional fees. Consult Table V of the *Guide* for the fee schedule. Fees might change from time to time as approved by the Minister of Finance.

**Fees:** Submit the completed Notice A, along with your account number and the password the Registry issued to you, or the applicable fee made payable to:

Regjistri i Barrëve Siguruese
Rruga “Dora D’Istria”, Nr. 2 (pranë Degës së Tatim – Taksave)
Kutia Postare 8362
Tiranë, Shqipëri

**Typing Instructions:** Enter information in UPPER CASE, in specified fields only, without erasure or alteration.

*Example:*  
The name XHEMOLLARI SH.P.K. will be written as follows:

X H E M O L L A R I SH.P.K.

Page ___ of ___ Pages

This space is used to record the number of pages in a registration when one or more schedules are required to record all the information.

*Example:*  
When a Notice A and a single Schedule A1 are used, the Notice is to be marked Page 1 of 2 Pages and the Schedule is to be marked Page 2 of 2 Pages.
PART 1: REGISTRATION LIFE

Under "registration life" indicate the number of years of the life of the registration. Mark 1 to 25 years if the number of years is 25 or less. If the life of the registration is more than 25 years or infinity, mark X.

Example:
If you wish to have your registration for 5 years, mark 5 in the designated area. If you wish to register for 40 years, mark X in the designated area. If you wish to register for infinity, mark X in the designated place.

NOTE: The amount of the fee you will pay for the registration is affected by the number of years chosen. The longer the life of the registration, the higher the fee. Refer to Table V of this Guide for the exact fee.

PART 2: CHARGE (CREDITOR)

Provide one of the following:

a) ID Number,
   OR
b) Name (Physical or Juridical Person)

ID Number: The identification number can be obtained from the Registry upon request. If the chargee has such a number, insert it in the space for the ID number.

Physical Person: Complete this area in the following order: first name, father's name, last name.

NOTE: Do not use titles such as Dr. or nicknames.

Juridical Person: Enter the registered name exactly as it appears in the court decision. Do not abbreviate unless the abbreviation is part of the registered name or is an abbreviation set out in Table I.

NOTE: Complete only ONE field, either the one for physical person or the one for juridical person, but not both.
Address: The address MUST include one line in the field designated for the “Address” as well as the village or town, district, and the country.

Phone Number: Include phone number together with the area code.

Fax Number: Include the fax number together with the area code if the chargee is to receive the confirmation by facsimile.

Electronic Mail: Include e-mail address if the chargee is to receive the confirmation by e-mail. In order to use this service, the user must first contact the Registry.

NOTE: If there is more than one chargee, complete Schedule A1, Part 2 (cont.). Chargees include the following:

- a lender who took a securing charge on property of the borrower in order to secure the repayment of the loan;
- a seller of goods under a sale of goods contract that provides for retained ownership by the seller until the purchase price is paid;
- a consignor of goods;
- a lessor under a lease contract of movable property for more than one year; and
- a buyer or transferee of an account.

PART 3: CHARGOR (DEBTOR)

Physical Person: Complete this part in the following order: first name, father’s name, last name.

NOTE: Do not use titles such as Dr. or nicknames.

Juridical Person: Enter the registered name exactly as it appears in the court decision. Do not abbreviate unless the abbreviation is part of the registered name or is an abbreviation set out in Table I.

NOTE: Complete only ONE field, either the one for physical person or the one for juridical person, but not both.
Address: The address MUST include one line in the field designated for the "Address" as well as the village or town, district, and the country.

Phone Number: Include phone number together with the area code.

Fax Number: Include the fax number together with the area code if the chargor is to receive the confirmation by facsimile.

Electronic Mail: Include e-mail address if the chargor is to receive the confirmation by e-mail. In order to use this service, the user must first contact the Registry.

NOTE: If there is more than one chargor, complete Schedule A1, Part 3 (cont.). Chargors include the following:

- a borrower who gives a securing charge on his or her property in order to secure the repayment of the loan;
- a buyer of goods under a sale of goods contract that provides for retained ownership by the seller until the purchase price is paid;
- a consignee of goods;
- a lessee under a lease of movable property for more than one year; and
- a seller or transferor of an account.

PART 4: SERIAL NUMBERED GOODS

NOTE: To determine what types of goods are serial numbered goods and when the serial number of the goods MUST be included in a registration, see the Regulations.

The following information is required for the registration of securing charges on serial numbered goods:

Code: If serial numbered goods are registered, enter the applicable CODE from the list below:
CODE | ITEM
---|---
1 | Automobile
2 | Motorcycle
3 | Agriculture Machine
4 | Construction (service) Machine
5 | Aircraft
6 | Boat
7 | Motor Vehicle
8 | Aircraft Engine
9 | Trailer
10 | Trolley Bus

**Serial Number:** List the last 25 alphanumerical characters of the serial number.

*Example:*  
The serial number ABCDEFGHIJKLMNOPQRST123456789 MUST be written as follows:

**E F G H I J K L M N O P Q R S T 1 2 3 4 5 6 7 8 9**

**Manufacturer, Year:** Enter the name of the manufacturer and the year of production.

**NOTE:** If more than two serial numbered goods need to be registered, complete Schedule A2, Part 4 (cont.).

**PART 5: OTHER COLLATERAL**

This part is to be completed for collateral and proceeds collateral that are not serial numbered goods (Part 4). Include in this part the correct description of the original collateral and proceeds collateral (proceeds collateral is any movable property that is derived from a dealing with the original collateral). It also includes insurance payments made in connection with any damage to or loss of the original collateral (See Article 1 of the Law).

**NOTE:** If more space is needed for the description in PART 5, complete Schedule A2, Part 5 (cont.). At least one item in Part 4 or Part 5 MUST be completed.
APPENDIX A. THE CHIEF REGISTRAR GUIDE

PART 6: REGISTERING PERSON

NOTE: Complete this part only if the registering person is NOT a chargee or a chargor under this registration. To complete this part, follow the same procedure as in Part 2.

PART 7: AUTHORIZED SIGNATURE

Name and Surname: The name and surname of the individual signing the form MUST be typed in this area.

Signature: This area MUST be signed by the authorizing person.

Account Number and Password: To charge the fees to a personal account established with the Registry, both the account number and the password MUST be included.

Document Number: Each Notice A has a unique document number located at the bottom right side of the document. If a Notice A is submitted together with schedules, the document number MUST be repeated on all attached schedules.

User Reference: This field is used to record any alphanumeric code that the user chooses for his or her own reference. This is optional.

NOTICE B: AMENDMENT OF A REGISTRATION

This form is used to amend a registration that is still available in the database of the Registry. Details needed to complete the form (e.g., registration number, name of chargor and chargee, serial numbers, and block numbers) will be found on the confirmation statement of the registration to be changed or on any search result of the registration.

Complete Notice B and the applicable schedules to record one of the following amendments:

1. Extension of Registration
2. Discharge of Registration
3. Reinstatement of a Discharged or Lapsed Registration
4. Subordination of Registration
5. Addition of Chargee
6. Deletion of Chargee
7. Change or Transfer of Chargee’s Right
8. Addition of Chargor
9. Deletion of Chargor
10. Change or Transfer of Chargor’s Right
11. Addition of Collateral
12. Deletion of Collateral
13. Change or Substitution of Collateral
14. Other Changes or Court Order
15. Registry Correction

NOTE: Any amendment to a registration is recorded under the registration number given to that registration.

Schedules: Should you require extra pages for additional information, complete the following schedules as instructed below:

Schedule B1: Subordination of a Securing Charge;
Schedule B2: Change of Chargee’s or Chargor’s Details, Addition and Deletion of Chargee or Chargor, Substitute of Chargee or Chargor;
Schedule B3: Addition, Deletion, Substitute of Collateral;
Schedule B4: Discharge of a Registration, Deletion of a Chargee, Deletion of a Chargor, Deletion of a Collateral, Substitute of Chargee or Chargor, Substitute of Collateral, Change of Information on Chargee, Chargor, or Collateral

NOTE: You can use as many schedules as you need for each amendment. For example: you can delete two chargees under a single amendment. You will need then to use TWO Schedules B2.

Each of the changes involves different fees. Refer to Table V of the Guide for the fee schedule. Fees might change from time to time as approved by the Minister of Finance.

Fees: Submit the completed Notice B, along with your account number and the password the Registry gave you, or the applicable fee made payable to:

Regjistri i Barrëve Siguruese
Rruga "Dora D’Istria", Nr. 2 (pranë Degës së Taitim – Taksave)
Typing Instructions: Enter information in UPPER CASE, in the specified field only, without erasure or alteration.

Example:
The name XHEMOLLARI SH.P.K. will be written as follows:

X H E M O L L A R I SH.P.K.

Page ___ of ___ Pages

This space is used to record the number of pages in a registration when one or more schedules are required to record all the information.

Example:
When a Notice B and a single Schedule B1 are used, the notice is to be marked Page 1 of 2 Pages and the Schedule is to be marked Page 2 of 2 Pages.

PART 1: REGISTRATION TO BE CHANGED

Registration Number: Enter the alphanumeric registration number assigned by the Registry to the registration to be changed.

