

Model Law on Secured Transactions

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European Bank
for Reconstruction and Development

MODEL LAW ON SECURED TRANSACTIONS (MLST)

The Model Law was prepared by John L. Simpson and Jan-Hendrik M. Röver with assistance from Andre Newburg (General Counsel), John L Taylor (Deputy General Counsel) and other members of the Office of the General Counsel of the European Bank for Reconstruction and Development. The project has had the benefit of the knowledge and experience of an Advisory Board of twenty academic and practising lawyers (see page viii). The drafting team is grateful for the many comments on the two previous working drafts of the Model Law and on its work generally that it has received from interested parties in central and eastern European countries and elsewhere.

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CONTENTS

Introduction	V
A Legal System for Secured Transactions in Market Economies in Transition	
An Introduction to the European Bank's Model Law on Secured Transactions	
Members of the Advisory Board	viii
Note on Terminology	x
Model Law on Secured Transactions and Commentary	1
Part 1. General Provisions	1
Article 1. Nature of a Charge.....	1
Article 2. Person Giving a Charge.....	1
Article 3. Person Receiving a Charge.....	2
Article 4. Secured Debt.....	2
Article 5. Charged Property.....	4
Part 2. Creation of a Charge	7
Article 6. General Rules for the Creation of a Charge.....	7
Article 7. Charging Instrument.....	8
Article 8. Registered Charge.....	10
Article 9. Unpaid Vendor's Charge.....	12
Article 10. Possessory Charge.....	13
Article 11. Additional Registration.....	13
Article 12. Charge of a Debt.....	14
Article 13. Charge of a Contractual Obligation other than a Debt.....	15
Article 14. Rights and Defences.....	15
Article 15. Rights and Obligations of Chargor and Chargeholder.....	16
Article 16. Charge Manager.....	17
Part 3. Involvement of Third Parties	19
Article 17. Priorities between Chargeholder.....	19
Article 18. Transfer of a Secured Debt.....	20
Article 19. Legal Licence to Transfer Charged Property.....	21
Article 20. Contractual Licence to Deal in Charged Property.....	22
Article 21. Third Party Acquiring Charged Property.....	23
Part 4. Enforcement and Termination	26
Article 22. General Rules on Enforcement.....	26
Article 23. Measures for Protection of Charged Property.....	28
Article 24. Measures for Realisation of Charged Property.....	29
Article 25. Enterprise Charge Administration.....	30
Article 26. Purchaser from Chargeholder or Enterprise Administrator.....	34
Article 27. Proceeds Depositary.....	35
Article 28. Distribution of Proceeds of Sale.....	37
Article 29. Court Remedies on Enforcement.....	39
Article 30. Damages.....	41
Article 31. Insolvency Principles.....	41
Article 32. Termination of a Charge.....	41
Part 5. Registration	44
Article 33. Supplementary Registration Statement.....	44
Article 34. Registration Procedure.....	47
Article 35. Access to the Register.....	48
Schedule 1 Charging Instrument (Article 7.2 MLST)	50
Schedule 2 Registration Statement (Article 8.3 MLST)	51

INTRODUCTION

A Legal System for Secured Transactions in Market Economies in Transition

An Introduction to the European Bank's Model Law on Secured Transactions

Secured transactions play a vital role in financing in emerging and transitional market economies. Every commercial investor is interested in making a profit from his investment but in many cases the first fundamental concern is to obtain protection against loss of the investment. A legal framework for secured transactions is a key requirement in creating an investor-friendly climate. An investor who knows that he has legally recognised rights to turn to his debtor's assets in case of non-payment may assess the investment risk quite differently. It may influence his decision whether to invest or not; it may also change the terms on which he is prepared to invest (typically by lowering the interest rate on a loan). There is a direct relationship between the legal framework and the attitude of the investor. If there is a law on secured transactions which is seen to give practical protection and remedies in the case of non-payment of a debt then security can become a major part of the investment decision, both for local and international investors. If the investor is not persuaded that the law gives real protection and remedies then it becomes irrelevant.

Shortly after the European Bank was established in 1991 it became evident that central and eastern European countries needed particular support in the strengthening of the legal framework for secured transactions.

A Round Table discussion at the First Annual Meeting in 1992 in Budapest indicated clearly that most countries either did not have any rules on secured transactions at all or had to rely on outdated rules from pre-communist regimes. After that meeting the Bank set up its Secured Transactions Project and produced a first 'working draft' for a Model Law on Secured Transactions for the Bank's Second Annual Meeting in April 1993 in London. At that meeting a Round Table discussion on the Model was led by the Project's Advisory Board. The year since then has been spent in wide consultations, both within the region and outside, and in developing the working draft into the final text of the Model Law on Secured Transactions to be presented at the Third Annual Meeting of the Bank in St. Petersburg in April 1994.

Why a **model law**? If the European Bank's contribution in the area of secured transactions was to be effective it had to be rapid and practical. It also had to recognise that the precise needs and the legal traditions of each country are different. It would have been possible just to give general advice; but the advice has to be applied and it is often only from the practical drafting of a law that the nature and extent of the legal issues is properly understood. The Bank therefore decided that it would be more efficient, and of more help to those seeking to develop their own laws, if it drew up a guide in the form of a model law. The Model is not intended as detailed legislation for direct incorporation into local legal systems. It is, however, intended to form the basis for national legislation. It seeks to combine carefully worded and detailed legal text with a high degree of flexibility to enable adaptation to local circumstances. The principal perspectives are both to harmonise the approach to security rights legislation and to provide guidance as to expectations of international investors and lenders.

The Model is based on comparative work and has been influenced by a number of legal systems. This was made possible through the support of an international **Advisory Board**. The members (listed on page viii) have made available to the project the benefit of their knowledge and experience and the Bank is greatly indebted to them and to the many others who have contributed views, suggestions and critique. The draftsmen of the Model have combined a civil law and a common law approach and have sought to draw on a broad range of legal and practical sources both in central, eastern and western European countries and elsewhere in the world.

One principle which has guided the drafting of the Model has been to produce a text which is compatible with the **civil law** concepts which underlie many central and eastern European legal systems and, at the same time, to draw on common law systems which have developed many useful solutions to accommodate modern financing techniques. This aim underscores the economic function of a law on secured transactions. If the Model has in places departed from some of the traditional legal concepts of secured transactions found in laws which date from times when financing had a less important role, it is with a view to achieving a result which is economically efficient for both lender and borrower. The lender must obtain real benefit from holding security but not at the expense of depriving the borrower of the use of the assets given as security or the flexibility needed to operate an efficient business. Although the Model should be the basis for modern legislation covering a wide range of sometimes complex matters it had to be kept simple in order to be of practical use for market economies in transition. The Model Law is, therefore, a basic system on which more sophisticated rules can be developed.

Several features of the Model Law should be noted:

1. Single Security Right

The Model Law is based on the idea of a **single security right (a 'charge') in respect of all types of things and rights**. The distinction between various traditional types of security rights, such as pledges of movables, pledges of rights, and mortgages is merged in one right.

2. Right in Property

A charge under the Model Law is a **property right** and not a mere obligation. The right entitles the person receiving security to a sale, in enforcement proceedings, of the things and rights taken as security and gives preference over unsecured creditors in insolvency proceedings.

3. Securing Business Credits

The Model is limited to securing **business credits** since this is the area of the most pressing need. It could be extended to cover personal and consumer transactions in countries where adequate rules on consumer protection exist.

4. Minimum Restrictions

The parties to the charge are given a maximum **flexibility** to arrange their relationship as best suits their particular needs. Mandatory requirements and restrictions on what the parties can agree have been kept to a minimum.

5. Flexible Definition of Secured Debt and Charged Property

There is also great flexibility in the way in which the parties can define the debt or debts which are secured and the things and rights which are given as security. In both cases they can be described specifically or generally, they can be present or future and they can change during the life of the charge. It suffices that they are identified at the outset.

6. Public Registration

The Model works on the principle that charges are a matter for **public knowledge**. Since Roman law the creation of secret rights in assets has been disfavoured. A person who gives assets as security but does not indicate this to his creditors creates an impression of 'false wealth'. The Model achieves publicity mainly by relying on registration of charges at a separate registry.

7. Broad Rights of Enforcement

Enforcement relies in the first instance on **self help**, the person holding the charge being given broad but clearly defined rights to sell the charged property in whichever way he considers most appropriate. This is supported by the right of any interested party to apply to the court for protection and to claim damages from the person enforcing the charge for any loss suffered as a result of wrongful or abusive enforcement. The interests of persons entitled to the proceeds of sale are further protected by distribution being made through a proceeds depository

8. Sale of Enterprise

Where the charge covers all the assets of an enterprise there is the additional remedy of selling the enterprise as a going concern, which may enable an enterprise in financial difficulties to be salvaged while increasing the recovery of the secured creditor. This is a complex area which will require development in each jurisdiction, in particular to take account of insolvency laws, but the Model seeks to give at least a preliminary indication of how such a system might work.

9. Practical Application

A number of provisions have been included in the Model to cover practical matters which often cause difficulties in secured transactions, such as the inclusion of a **'charge manager'** and a definition of the continuing licence of the chargor to deal in the charged property.

The law itself is divided into five main parts. **Part 1** contains **general provisions** which set out who can give a charge, who can receive a charge, and general rules concerning the secured debt and the charged property.

Part 2 deals with rules on the **creation** of charges and introduces the general distinction between **registered charges** which have to be registered at a charges' registry, **possessory charges** for which registration is not required but where the chargeholder takes and must retain possession of the charged property, and **unpaid vendor's charges** which protect suppliers of goods who seek retention of title. Part 2 also contains rules about the defences of a chargor against a charge and the rights and obligations of chargor and chargeholder and introduces the idea of a charge manager who is designed to stand in the place of the chargeholder for most dealings concerning the charge.

Part 3 provides for the cases where **third parties** are involved, in particular the priorities between different chargeholders, the transfer of a secured debt (and a charge), the licence of the chargor to deal in the charged property and the acquisition by third parties of things or rights which are subject to a charge.

Part 4 sets out a system of **enforcement** proceedings. The Model allows the person taking security to enforce the charge immediately after a failure to pay the secured debt. There is no requirement of a court order to enable the chargeholder to enforce his charge and the Model allows considerable flexibility to the person enforcing a charge while including protections against abuse.

The rules on enforcement have to interface with local insolvency laws and will have to be adapted to local procedural rules. It is vital that appropriate provisions on enforcement be included. Without a clear right to enforce, the chargeholder is deprived of his remedy and a charge becomes valueless.

Part 4 of the Model is completed by a definition of the different events which cause a charge to terminate.

Finally, **Part 5** sets out rules for **registration** at a separate charges' registry. Again these will need to be supplemented according to the needs of each country. It is of particular importance that registration does not involve cumbersome procedures but remains a simple, low cost administrative act.

The Model is designed to provide a fair balance between the competing but legitimate interests of debtor, secured creditor and other parties. Such a system should be comprehensive, with different parts being dependent on each other. It is not sufficient for central and eastern European countries to have a law on secured transactions: it has to be a law which works and the Model will have to be adapted to interface with local law, for example in the areas of contract law, land law, company law, court procedures and insolvency rules. In places the Model may give an indication of how that interface may occur but the draftsmen intentionally have limited the Model to secured transactions.

This publication contains the full text of the final version of the European Bank's Model Law on Secured Transactions and a practical commentary which gives a short explanation of the concepts developed in the Model and the way that it may work in practice. Time was of the essence for this project. The Model had to be produced quickly and although 18 months may seem a long time, it was not for those working directly on the project. The 'final' version of the Model will, it is hoped, remain a living text which can be developed further as experience is gained in using the Model to develop national laws.

The Model aims to assist central and eastern European countries in multiple ways. Now that the drafting has been completed the task ahead is to use the Model as a basis from which national laws can be developed; the way that this is done will vary from country to country. In several jurisdictions the drafts of the Model Law have already contributed to the process of producing new legislation. The level of interest that has been shown in the project gives us confidence that sufficient momentum will be generated to move from the Model Law to national legislation as part of the transition towards open market-oriented economies. It may also be that this exercise of developing modern legislation for secured transactions in central and eastern Europe will provide useful lessons for other parts of the world.

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NOTE ON TERMINOLOGY

The choice of terms was necessarily a compromise. We have sought to use terms which will not mislead but we are aware that expressions will bear different connotations to lawyers from different jurisdictions. The model has been prepared drawing on the experience of many lawyers from many jurisdictions and, therefore, terms used should be read generally and detached from particular meanings they may have acquired in the context of a specific law.