Example:
A-20001110205649234

AND

Name of Chargor or Debtor: For verification purposes, indicate one of the registered chargors or debtors listed on the registration exactly as it appears on the confirmation statement or search result of the registration to be changed.
PART 2: TYPE OF AMENDMENT

NOTE: You must choose only ONE of the following amendments. (The amendments Other Changes or Court Order and Registry Correction are exceptions to this rule).

Extension of Registration: Mark X in this amendment to extend the life of an existing registration. State the number of additional years of extension (1 to 25 for up to 25 years or X for more than 25 years or for infinity).

NOTE: The amount of the fee you will pay to extend the registration is affected by the number of years chosen. The longer the extension, the higher the fee. Refer to Table V of the Guide for the exact fee.

Discharge of a Registration: Mark X in this amendment to remove the registration from the Registry system.

In addition to Notice B, you must submit a completed Schedule B4. All the chargees recorded under the registration to be amended MUST sign Schedule B4.

Reinstatement of a Discharged or Lapsed Registration: Mark X in this amendment to renew a registration. The reinstatement will be valid ONLY if it was recorded in the Registry system no later than 30 days after the registration was discharged or has lapsed (for further limitation on reinstatement of a registration, refer to Article 4 of the Regulations). Choose the number of years you wish to add to the life of the registration (1 to 25 for up to 25 years or X for more than 25 years or for infinity). (Mandatory in case the registration lapsed, and optional in case of discharge.)

Subordination: Mark X in this amendment to subordinate a registered securing charge to another registered securing charge on the same collateral. You MUST complete Schedule B1 according to the following instructions: For total subordination, complete (1) and (2), or for partial subordination complete (1), (2), and (3):

1. Insert in Schedule B1, Part 1, the number of the registration beneficiary.
2. Insert in Schedule B1, Part 1, the name or the ID number of the beneficiary chargee.
3. Insert in Schedule B1, Part 2 and/or Part 3, the block number and description of the collateral affected, exactly as they appear on the
confirmation statement or search result of the registration to be changed.

Addition of Chargee: Mark X in this amendment to add one or more chargees to the existing registration. You MUST complete Schedule B2, Part 1a, in addition to Notice B.

Deletion of Chargee: Mark X in this amendment to delete one or more chargees from the existing registration. You MUST complete Schedule B2, Part 1b, in addition to Notice B. Do not forget to insert the BLOCK NUMBER and the name or the ID number exactly as they appear on the confirmation statement or search result of the registration to be changed.

You must submit a completed Schedule B4. All the chargees that are to be deleted MUST sign Schedule B4.

NOTE: Since at least one chargee must exist in each registration, you cannot delete a chargee unless at least another one exists in the registration.

Change or Transfer of Chargee's Right: This amendment has two options:

1. Mark X in this amendment to make a change to the chargee's information, for example, change of address or name; or
2. Mark X in this amendment to register a transfer of the right of the chargee to another chargee.

The process for each of the two changes is the same; you MUST complete Schedule B2, Part 1a and 1b, in addition to Notice B. First, insert the new information you want to add (addition of chargee) in Schedule B2, Part 1a, and then insert the old information you want to delete (deletion of chargee) in Schedule B2, Part 1b. Do not forget to insert the BLOCK NUMBER and the name exactly as they appear on the confirmation statement or search result of the registration to be changed.

You must submit a completed Schedule B4. All the chargees that are to be deleted MUST sign Schedule B4.

Addition of Chargor: Mark X in this amendment to add one or more chargors to the existing registration. You MUST complete Schedule B2, Part 2a, in addition to Notice B.

Deletion of Chargor: Mark X in this amendment to delete one or more chargors from the existing registration. You MUST complete Schedule B2,
Part 2b, in addition to Notice B. Do not forget to insert the BLOCK NUMBER and the name exactly as they appear on the confirmation statement or search result of the registration to be changed.

You must submit a completed Schedule B4. All the chargees recorded under the registration to be amended MUST sign Schedule B4.

NOTE: Since at least one chargor must exist in each registration, you cannot delete a chargor unless at least another one exists in the registration.

Change or Transfer of Chargor’s Right: This amendment has two options:

1. Mark X in this amendment to make a change to the chargor’s information, for example, change of address or name; or
2. Mark X in this amendment to register a transfer of the right of the chargor to another chargor.

The process for these two changes is the same; you MUST complete Schedule B2, Part 2a and 2b, in addition to Notice B. Insert the new information you want to add (addition of chargor) in Schedule B2, Part 2a, and the old information you want to delete (deletion of chargor) in Part 2b. Do not forget to insert the BLOCK NUMBER and the name exactly as they appear on the confirmation statement or search result of the registration to be changed.

You must submit a completed Schedule B4. All the chargees recorded under the registration to be amended MUST sign Schedule B4.

Addition of Collateral: Mark X in this amendment to add collateral to the existing registration. You MUST complete Schedule B3, Part 1a and/or 2a, in addition to Notice B.

Deletion of Collateral: Mark X in this amendment to delete collateral from the existing registration. You MUST complete Schedule B3, Part 1b and/or 2b, in addition to Notice B. Do not forget to insert the BLOCK NUMBER (for serial number goods) and the description of the collateral exactly as they appear on the confirmation statement or search result of the registration to be changed.

You must submit a completed Schedule B4. All the chargees recorded under the registration to be amended MUST sign Schedule B4.

NOTE: Since at least one item of collateral must exist in each registration, you cannot delete an item of collateral unless there is at least another one in the registration.
Change or Substitution of Collateral: This amendment has two options:

1. Mark X in this amendment to change the collateral information, for example, to correct a serial number or year of production; or
2. Mark X in this amendment to register that the existing collateral is being substituted with another collateral.

The process for these two changes is the same; you MUST complete Schedule B3, Part 1 and Part 2, in addition to Notice B. Insert the new information you want to add (addition of collateral) in Schedule B3, Part 1a and/or 2a, and the old information you want to delete (deletion of collateral) in Part 1b and/or 2b. Do not forget to insert the BLOCK NUMBER and the description of the collateral exactly as they appear on the confirmation statement or search result of the registration to be changed. There is no block number for Part 2b.

You must submit a completed Schedule B4. All the chargees recorded under the registration to be amended MUST sign Schedule B4.

Other Changes or Court Order: This amendment has two options:

1. Mark X in this amendment to change a registration that is NOT mentioned in Notice B; or
2. Mark X in this amendment to make a change to a registration based on a court decision.

For a change that is NOT mentioned in Notice B, you must include a description of the change in the space provided in Notice B.

For a change that is the result of a court decision, insert the name of the court, the date of the order, and a short description of the decision in the space provided in Notice B.

NOTE: If the court ordered one of the changes listed in Notice B, you MUST mark an additional X in the type of change the court ordered and then follow the procedure described above for that particular change.

Registry Correction

NOTE: This change is to be used only to correct errors made as a result of the operation of the Registry and not errors made by users of the Registry.

NOTIFY THE REGISTRY IMMEDIATELY WHEN YOU NOTICE AN ERROR MADE BY THE REGISTRY.
However, you may also make the change by submitting Notice B to the Registry. If you choose to do it by submitting Notice B, mark X in the “Registry Correction” amendment. Second, you MUST mark a second X in the type of change necessary, in order to correct the Registry error. Third, follow the procedure described above for the particular change.

PART 3: REGISTERING PERSON

Provide one of the following:

a) **ID Number,**
   OR
b) **Name** (*Physical or Juridical Person*)

*ID Number:* An identification number can be obtained from the Registry upon request. If the registering person has such a number, insert it in the space for the ID number.

*Physical Person:* Complete this area in the following order: *first name, father’s name, last name.*

**NOTE:** Do not use titles such as Dr. or nicknames.

*Juridical Person:* Enter the registered name exactly as it appears in the court decision. Do not abbreviate unless the abbreviation is part of the registered name or is an abbreviation set out in Table I.

**NOTE:** Complete only ONE field, either the one for physical person or the one for juridical person, but not both.

*Address:* The address MUST include one line in the field designated for “Address” as well as the village or town, district, and the country.

*Phone Number:* Include a phone number together with the area code.

*Fax Number:* Include the fax number together with the area code if the registering person is to receive the confirmation by facsimile.

*Electronic Mail:* Include e-mail address if the registering person is to receive the confirmation by e-mail. In order to use this service, the user MUST first contact the Registry.
APPENDIX A. THE CHIEF REGISTRAR GUIDE

PART 4: AUTHORIZED SIGNATURE

Name and Surname: The name and surname of the individual signing the form MUST be typed in this area.

Signature: This area MUST be completed by a signature of the authorizing person.

Account Number and Password: To charge the fees to a personal account established with the Registry, both the account number and the password MUST be included.

Document Number: Each Notice B has a unique document number located at the bottom right of the document. In case a Notice B is submitted together with schedules, the document number MUST be repeated on all attached schedules.

User Reference: This field is to record any alphanumeric code that the user chooses for his or her own reference. This is optional.

NOTICE C: REGISTRATION OF A STATE CLAIM
This form is used for registering a state claim. Notice C is to be used only by a state agency. A registration of a state claim is valid until it is discharged.

Fees: The state agency should submit the completed Notice C, along with the state agency account number and the password given by the Registry, or the applicable fee made payable to:

Regjistri i Bërëve Siguruese
Rruga "Dora D'Istria", Nr. 2 (pranë Dëgës është Tëtim - Taksave)
Kutia Postare 8362
Tirana, Shqipëri

Typing Instructions: Enter information in UPPER CASE, in specified areas only, without erasure or alteration.

Example:
The name XHEMOLLARI SH.P.K. will be written as follows:

X H E M O L L A R I SH.P.K.
PART 1: STATE AGENCY

Provide the following:

a) **ID Number,**
   OR
b) **Name of the Agency**

**ID Number:** The identification number can be obtained from the Registry upon request. If the state agency has such a number, insert it in the space for the ID number.

**Agency Name:** Enter the name of the state agency, which is the creditor of the debtor against which the claim is registered.

**Address:** The address MUST include one line in the field designated for “Address” as well as the village or town, district and the country.

**Phone Number:** Include phone number together with the area code.

**Fax Number:** Include the fax number together with the area code if the state agency is to receive the confirmation by facsimile.

**Electronic Mail:** Include e-mail address if the state agency is to receive the confirmation by e-mail. In order to use this service, the user MUST first contact the Registry.

PART 2: DEBTOR

**Physical Person:** Complete this area in the following order: *first name, father's name, last name.*

**NOTE:** Do not use titles such as Dr. or nicknames.

**Juridical Person:** Enter the registered name exactly as it appears in the court decision. Do not abbreviate unless the abbreviation is part of the registered name or is an abbreviation set out in Table I.

**NOTE:** Complete only ONE field, either the one for physical person or the one for the juridical person, but not both.
Address: The address MUST include one line in the field designated for “Address” as well as the village or town, district, and the country.

Phone Number: Include phone number together with the area code.

Fax Number: Include the fax number together with the area code if the debtor is to receive the confirmation by facsimile.

Electronic Mail: Include an e-mail address if the debtor is to receive the confirmation by e-mail. In order to use this service, the user MUST first contact the Registry.

NOTE: Only ONE debtor can be registered under a single Notice C registration. If the state claim is against more than one debtor, the state agency MUST complete a separate Notice C for each debtor.

PART 3: BASIS FOR STATE CLAIM

The state agency MUST give details on the state claim, including the name of the law on which the claim is based, the date the claim was initiated, and a brief description of the claim itself. Other information on the debtor may be included here (but is not mandatory), for example, the debtor’s fiscal code.

PART 4: AUTHORIZED SIGNATURE

Name and Surname: The name and surname of the individual signing the form MUST be typed in this area.

Signature: This area MUST be signed by the authorizing person.

Account Number and Password: To charge the fees to a state agency account established with the Registry, both the account number and the password MUST be included.

Document Number: Each Notice C has a unique document number located at the bottom right of the document.

User Reference: This field is used to record any alphanumeric code that the user chooses for his or her own reference. This information is optional.
NOTICE D: SEARCH REQUEST

This form is used for searching and retrieving information from the Registry. A person who is intending to purchase goods or lend money on the security of property (collateral) may determine whether there are any securing charges or state claims recorded against the name of the person who is selling the property or offering it as a security for a loan. If the property includes serial numbered goods, the Registry will also provide a means of determining all the registrations recorded in the system against a particular serial number.

Searches of registered information in the Registry may be made in one of three ways:

Registration Number: This provides information related to a registration recorded under a specified registration number and subsequent amendments to this registration.

Name of Chargor or Debtor (Physical or Juridical Person): This provides information on registrations recorded under the specified name in the case of a physical person or juridical person and subsequent amendments to these registrations.

Serial Number: This provides information on registrations recorded under a specified serial number of goods that are not inventory and subsequent amendments to these registrations.

NOTE: The information retrieved from the Registry through a search depends entirely on the search criterion you use. Make sure that the information you are using for the search criterion is valid and accurate. If it is not, you may not be able to retrieve information relating to registered securing charges and state claims.

Fees: Submit the completed Notice D, along with your account number and the password the Registry gave you, or the applicable fee made payable to:

Regjistrati i Barreffë Siguruese
Rruga “Dora D’Istria”, Nr. 2 (pranë Degës së Tâtim – Taksave)
Kutia Postare 8362
Tiranë, Shqipëri

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Typing Instructions: Enter information in UPPER CASE in specified areas only, without erasure or alteration.

Example:
The name: XHEMOLLARI SH.P.K. will be written as follows:

X H E M O L L A R I SH.P.K.

PART 1: SEARCHING PERSON

Provide one of the following:

a) ID Number,
   OR
b) Name (Physical or Juridical Person)

ID Number: An identification number can be obtained from the Registry upon request. If the searching person has such a number, insert it in the space designated for the ID Number.

Physical Person: Complete this area in the following order: first name, father's name, last name.

NOTE: Do not use titles such as Dr. or nicknames.

Juridical Person: Enter the registered name exactly as it appears in the court decision. Do not abbreviate unless the abbreviation is part of the registered name or is an abbreviation set out in Table I.

NOTE: Complete only ONE field, either the one for physical person or the one for juridical person, but not both.

Address: The address MUST include one line in the field designated for "Address" as well as the village or town, district and the country.

Phone Number: Include phone number together with the area code.

Fax Number: Include the fax number together with the area code, if the search result is to be sent by facsimile to the searching person.
**Electronic Mail:** Include an e-mail number if the search result is to be sent to the searching person by e-mail. Before this service can be provided, the user must first contact the Registry.

**PART 2: CRITERIA TO BE SEARCHED**

This part covers the type of search you wish to conduct.

**NOTE:** You can insert more than one type of searches in this part. The fees to be paid are calculated according to the number of search criteria mentioned in this Part.

You must insert at least one of the 12 search criteria in Part 2 of the Notice.

**Registration Number:** You can include up to two registration numbers as search criteria in each Notice D. Enter the first registration number in the first space designated for it. Use the second space if you wish to search for a second registration number.

**Physical Person:** You can include up to three physical person’s names as search criteria in each Notice D. Enter the first physical person’s name in the first space designated for it. Use the next two spaces if you wish to conduct more searches based on a physical person’s name. Complete this area in the following order: first name, father’s name, last name.

**NOTE:** Do not use titles such as Dr. or nicknames.

**Juridical Person:** You can include up to three juridical person’s names as search criteria in each Notice D. Enter the first juridical person’s name in the first place designated for it. Use the next two spaces if you wish to conduct more searches based on the juridical person’s name.

**NOTE:** Enter the registered name exactly as it appears in the court decision. Do not abbreviate unless the abbreviation is part of the registered name or is an abbreviation set out in Table I.

**Serial Numbered Goods:** You can include up to four serial numbers as search criteria in each Notice D. Enter the first serial number in the first space designated for it. Use the next three spaces if you wish to conduct more searches based on serial numbered goods.
NOTE: Do not forget to properly insert the following information:

*Code:* Enter the applicable code from the following list:

<table>
<thead>
<tr>
<th>CODE</th>
<th>ITEM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Automobile</td>
</tr>
<tr>
<td>2</td>
<td>Motorcycle</td>
</tr>
<tr>
<td>3</td>
<td>Agriculture Machine</td>
</tr>
<tr>
<td>4</td>
<td>Construction (service) Machine</td>
</tr>
<tr>
<td>5</td>
<td>Aircraft</td>
</tr>
<tr>
<td>6</td>
<td>Boat</td>
</tr>
<tr>
<td>7</td>
<td>Motor Vehicle</td>
</tr>
<tr>
<td>8</td>
<td>Aircraft Engine</td>
</tr>
<tr>
<td>9</td>
<td>Trailer</td>
</tr>
<tr>
<td>10</td>
<td>Trolley Bus</td>
</tr>
</tbody>
</table>

*Serial Number:* List the last 25 alphanumerical characters of the serial number.

*Example:*
The serial number ABCDEFGHIJKLMNOPQRSTUVWXYZ123456789
MUST be written as follows:

EFGHIJKLMNOPQRSTUVWXYZ 123456789

*Manufacturer, Year:* Enter the name of the manufacturer and the year of production.

PART 3: AUTHORIZED SIGNATURE

*Name and Surname:* The name and surname of the individual signing the form MUST be typed in this area.

*Signature:* This area MUST be signed by the authorizing person.

*Account Number and Password:* To charge the fees to a personal account established with the Registry, both the account number and the password MUST be included.
VII. Confirmation Statements, Rejection Statements, and Search Results

A. CONFIRMATION STATEMENTS

Confirmation statements are issued by the Registry. Upon registration of Notice A, Notice B, and Notice C, confirmation statements will be sent to the parties indicated on the registration. The confirmation statement will show the assigned registration number, the date and time of registration, the document number of the Notice, the reference number, and the details of the information recorded exactly as they appear in the system. The block numbers where information is stored on the system will also be shown on the confirmation statement for future reference.

The confirmation statement should be retained by any person who receives it along with a copy of the notice submitted to the Registry and supporting documentation, as a permanent record of the information recorded in the Registry.

The confirmation statement is provided for two reasons:

1. to permit the registering person to compare the details recorded in the system with the details the registering person submitted for registration.

NOTE: The Registry is not responsible for any error in the recording of information if such error appears on the confirmation statement.