'Property' has a wide meaning to some but implies land or real estate to others; we refer often to 'things or rights'. The model covers security or 'charges' over anything which is capable of being owned; 'ownership' is another example of a concept which must be interpreted broadly. 'Persons' includes natural persons and legal persons. The time we spent discussing and deciding terminology has been rewarding in that it has led to closer analysis of many concepts. The model will, however, be translated and that process will inevitably involve the use of terms in other languages which are not perfect equivalents. There comes a stage, therefore, in the context of a model law at which further examination of exact meanings is counter-productive.

Although we have resisted the temptation of including a detailed definitions section some terms have had a precise meaning attributed to them, in particular the following:

Charge	Article 1.1
Chargor	Article 2
Chargeholder	Article 3.1
Secured debt	Article 4.1
Charged property	Article 5.1
Enterprise charge	Article 5.6
Registered charge	Articles 6.2 and 8
Unpaid vendor's charge	Articles 6.3 and 9
Possessory charge	Articles 6.4 and 10
Charging instrument	Article 7.1
Registration statement	Article 8
Charge manager	Article 16
Enforcement notice	Article 22.2
Enterprise administrator	Article 25.5.1
Proceeds depository	Article 27.1
Supplementary registration statement ..	Article 33

Customs vary as to the inclusion of cross-references in legal texts. Although they can help to hold the text together for the uninitiated reader and to enable him to see relationships between provisions they can make a law hard to read. Many cross-references have been included in the model in order to facilitate comprehension but this practice does not necessarily have to be followed for national laws.

Part 1. General Provisions

Article 1. Nature of a Charge

1.1 Things and rights may be encumbered by the owner with a security right (called a charge) in order to grant security for a debt.

1.2 This law does not prevent a security right arising

1.2.1 by operation of law or by judicial or administrative act; or

1.2.2 pursuant to [specific exceptions to be determined separately for each jurisdiction].

Article 1

1.1 The model creates a single form of consensual security right which is a **right in property** (right in rem). The term ‘**charge**’ is used because it is probably the most general and neutral expression in English to cover consensual security rights.

1.2 The model does not attempt to exclude other methods of creating security. These may be:

- a security right which arises **without** requiring any agreement between the parties (1.2.1), for example in many jurisdictions the repairer of a machine has a lien over the machine in respect of the cost of the repair;
- under **existing laws** in a jurisdiction (1.2.2): where security laws exist any new law may replace them or it may be designed to fit around them;
- by the granting of other rights in respect of property: there are many techniques which may achieve a similar effect to the granting of a charge under the model (for example, financial leasing contracts, outright transfers of title, assignments of debts); these are not within the scope of the model. The model does, however, cover retention of title clauses by treating them as an unpaid vendor’s charge (see Article 9).

Article 2. Person Giving a Charge

Any person may grant a charge over his things and rights except that a natural person may grant a charge only as part of his business activity and only over things and rights used for that activity at the time of creation of the charge pursuant to Article 6.7. The person granting the charge is called the chargor.

Article 2

Since domestic and consumer financing give rise to issues of consumer protection which are not addressed in the model it excludes charges by a natural person other than as part of his **business activity**. However, for jurisdictions where adequate consumer protection laws exist it would be possible to extend the model to cover individuals acting in a non-business capacity.

The person **giving** the charge must be the **owner** of the charged property (see also Article 6.5.1). If a person has the right to transfer title to something, then he also has a right to charge it (see also Articles 5.2 and 5.3). In the case of an enterprise charge, the chargor must be a corporate entity (see Article 6.6). For the time of creation of a charge the relevant time is as referred to in Article 6.7 and not the time of deemed creation as referred to in Article 6.8. The chargor does not have to be the person owing the debt that is secured (see Article 4.3.1), although he very often will be.

Article 3. Person Receiving a Charge

- 3.1 A charge may be granted to any person or persons to whom the debt or any of the debts being secured is owed. The person receiving the charge or to whom it is transferred is called the chargeholder.
- 3.2 The chargeholder may appoint another person (called a charge manager) to act in his place in relation to a charge pursuant to Article 16.

Article 4. Secured Debt

- 4.1 A charge may secure one or more debts (called a secured debt).
- 4.2 For the charge to be valid the secured debt must be capable of expression in money terms whether in national or foreign currency or monetary units of account or any combination of these. A charge securing an obligation which is not yet translated into a money obligation is not enforceable until this translation occurs.
- 4.3 A secured debt may be
- 4.3.1 owed by any person or persons who need not be the chargor;
 - 4.3.2 identified specifically or generally;
 - 4.3.3 governed by national or foreign law;

Article 3

- 3.1 The charge is tied to the secured debt (see Articles 18.1, 32.1.2 and 32.1.9) and the only person **to whom** the charge can be granted is the person to whom the debt is owed. Where the secured debt is owed to more than one person the charge may be granted to a number of chargeholders (and in that case any act required under the model by the chargeholder must be performed by or on behalf of each of them).
- 3.2 A **'charge manager'** may be used to facilitate the practical operation of the charge (see Article 16).

Article 4

- 4.1 The expression **'secured debt'** has a wide meaning and depends largely on what the parties agree. It may cover a single specific debt or several specific debts, a single category of debts or several categories of debts, or it may cover any combination (see Article 4.3.2). It may also cover a permanently changing 'pool' of present and future debts (see Articles 4.3.4 and 4.4), for example, all monies becoming payable under a supply agreement.
- 4.2 A charge is not immediately enforceable until there is failure **to pay** the secured debt (see Article 22.1). There must therefore be a determined or determinable debt for money. An obligation to supply goods cannot be a secured debt but the obligation to pay damages for failure to supply can be. It does not matter that the debt is to be calculated by using a formula, an index or any other means of determination provided that it is a debt for money when the chargor takes any steps to enforce the charge.
- 4.3.1 Where the charge is not granted by the person who owes the secured debt the relationship between the chargor and the debtor is a matter to be determined between them.
- 4.3.3 The fact that the secured debt is subject to a **foreign law** does not in itself affect the creation of a charge, but it will be relevant in determining the creation, validity and enforceability of the secured debt on which the charge depends (see Article 6.5.3).

4.3.4 conditional or future.	4.3.4 The debt does not have to exist or be owing to the chargeholder at the time the charge is granted. For a charge to be created it is sufficient if the debt is identified in the charging instrument (see Article 4.4). That identification can be very general (see Article 4.3.2). For example, a charge securing a bank facility may cover not only amounts advanced at the time the charge is created but also subsequent advances. If an advance is repaid and then re-advanced the charge may still exist.
4.4 A debt which is created after the date of the charging instrument will be included in the secured debt if that debt is identified in the charging instrument.	
4.5 The amount of the debt secured by a charge is limited to the maximum shown on the registration statement pursuant to Article 8.4.3 or, in the case of a possessory charge, in the charging instrument pursuant to Article 7.3.3 plus any additional amounts included pursuant to Article 4.6.	4.5 Stating the maximum amount is important as it ensures that the parties have agreed as to the extent of the secured debt, it gives a meaningful indication to third parties of the relative importance of the charge and it avoids potential secret security rights where a charge appears to be of less value than it actually is. It may also help to preserve the chargor's ability to grant further charges. It is not necessary to state the maximum amount in the case of an unpaid vendor's charge because it is always limited by reference to the unpaid purchase price (see Article 9.2.1).
4.6 The following additional amounts are included in the secured debt unless otherwise agreed between the chargor and the chargeholder	4.6 Interest, maintenance and enforcement costs and damages are included automatically in the secured debt in addition to the maximum amount. This is included for convenience and the parties to a charge may agree to exclude or modify this provision.
4.6.1 interest on the secured debt to the extent contractually payable from the time at which the charge is created or deemed to be created pursuant to Article 6.7 or 6.8 until the date of payment; and	4.6.1 This covers interest which is payable contractually, for example under the terms of a loan agreement.
4.6.2 interest on the secured debt payable by operation of law; and	4.6.2 This covers non-contractual interest, for example where a court awards interest on the debt claimed.
4.6.3 reasonable costs properly incurred by the chargeholder in preserving and maintaining the charged property and in enforcing the charge; and	
4.6.4 damages for any breach of the contract under which the secured debt arises up to twenty per cent.	
4.6.4.1 of the maximum amount of the secured debt included in the registration statement pursuant to Article 8.4.3 or the charging instrument pursuant to Article 7.3.3; or	

4.6.4.2 in the case of an unpaid vendor's charge, of the unpaid part of the purchase price referred to in Article 9.2.1.

Article 5. Charged Property

- 5.1 A charge may encumber one or more things or rights (called charged property).
- 5.2 Charged property may comprise anything capable of being owned, in the public sector or in the private sector, whether rights or movable or immovable things, and including debts due from the chargeholder to the chargor. The charged property includes any thing or right which, at the time of creation of the charge or subsequently, is attached or related to the charged property and which on a transfer of ownership of the charged property as described in the charging instrument would be included with the charged property by operation of law.
- 5.3 Things or rights which are not capable in law of being transferred separately cannot be charged separately.
- 5.4 A charge is valid notwithstanding any agreement entered into by the chargor not to charge things or rights except
- 5.4.1 where the charged property is a contractual obligation which is not a debt for money; or
- 5.4.2 as provided under Article 12.6.

An agreement that a contractual right which is not a debt for money is not transferable is deemed unless otherwise provided to be an agreement that the right cannot be charged.

Article 5

- 5.1 The expression 'charged property' has a wide meaning and depends largely on what the parties agree. It may cover a single specific item or several specific items, a single category of property (for example, all raw materials in a warehouse) or several categories (for example, all raw materials and all finished products), or it may cover any combination (see Article 5.5).
- 5.2 A charge may be granted over things or rights of all kinds. Where the chargeholder owes money to the chargor, for example where a lending bank also holds accounts for the chargor, the chargor may charge those debts back to the chargeholder.
- If a person has the right to transfer title to something, then he also has a right to charge it (see also Article 5.3). A charge may be granted over things and rights in the public sector in the same way as in the private sector but where the law restricts the right to transfer things and rights the right to grant a charge will be similarly restricted (see Article 5.3).
- 5.3 Since a charge creates rights in property and, in enforcement proceedings, gives the right to transfer ownership of the charged property (see Articles 22 to 25), any provision of law which restricts things and rights being transferred also operates to restrict their being charged. If, for example, the law prevents an employer transferring his rights under an employment contract then those rights cannot be charged.
- 5.4 A person taking a charge needs to be assured that there is no restriction preventing his doing so. In practice he will need to satisfy himself that the chargor is owner of the things or rights being charged. Once he has done that he may assume that they can be charged. If an owner of things or rights agrees not to charge them, he may be liable to the person with whom he has made the agreement for any breach of that agreement but the charge created in breach will be valid.
- There are two exceptions: first, where the charged property is a contractual obligation (other than a debt for money), for example obligations of a supplier to the chargor under a supply agreement or obligations of a builder to the chargor under a building contract; and secondly, in the case of a charge of a secured debt where the parties may agree that the charge of the secured debt does not extend to the charge given in respect of that debt (see Article 12.6).

5.5 Charged property may be identified specifically (in which case the charge is a specific charge) or generally (in which case the charge is a class charge).	5.5	The charged property may cover a permanently changing pool of present and future assets, for example inventory (see Article 5.8). There is no requirement in the model for items of charged property to be listed individually or labelled.
5.6 Where a class charge covers 5.6.1 all the things and rights used in an enterprise which is capable of operating as a going concern; or 5.6.2 such part of the things and rights of an enterprise as needs to be transferred to enable an acquirer to continue the enterprise as a going concern; the charge may be registered as an enterprise charge pursuant to Article 8.4.5.	5.6	The enterprise charge only relates to corporate entities (see Article 6.6). The particular feature of an enterprise charge is that it entitles the chargeholder to the remedy of selling an enterprise as a going concern (see Article 25).
5.7 Charged property may be situated within or outside the jurisdiction.	5.7	The charged property may be in the jurisdiction where the charge has been created or outside it. A charge can, therefore, be taken over things or rights which only come into the jurisdiction at a later date or which move in and out of the jurisdiction. The charge is created even if the charged property is outside the jurisdiction but enforcement rights will depend on the rules of the jurisdiction where it is situated at the time of enforcement.
5.8 A charge may be expressed to cover things and rights not owned by the chargor at the time at which the charge is deemed to be created pursuant to Article 6.8.	5.8/5.9	A charge may be expressed to cover things or rights which are not yet owned by the chargor either because they do not yet exist or because they are owned by another person. A charge over all the equipment in a factory may also cover new equipment as it is received. The charge as a right in property does not exist until the charged property is owned by the chargor (but once it is owned by him the charge is treated as if it was created earlier – see Article 6.8).
5.9 A charge extends to things and rights which become owned by the chargor after the charge is deemed to be created pursuant to Article 6.8 if they are identified in the charging instrument.		
5.10 The charged property automatically extends to any rights of the chargor under any insurance policy which covers loss or reduction in value of the charged property.	5.10	The right to receive payment under an insurance policy is a debt to which Article 12 will apply. In order to protect his rights the chargeholder should notify the insurer of the charge. The effect of Article 5.10 is to include insurance rights in the charged property even if the parties have not provided for that in the charging instrument. The charged property does not include the proceeds of its sale. The chargor is under an obligation not to deal in the charged property (Article 15.2) other than as permitted under the licence pursuant to Article 19 or 20. If a sale is made in breach of this obligation things or rights are generally transferred subject to the charge (Article 21.1) and the charged property now owned by the acquirer is still encumbered by a charge. The chargeholder will have a claim in damages against the chargor for any loss resulting from the breach (see Article 15.2).