Example:
Chargee submits Notice A with Chargor’s name ARTAN AGIM PASHA. A Confirmation Statement is sent to the chargee confirming the recording of a securing charge under the name ARTAN AGIM PASHE.

Since the Confirmation Statement disclosed the mistake by showing the wrong last name (PASHE instead of the correct last name PASHA), the Government will not be liable for damages suffered by the chargee that may be a result of this mistake. A per-
son who receives a confirmation statement MUST verify that the information recorded is correct, and if an error occurred, he or she MUST immediately inform the Chief Registrar about such mistake.

For further information, you should refer to the Council of Ministers decree regarding limitation on the liability of the Government for mistakes of the Registry.

2. to complete the details required for Notice B: Amendment to Registration and Notice D: Search Request.

A confirmation statement is designed as well to provide information to a person who wishes to make amendments to a registration. The information that appears on the confirmation statement includes the information needed for future amendments. The information that is recorded after the confirmation statement of the original registration is issued by the Registry can be found on confirmation statements of registrations of Notices A or by conducting a search based on the registration number as the search criterion.

Example:

January 1 Notice A is registered with one chargee,
Name: ARTAN AGIM PASHA.

January 2 Registry issues a confirmation statement confirming one chargee registered, Name: ARTAN AGIM PASHA,
Block Nr.: BM01, Registration Nr.: A-20000101121359023.

February 1 Notice B registered; additional chargee. Name: COLLAKU SH.P.K.

February 2 Registry issues a confirmation statement confirming second chargee registered, Name: COLLAKU SH.P.K.,
Block Nr.: BM02, Registration Nr.: B-2000020113347756.

March 1 Notice D is submitted with registration number:
A-20000101121359023 as search criterion.

March 2 Registry issues a search result confirming that such registration exists with two chargees included:
First chargee name: ARTAN AGIM PASHA,
Block Nr.: BM01.
Second chargee name: COLLAKU SH.P.K.,
Block Nr.: BM02.
B. REJECTION STATEMENTS

Rejection statements are issued by the Registry and are sent to the chargee and the registering person when it is found that a Notice A, B, C, or D cannot be registered or searched for some reason. The document number is indicated on the rejection statement and the reasons for the rejection are explained so that appropriate action can be taken by the registering or searching person. The faulty form submitted will be attached and returned as well.

No fees will be charged for rejection. However, if a person submits payment in cash, the Registry will hold the money and will apply it to the registration or search once the correction is made and the Notice is resubmitted. A person who decides not to register a Notice or resubmit a search request after it has been rejected may contact the Registry for a refund.

A typical rejection statement will look like the following:

Date: January 1, 2001
Name: Loaning Bank Ltd.
Address: Rr. Myslym Shyri, Nr. 15, Tiranë-Tiranë, Shqipëri
Re: Document Number: A-300-001-1234

The attached document has been examined and is being rejected and returned for the reason(s) indicated below. Please refer to the Law for Securing Charges, Regulations of Securing Charges, and Chief Registrar Guide. Correct the indicated error(s), and resubmit the document for processing along with your account number and password or the appropriate fees. If you decide not to resubmit the notice and you have already submitted fees, contact the Registry for a refund.

Reasons for Rejection:
1. INSUFFICIENT FUNDS WERE SUBMITTED.

C. SEARCH RESULTS

Search results are issued by the Registry. Upon submission of Notice D, a search result will be sent to the searching person. The information on the search result will include the date and time of the search, searching person's name and address, the search criterion, and any recorded information under each search criterion mentioned on Notice D. The search result will include the document number and the reference number as well.
Search Result When Search Criterion Is Registration Number: When the search criterion is a registration number, the search result will include the original information recorded when the Notice A or Notice C was registered and any subsequent recorded information from any Notice B that was submitted to the Registry. This information will appear on the search result in chronological order.

Search Result When Search Criterion Is Chargor Name (Physical Person or Juridical Person): When the search criterion is the name of the chargor, the search result will include all the registrations recorded in chronological order under this search criterion. The first will be the first registration recorded under that criterion, including all the amendments to that registration. Below this registration will appear the next registration recorded with all the amendments to this registration, and so on.

Search Result When Search Criterion Is a Serial Number: When the search criterion is a serial number, the search result will include all the registrations recorded in chronological order under this serial number. The first will be the first registration where the serial number is recorded, including all the amendments to this registration. Below this registration will appear the next registration where the serial number is recorded with all the amendments to this registration, and so on.

VIII. Tables

TABLE I. Abbreviations

<table>
<thead>
<tr>
<th>BUSINESS TYPE</th>
<th>ABBREVIATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SHOQËRI ME PËRGJEGJËSI TË KUFIZUAR</td>
<td>SH.P.K.</td>
</tr>
<tr>
<td>SHOQËRI ANONIME</td>
<td>SH.A.</td>
</tr>
<tr>
<td>SHOQËRI KURSIM KREDITI</td>
<td>SH.K.K.</td>
</tr>
<tr>
<td>SHOQËRI BASHKËPUNIMI RECIPROK</td>
<td>SH.B.R.</td>
</tr>
<tr>
<td>COMPANY</td>
<td>CO.</td>
</tr>
<tr>
<td>CORPORATION</td>
<td>CORP.</td>
</tr>
<tr>
<td>INCORPORATED</td>
<td>INC.</td>
</tr>
<tr>
<td>LIMITED</td>
<td>LTD.</td>
</tr>
<tr>
<td>LIMITÉE</td>
<td>LTEE.</td>
</tr>
</tbody>
</table>
### TABLE II. Punctuation

<table>
<thead>
<tr>
<th>ITEM</th>
<th>SYMBOL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ampersand</td>
<td>&amp;</td>
</tr>
<tr>
<td>Apostrophe</td>
<td>'</td>
</tr>
<tr>
<td>Colon</td>
<td>:</td>
</tr>
<tr>
<td>Comma</td>
<td>,</td>
</tr>
<tr>
<td>Dollar sign</td>
<td>$</td>
</tr>
<tr>
<td>Hyphen</td>
<td>-</td>
</tr>
<tr>
<td>Parentheses</td>
<td>( )</td>
</tr>
<tr>
<td>Period</td>
<td>.</td>
</tr>
<tr>
<td>Plus sign</td>
<td>+</td>
</tr>
<tr>
<td>Quotation marks</td>
<td>“ ”</td>
</tr>
<tr>
<td>Semicolon</td>
<td>;</td>
</tr>
<tr>
<td>Virgule</td>
<td>/</td>
</tr>
</tbody>
</table>

### TABLE III. Codes of Serial Numbered Goods

<table>
<thead>
<tr>
<th>CODE</th>
<th>ITEM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Automobile</td>
</tr>
<tr>
<td>2</td>
<td>Motorcycle</td>
</tr>
<tr>
<td>3</td>
<td>Agriculture Machine</td>
</tr>
<tr>
<td>4</td>
<td>Construction (service) Machine</td>
</tr>
<tr>
<td>5</td>
<td>Aircraft</td>
</tr>
<tr>
<td>6</td>
<td>Boat</td>
</tr>
<tr>
<td>7</td>
<td>Motor Vehicle</td>
</tr>
<tr>
<td>8</td>
<td>Aircraft Engine</td>
</tr>
<tr>
<td>9</td>
<td>Trailer</td>
</tr>
<tr>
<td>10</td>
<td>Trolley Bus</td>
</tr>
</tbody>
</table>
### TABLE IV. Character Field Lengths

<table>
<thead>
<tr>
<th>FIELD</th>
<th>MAXIMUM LENGTH (including spaces)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Physical Person</strong></td>
<td></td>
</tr>
<tr>
<td>First Name</td>
<td>15 characters</td>
</tr>
<tr>
<td>Father's Name</td>
<td>15 characters</td>
</tr>
<tr>
<td>Last Name</td>
<td>30 characters</td>
</tr>
<tr>
<td><strong>Juridical Person / State Agency</strong></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>75 characters</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>40 characters</td>
</tr>
<tr>
<td>Additional Information on Address</td>
<td>40 characters</td>
</tr>
<tr>
<td>Village/Town and District</td>
<td>30 characters</td>
</tr>
<tr>
<td>State</td>
<td>30 characters</td>
</tr>
<tr>
<td><strong>Serial Numbered Goods</strong></td>
<td></td>
</tr>
<tr>
<td>Serial Property Number</td>
<td>25 characters</td>
</tr>
<tr>
<td>Manufacturer</td>
<td>30 characters</td>
</tr>
<tr>
<td>Year</td>
<td>4 characters</td>
</tr>
<tr>
<td>Code</td>
<td>2 characters</td>
</tr>
<tr>
<td><strong>Other Collateral / Court Order / Basis for State Claim</strong></td>
<td>200 characters</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
</tr>
<tr>
<td>Account Number</td>
<td>7 characters</td>
</tr>
<tr>
<td>Password</td>
<td>7 characters</td>
</tr>
<tr>
<td>ID Number</td>
<td>7 characters</td>
</tr>
<tr>
<td>Registration Life/Extension</td>
<td>2 characters</td>
</tr>
<tr>
<td>User Reference Number</td>
<td>12 characters</td>
</tr>
<tr>
<td>Phone Number</td>
<td>12 characters</td>
</tr>
<tr>
<td>Fax Number</td>
<td>12 characters</td>
</tr>
<tr>
<td>Electronic Mail</td>
<td>35 characters</td>
</tr>
<tr>
<td>Block Number</td>
<td>4 characters</td>
</tr>
</tbody>
</table>
### TABLE V. Fees for Registry Services

<table>
<thead>
<tr>
<th>TYPE OF SERVICE</th>
<th>FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic Fees</strong></td>
<td></td>
</tr>
<tr>
<td>1. Registration of Notice A (1-25 years)</td>
<td>500 Lek</td>
</tr>
<tr>
<td>2. Registration of Notice B</td>
<td>500 Lek</td>
</tr>
<tr>
<td>3. Registration of Notice C</td>
<td>100 Lek</td>
</tr>
<tr>
<td>4. Registration of Notice D</td>
<td>500 Lek</td>
</tr>
<tr>
<td><strong>Additional Fees</strong></td>
<td></td>
</tr>
<tr>
<td>5. Fees for Life of Registration (Notice A or B)</td>
<td></td>
</tr>
<tr>
<td>For Infinity</td>
<td>500 Lek</td>
</tr>
<tr>
<td>6. Addition of One Chargee (Notice A or B)</td>
<td>100 Lek</td>
</tr>
<tr>
<td>7. Deletion of One Chargee</td>
<td>100 Lek</td>
</tr>
<tr>
<td>8. Addition of One Chargor (Notice A or B)</td>
<td>100 Lek</td>
</tr>
<tr>
<td>9. Deletion of One Chargor</td>
<td>100 Lek</td>
</tr>
<tr>
<td>10. Addition of One Item of Collateral (Notice A or B)</td>
<td>100 Lek</td>
</tr>
<tr>
<td>11. Deletion of One Item of Collateral</td>
<td>100 Lek</td>
</tr>
<tr>
<td>12. Additional Search</td>
<td>200 Lek</td>
</tr>
<tr>
<td>13. Subordination</td>
<td>100 Lek</td>
</tr>
<tr>
<td>14. Discharge of One Registration</td>
<td>100 Lek</td>
</tr>
<tr>
<td>15. To Obtain a Photocopy</td>
<td>10 Lek/page</td>
</tr>
<tr>
<td>16. For a Reprint of a Confirmation Statement or Search Result</td>
<td>500 Lek</td>
</tr>
<tr>
<td>17. To Purchase Registration Forms</td>
<td>150 Lek/10 forms</td>
</tr>
<tr>
<td></td>
<td>1,000 Lek/100 forms</td>
</tr>
<tr>
<td>18. Chief Registrar Guide</td>
<td>300 Lek</td>
</tr>
<tr>
<td>19. A Diskette with the Documents</td>
<td>1,000 Lek</td>
</tr>
<tr>
<td>20. For One Request Pursuant to Article 7 of the Law for Securing Charges</td>
<td>1,000 Lek</td>
</tr>
</tbody>
</table>
IX. The Forms

Notice A: REGISTRATION OF A SECURING CHARGE
Notice B: AMENDMENT TO A REGISTRATION
Notice C: REGISTRATION OF A STATE CLAIM
Notice D: SEARCH REQUEST

Schedule A1: ADDITIONAL CHARGEE/CHARGOR
Schedule A2: ADDITIONAL COLLATERAL
Schedule B1: SUBORDINATION OF A SECURING CHARGE
Schedule B2: CHANGES TO CHARGEE/CHARGOR
Schedule B3: CHANGES TO COLLATERAL
Schedule B4: AUTHORIZATION (PHYSICAL PERSON)
Schedule B4: AUTHORIZATION (JURIDICAL PERSON)
Pjesa 1 Kohezgjatia e Regjistrimit

Pjesa 2 Barbëmarelli (Kreditori)

- Nr. Identifikimi: OSE
- Emri: Atbisha Mblenri
- Emri i Personit Folk: OSE
- Emri i Personit Juridik: OSE
- Adresa: Informacioni shitur për Adresën
- Fiskali / Qyteti: Shiteti Nr. Tel. Nr. Fakso Perta Elektronike (E-mail)

Pjesa 3 Barbëdhenesi (Debtori)

- Emri: Atbisha Mblenri
- Emri i Personit Folk: OSE
- Emri i Personit Juridik: OSE
- Adresa: Informacioni shitur për Adresën
- Fiskali / Qyteti: Shiteti Nr. Tel. Nr. Fakso Perta Elektronike (E-mail)

Pjesa 4 Malmba me Numër Serie (ja inventare)

- Kod: Nr. i Seriei
- Fshirimi: VIII

Pjesa 5 Kolateral Tjetër (Përforiku të ardhurat kolateral përveç malmbave me numër të serie)

Pjesa 6 Persimi Regjistrues (Pashfinoni këtë pjesë vetëm nëse personi regjistrues nuk është barême të këtë regjistrin)

- Nr. Identifikimi: OSE
- Emri: Atbisha Mblenri
- Emri i Personit Folk: OSE
- Emri i Personit Juridik: OSE
- Adresa: Informacioni shitur për Adresën
- Fiskali / Qyteti: Shiteti Nr. Tel. Nr. Fakso Perta Elektronike (E-mail)

Pjesa 7 Nëveshkim i Autorizuar

- Emri dhe Mblenri
- Nr. i Llogarit: Përshtatësi
- Nr. i Dokumentit: A-200-000-1234567

Referenca: Përshtatësi
**PIESA 1 REGISTRIMI QUE DO TE NDRYSHUHET**

Nr. i Regjistrimit: --> 

Bardhehesh te Delaturi:

Emri i Personit Fill: --> 

Emri i Personit Jasht:< -->

**PIESA 2 LLOJI I NDRYSHIMIT**

- [ ] Zgjidhje per Vite (Zgjidhje e regjistrimit e katër
- [ ] Vite (Shiko nje nga regjistrimit e katër
- [ ] Vite (Shiko nga regjistrimi i barreves
- [ ] Vite (Shiko nga regjistrimi i barreves

**PIESA 3 PERSONI REGJISTRUES**

Nr. identifikimit: --> OSE

Emri i Personit Fill: -->

Emri i Personit Jasht:< -->

Adresse: 

Funksioni shokëtore: 

Nr. Tel: 

**PIESA 4 NËNSHKURIMI I AUTORIZUAR**

Emri i Ministrin:<

Nëshkuri i Ministrin:<

Televizoria: 

Nëshkuri i Ministrin:<

Nëshkuri i Delaturi:<

Nëse është disponues në regjistrin dhe të cilëtë nuk është disponues në regjistrin, për

- [ ] Zgjidhje per Vite (Zgjidhje e regjistrimit e katër
- [ ] Vite (Shiko nje nga regjistrimi e katër
- [ ] Vite (Shiko nga regjistrimi i barreves
- [ ] Vite (Shiko nga regjistrimi i barreves

**PIESA 2 LLOJI I NDRYSHIMIT**

- [ ] Zgjidhje per Vite (Zgjidhje e regjistrimit e katër
- [ ] Vite (Shiko nje nga regjistrimi e katër
- [ ] Vite (Shiko nga regjistrimi i barreves
- [ ] Vite (Shiko nga regjistrimi i barreves

**PIESA 3 PERSONI REGJISTRUES**

Nr. identifikimit: --> OSE

Emri i Personit Fill: -->

Emri i Personit Jasht:< -->

Adresse: 

Funksioni shokëtore: 

Nr. Tel: 

**PIESA 4 NËNSHKURIMI I AUTORIZUAR**

Emri i Ministrin:<

Nëshkuri i Ministrin:<

Televizoria: 

Nëshkuri i Ministrin:<

Nëshkuri i Delaturi:<

Nëse është disponues në regjistrin dhe të cilëtë nuk është disponues në regjistrin, për

- [ ] Zgjidhje per Vite (Zgjidhje e regjistrimit e katër
- [ ] Vite (Shiko nje nga regjistrimi e katër
- [ ] Vite (Shiko nga regjistrimi i barreves
- [ ] Vite (Shiko nga regjistrimi i barreves
PIESA 1  AGENCIJA SHTETËRORI (Kreditori)

<table>
<thead>
<tr>
<th>Nr. Identifikimi</th>
<th>Emri</th>
<th>Emri i Agencisë</th>
<th>Adresa</th>
<th>Informacioni Shtesis për Adresën</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PIESA 2  DEBITORI

<table>
<thead>
<tr>
<th>Emri i Personit Fisik</th>
<th>Emri i Personit Juridik</th>
<th>Adresa</th>
<th>Informacioni Shtesis për Adresën</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PIESA 3  PRETENDIMI SHTETËROR

Dosa përshkueshme që përdores identifikimin dhe informacionin të pretendimit për debitorin.