Where a chargeholder wants a charge to extend to property into which the charged property may be converted or transformed he should expressly provide for this at the outset: for example a charge over debts may be combined with a charge over the bank account into which the debts are payable; a charge over raw materials may be combined with a charge over work-in-progress and/or finished products. The charge over the charged property which is transformed terminates (Article 32.1.4).

Part 2. Creation of a Charge

Article 6. General Rules for the Creation of a Charge

Article 6

6.1 A charge may be only

6.1.1 a registered charge; or

6.1.2 an unpaid vendor's charge; or

6.1.3 a possessory charge.

6.2 A registered charge is created by

6.2.1 the chargor and the chargeholder entering into a charging instrument pursuant to Article 7; and

6.2.2 registration of the charge pursuant to Article 8.

6.3 An unpaid vendor's charge is created pursuant to Article 9.1.

6.4 A possessory charge is created by

6.4.1 the chargor and the chargeholder entering into a charging instrument pursuant to Article 7; and

6.4.2 possession of the charged property being given pursuant to Article 10.1.

6.5 A charge is created only if

6.5.1 the chargor as referred to in Article 2 is the owner of the charged property; and

6.5.2 the chargor has the power to grant the charge at the time the charge is created or deemed to be created pursuant to Article 6.7 or 6.8; and

6.5.3 the charge secures a debt as referred to in Article 4.2.

6.6 An enterprise charge may only be created by a [company].

6.7 The time at which a charge over things or rights owned by the chargor is created is

6.7.1 in the case of a registered charge, the time of registration of the charge pursuant to Article 34.4 unless the charge was initially created as an unpaid vendor's charge or a possessory charge in which case it is the time of initial creation in accordance with Article 6.7.2 or 6.7.3;

Articles 6.1 to 6.4 set out the three ways in which a charge may be created.

6.4 Possession by itself is not adequate to create a charge: there has also to be a charging instrument (see Article 7). Where a person already has possession of the property all that is needed to create a charge is for the owner and the person in possession to enter into a charging instrument.

6.5 Fundamental principles which are already stated in Articles 1.1, 2 and 3.1 are that the chargor must be the owner of the charged property and that the charge secures a debt. Article 6.5 also draws attention to the fact that the chargor must have the power to charge a thing or right which he may lack if, for example, he is in insolvency.

6.6 The appropriate term to describe corporate entities will vary from jurisdiction to jurisdiction but it should cover all legal persons that carry on commercial activities and can transfer title to something. There are strong policy arguments against permitting an individual to charge all or most of his assets.

6.7 The time of creation of a charge must be clearly determinable, particularly for deciding priorities (see Article 17).

6.7.2	in the case of an unpaid vendor's charge, the time at which title to the charged property is transferred to the purchaser pursuant to Article 9.1;		
6.7.3	in the case of a possessory charge, the later of possession of the charged property being given pursuant to Article 10.1 and the date of signature of the charging instrument by or on behalf of the chargor.		
6.8	Where a registered charge is granted over things or rights not yet owned by the chargor the charge is deemed to have been created at the time provided under Article 6.7.1.	6.8	The charge as a right in property is not actually created and does not exist until the charged property is owned by the chargor (see commentary to Articles 5.8/5.9). It would, however, be unsatisfactory in practice if the time of creation of a charge were determined separately for each item of charged property depending on when the chargor acquired it. The registered charge is, therefore, treated as if it were created at the time specified under Article 6.7.1 when all the formalities of creation have been completed. This is particularly relevant when looking, for example, at questions of priority (see Article 17). Article 6.8 does not apply to an unpaid vendor's charge or a possessory charge since creation of the charge requires that title to the movable thing is transferred to the chargor (in the case of an unpaid vendor's charge) or that the chargor gives possession (in the case of a possessory charge).
6.9	An unpaid vendor's charge or a possessory charge is converted into a registered charge upon registration in accordance with Article 8.2.	6.9	An unpaid vendor's charge has a life limited to six months (Article 9.4.1) and a possessory charge will terminate automatically when possession ceases (Article 32.1.8). However, the charge can be extended without changing its priority by subsequent conversion into a registered charge (see also Article 9.3 and 10.2).
6.10	A chargor and a chargeholder may agree to add to the debt secured by a charge, to increase the maximum amount of the secured debt pursuant to Article 4.5, to add to the charged property or to convert a charge as described in Article 5.6 into an enterprise charge. Such addition, increase or conversion is treated as the creation of a new charge and is accordingly subject to all the provisions of this law.	6.10	The secured debt, the maximum amount of the secured debt and the charged property are determined at the time of creation (or deemed creation) of the charge. They can only be added to or increased by creating a new charge which consequently has a different priority from the first charge. Similarly if a charge is to be an enterprise charge it has to be registered as such at the outset.
Article 7. Charging Instrument		Article 7	
7.1	The chargor and the chargeholder must enter into an agreement (called a charging instrument) except in the case of an unpaid vendor's charge. One charging instrument may relate to one or more charges.	7.1	A charging instrument is required for a registered charge and a possessory charge. For an unpaid vendor's charge there is no need for a charging instrument but there must be a written agreement between the vendor and purchaser that the vendor retains title or obtains a security right in the movable thing (see Article 9.1). Parties may combine different secured debts or charged property in one charge or may create several charges in one charging instrument.
7.2	The charging instrument may be in the form set out in schedule 1.	7.2	The form of instrument in the schedule is optional.

7.3	In order to be valid the charging instrument must be in writing and include	7.3	These are the minimum requirements for a charging instrument without which it is not valid.
7.3.1	identification of the chargor, the person owing the secured debt (if not the chargor) and the chargeholder; and		
7.3.2	specific or general identification of the secured debt; and		
7.3.3	in the case of a possessory charge, the maximum amount of the secured debt expressed in national or foreign currency or monetary units of account or any combination of these; and	7.3.3	Where the charge is not possessory but registered it is adequate for the maximum amount to be stated in the registration statement (see Article 8.4.3); it is not a requirement for validity that it is in the charging instrument.
7.3.4	specific or general identification of the charged property; and		
7.3.5	signatures by or on behalf of		
	7.3.5.1 the chargor; and		
	7.3.5.2 the chargeholder; and		
7.3.6	the date of the charging instrument being the date of signature by or on behalf of the chargor.	7.3.6	The date of the charging instrument is the date of the signature of the chargor. If the chargeholder signs at another time that will not change the date of the instrument. A chargeholder cannot obtain a charge from a chargor and then delay its registration by not signing it himself until a later date. The date of the charging instrument is particularly relevant in view of the 30 day period provided under Article 8.1.
7.4	A charge is not valid unless the charging instrument contains a statement that the purpose of the document is to create a charge or such purpose is implied from the instrument.	7.4	It must be clear from the charging instrument that the purpose is to create a charge.
7.5	The charging instrument may include such other matters as the parties agree and may, subject to Article 6.10, subsequently be amended by the parties. In order for an amendment to be of effect against third parties it must be registered pursuant to Article 33.1.1.	7.5	The charging instrument is a contract between the parties. As well as containing the elements needed for the creation of a charge it may include such other contractual provisions as the parties wish. The charging instrument may be amended provided that the secured debt or charged property are not added to or the maximum amount is not increased or the charge is not converted into an enterprise charge (see Article 6.10). Amendments may be of importance to third parties, for example the inclusion of a subsequent restriction of the right to transfer the charge (see Article 18.1). In that case, however, the restriction would be of no effect against a third party to whom the secured debt and charge were transferred unless the amendment had been registered at the charges' registry.
7.6	If a charging instrument is signed by a person acting on behalf of the chargor the charge is valid only if that person is independent of the chargeholder.	7.6	In order to protect the chargor the charging instrument and the registration statement have to be signed by the chargor himself or by someone acting for him who must be independent of the chargeholder (see also Article 8.8).

Article 8. Registered Charge

Article 8

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|-------|---|-------|---|
| 8.1 | In order to obtain registration of a registered charge as referred to in Article 6.2 a registration statement must be presented at the charges' registry not later than 30 days after the date of the charging instrument as defined in Article 7.3.6. If a registration statement is not presented by that date the charge is not created. | 8.1 | Registration has to be within 30 days of the date of the charging instrument. This avoids the creation of 'secret' charges where the chargeholder takes a charge but does not register until he chooses. The thirty day period may be extended where the registrar refuses to register and a new registration statement is presented (see Article 34.3). The model does not provide for advance registration. A chargeholder should in practice ensure that the charge is registered before lending money or giving credit. It would be possible to include simple provisions for advance protective registration which gives a charge priority if definitive registration is made within a fixed period. |
| 8.2 | In order to convert an unpaid vendor's charge or a possessory charge into a registered charge a registration statement must be presented at the charges' registry during the time provided in Article 9.3 or Article 10.2. | | |
| 8.3 | The registration statement may be in the form set out in schedule 2. | 8.3 | The form of statement in the schedule is optional. |
| 8.4 | In order for a registered charge to be valid the registration statement must include | 8.4 | If the minimum required information is not included in the registration statement the charge is not valid. |
| 8.4.1 | identification of the chargor, the person owing the secured debt (if not the chargor), the chargeholder and the charge manager (if appointed); and | 8.4.1 | A charge manager may also be registered subsequently (see Article 33.1.2). |
| 8.4.2 | specific or general identification of the secured debt; and | 8.4.2 | The identification in the registration statement must correspond with the identification in the charging instrument although of necessity it may be shorter. |
| 8.4.3 | the maximum amount of the secured debt expressed in national or foreign currency or monetary units of account or any combination of these; and | 8.4.3 | In the case of a converted possessory charge, this should be the same as the amount provided in the charging instrument (see Article 7.3.3). In the case of a converted unpaid vendor's charge it should be the unpaid purchase price (see Article 9.2.1). |
| 8.4.4 | specific or general identification of the charged property; and | 8.4.4 | See commentary to Article 8.4.2. |
| 8.4.5 | in the case of an enterprise charge, a statement that the charge is an enterprise charge; and | 8.4.5 | Without this statement in the registration statement the charge will not be an enterprise charge and it can only be changed into one in accordance with Article 6.10. |
| 8.4.6 | signature by or on behalf of | 8.4.6 | Where a charge is created directly as a registered charge the registration statement has to be signed by the chargor (see commentary to Article 7.3.6). In practice it is likely that the registration statement and the charging instrument will often be signed at the same time. Where the charge has already been created as an unpaid vendor's charge or a possessory charge the chargor cannot prevent conversion and, therefore, the chargeholder signs. |
| | 8.4.6.1 | | |
| | the chargor and the charge manager (if appointed); or | | |
| | 8.4.6.2 | | |
| | in the case of a registration statement pursuant to Article 8.2, the chargeholder; and | | |

8.4.7	the date of the charging instrument except where an unpaid vendor's charge is converted into a registered charge; and	8.4.7	For a converted unpaid vendor's charge the date of the relevant agreement must be included (see Article 8.5.3).
8.4.8	any additional information required pursuant to Article 8.5 or 8.6.		
8.5	Where an unpaid vendor's charge is being converted into a registered charge the registration statement must in addition to the information required under Article 8.4 include		
8.5.1	a statement that the unpaid vendor's charge is being converted into a registered charge; and		
8.5.2	the date on which title to the charged property was transferred to the chargeholder as referred to in Article 9.1; and	8.5.2	This determines the time at which an unpaid vendor's charge is created (see Article 6.7.2).
8.5.3	the date and identification of the written agreement referred to in Article 9.1.		
8.6	Where a possessory charge is being converted into a registered charge the registration statement must in addition to the information required under Article 8.4 include		
8.6.1	a statement that the possessory charge is being converted into a registered charge; and		
8.6.2	the date on which possession of the charged property was given pursuant to Article 10.1 if given after the date of the charging instrument.	8.6.2	This is relevant for determining the time at which a possessory charge is created (see Article 6.7.3).
8.7	Where there is more than one chargor a separate registration statement must be presented for each chargor.	8.7	Joint owners may grant a charge but in that event the charge has to be registered against each of them and, therefore, a separate registration statement for each is required.
8.8	If a registration statement is signed by a person acting on behalf of the chargor the charge is valid only if that person is independent of the chargeholder.	8.8	See commentary to Article 7.6.
8.9	The time of registration is as provided in Article 34.4.	8.9	The time of registration is important for determining the time at which a registered charge is created (see Article 6.7.1).

Article 9. Unpaid Vendor's Charge

- 9.1 Where at or before the time of transfer of title by way of sale of a movable thing there is written agreement between the vendor and the purchaser that the vendor retains title or obtains a security right in the thing until payment of the purchase price
- 9.1.1 title to the thing is not retained by the vendor but is transferred to the purchaser as if such agreement does not exist; and
- 9.1.2 the vendor simultaneously receives a charge over the thing unless the parties otherwise agree without any requirement for a charging instrument or registration.

- 9.2 A charge created pursuant to Article 9.1 only secures
- 9.2.1 any part of the purchase price of the charged property that remains unpaid at the time the charge is created; and
- 9.2.2 additional amounts included pursuant to Article 4.6.

- 9.3 At any time within six months of the date on which an unpaid vendor's charge is created it may be converted into a registered charge by registration in accordance with Article 8.2.

Article 9

- 9.1 Forms of retention or reservation of title are common in many jurisdictions to secure credit in trade transactions. The unpaid vendor's charge replaces reservation of title by a charge in favour of the unpaid vendor – title passes to the purchaser and simultaneously a charge is given back automatically in favour of the vendor. The written agreement referred to in Article 9.1 that gives rise to an unpaid vendor's charge may refer to the vendor retaining title or to his receiving a charge: a vendor may expressly provide that he is to receive a charge as provided under the law but even if he agrees to retention of title he will still obtain a charge. The parties do not actually need to be aware of the provisions of Article 9.

There is no necessity to make any registration in respect of an unpaid vendor's charge unless it is to extend beyond six months (see Articles 9.3 and 9.4.1) or an enforcement notice is delivered (see Article 22.7.1.2). As an unpaid vendor's charge is not registered a third party dealing with the purchaser may well, therefore, be unaware of its existence. The purchaser as chargor is under an obligation not to dispose of the charged property except under a licence pursuant to Articles 19 or 20 (see Article 15.2). If he does, however, the acquirer will normally obtain good title (see Article 21.2.7). In this respect the unpaid vendor's charge may give less protection than a registered charge (see also commentary to Article 23.7.1).

An unpaid vendor's charge, however, gives priority over other charges pursuant to Article 17.3.

- 9.3 The unpaid vendor's charge is intended to cover sales on normal credit terms. In the case of a 90 day credit period the vendor has a further three months in which to take action for a failure to pay and, if necessary, to register his charge. Where the sale is on credit terms which in practice would not permit enforcement to be commenced in the case of non-payment within 6 months, a registered charge should be taken to protect the unpaid vendor.

9.4 An unpaid vendor's charge terminates

9.4.1 six months after the date on which it was created unless an enforcement notice has been delivered pursuant to Article 22.2 in respect of the charge or any other charge over the same charged property; or

9.4.2 in the other events provided under Article 32.

Article 10. Possessory Charge

10.1 Where the charged property is capable of transfer by delivery the chargeholder or a person nominated by the chargeholder or a person holding on terms agreed between the chargeholder and the chargor may before or after the date of the charging instrument be given possession of the charged property by the chargor in which case registration pursuant to Article 8 is not required.

10.2 At any time while possession as referred to in Article 10.1 continues a possessory charge may be converted into a registered charge by registration in accordance with Article 8.2.

Article 11. Additional Registration

11.1 Where additional registration of a charge is required pursuant to this Article 11 a charge created pursuant to Article 6 cannot be enforced until such registration has been made.
11.2 [Add specific requirements for additional registration to be determined separately for each jurisdiction.]

Article 10

10.1 A possessory charge can only be granted over property which is capable of transfer by delivery. Possession by itself is not adequate to create a charge: a charging instrument is also required (see Article 6.4.1). Under the model it would not be possible for any person in possession of property to be able to claim that he has a charge merely by reason of possession. Granting a charge is an act with serious legal consequences and a minimum of formality is desirable.

There is no necessity to make any registration in respect of a possessory charge unless an enforcement notice is delivered (see Article 22.7.1.2).

10.2 If a possessory charge is to be converted into a registered charge it is important that this occurs while possession continues. A possessory charge terminates when possession ceases (see Article 32.1.8).

Article 11

This Article needs to be drafted to fit the particular needs of each jurisdiction. It is a basic principle of the model that all registered charges (including charges converted into a registered charge, see Article 6.9) should be registered in the same place pursuant to Article 8. In cases where the charged property is also registered in a different register a decision is required by each country as to whether charges need also to be registered there. The most common example will probably be land but it may also apply, for example, to ships, aircraft, registered intellectual property and registered shares.

The formalities for creating the charge must be kept simple. Any additional registration required under Article 11 can be carried out subsequent to the creation of the charge but

- it will not be possible to enforce the charge until Article 11 requirements have been fulfilled; and
- the time of fulfilling those requirements is relevant for determining the priority of the charge (see Article 17.5); and

- in the case of an enterprise charge the chargor has a licence to sell the charged property until those requirements have been fulfilled (see Article 19.4).

Since the charge is already created prior to Article 11 registration a person acquiring property cannot rely solely on the register where the property is registered: he must also look at the charges' register against the name of the chargor. If he does not and there is a charge over the property registered on the charges' register he will generally acquire subject to that charge (see Article 21.1). There is in particular an exception in the case of an enterprise charge (see Articles 19.4 and 21.2.1).

Article 12. Charge of a Debt

Article 12

12.1 Where the charged property is a debt for money the person owing the charged debt may satisfy it in a manner agreed with the chargor unless the chargeholder notifies that person pursuant to Article 12.2.

12.1 A charge over a debt for money may be of little practical value if the chargeholder cannot be assured of receiving the debt when it is paid. Articles 12.1 et seq. provide for an option for the chargeholder to give notice to the third party debtor; when such notice is given the third party debtor can only satisfy the debt by paying directly to the chargeholder who has a direct right to sue for the debt. It is always open for the chargeholder to agree for payment to be made to some other person, even after notice has been given (see Article 12.4).

Once payment of the charged debt is made by the third party debtor to the chargeholder the debt is satisfied and the charged property ceases to exist; the charge therefore also ceases to exist (see Article 32.1.3). The monies received by the chargeholder reduce the secured debt unless it is not yet payable; in that case the chargeholder should account to the chargor subject to any agreement between them. It would also be possible for a charge to be granted over the payment proceeds as well as the debt (for example by requiring them to be paid into a specified bank account and taking a charge over that account) but this would have to be expressly provided for.

12.2 The chargeholder may at any time notify the person owing the charged debt that the charge exists. In that event

12.2 The manner in which the notice is given is a matter for the general law of each jurisdiction.

12.2.1 the charged debt can be satisfied only by payment to the chargeholder or to such person as the chargeholder nominates unless the chargeholder otherwise agrees; and

12.2.2 the chargeholder may directly pursue the person owing the charged debt for that debt.

12.3 For a notice given pursuant to Article 12.2 to be valid it must

12.3.1 be in writing; and

12.3.2 identify the chargor; and

- 12.3.3 describe the charged debt either specifically or generally in a manner which enables the person owing the charged debt to identify it; and
- 12.3.4 include clear instructions as to the person to whom the charged debt is to be paid.
- 12.4 The instructions given pursuant to Article 12.3.4 may be amended by a subsequent notice in accordance with Article 12.3.
- 12.5 Upon a charged debt being satisfied the charge terminates pursuant to Article 32.1.3.

12.6 Where the charged property is a secured debt the charge over the secured debt extends to the charge given in respect of that debt unless otherwise provided in the charging instrument for either charge. Where the charged property is described as the charge given in respect of a secured debt it is deemed to include that debt.

12.6 The model provides that a charge cannot be transferred without the debt it secures (see Article 18.1): it cannot, therefore, be charged unless the secured debt is also charged and the assumption is made that any transfer or charge of the secured debt extends to the charge. It is, however, open to the chargor and the chargeholder of either the charge over the secured debt or the charge given to secure that debt to agree otherwise in the charging instrument. This is one of the exceptions to the principle that an agreement by the owner of property not to charge it is not valid against a subsequent chargeholder (see Article 5.4.2).

Article 13. Charge of a Contractual Obligation other than a Debt Article 13

Where the charged property is a contractual obligation which is not a debt for money the person owing the contractual obligation may satisfy it in the manner agreed with the chargor unless

- 13.1 the person owing the contractual obligation has received notice from the chargeholder pursuant to Article 23.3; and
- 13.2 the chargeholder exercises the chargor's rights pursuant to Article 23.3.3.

A charge can be taken over personal contractual rights of any nature. A distinction is drawn between a debt for money and other contractual rights, for example the rights under a supply contract or a licensing agreement. Unlike in the case of a secured debt the obligation and the manner of its satisfaction are not affected by the charge until enforcement has commenced; at that time the chargeholder may exercise the chargor's rights including the right to take any court action (see Article 23.3). It remains open to the chargor, the chargeholder and the person owing the contractual obligation to agree otherwise.

Article 14. Rights and Defences Article 14

14.1 A chargeholder may only claim rights arising out of a charge if the charge has been created pursuant to Article 6 and has not been terminated pursuant to Article 32.

14.1 A chargor can only claim rights and a chargor can only raise defences if a charge exists. The charge must have been created (see Article 6) and not been terminated (see Article 32).

14.2 A chargeholder may only claim rights arising out of a charge in relation to a debt if the charge extends to that debt.

14.2 See Article 4.

14.3	A chargeholder may only claim rights arising out of a charge in relation to charged property if the charge extends to that property.	14.3	See Article 5.
14.4	A charge is valid and enforceable only to the extent that the secured debt is valid and enforceable.	14.4	The chargor may raise against the chargeholder any defences which relate to the secured debt even if the debtor is a different person. The model does not make any reference to the relationship between chargor and debtor. A chargeholder may enforce his charge against the charged property pursuant to Articles 22 to 25 without having to concern himself with the chargor's rights against the debtor (see commentary to Article 4.3.1).
14.5	In any proceedings brought by the chargeholder claiming rights arising out of the charge		
14.5.1	the chargeholder must prove that the charge has been created; and		
14.5.2	the chargor or other party must prove that the charge has terminated or that any defences which he claims apply.		
14.6	A chargor, any other chargeholder with a charge over the same charged property or any other party claiming rights in the charged property who disputes the creation or validity of the charge or claims that a charge has been terminated may apply to the court for a declaration that the charge is not created, is invalid or has been terminated.		
Article 15.	Rights and Obligations of Chargor and Chargeholder	Article 15	
15.1	The chargor and the chargeholder are free to determine the rights and obligations of each of them except as otherwise provided by law.	15.1	The basic principle is that the parties may agree rights and obligations between themselves.
15.2	The chargor is under an obligation not to deal in the charged property except under a licence pursuant to Article 19 or Article 20 and is liable to the chargeholder for any loss suffered as a result of breach of this obligation.	15.2	If a chargor transfers charged property in breach of this Article he is liable to the chargeholder. For the position of the acquirer see Article 21.
15.3	The chargor has, except in the case of a possessory charge and unless otherwise agreed, the right		
15.3.1	to make use of or apply the charged property including to combine the charged property with any other thing or right, to apply the charged property in any manufacturing process and, where the charged property has been acquired for consumption, to consume the charged property; and	15.3.1	Unless he specifically agrees the chargor should not be fettered in the manner in which he uses the charged property. Where the charged property is combined with other property or applied in a manufacturing process the charge may terminate (see Articles 32.1.4); if it is consumed the charge will terminate (Article 32.1.3). There may often be circumstances where the parties to a charge agree restrictions on the use of charged property.

15.3.2 to receive any fruits arising out of the charged property.

15.3.2 The fruits remain part of the charged property until they are separated from it (see Article 5.2).

Rights arising pursuant to this Article 15.3 terminate upon an enforcement notice being delivered pursuant to Article 22.2.

15.4 The chargor and the chargeholder have unless they otherwise agree the following further rights and obligations

15.4 The parties are free to vary the provisions of Article 15.4 by agreement.

15.4.1 except in the case of a possessory charge, the chargor must preserve and maintain the charged property subject to his right to use it pursuant to Article 15.3.1. Where possession of the charged property is passed to a third party the chargor remains under an obligation to ensure that the charged property is preserved and maintained; and

15.4.2 in the case of a possessory charge, the chargeholder must preserve and maintain the charged property; and

15.4.3 the party not in possession of the charged property has a right to inspect; and

15.4.4 the chargor must insure the charged property against such risks as are habitually insured against by a prudent person owning similar things or rights.