PIESA 4  NËNSHKURIMI I AUTORIZUAR

<table>
<thead>
<tr>
<th>Të-ti-Mësoni</th>
<th>Nr. i Dokumentit</th>
<th>Kuptimi i Dokumentit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>C - 200-000-1594873</td>
<td></td>
</tr>
</tbody>
</table>

Nënshkrimi
### Pjesa 1 Personi Kërkuar

<table>
<thead>
<tr>
<th>Num. Identifikim</th>
<th>GSE</th>
<th><strong>Emri</strong></th>
<th><strong>Mbiemri</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Adresse</strong></td>
<td></td>
<td><strong>Informacion Shënim për Kërkues</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Tel./Qendër/britë**

Nr. Tel. | Nr. Britë | Posta Elektro-like (e-mail)

### Pjesa 2 Kriteri i Kërkimit

Kërkimi i parë Nënri të Registrit të

<table>
<thead>
<tr>
<th>Nr. i Registrit të</th>
<th>Nr. i Registrit të</th>
</tr>
</thead>
</table>

Kërkimi i parë Emri të Personit Fizik ose Personit Juridik

<table>
<thead>
<tr>
<th>Emri</th>
<th><strong>Azi</strong></th>
<th><strong>Mbiemri</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Emri</th>
<th><strong>Azi</strong></th>
<th><strong>Mbiemri</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Emri</th>
<th><strong>Azi</strong></th>
<th><strong>Mbiemri</strong></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Emri</th>
<th><strong>Azi</strong></th>
<th><strong>Mbiemri</strong></th>
</tr>
</thead>
</table>

Kërkimi i parë Nënri të Seriut

<table>
<thead>
<tr>
<th><strong>N. i Seriut</strong></th>
<th><strong>Emri i Shpërtej</strong></th>
<th><strong>Fshihet</strong></th>
</tr>
</thead>
</table>

### Pjesa 3 Nënëshkrimi i Autorizuar

Emri i Shkruar

<table>
<thead>
<tr>
<th>Nr. i Shqiptar</th>
<th>Përshkrimi</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Nr. i Dokumentit</th>
<th>D-200-003-9638254</th>
</tr>
</thead>
</table>

Referencë e Përfundimit

Nënëshkrimi
### Pjesa 2 (Vazhdimi) Barremarresi (Kordoni)

<table>
<thead>
<tr>
<th>Nr. Identifikimi</th>
<th>OSE</th>
<th>Emri</th>
<th>Adresa</th>
<th>Atribut</th>
<th>Mbrojet</th>
<th>Emri i Personit Fizik</th>
<th>Emri i Personit Juridik</th>
<th>Adresa</th>
<th>Informacione Shpesh per Adrese</th>
<th>Releksi</th>
<th>Shteti</th>
<th>Nr. Tel</th>
<th>Nr. Faks</th>
<th>Poster Elektronike/Email</th>
</tr>
</thead>
</table>

### Pjesa 3 (Vazhdimi) Barredhenei (Debitori)

<table>
<thead>
<tr>
<th>Nr. Identifikimi</th>
<th>OSE</th>
<th>Emri</th>
<th>Adresa</th>
<th>Atribut</th>
<th>Mbrojet</th>
<th>Emri i Personit Fizik</th>
<th>Emri i Personit Juridik</th>
<th>Adresa</th>
<th>Informacione Shpesh per Adrese</th>
<th>Releksi</th>
<th>Shteti</th>
<th>Nr. Tel</th>
<th>Nr. Faks</th>
<th>Poster Elektronike/Email</th>
</tr>
</thead>
</table>

### Ndriçimi

<p>| Nr i Dokumentit |</p>
<table>
<thead>
<tr>
<th>Pjesa 4 (nazhdim)</th>
<th>Malëria me Numër Serie (i i inventare)</th>
<th>Koral</th>
<th>No. i Serijë</th>
<th>Prefishe</th>
<th>Viti</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Pjesa 5 (nazhdim)</th>
<th>Kolateral Tjetër (Përshkruar i prituesit kolateral përveç malërise me numër serit)</th>
</tr>
</thead>
</table>
**Pjesa 1**  **Regjistrimi që do të ndryshohet**

<table>
<thead>
<tr>
<th>Nr. i Identifikimit</th>
<th>OSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emri i Personit Përshtatshëm</td>
<td></td>
</tr>
<tr>
<td>Emri i Personitëlsh</td>
<td></td>
</tr>
</tbody>
</table>

**Pjesa 2**  **Mallra me numër serie**

<table>
<thead>
<tr>
<th>Nr. i Mallrës</th>
<th>Kodic</th>
<th>Sh.nimi i Mallrës</th>
<th>Pr. sh.nimi</th>
<th>Njohja</th>
</tr>
</thead>
<tbody>
<tr>
<td>dhe</td>
<td>dhe</td>
<td>dhe</td>
<td>dhe</td>
<td>dhe</td>
</tr>
</tbody>
</table>

**Pjesa 3**  **Kolateral Tefër**  (Përshtatët dhe/otër kolateral përveç mallrave me numër serie):
REPUBLICA MINISTRIA E FINANCEVE
SHQIPERIE

**SHTOICA**
82
NDRYSHIM ARKEMARRRES
4/RARRFDHFVESf

**REGJISTRI I BARREVE SIGURUESE**
SHQIPERIS

**PIESA 1**
BARREMARRESI (Krediti i)

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**Fshat / Qyte / Njeve**
Shkreti
N. Tel.
N. Faks
Posta Elizavorike e Millit

**Fshirje Barremarres**

**PIESA 2**
BARREHENESI (Debitori)

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N. Tel.
N. Faks
Posta Elizavorike e Millit

**Fshirje Barrehenes**

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<th>KOLATERAL TJE TËR (Pershkrij vendim të kolateral tje tëtër më të vjerë me numër serin)</th>
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PES A 1  DEKLARATË E PERSONAVE FIZIKË

Une / Ne, personi/at emri dhe nënshkrimi i të citit/cilëve shfaqet më poshtë, autorizoj/më Regjistrin e Barreve Sigurese të kryejë ndryshimin e regjistrimit Nr. __________________________ në përpërthe me informacionin që paraqitet në dokumentin Nr. B - __________________________ bashkëngjitur këtij formulari.

PES A 2  VËRTETIM NËNSHKIRM I

__________________________  __________________________
Nënshkrimi                  Nënshkrimi

REPU LIKA E SHQIPëRISË
DHOMA E NOTERIJE

NR. REP. __________________________ në _______________

VËRTETIM

Sot me datë _______ _______ përpërte meje noterit/es __________________________ u paraqëti/en personalisht personi/at l/e mëposhtëm:

1- Z/Znj. (Emri): __________________________ (Atësi) __________________________ (Mbiemri)
    Endur më _______ _______ banues në __________________________________ mbyjet i pasaportës me Nr. _______________

2- Z/Znj. (Emri): __________________________ (Atësi) __________________________ (Mbiemri)
    Endur më _______ _______ banues në __________________________________ mbyjet i pasaportës me Nr. _______________

madhor/madhore me zotëri të plotë për të vepruar që më deklaron/son se këtë dokument e ka/në nënshkur me vullnetin e tij/tijë të lirë dhe une noteri/aja vërtetoj nënshkrimin/et e saj/tij/tyre rregullisht.

NOTER
PIESA 1  DEKLARATË E PERSONAVE JURIDIKE

Unë / Ne, personi/at emri dhe nënshkrimi i të cilit/cilëve shfaqet më poshitë, autorizoj/ne Regjistrin e Barreve Siguruese të kryejë ndryshimin e regjistrimit Nr. _____________________________ në përputhje me informacionin që paraqitet në dokumentin Nr. B - _____________________________ bashkëngjitur këtij formulari.

PIESA 2  VËRTETIM NËNSHKRIMI

__________________________  ____________________________
Nënshkrimi                                  Nënshkrimi

REPUBLICA E SHQIPERISË
dhoma e notërëve ________________________________

NR.          REP.          me ____________

VËRTETIM

Sot me datë ____________ përpara meje noterit/es me ________________ u paraqit nën personalisht
personi/at i/e mëposhitëm:

1- Z/Znj. shqëria (Emri) ____________________________ (Atesia) ____________________________ (Mbi-ri) 
mbajtës i pasaportës me Nr. ____________________________ në cilësinë e përfshirës së shoqërisë
(Emri i shoqërisë) ____________________________

Regjistruar me Vendimin e Gjykates të Rrethit Tirane
Nr. ____________________________ date ____________
me sëllë (adresa e plotë) ____________________________

2- Z/Znj. shqëria (Emri) ____________________________ (Atesia) ____________________________ (Mbi-ri)
mbajtës i pasaportës me Nr. ____________________________ në cilësinë e përfshirës së shoqërisë
(Emri i shoqërisë) ____________________________

Regjistruar me Vendimin e Gjykates të Rrethit Tirane
Nr. ____________________________ date ____________
me sëllë (adresa e plotë) ____________________________

që më dëklaroj/am se këtë dokument e ka/në nënshkrimar me vullnetin e saj/hijte të shëndë dhe në bazë të tagrave që i/j/në dhënë nga shoqëria/të dhe unë noteri/ja vërtetoj/nënshkrimin/et e saj/hijte të re.pdf

NOTER

__________________________
Shqipëria

9.0.1.14
SAMPLE OF A SECURING AGREEMENT:
SPECIFIC COLLATERAL

Disclaimer and Notice

This document represents only the opinions of the authors with respect to the type of agreement to which the Law for Securing Charges applies. It is not meant to be a legal interpretation of the Law for Securing Charges or to be used without consulting legal counsel for advice and guidance as to the legal effect of the Law for Securing Charges.