15.4.4 The obligation to insure is drafted in very general terms and may need to be adapted to specific jurisdictions. It extends to charged property under all types of charges including an unpaid vendor's charge and a possessory charge even if the chargeholder is in possession.

Article 16. Charge Manager

Article 16

The 'charge manager' is more than a mere representative of the chargeholder; in practical terms he stands in the place of the chargeholder for the purposes of all dealings with third parties in relation to the operation of the charge (but not for transferring the chargeholder's rights to the secured debt and the charge). This role is likely to be of particular relevance where the charge is given to a number of chargeholders, for example a pool of lending banks or the holders of bonds or where the chargeholder is not resident in the jurisdiction.

16.1 The chargeholder may at any time appoint a charge manager for a registered charge either in the charging instrument or in a separate document.

16.1 The appointment may be at the time of creation of a registered charge or at any time during its life. A charge manager cannot be appointed for an unpaid vendor's charge or a possessory charge.

16.2 The charge manager may be a chargeholder or a third party. Where a charge is granted to more than one chargeholder the appointment of the charge manager and any termination of that appointment must in order to be valid be made by or on behalf of all the chargeholders.

16.2 There are no specific qualifications required to act as charge manager. Where there are several chargeholders they may appoint one of their number.

16.3	The powers and obligations of the charge manager are as provided in this Article 16 and any agreement relating to those powers and obligations is of effect only between the parties to that agreement.	16.3	A person dealing with the charge manager can assume that he has the powers and obligations set out in Article 16.
16.4	Immediately upon a charge manager being registered pursuant to Article 8.4.1 or 33.1.2	16.4	Registration is the trigger to the charge manager acquiring his special status. Prior to registration the appointment is not effective against third parties. In practical terms Article 16.4 means that where a charge manager is appointed the word 'chargeholder' can be read as 'charge manager' in all provisions relating to the rights and obligations arising under the charge except in relation to a transfer of the secured debt (see Article 16.4.1). The appointment of a charge manager may be registered on the charges' register immediately when the charge is registered (Article 8.4.1) or subsequently (Article 33.1.2).
16.4.1	the charge manager becomes entitled to exercise in the place of the chargeholder all the rights of the chargeholder arising under the charge including but not limited to the right to take enforcement proceedings pursuant to Articles 22 to 25 but excluding any right to transfer the secured debt;	16.4.1	The charge manager does not obtain any proprietary right in the charge and has no power to transfer the secured debt or the charge.
16.4.2	the chargeholder ceases to be entitled to exercise such rights while the charge manager is appointed;	16.4.2	Where a charge manager has been appointed third parties have to deal with the charge manager.
16.4.3	the charge manager becomes liable to perform all the obligations of the chargeholder to third parties arising out of the charge notwithstanding the continuing liability of the chargeholder.	16.4.3	If a charge manager fails to fulfil the obligations of the chargeholder third parties have a direct right against both the charge manager and the chargeholder. They do not have any right to double recovery; the rights as between chargeholder and charge manager in respect of any liability to third parties depend on the agreement between them and any general provisions of law.
16.5	When a person is registered as a charge manager pursuant to Article 8.4.1 or 33.1.2, any act of that person as charge manager is binding on the chargeholder even if the appointment of the charge manager is invalid except where the person claiming against the chargeholder has actual knowledge at the time of the act of the invalidity of the appointment.	16.5	A third party is entitled to assume that a person registered on the charges' register as charge manager has been properly appointed (unless he actually knows that this is not the case). There is no obligation on him to make enquiries.
16.6	The appointment of a charge manager can be terminated by the chargeholder or the charge manager at any time subject to any agreement between them. The termination becomes effective against a third party at the time when he has actual knowledge of the termination or, if he does not have such knowledge, at the time when the termination is registered pursuant to Article 33.1.3.	16.6	As with the appointment registration is the trigger which makes termination effective against third parties unless a person has actual knowledge of the termination.
16.7	Upon any transfer by a chargeholder of the secured debt extending to the charge the powers and obligations of a charge manager pursuant to this Article 16 continue and the charge manager acts in the place of the new chargeholder.	16.7	A third party dealing with a charge manager does not need to concern himself with any transfer of the secured debt and the charge that may have taken place whether registered or not (see commentary to Article 18.3).

Part 3. Involvement of Third Parties

Article 17. Priorities between Chargeholders

17.1 A chargor may grant more than one charge over the same right or thing.

17.2 The priority between different charges over the same charged property is determined in accordance with the time at which they were created or deemed to be created pursuant to Articles 6.7 or 6.8 except as otherwise provided in this Article 17. Where title to a thing or right is acquired subject to a charge that charge will have priority over any charge granted by the acquirer.

17.3 An unpaid vendor's charge takes priority over any other charge granted by the purchaser over the thing transferred.

17.4 A possessory charge over negotiable instruments or negotiable documents takes priority over any prior charge.

Article 17

17.1 It is possible to have more than one charge covering the same property. What is needed is clarity as to which charge has first claim. Article 17 only deals with priorities as between security rights. Priorities determine the order of distribution of the proceeds of sale between different chargeholders (see Article 28.3.4). They also have an effect on the right to enforce an enterprise charge between different enterprise chargeholders (see Article 22.7.6).

Priorities other than those under Article 17 may exist in the case of insolvency; this will depend on the law of each jurisdiction. However, the existence of such other priorities may detract seriously from the purpose of the charge if they give more than very limited rights. Creditors will see little advantage in taking a charge if it does not give them real protection in the event of insolvency. It will be necessary to examine carefully how the model interacts with existing national law in this area (see also Article 31).

17.2 The general rule is that time of creation determines priority. Exceptions to this rule are provided in Articles 17.2 in fine to 17.8. If a system of advance registration is introduced (see commentary to Article 8.1) this would be a further exception.

Where the charged property has already been charged by a previous owner and that charge still survives (see Article 21.1) the charge subject to which title was acquired takes priority.

17.3 A supplier who relies on the protection of an unpaid vendor's charge does not have to concern himself with other charges irrespective of the nature of the charged property.

17.4 Title to negotiable instruments and negotiable documents can normally be transferred by delivery of the instrument or document and a third party taking delivery will acquire free from any charge (see Article 21.2.6.1). A chargeholder taking a possessory charge of a negotiable instrument or negotiable document can, by virtue of Article 17.4, also assume that his charge will take priority over any other charge. A chargeholder taking possession of other things cannot make the same assumption. If they are already charged his possessory charge will rank behind the existing charge (see Article 17.2 in fine).

17.5	The priority of a charge over a thing or right to which additional registration under Article 11 applies is determined by the later of the time of its creation or deemed creation pursuant to Articles 6.7 or 6.8 and the time at which such additional registration is made.	17.5	Where additional registration pursuant to Article 11 is required a charge that is created and valid does not become enforceable in respect of charged property for which additional registration is required until that registration is made. It therefore follows that in the meantime another charge may take priority.
17.6	A security right arising by operation of law for money due for services in relation to a thing or right held takes priority over any prior charge.	17.6	Many systems of law provide for security rights for persons who provide services – for example, a person who repairs a machine in respect of money due for the repair. Such persons do not have to concern themselves with other charges.
17.7	[Specific exceptions to be determined separately for each jurisdiction to cover charges under other laws].	17.7	Where a country’s laws already provide for security rights other than as referred to in Article 17.6 (see Article 1.2.2) then provisions will be needed to define priorities.
17.8	The priority of a charge may be changed at any time by written agreement between chargeholders or between the chargor and a chargeholder. An agreement to change the priority of a charge is valid only upon written consent being obtained from	17.8	The priority of a charge cannot be changed by agreement unless all other chargeholders whose priority would be adversely affected agree to the change.
17.8.1	the chargeholder of any other charge which would cease to have priority over that charge as a result of the change; and		
17.8.2	the chargeholder of any other charge which as a result of the change		
	17.8.2.1	would cease to have the same priority as that charge; and	
	17.8.2.2	would not acquire priority over that charge.	
Article 18. Transfer of a Secured Debt		Article 18	
18.1	A transfer of a secured debt by the chargeholder extends to the charge given in respect of that debt unless otherwise provided in the charging instrument or agreed between the parties to the transfer. An agreement which provides for the transfer of a charge is deemed to be a transfer of the debt secured by that charge. The charge terminates pursuant to Article 32.1.9 if the secured debt is transferred without the charge.	18.1	Where the parties to a charge agree to restrict the right to transfer a secured debt with the charge they must include the restriction in the charging instrument. If they do not the restriction will not be effective against third parties. A person wishing to acquire a secured debt can, therefore, find out if any restrictions exist by looking at the charging instrument. Since the charge cannot exist independently from the secured debt (see commentary to Article 3.1) the assumption is made that parties who state that they are transferring a charge intend to transfer the secured debt as well as the charge. For the same reason the charge ceases to exist upon separation of the secured debt and the charge (see Article 32.1.9).
18.2	In the case of a transfer of a debt secured by a possessory charge, the transfer extends to the charge only if at the time of the transfer		
	18.2.1	the transferor passes possession of the charged property to the new chargeholder or a person nominated by the new chargeholder; or	18.2 A secured debt can only be transferred with a possessory charge if possession of the charged property passes to the new chargeholder at the time of the transfer. If it passes later the charge will have terminated (see Article 32.1.8).

18.2.2	the transferor agrees to hold the charged property on behalf of the new chargeholder.	
18.3	Where a secured debt which extends to a registered charge has been transferred the charge is not enforceable unless	
18.3.1	the transfer is registered pursuant to Article 33.1.4; or	18.3.1 Provided that the charges' register shows the existence of the charge it does not matter whether the identity of the current chargeholder is available to third parties or not until he wants to exercise rights of enforcement.
18.3.2	a charge manager is registered in respect of the charge pursuant to Article 8.4.1 or 33.1.2.	18.3.2 Where a charge manager has been appointed the identity of the current chargeholder is not relevant even at that stage since the charge manager and not the chargeholder has the right to enforce (see Article 16).
18.4	The chargor may claim any defences which he has against the transferor also against the new chargeholder.	
18.5	A transfer of a secured debt which extends to the charge automatically extends also to all rights of the chargeholder under the charging instrument unless otherwise provided in the charging instrument or agreed between the parties to the transfer.	18.5 A charging instrument, as well as being the constitutive document of the charge, may also create contractual obligations of the chargor towards the chargeholder. The rights of the chargeholder arising out of such obligations are transferred with the secured debt by law unless otherwise agreed.
18.6	Where only part of a secured debt and a charge is transferred the new chargeholder becomes entitled to the charge and any transferred rights under the charging instrument jointly with the transferring chargeholder up to the amount of the secured debt transferred.	18.6 Since the secured debt need not be a single indivisible debt the model covers the case of sharing in the charge where the secured debt is split between different creditors.
18.7	A transfer of a secured debt by operation of law extends to the charge given in respect of that debt.	18.7 Where the transfer of the secured debt is not made by the chargeholder but arises by operation of law, for example on death of the chargeholder, then the transfer extends to the charge.
Article 19.	Legal Licence to Transfer Charged Property	Article 19
19.1	The chargor has a licence to transfer title to the charged property by way of sale free from the charge in the terms set out in this Article 19 except in the case of a possessory charge.	19.1 The basic rule is that a third party acquires charged property subject to any existing charges (see Article 21.1). If he wants to protect himself he, therefore, normally needs to search the charges' register to confirm that the property he is acquiring is not subject to a charge. In some circumstances this can be impractical or unduly onerous. Article 19 provides a limitative list of the cases where a chargor may transfer title to charged property free from the charge without the consent of the chargeholder. Article 19 establishes the power to do so whereas Article 21 gives the consequence that an enquirer obtains title free from the charge.
19.2	The chargor may transfer title to items of his charged trading stock by way of sale in the ordinary course of his trading activity.	19.2 When a chargor's trade includes selling goods his customers who purchase the goods do not have to concern themselves with any charge that may exist unless the goods are not sold in the ordinary course of business.