The terms set out herein are those that, in the opinion of the authors, are relevant to compliance with the Law for Securing Charges. Additional terms will be required to address other or more specific parts of the agreement between the parties.

SECURING AGREEMENT
(Specific Collateral: Purchase-Money Securing Charge)

THIS SECURING AGREEMENT made as of this ______ day of __________________, 200_.

BETWEEN:

(Name)

(hereafter referred to as the “Chargor”)

AND:

(Name)

(hereafter referred to as the “Chargee”)

205
The Chargor agrees with the Chargee as follows:

**Article 1**
**CREATION OF CHARGE AND OBLIGATION SECURED**

1.1 The Chargor hereby grants to the Chargee a purchase-money securing charge (hereafter referred to as the “Securing Charge”) in the following goods:

(a) 1999 Caterpillar Tractor, Serial Number XYZ123 together with all parts, fittings, accessories, equipment, special tools, renewals, and replacements of all or any part thereof, whether now owned or hereafter acquired by the Chargor (hereafter collectively referred to as the “Collateral”).

1.2 The Securing Charge granted hereby secures payment, performance, and satisfaction of a loan in the amount of ________ Lek made by the Chargee to enable the Chargor to acquire the Collateral as well as all other amounts owing by the Chargor to the Chargee under this or a related agreement.

**Article 2**
**COVENANTS OF CHARGOR**

The Chargor covenants and agrees that it shall:

(a) maintain the Collateral in a condition and state of repair that preserves the value of the Collateral, reasonable wear and tear excepted;

(b) upon request, furnish in writing all information concerning the Collateral and permit the Chargee from time to time to inspect the Collateral, and for such purpose to enter upon the premises of the Chargor;

(c) upon demand, execute, acknowledge, and deliver such further assignments, transfers, and documents as may be reasonably requested by the Chargee in order to give effect to this Agreement and pay all costs for searches and registrations;

(d) reimburse the Chargee for any costs or expenses, including legal fees incurred by the Chargee in enforcing this Agreement or re-
alizing upon the Collateral and all costs associated with registry searches and registration of notices in relation to the charge created by this agreement;

(e) immediately notify the Chargee if the Collateral is damaged, destroyed, expropriated, or stolen;

(f) immediately notify the Chargee of any change in the name of the Chargor;

(g) not sell, lease, or dispose of the Collateral or any interest therein, without the prior written consent of the Chargee;

(h) not remove the Collateral from Albania without the permission of the Chargee;

(i) insure the Collateral for such periods, in such amounts, on such terms, and against loss or damage by fire and such other risks as would a prudent company operating in the locations and industry where the Collateral is located and shall pay all premiums relating thereto.

Article 3
EVENTS OF DEFAULT

3.1 The happening of any one or more of the following events shall constitute default hereunder (hereafter referred to as “Default”):

(a) if the Chargor should fail to pay the Chargee, when payable, any amount owing to the Chargee under this or any related agreement, or if the Chargor should fail to perform any other covenant or condition contained in this Agreement or in any other related agreement between the Chargor and the Chargee;

(b) if any representation made by the Chargor relating to this Agreement or the Collateral is found to be incorrect;

(c) if any process of court shall become enforceable against the Chargor;

(d) if any other party claiming a securing charge against the Collateral takes steps to enforce its securing charge;

(e) if, in the opinion of the Chargee, upon commercially reasonable grounds, the Securing Charge or the Collateral is jeopardized or endangered; or

(f) if the Chargor becomes a bankrupt or any bankruptcy or insolvency proceedings are commenced against or by the Chargor.
Article 4

REMEDIES

4.1 Upon Default, in addition to any other rights or remedies it may have at law, the Chargee may:

(a) by its officers, employees, or agents at any time, but with the consent of the Chargor, enter the Chargor’s land or premises where the Collateral or any part thereof may be for the purpose of taking possession of or removing the Collateral;

(b) in its sole discretion, declare all or any part of the obligations that are not by their terms payable on demand to be immediately due and payable, without demand or notice of any kind, and collect the entire indebtedness with reasonable expenses including court costs, lawyers’ fees, and other legal expenses; and

(c) in addition to those rights granted herein and in addition to any other rights the Chargee may have at law, the Chargee shall have, both before and after default, all rights and remedies of a Chargee under the Law for Securing Charges (Albania), including the right to sell the Collateral and the right to payment of any deficiency to which the Chargee may be entitled to by law.

Article 5

MISCELLANEOUS

5.1 The Chargor hereby authorizes the Chargee to register such notice of registration forms and other documents and do such acts as the Chargee may deem appropriate to complete and continue the Securing Charge, to protect and preserve the Collateral, and to realize upon the Securing Charge.

5.2 The Chargee may grant extensions of time and other indulgences, compromise, settle, grant releases and discharge, and otherwise deal with the Chargor and with the Collateral as the Chargee may see fit without prejudice to the liability of the Chargor or the rights of the Chargee.

5.3 This Agreement is in addition to, and not in substitution for, any other charge now held or hereafter held by the Chargee, and this Agreement shall be to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

5.4 No modification, variation, or amendment of any provision of this Agreement shall be made except by written agreement, executed by
the parties hereto, and no waiver of any provision hereof shall be effective unless in writing.

5.5 This Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of Albania, as may, from time to time, be in effect, including the Law for Securing Charges (Albania).

5.6 Any notices or other communications required or permitted hereunder shall be sufficiently given if personally delivered, sent by registered mail or facsimile, as follows:

(a) To the Chargee:
   (Name) 
   (Address) 
   (Facsimile) 

(b) To the Chargor:
   (Name) 
   (Address) 
   (Facsimile) 

or in any case to such other address as shall be furnished in writing by any such party to all of the parties hereto. Such notices or other communications so given shall be deemed to have been given on the ______ day after the date so mailed or on the date of delivery, in the case of personal delivery, or facsimile transmission, provided that in the case of facsimile transmission confirmation by return facsimile is given.

5.7 In the event any provision of this Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain in full force and effect.

5.8 The Chargor hereby acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year here above written.

(Name and signature of Chargor) 
(Name and signature of Chargee)
SAMPLE OF A SECURING AGREEMENT:
GENERAL COLLATERAL

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The terms set out herein are those that, in the opinion of the authors, are relevant to compliance with the Law for Securing Charges. Additional terms will be required to address other or more specific parts of the agreement between the parties.

SECURING AGREEMENT
(Collateral Inventory and Accounts-All Obligations)

THIS SECURING AGREEMENT made as of this ______ day of __________________, 200__.

BETWEEN:
(Name)
(hereafter referred to as the “Chargor”)

AND:
(Name)
(hereafter referred to as the “Chargee”)

The Chargor agrees with the Chargee as follows:

ARTICLE 1
INTERPRETATION

1.1 DEFINITIONS
In this Agreement the following terms and expressions have the following meanings:
APPENDIX B. SAMPLE OF SECURING AGREEMENTS

(a) "Collateral" has the meaning attributed to such term in Section 2.1 hereof.

(b) "Inventory" means all inventory of the Chargor supplied or financed by the Chargee, of whatever kind and wherever situated, whether now owned or hereafter acquired or reacquired by the Chargor including all goods, merchandise, raw materials, goods in process, finished goods, and other tangible personal property held for sale, lease, or resale or furnished or to be furnished under contracts for service.

(c) "Obligations" means any and all of the obligations, liabilities, and indebtedness of whatever nature or kind of the Chargor to the Chargee (including interest thereon and legal fees and disbursements) owing from time to time, whether present or future, absolute or contingent, matured or not, extended or renewed, wheresoever and howsoever incurred, and any ultimate unpaid balance(s) thereof.

(d) "Receivables" means books, documents, writings, papers, records and computer records, and all of the present and future accounts, debts, claims, monetary obligations, and demands of every nature and kind and whether or not evidenced by instruments, which are now or may hereafter become due, payable, owing, or accruing due to the Chargor and all proceeds thereof.

1.2 INVALIDITY OF PROVISIONS

Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity or unenforceability of any such provision or part thereof by a Court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.3 AMENDMENT, WAIVER

No amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.4 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Albania.
2.1 CREATION OF SECURING CHARGE
The Chargor hereby grants to the Chargee a Securing Charge (the “Securing Charge”) in:
(a) inventory;
(b) receivables; and
(c) all proceeds collateral of any of the foregoing.
(Hereafter the foregoing property shall be collectively referred to as “Collateral,” and any reference to “Collateral” shall be deemed to be a reference to “Collateral or any part thereof.”)

3.1 OBLIGATIONS SECURED
The Securing Charge granted hereby secures payment, performance, and satisfaction of all of the Obligations.

3.2 CONTINUOUS INTEREST
The Securing Charge shall be a continuous charge notwithstanding that the Obligations may be fluctuating and even may, from time to time, be reduced to a nil balance and notwithstanding that credit advanced may be repaid and further credit advanced in respect of which the Chargor is liable.

3.3 APPLICATION OF PAYMENTS
All monies collected or received by the Chargee from the Chargor shall be applied on account of the Obligations in such manner as the Chargee may in its sole discretion determine.