19.3	The chargor may transfer title to other charged property by way of sale in the ordinary course of his business provided that the thing or right transferred is of a kind that is habitually transferred by him in the ordinary course of his business.	19.3	A trader may sell property other than his trading stock. For example he may sell his delivery vehicles when he replaces them with newer vehicles. In order for such a sale to fall within Article 19 there is a dual test: <ul style="list-style-type: none"> • first the sale has to be in the ordinary course of the chargor's business, and • secondly the property sold must be of a kind habitually sold by him in the ordinary course of that business.
19.4	In the case of an enterprise charge the chargor may transfer title by way of sale in any charged property in respect of which applicable additional registration as provided in Article 11 has not been made.	19.4	This only relates to an enterprise charge (see Article 5.6). If Article 11 requires for example registration of charges over land, a chargor who has created an enterprise charge may transfer title to land free from the enterprise charge for so long as the charge has not been registered against that land pursuant to Article 11.
19.5	The licence to transfer title by way of sale pursuant to this Article 19 is suspended automatically	19.5	The licence under Article 19 only terminates when the charge terminates (see also Article 19.6) but it is temporarily suspended where the chargeholder has a possessory charge or where an enforcement notice has been delivered.
19.5.1	upon possession of the charged property being given pursuant to Article 10.1 until the time when such possession ceases; or		
19.5.2	upon an enforcement notice in respect of the charge being delivered pursuant to Article 22.2 until enforcement proceedings may no longer be continued pursuant to Article 22.4.		
19.6	Any agreement between the chargor and the chargeholder restricting or terminating the licence pursuant to this Article 19 is of effect only between the parties.	19.6	A third party dealing with the chargor can rely on the licence under Article 19 in the knowledge that any restriction or termination is only of effect between the parties.
Article 20.	Contractual Licence to Deal in Charged Property	Article 20	
20.1	The chargeholder may, except in the case of a possessory charge, grant the chargor a contractual licence to transfer title to the charged property free from the charge in addition to the licence granted pursuant to Article 19.	20.1	The parties to the charge may agree to an additional contractual licence to extend the licence under Article 19.
20.2	In any contractual licence granted pursuant to Article 20.1 the charged property may be identified specifically or generally and the licence may be granted on such terms as the chargor and chargeholder may agree.	20.2	A licence under this Article may take whatever form the circumstances require. It may, for example, cover a specific sale of charged property to a named purchaser or may give a general permission for transfers of a particular kind. It may also cover transactions other than sales. In the case of an enterprise charge it may frequently be desirable for the chargor to be given a licence to sell that is wider than provided under Article 19.

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| 20.3 | The grant of a contractual licence pursuant to Article 20.1 may be included in the charging instrument and in that event a person dealing with the chargor acquires charged property free from the charge pursuant to Article 21.2.3 without being under an obligation to make further enquiries. | 20.3 | The practical problem of a third party who relies on a contractual licence under Article 20 is to know whether the licence is still existing at the time of the transfer. To avoid the need of enquiry of the chargeholder each time the third party may rely on a licence which is included in the charging instrument on condition that he believes in good faith that the licence exists (see Article 21.2.4). |
| 20.4 | A contractual licence granted pursuant to Article 20.1 is suspended automatically in the events as provided in Article 19.5 and may subject to Article 20.3 be terminated at any time by the chargeholder or in accordance with its terms. | | |

Article 21.	Third Party Acquiring Charged Property	Article 21	
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| 21.1 | Any person acquiring title to charged property will acquire subject to the charge except as provided in Article 21.2. | 21.1 | The charge is a right in property which follows the charged property on a change of ownership. However, in practice a number of exceptions are required. |
| 21.2 | If a person acquires title to charged property he acquires it free from the charge | 21.2 | The exceptions are only concerned with the question whether or not a third party acquires free from a charge. The question whether he acquires title to charged property at all has to be determined in accordance with general rules of law. |
| 21.2.1 | where the chargor transfers title to the charged property by way of sale under the licence granted pursuant to Article 19; or | | |
| 21.2.2 | while the licence granted pursuant to Article 19 is suspended where the transfer of title by the chargor by way of sale if made prior to suspension would have been under the licence and where either | 21.2.2 | The purpose of the licence under Article 19 is to permit third parties to deal with the chargor in certain circumstances without having to concern themselves as to whether the chargor has created a charge or not. If the licence is suspended the onus is on the chargeholder to make sure that third parties are made aware that the charge exists and that the licence has been suspended (see also commentary to Article 19.6). |
| 21.2.2.1 | the purchaser does not have actual knowledge at the time of the transfer of the existence of the charge; or | | |
| 21.2.2.2 | the purchaser believes in good faith at the time of the transfer that the licence exists; or | | |
| 21.2.3 | where the chargor transfers title to the charged property under a contractual licence granted pursuant to Article 20.1; or | | |
| 21.2.4 | while a contractual licence granted pursuant to Article 20.1 is suspended or after it is terminated where the transfer of title by the chargor if made prior to suspension or termination would have been under the licence and where the acquirer believes in good faith at the time of the transfer that the licence exists. Except where a contractual licence is contained in the charging instrument the acquirer is under an obligation to enquire of the chargeholder; or | 21.2.4 | Where there is a contractual licence the third party should be aware that the charge exists. If it is contained in the charging instrument the onus is on the chargeholder to make third parties aware of any suspension (see Article 20.3). If it is not then the third party relying on the licence should confirm with the chargor that it has not been suspended. |

21.2.5	where the price paid for the charged property is less than [amount] and where the purchaser believes in good faith at the time of the transfer that no charge exists; or	21.2.5	This is included to prevent a search having to be made of the charges' register where the value of the property transferred is low. An appropriate figure should be inserted.
21.2.6	where the charged property is		
21.2.6.1	a negotiable instrument or negotiable document; or	21.2.6.1	See commentary to Article 17.4.
21.2.6.2	a share or debt instrument or a contract quoted on a recognised exchange or habitually traded in a recognised market; or	21.2.6.2	It must remain possible to deal on established securities' markets on the assumption that the shares or other securities traded are not subject to any charge. The precise description of what is covered by this provision may need to be adapted for each jurisdiction. Consideration should also be given to any other cases that may need to be covered, for example goods sold at public auction.
21.2.7	where the charge is to an unpaid vendor pursuant to Article 9 unless	21.2.7	The unpaid vendor's charge gives protection to the vendor for so long as the goods sold are owned by the chargor but it is impracticable to expect a person to enquire as to whether an unpaid vendor's charge exists every time he purchases goods. There is an exception to cover the case where a sale is made with the deliberate intention of terminating the charge, for example by transferring goods to an associate company shortly after acquisition.
21.2.7.1	a purpose of the chargor is to terminate the unpaid vendor's charge; and		
21.2.7.2	the acquirer has actual knowledge at the time of the transfer of that purpose or circumstances exist which should make him aware of that purpose.		
21.3	For the purposes of Articles 21.2.2.2 and 21.2.4 a purchaser or an acquirer believes in good faith that a licence exists if		
21.3.1	he does not have actual knowledge of the termination of the licence; and		
21.3.2	there do not exist circumstances which should make him aware of the termination of the licence.		
21.4	For the purposes of Article 21.2.5 a purchaser believes in good faith that no charge exists if		
21.4.1	he does not have actual knowledge of the existence of the charge; and		
21.4.2	there do not exist circumstances which should make him aware of the existence of the charge.		
21.5	For the purposes of Articles 21.2.2, 21.2.4 and 21.2.5 the purchaser or acquirer is not under an obligation to search the charges' register unless the particular circumstances are abnormal and such as to make a search of the charges' register prudent.		

21.6 Where a person acquires title to charged property subject to a registered charge the chargeholder may at any time register the charge against the name of such person pursuant to Article 33.1.5.

21.6 Where charged property is sold subject to a charge it is necessary to give the chargeholder the right to register the charge against the name of the new owner in order to protect his rights against third parties.

Part 4. Enforcement and Termination

Article 22. General Rules on Enforcement

22.1 A charge becomes immediately enforceable if there is a failure to pay the secured debt and it remains immediately enforceable until

22.1.1 the chargeholder agrees that the charge is no longer immediately enforceable; or

22.1.2 the secured debt is satisfied in full or otherwise ceases to exist; or

22.1.3 the charge terminates for any other reason.

22.2 The chargeholder of a charge which has become immediately enforceable may commence enforcement proceedings by delivering an enforcement notice to the chargor containing the information set out in Article 22.7.

22.3 When a chargeholder has delivered an enforcement notice pursuant to Article 22.2 he has the right to take protective measures pursuant to Article 23 and to realise the charge pursuant to Article 24 or, in the case of an enterprise charge, to have the charge enforced pursuant to Article 25.

22.4 Enforcement proceedings cannot be continued if

22.4.1 a supplementary registration statement in respect of the enforcement notice delivered pursuant to Article 22.2 has not been presented at the charges' registry pursuant to Article 33.1.6 within seven days of delivery to the chargor; or

22.4.2 the enforcement notice is declared invalid by the court; or

Article 22

22.1 The secured debt has to be payable before the enforcement can commence. In banking agreements it is usual to specify a number of events of default which may make a loan immediately repayable. The occurrence of an event of default will only give rise to a right to enforce the charge given to secure the loan if the loan becomes immediately repayable and if there is a failure to pay. Where the debtor and the chargor are different persons there is no requirement in the model for the chargeholder to exhaust his rights against the debtor before enforcing the charge.

22.1.1 It is always open to the chargeholder to settle his claim amicably and to agree to discontinue enforcement.

22.1.2 The secured debt includes interest, maintenance and enforcement costs and damages unless otherwise agreed (see Article 4.6).

22.2 Delivery of an enforcement notice is the act that commences enforcement proceedings. Where a charge manager has been appointed he has the power to deliver the notice and to carry out all subsequent acts involved in enforcement (see Article 16.4). Where the secured debt has been transferred and no charge manager has been appointed the charge can only be enforced if the transfer has been registered at the charges' registry (see Article 18.3.1). Except in the case of an enterprise charge (see Article 22.7.6) a chargeholder may enforce even if there is a prior ranking charge on the same charged property. The prior ranking chargeholder's right to the proceeds of sale is protected by the proceeds depositary (see Article 28.3.4).

22.4.1 Registration of the enforcement notice is essential even in the case of an unpaid vendor's or possessory charge to ensure that third parties can become aware of the enforcement proceedings.

22.4.3	the charge ceases to be immediately enforceable in accordance with Article 22.1.		
22.5	In the event of the chargeholder failing to register the enforcement notice as required by Article 22.4.1 the chargeholder is liable to the chargor, any other chargeholder with a charge over the same property and any other party claiming rights in the charged property for any loss suffered by any of them as a result of the protective measures. This does not apply where the charge ceases to be immediately enforceable in accordance with Article 22.1 within seven days of delivery of the enforcement notice to the chargor and where the protective measures were taken while the charge was immediately enforceable.	22.5	If protective measures are taken the chargeholder must register the enforcement within the seven day period unless the enforcement notice is declared invalid by a court or the charge ceases to be immediately enforceable after the measures are taken but within the seven days (this may for example be the case if a settlement is reached between the chargor and the chargeholder).
22.6	The chargeholder may at any time request deregistration of the enforcement notice pursuant to Article 33.1.11 and is under an obligation to do so in the events referred to in Article 22.4.2 and 22.4.3.		
22.7	An enforcement notice delivered pursuant to Article 22.2 must in order to be valid be in writing and	22.7	This Article sets out the minimum information that must be included in an enforcement notice for it to be valid. The manner in which the notice has to be delivered is a matter for the general law of each jurisdiction.
22.7.1	identify the charge in respect of which enforcement proceedings are being commenced		
22.7.1.1	in the case of a registered charge, by reference to the charges' register and the date of registration; or		
22.7.1.2	in the case of an unpaid vendor's charge or a possessory charge, by reference to the information required to register such a charge pursuant to Articles 8.4 to 8.6; and	22.7.1.2	When the charge is not already shown on the register because it is an unpaid vendor's charge or a possessory charge additional information is required in the notice to make its registration meaningful.
22.7.2	identify the debt in respect of which enforcement proceedings are being commenced which may be the secured debt or any part of that debt; and		
22.7.3	contain a statement that the charge has become immediately enforceable; and		
22.7.4	where the chargeholder elects for a charged enterprise to be transferred as a going concern pursuant to Article 25.3 state that such election is being made and identify the person appointed as enterprise administrator; and		
22.7.5	be signed by or on behalf of the chargeholder and, where Article 22.7.4 applies, the enterprise administrator; and		
22.7.6	in the case of an enterprise charge, be signed by or on behalf of the chargeholder of any prior ranking enterprise charge.	22.7.6	Where there is more than one enterprise charge the right to enforce is determined by the priority of the charges (see Article 17.1). If a subsequent enterprise chargeholder wants to enforce the charge and the prior chargeholder does not agree it is possible for him to satisfy the prior charge (see Article 32.2).

Article 23. Measures for Protection of Charged Property

Article 23

23.1 When an enforcement notice has been delivered pursuant to Article 22.2 the chargeholder has the right to possession of charged property which is in the form of movable things.