4.1 GENERAL AGREEMENTS
The Chargor agrees that:
(a) it shall insure the Collateral for such periods, in such amounts, on such terms, and against loss or damage by fire and such other risks as would a prudent company operating in the locations and industry where the Collateral is located and shall pay all premiums therefor;
(b) it shall notify the Chargee promptly of:
   (i) any change in the name of the Chargor;  
   (ii) any change in the place of business of the Chargor or, if  
      the Chargor has more than one place of business, in the  
      Chief Executive office of the Chargor;  
   (iii) any change in the location of the Collateral;  
   (iv) any damage to or loss of Collateral;  
   (v) the occurrence of any Event of Default (as hereinafter de-
      fined);

(c) it shall not sell, lease, or dispose of any Collateral or interest  
    therein, other than inventory collateral, without the prior writ-
    ten consent of the Chargee, and shall sell inventory only in the  
    ordinary course of business but not after notice to desist from  
    sale has been given by the Chargee;

(d) in case it changes its name, he shall give, prior to the time the  
    change of name takes effect by law, a written notice to the Char-
    gee of the new name and date upon which such a change of name  
    is to take effect; and

(e) it shall do, execute, acknowledge, and deliver such registration  
    notice forms and further assignments, transfers, documents, acts,  
    matters, and things, including further schedules to this agree-
    ment, as may be reasonably requested by the Chargee in order to  
    give effect to this agreement.

4.2 VERIFICATION OF COLLATERAL
The Chargee shall have the right at any time and, from time to time,  
verify the existence and state of the collateral in any manner the  
Chargee may consider appropriate, and the Chargor agrees to fur-
nish all assistance and information and to perform all such acts as  
the Chargee may reasonably request in connection therewith and  
for such purpose to grant to the Chargee or its agents access to all  
places where Collateral may be located and to all premises occupied  
by the Chargor.

4.3 EXPENSES
The Chargor shall pay to the Chargee, on demand, all the Chargee's  
reasonable costs, charges, and expenses (including, without limitation,  
legal fees) in connection with the preparation, registration, or amend-
ment of this Agreement, the completion or preservation of the Secur-
ing Charge, the enforcement by any means of any of the provisions  
hereof, or the exercise of any rights, powers, or remedies hereunder or  
under the Law for Securing Charges.
ARTICLE 5
COLLECTION OF DEBTS

5. COLLECTION OF DEBTS
Before or after the occurrence of an Event of Default, the Chargee may give notice of the Securing Charge to any person obligated to pay any debt or liability constituting Collateral and may also direct such person to make all payments on account of any such debt or liability to the Chargee. The Chargor acknowledges that any payments received by the Chargor from such persons after an Event of Default which is continuing, whether before or after notification of the Securing Charge to such person, shall be received and held by the Chargor for the Chargee and shall be turned over to the Chargee upon request. After the occurrence of an Event of Default which is continuing, the Chargor agrees to deposit all proceeds resulting from the disposition of Inventory into its account with a bank approved by the Chargee.

ARTICLE 6
EVENTS OF DEFAULT

6.1 EVENTS OF DEFAULT
The happening of any of the following events or conditions constitutes a default hereunder and is herein referred to as an “Event of Default”:

(a) the failure to perform or observe any obligations, including, without limitation, the nonpayment of any principal, interest, or other amount forming part of the Obligation when due;
(b) a material misrepresentation made by the Chargor in any agreement or transaction between the Chargor and the Chargee;
(c) the bankruptcy or insolvency of the Chargor, the filing against the Chargor of a bankruptcy, or insolvency proceedings;
(d) any process of court that becomes enforceable against the Chargor or the Collateral;
(e) any other party claiming a securing charge against the Chargor’s property taking steps to enforce its securing charge;
(f) if the Chargor ceases or threatens to cease to carry on business or makes or agrees to make a sale of assets or a substantial portion of its assets without complying with applicable law or without notice to the Chargee;
APPENDIX B. SAMPLE OF SECURING AGREEMENTS

(g) if, in the opinion of the Chargee, upon commercially reasonable grounds, the Securing Charge or the Collateral is jeopardized or endangered;

6.2 ACCELERATION

Upon the occurrence of an Event of Default or at any time thereafter, the Chargee in its sole discretion may declare all or any part of the Obligations that are not by their terms payable on demand to be immediately due and payable, without demand or notice of any kind.

6.3 REMEDIES ON DEFAULT

Upon an Event of Default, the Chargee may, in addition to any other rights and remedies it may have at law:

(a) elect to retain all or any part of the Collateral in satisfaction of the Obligations of the Chargor under this Agreement then outstanding as provided in the Law for Securing Charges.

(b) seize, collect, realize, sell, lease, borrow money on the security of, release to third parties, or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions, and at such time or times as permitted by the Law for Securing Charges, and may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered in connection with seizing, collecting, realizing, borrowing on the security of, selling, or obtaining payment of the Collateral and may add the amount of such sums to the indebtedness of the Chargor to the Chargee.

(c) proceed to enforce payment and exercise any of the rights and remedies of the Chargee provided for in the Law for Securing Charges, as well as any and all other rights and remedies possessed by the Chargee that are not disallowed by any law of Albania.

6.4 REMEDIES NOT EXCLUSIVE

All rights, powers, and remedies of the Chargee under this Agreement may be exercised separately or in combination and shall be in addition to, and not in substitution for, any other security now or hereafter held by the Chargee and any other rights, powers, and remedies of the Chargee, however created or arising.

6.5 LIABILITY FOR DEFICIENCY

Subject to applicable law, the Chargor shall remain liable for the performance of any Obligation that is not fully satisfied or discharged by the application of the proceeds arising from the enforcement of the Securing Charge against the Obligations.
ARTICLE 7
GENERAL

7.1 CONTINUING SECURITY
This Agreement and the Securing Charge created hereby are in addition to and not in substitution for any other securing charge now or hereafter held by the Chargee, and is intended to be a continuing Agreement and Securing Charge until terminated in writing and signed by the parties.

7.2 COMMUNICATION
Wherever either party hereto is required or entitled to notify or direct the other or to make a demand or request upon the other, such notice, direction, demand, or request shall be in writing and shall be sufficiently given only if physically delivered to the party for whom it is intended or sent by mail addressed to the party for whom it is intended to the address of such party as set forth below or as changed, provided that such a change of address is delivered to the other party in the manner hereinabove set forth. Communication shall be addressed as follows:

(a) If to the Chargee: ________________________________
   (Name) ________________________________
   (Address) ________________________________
   (Facsimile) ________________________________

(b) If to the Chargor: ________________________________
   (Name) ________________________________
   (Address) ________________________________
   (Facsimile) ________________________________

7.3 SUCCESSORS AND ASSIGNS
This Agreement shall be binding on the Chargor and its successors and shall ensure to the benefit of the Chargee and its successors and assigns. This Agreement shall be assignable by the Chargee free of any counterclaims between the Chargor and the Chargee, and the Chargor shall not assert against an assignee of the Chargee any claim or defense that the Chargor has against the Chargee.
7.4 COPY RECEIVED

The Chargor hereby acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF, the Chargor has executed this Agreement as of the date hereabove written.

(Name of Chargor)
PER:______________________________

IN WITNESS WHEREOF, the Chargee has executed this Agreement as of the date hereabove written.

(Name of Chargee)
PER:______________________________
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**Professor Yair Baranes** has two Canadian law degrees and is a specialist in the area of secured financing law. He was the principal advisor to the Albanian government on creating its new secured financing system. He has acted as a consultant for several governments and international organizations on secured financing law. Yair Baranes is a visiting lecturer at the Magistrate School, Tirana, Albania.

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The authors worked with Albanian legal experts in the drafting of the *Law for Securing Charges, Regulations of Securing Charges*, and related legislation and in designing the Registry system.
“Mr. Baranes and Mr. Cuming should be applauded for undertaking this important initiative. By explaining the theory underlying the legal concepts and rules of the Law for Securing Charges in a clear and professional manner, they have made a valuable contribution to facilitating the application of this law. This book will be of assistance to the banking community as well as to other users of the system.”

—Dhame Pite, Deputy Governor, Bank of Albania

“The high level of professionalism, and the comprehensiveness and clarity in dealing with the legal problems make Baranes and Cuming’s book an excellent support tool for the proper functioning of the modern system of secured financing recently established in Albania. The book will provide essential assistance to Albanian judges who will soon have to address the issues dealt with in this book.”

—Artan Hoxha, Judge, Supreme Court of Albania

“The development of a secured financing system involving movable property was a major innovation for the commercial credit system of Albania. The book is a clear and comprehensive text useful for those working in Albania as well as for others who might want to emulate the system elsewhere.”

—Howard Sumka, Director, USAID Mission to Albania

“In this seminal book, Messrs. Baranes and Cuming successfully navigate the reader through a maze of complex concepts and nuanced issues in illuminating the application of Albania’s new Law for Securing Charges. It should be required reading for anyone engaged in asset-backed lending or that has a professional interest in understanding and interpreting the new law.”

—Gordon Johnson, Senior Legal Counsel, World Bank

“The Law for Securing Charges is a major step forward towards the development of a functioning credit market in Albania and has thus helped in establishing the basis for sustaining the country’s growth performance. Baranes and Cuming ought to be congratulated for writing a book that succinctly summarizes the many key features of this important work of legislative reform that could be a model also for other countries.”

—Volker Treichel, IMF Resident Representative in Albania