23.1/2 In practice it is essential that the chargeholder has effective rights to protect the charged property without delay. The rights under Article 23 arise immediately upon delivery of the enforcement notice. A chargeholder is liable for any failure to comply with the requirements of the law or for any action he takes to which he is not entitled (see Article 30.2).

23.2 Where taking possession of charged property referred to in Article 23.1 is impracticable or is disputed by a third party in possession of the charged property the chargeholder may take such steps as are necessary to immobilise the charged property, to prevent the chargor or a third party using it and to prevent the chargor transferring title to it.

23.3 Where an enforcement notice has been delivered pursuant to Article 22.2 in respect of charged property which is a contractual obligation other than a debt for money the chargeholder may notify the person owing the charged obligation that it is subject to a charge and that enforcement proceedings have been commenced. Upon such notification

23.3 Contractual obligations other than debts for money are a special case (see Article 13).

23.3.1 the chargor cannot modify the contractual obligation without the agreement of the chargeholder; and

23.3.2 the chargor cannot take any steps to exercise his rights in respect of the contractual obligation without the agreement of the chargeholder; and

23.3.3 the chargeholder may exercise the chargor's rights in respect of the contractual obligation but in such case the chargeholder must comply with any corresponding obligation owed by the chargor.

23.3.3 As an example the chargeholder may require the delivery to himself of goods or services as provided by the contract but in that case he is obliged to pay for them. He may also take court action.

23.4 Where an enforcement notice has been delivered pursuant to Article 22.2 the chargeholder may take reasonable steps

23.4.1 to preserve, maintain and insure the charged property; and

23.4.2 with a view to increasing the sale price or reducing the sale costs including enhancing the charged property or renting it on commercially prudent terms to a third party.

23.5 Upon application by the chargeholder the court may make an order for other appropriate measures to protect the charged property after the enforcement notice has been registered as required by Article 22.4.1.

23.5 It is not possible to provide an exhaustive list of all protective measures that may be appropriate and, therefore, the court is given a discretion to make an order for other measures where the chargeholder so requests.

23.6 The chargeholder at any time may take protective measures as agreed with the chargor.

<p>23.7 If in order to obtain possession as referred to in Article 23.1 or to take other steps as provided in Article 23.2 the chargeholder does not have the right to enter upon the site where the charged property is situated or where any such rights are refused to the chargeholder he may appoint a [bailiff] for such purpose. The [bailiff] may on the chargeholder's behalf take the protective measures to which the chargeholder is entitled provided</p>	<p>23.7</p>	<p>The purpose of Article 23.7 is to enable protective measures which are beyond the power of an ordinary person to be taken by a person with recognised authority who can be appointed in a simple manner and without the delay and formality of court proceedings. There may be circumstances where such measures have to be taken within hours if the chargeholder is to be properly protected. The appropriate person to be included as 'bailiff' will depend on the legal system of each jurisdiction.</p>
<p>23.7.1 he is satisfied that the charge is registered or, in the case of an unpaid vendor's charge or a possessory charge, the enforcement notice is registered; and</p>	<p>23.7.1</p>	<p>Because of the possible need for speedy action the 'bailiff' does not have to wait until the enforcement notice is registered except in the case of an unpaid vendor's or possessory charge.</p>
<p>23.7.2 he receives from the chargeholder a copy of the enforcement notice delivered pursuant to Article 22.2.</p>		
<p>Article 24. Measures for Realisation of Charged Property</p>		<p>Article 24</p>
<p>24.1 When at least 60 days have elapsed since delivery of an enforcement notice pursuant to Article 22.2 the chargeholder has the right to transfer title to the charged property by way of sale in order to have the proceeds of sale applied towards satisfaction of the secured debt.</p>	<p>24.1</p>	<p>The right to sell the charged property under Article 24 is a right that can be exercised by the chargeholder without the intervention of the court provided that 60 days have elapsed since the enforcement notice was delivered to the chargor. During that 60 day period the chargeholder can, however, take protective measures under Article 23 to ensure that the property remains available for sale and the chargor or any other party who wants to dispute the chargeholder's right to enforce the charge can make application to the court (see Article 29).</p>
<p>24.2 Any agreement entered into prior to delivery of an enforcement notice pursuant to Article 22.2 which provides for the transfer of title to charged property by way of sale by or to the chargeholder after delivery of the enforcement notice is invalid.</p>	<p>24.2</p>	<p>A sale during enforcement by or to the chargeholder must be agreed after the delivery of the enforcement notice; it cannot all be settled in advance. It can be agreed in the 60 days after the enforcement notice provided that the sale does not actually take place until after the 60 days. This provision only covers sales made after delivery of the enforcement notice.</p>
<p>24.3 The chargeholder must</p>		
<p>24.3.1 endeavour to realise a fair price for the charged property; and</p>	<p>24.3.1</p>	<p>Ultimately in the case of disagreement it is for the court to determine what is a 'fair' price (but see Article 24.4). To impose a test of the best price is impracticable because of the various factors that may make one proposal more favourable than another and because of the difficulty of determining at the time of sale what is the best price.</p>
<p>24.3.2 advise the purchaser that he is transferring title to charged property in the capacity of chargeholder and that the proceeds of sale must be paid directly to a proceeds depositary appointed pursuant to Article 27.1.</p>	<p>24.3.2</p>	<p>The purchaser will normally obtain good title if the enforcement notice is registered and the proceeds are paid to a proceeds depositary (see Article 26).</p>

24.4	The chargeholder may subject to the obligation under Article 24.3.1 transfer title to the charged property by way of sale in such manner as he considers appropriate which may include transfer by private agreement on the open market or at public or private auction. The chargeholder may appoint a person to act on his behalf for the transfer or for any matter connected with it.	24.4	This is intentionally broad. The chargeholder has an obligation to endeavour to realise a fair price but the way in which he can best do that will inevitably vary with the circumstances. In many cases the chargeholder may prefer to appoint someone to deal with the sale on his behalf and he is given the express power to do this. An appointment of such a person under Article 24.4 is distinct from any appointment of a charge manager under Article 16.
24.5	A chargeholder is treated as having fulfilled his obligation under Article 24.3.1 if he can demonstrate that		
	24.5.1		in the case of charged property of a kind for which there is a recognised market, he acted in the manner of a prudent person operating in that market; or
	24.5.2		in all other cases, he took such steps to realise a fair price as could be expected in the circumstances of a prudent person.
Article 25. Enterprise Charge Administration		Article 25	
25.1	An enterprise charge may be enforced pursuant to Articles 23 and 24 or pursuant to this Article 25.	25.1	Where a charge has been registered as an enterprise charge (see Articles 5.6 and 8.4.5) the chargeholder has the right, but not the obligation, to enforce pursuant to Article 25; he may instead enforce the charge pursuant to Articles 23 and 24 in the same way as if the charge had not been registered as an enterprise charge.
25.2	Any agreement entered into prior to delivery of an enforcement notice pursuant to Article 22.2 which provides for the transfer of title to the charged enterprise by way of sale by or to the chargeholder after delivery of the enforcement notice is invalid.	25.2	This corresponds to Article 24.2.
25.3	A chargeholder of an enterprise charge who delivers an enforcement notice pursuant to Article 22.2 may elect for the enterprise to be transferred as a going concern pursuant to this Article 25 and in that case the enforcement notice must comply with the requirements of Articles 22.7.4, 22.7.5 and 22.7.6.	25.3	It is by a statement in the enforcement notice that the chargeholder elects to enforce pursuant to Article 25. The election has, therefore, to be made at the commencement of enforcement proceedings.
25.4	A chargeholder may only make an election under Article 25.3 if he believes that the enterprise is capable of being transferred as a going concern.	25.4	The chargeholder has to decide at the outset whether or not he believes that the enterprise is capable of being sold as a going concern. If at any time he ceases to hold that belief he must terminate the enterprise administration (see Article 25.22).
25.5	When an election is made pursuant to Article 25.3		
	25.5.1	25.5.1	the chargeholder must appoint a person (called an enterprise administrator) who has the powers and obligations set out in this Article 25; and An enterprise administrator must be appointed no later than the time of the enforcement notice – he has to sign the enforcement notice (see Article 22.7.5). The terms of appointment are a contractual matter between the chargeholder and the administrator.

25.5.2	the chargeholder may not, except as provided under Article 25.20, exercise any rights pursuant to Articles 23 and 24 unless the election is rescinded.	25.5.2	Once the election for enterprise administration is made the chargeholder may not (except as provided in Article 25.20) realise under Article 24 as well. The protection rights under Article 23 are replaced by the rights of the enterprise administrator.
25.6	In order for the appointment of the enterprise administrator to be valid		
25.6.1	he must be a [qualified accountant or lawyer]; and	25.6.1	Enterprise administration is a responsible role which has to be performed by a person with appropriate qualifications. These will need to be defined separately for each jurisdiction and should normally be limited to persons practising within the jurisdiction.
25.6.2	he must not be a chargeholder or the charge manager; and		
25.6.3	a statement of his appointment must be presented at the [registry where the chargor is registered] within seven days of delivery of the enforcement notice pursuant to Article 22.2.	25.6.3	Since the enterprise administrator has wide powers to run the enterprise (see Article 25.7.2) his appointment needs to be registered at the commercial/company or other registry where persons would normally look to find notification of those empowered to bind the chargor. His appointment is registered at the charges' registry when the enforcement notice is registered (see Article 22.7.4).
25.7	Where an election is made pursuant to Article 25.3	25.7	Immediately on delivery of the enforcement notice the enterprise administrator replaces the directors or other persons previously empowered to run the enterprise and receives all their powers.
25.7.1	the powers of the persons authorised by law or by the chargor's constitution to administer the enterprise and to deal in the charged property cease upon delivery of the enforcement notice; and		
25.7.2	such powers are immediately vested in the enterprise administrator.		
25.8	Each of the persons whose powers cease pursuant to Article 25.7.1 is under an obligation to give all necessary information and assistance to the enterprise administrator to enable him to manage the enterprise and to carry out his functions and may in addition be given such powers in relation to the enterprise as may be agreed with the enterprise administrator.	25.8	The former directors or other managers have an obligation to co-operate. They may, in addition, have powers in relation to the enterprise if the enterprise administrator agrees. These, however, are new powers given by the enterprise administrator, not a continuation of their former powers.
25.9	Each of the persons whose powers cease pursuant to Article 25.7.1 is liable for any loss suffered by the chargor or any third party as a result of any exercise by that person of any of his former powers after he has actual knowledge that his powers have ceased.	25.9	In practice the onus is on the chargeholder or enterprise administrator to inform the directors or managers of the election which causes their powers to cease.
25.10	The enterprise administrator must		
25.10.1	fulfil all those obligations that are provided by law for the persons whose powers are vested in him pursuant to Article 25.7.2 (but not including the obligation under Article 15.2); and	25.10.1	Having replaced the directors or managers of the enterprise under Article 25.7 the enterprise administrator has to perform the same obligations as they did previously.
25.10.2	continue the enterprise as a going concern; and	25.10.2	If the enterprise is to be sold as a going concern it is essential that it is continued in the meantime.

25.10.3 advise the chargeholder promptly if he believes that the enterprise is not capable of being transferred as a going concern; and	25.10.3	This complements Articles 25.4 and 25.22.
25.10.4 endeavour to transfer the enterprise as a going concern and to realise a fair price; and	25.10.4/5	These correspond to Article 24.3.
25.10.5 advise the purchaser that he is transferring title to charged property in the capacity of enterprise administrator and that the proceeds of sale must be paid directly to a proceeds depository appointed pursuant to Article 27.1.		
25.11 The appointment of an enterprise administrator terminates upon		
25.11.1 his death; or		
25.11.2 his becoming incapable of performing his obligations; or		
25.11.3 his resignation; or		
25.11.4 his being removed by the chargeholder; or		
25.11.5 his being removed by the court; or		
25.11.6 the transfer of the enterprise by way of sale; or		
25.11.7 the administration of the enterprise ceasing pursuant to Article 25.22 or 25.23.		
25.12 When the appointment of an enterprise administrator is terminated pursuant to Articles 25.11.1 to 25.11.5 a new enterprise administrator must be appointed	25.12	Where the appointment of an enterprise administrator has been terminated but the enterprise administration is to continue it is important that a new enterprise administrator is appointed with minimum delay so that the enterprise can be continued as a going concern.
25.12.1 in the case of Articles 25.11.1, 25.11.2 or 25.11.3, by the chargeholder within seven days of the occurrence of the death, incapacity or resignation;		
25.12.2 in the case of Article 25.11.4, by the chargeholder at the time of the removal of the previous enterprise administrator;		
25.12.3 in the case of Article 25.11.5, by the court at the time of his removal and in such case the court may, if appropriate, appoint a new enterprise administrator nominated by the chargeholder.		
25.13 If the chargeholder fails to appoint a new enterprise administrator		
25.13.1 within seven days as provided in Article 25.12.1 the court may appoint a new enterprise administrator or rescind the election to have the enterprise transferred as a going concern pursuant to Article 25.3;	25.13.1	The court can look at the circumstances and decide whether it is in the best interests of all involved for the enterprise administration to terminate or for a new administrator to be appointed.

25.13.2 at the time of the removal by him of the previous enterprise administrator as referred to in Article 25.11.4 the removal is not valid.	25.13.2	If the chargeholder wants to exercise his right to remove an enterprise administrator he must at the same time appoint a successor unless he terminates the enterprise administration at the same time.
25.14 The appointment of a new enterprise administrator after the seven days as provided in Article 25.12.1 is valid but the chargeholder is liable to the chargor, any other chargeholder with a charge over the same charged property and any other party claiming rights in the charged property for any loss suffered by reason of any delay in the appointment caused by the chargeholder.	25.14	A late appointment is not invalid but the chargeholder may incur liability for loss resulting from any delay that he caused.
25.15 The chargeholder is under an obligation to present at the charges' registry pursuant to Article 33.1.7 or 33.1.8 and at [the registry where the chargor is registered] a request for registration of any termination of the appointment of an enterprise administrator or any appointment of a new enterprise administrator within seven days of the termination or appointment.	25.15	The obligation to register is on the chargeholder.
25.16 Within 60 days of delivery of an enforcement notice pursuant to Article 22.2 the enterprise administrator may renounce any contract to which the chargor is party and which imposes continuing obligations on the chargor.	25.16	Where a contract is renounced the other party may have a claim against the chargor for early termination but that claim will not prevent the sale of the enterprise as a going concern. The claim can only be satisfied out of the proceeds of sale to the extent that the chargor receives a distribution pursuant to Article 28.3.6. However, the other party is protected prior to renunciation (see Article 28.4.3).
25.17 Where a contract imposes continuing obligations on the chargor the other party may serve a notice on the enterprise administrator at any time within the 60 day period requiring the enterprise administrator to state whether or not he will be exercising his right under Article 25.16. Until the enterprise administrator replies to that notice the obligation of the other party to perform is suspended.	25.17	It may be unreasonable to expect the other party to continue performing if he does not know whether or not the contract will be renounced.
25.18 When at least 60 days have elapsed since delivery of an enforcement notice pursuant to Article 22.2 the enterprise administrator has the right to transfer the enterprise by way of sale in order to have the proceeds of sale applied towards satisfaction of the secured debt.	25.18	The power to sell only arises after 60 days as in Article 24.1.
25.19 The enterprise administrator may subject to the obligation under Article 25.10.4 transfer the enterprise as a going concern by way of sale in such a manner as he considers appropriate which may include transfer by private agreement, on the open market or at public or private auction. The enterprise administrator may appoint a person to act on his behalf for the transfer or for any matter connected with it.	25.19	This corresponds to Article 24.4.
25.20 If the enterprise administrator determines that any part of the charged property can be transferred separately from the enterprise without preventing the transfer of the enterprise as a going concern he may agree with the chargeholder that such property is transferred by the chargeholder pursuant to Article 24.	25.20	This represents a limited exception to the principle that the chargeholder may realise his enterprise charge under Article 24 or Article 25 but not both at the same time. The determination that part of the charged property can be transferred separately must be made by the enterprise administrator, not the chargeholder.

25.21 An enterprise administrator is treated as having fulfilled his obligation under Article 25.10.4 if he can demonstrate that he took such steps as could be expected in the circumstances of a prudent person transferring an enterprise of that nature.	25.21	This corresponds to Article 24.5.
25.22 The election to have the enterprise transferred as a going concern pursuant to Article 25.3 must be rescinded by the chargeholder if he determines that the enterprise is no longer capable of being transferred as a going concern.	25.22/23	There are only limited circumstances in which the election to realise the charge under Article 25 must or can be rescinded. The purpose of enterprise administration is to sell the enterprise as a going concern: once the chargeholder is of the view that this is not possible the administration has to be terminated.
25.23 The election to have the enterprise transferred as a going concern pursuant to Article 25.3 may be rescinded		
25.23.1 by the chargeholder if he determines that to do so is in the interests of other creditors of the chargor; or		
25.23.2 by the court pursuant to Article 25.13.1 or 29.		
25.24 In the event of the election being rescinded pursuant to Article 25.22 or 25.23 the charge may be enforced pursuant to Articles 23 and 24.	25.24	When the election is rescinded the chargeholder may take protection and realisation measures under Articles 23 and 24 without having to deliver a new enforcement notice and without having to wait for a further 60 days.
Article 26. Purchaser from Chargeholder or Enterprise Administrator	Article 26	
26.1 If a person acquires title to charged property from the chargeholder pursuant to Article 24 or from the enterprise administrator pursuant to Article 25 he acquires it free from any charge if		This Article includes basic protection for a purchaser from the chargeholder or the enterprise administrator. The purchaser acquires title free from any charge, not just from the charge that is being enforced. If sales on realisation of a charge are to be possible in practice the purchaser has to be given the certainty that he is obtaining good title. The interests of other chargeholders are protected by the proceeds distribution provisions (see Articles 27 and 28). Subject to matters within his actual knowledge (see Article 26.2) he must only check that the enforcement notice is registered and make payment to the proceeds depository. There is no need to make any further enquiries (see Article 26.3).
26.1.1 the enforcement notice and, in the case of a transfer pursuant to Article 25, the enterprise administrator remain registered on the charges' register until at least the third day (excluding weekends and public holidays) before the date of the transfer and no interim order remains registered pursuant to Article 33.1.9 at such time; and		
26.1.2 the sale price is paid to a proceeds depository appointed by the chargeholder pursuant to Article 27.		
26.2 A purchaser will not acquire title free from any charge if he has actual knowledge at the time of the purchase that		
26.2.1 the charge being enforced is not created, invalid or unenforceable; or		
26.2.2 the charge has ceased to be immediately enforceable in accordance with Article 22.1; or		
26.2.3 the enforcement notice has been declared invalid by a court; or		

- 26.2.4 an order made by the court pursuant to Article 29.3 is still outstanding; or
- 26.2.5 in the case of transfer of an enterprise pursuant to Article 25, the election made pursuant to Article 25.3 has been rescinded.

26.3 The purchaser has no obligation to enquire as to the creation, validity and enforceability of the charge or as to the powers of the enterprise administrator registered on the charges' register.

Article 27. Proceeds Depositary

Article 27

27.1 Prior to the day on which any proceeds of sale under Articles 24 or 25 become payable the chargeholder must appoint a person to receive the proceeds of sale (called a proceeds depositary). Such appointment may be made at any time after delivery of an enforcement notice pursuant to Article 22.2.

27.1 The proceeds depositary is appointed to ensure that the proceeds are correctly distributed.

27.2 In order for the appointment of the proceeds depositary to be valid

27.2.1 he must be a [qualified accountant or recognised bank]; and

27.2.1 Like the enterprise administrator the proceeds depositary has a responsible role requiring the appointment of a person with appropriate qualifications which must be defined separately for each jurisdiction. It should normally be limited to persons practising within the jurisdiction.

27.2.2 he cannot be the chargor, a chargeholder, the charge manager or the enterprise administrator.

27.3 The chargeholder or the enterprise administrator must cause the proceeds of sale to be paid to the proceeds depositary.

27.4 The proceeds depositary must place all amounts received by him on deposit on commercial terms with a prime bank in a segregated account.

27.4 The exact meaning of 'prime bank' has to be defined separately for each jurisdiction.

27.5 Promptly after his appointment the proceeds depositary must establish a list setting out

27.5/6 The list that the proceeds depositary must establish and the steps that he must take to establish it will in most cases be very simple.

27.5.1 the persons entitled to the proceeds of sale; and

27.5.2 the amount of the entitlement of each; and

27.5.3 the priority of the entitlement of each.

27.6 In order to establish the list pursuant to Article 27.5 the proceeds depositary

27.6.1 must examine the charges' register; and

27.6.2 must enquire of the chargor and the enterprise administrator; and

- 27.6.3 where the charged property includes a movable thing which may be subject to an unpaid vendor's charge, must determine the date of acquisition and, if appropriate, enquire of the vendor; and
- 27.6.4 must take note of any claim directly addressed to him; and
- 27.6.5 may but is not obliged to make other appropriate enquiries.
- 27.7 The proceeds depositary may exclude from the list any person who fails to provide information necessary to establish the list referred to in Article 27.5 if
- 27.7.1 the proceeds depositary has delivered two notices to that person requesting information as to his entitlement; and
- 27.7.2 there are at least 15 days between delivery of the first and of the second notice; and
- 27.7.3 both notices state that the information is needed for establishing the list and that any failure to provide the required information may cause loss of entitlement to proceeds of sale held by the proceeds depositary; and
- 27.7.4 the required information has not been received within 15 days of delivery of the second notice.
- 27.8 When the list is established pursuant to Article 27.5 the proceeds depositary must deliver a copy to the chargeholder, the enterprise administrator, the chargor, any chargeholder shown on the charges' register with a charge over the same charged property and any other person who, to the proceeds depositary's actual knowledge, has or claims to have a right in the charged property.
- 27.9 Any person who claims entitlement to the proceeds of sale and does not agree with the list as established by the proceeds depositary may within 21 days of delivery of the list pursuant to Article 27.8 notify the proceeds depositary of his disagreement. In this case the proceeds depositary must deliver to the persons referred to in Article 27.8 either an amended list or a statement that a disagreement has been notified but that the list remains unchanged.
- 27.10 Where establishment of a definitive list is delayed for any reason, the proceeds depositary may establish a provisional list making full reserve for any undetermined or disputed amounts.
- 27.6.3 An unpaid vendor's charge terminates after six months (see Article 9.4.1); so enquiries of the vendor will only be necessary for goods purchased within the six months prior to delivery of the enforcement notice.
- 27.10 For distribution of proceeds of sale under a provisional list see Article 28.2.

Article 28. Distribution of Proceeds of Sale

- 28.1 The proceeds depositary must, subject to any order made by the court pursuant to Article 29, distribute the proceeds of sale promptly upon 30 days elapsing after the latest of
- 28.1.1 receipt by the proceeds depositary of the proceeds of sale; or
 - 28.1.2 delivery of the list pursuant to Article 27.8; or
 - 28.1.3 delivery of the list or statement pursuant to Article 27.9.
- 28.2 The proceeds depositary may make an initial distribution of proceeds of sale on the basis of a provisional list established pursuant to Article 27.10.
- 28.3 The proceeds depositary must distribute the proceeds of sale as follows
- 28.3.1 first, in payment of his fees and costs up to [amount];
 - 28.3.2 second, where an election has been made pursuant to Article 25.3, in payment of the liabilities referred to in Article 28.4.1;
 - 28.3.3 third, where an election has been made pursuant to Article 25.3, in payment of the liabilities referred to in Articles 28.4.2 and 28.4.3;
 - 28.3.4 fourth, to chargeholders of charges over the charged property transferred in accordance with the priorities of their respective charges;
 - 28.3.5 fifth, to other persons with rights in the charged property which entitle them to the proceeds of sale; and
 - 28.3.6 sixth, to the chargor.
- 28.4 Where an election has been made pursuant to Article 25.3 the following liabilities have priority in any distribution of the proceeds of sale
- 28.4.1 reasonable remuneration of the enterprise administrator for continuing the enterprise as a going concern but excluding any remuneration or costs in respect of the transfer of the enterprise and any amounts due to an enterprise administrator by reason of termination of his appointment; and

Article 28

- 28.1 Distribution should take place as early as possible. If the proceeds depositary has delivered the list of entitlement to the proceeds prior to receipt of the proceeds of sale, distribution can take place 30 days after receipt, otherwise it is 30 days after establishment of the final version of the list. The 30 day period allows time for any interested party to apply to the court under Article 29.
- 28.3.1 The proceeds depositary must be assured of receiving a minimum level of fee which may be a fixed amount or may be calculated as a proportion of the proceeds.
- 28.3.4 If there is a charge ranking ahead of the charge being enforced (see Article 17) that chargeholder will have priority to the proceeds.
- 28.4.1 The remuneration of the enterprise administrator in respect of the transfer of the enterprise is included in the secured debt (see Article 4.6.3).

28.4.2	liabilities incurred by the enterprise administrator in continuing the enterprise as a going concern; and	28.4.2	The liabilities may be incurred under a new agreement entered into by the enterprise administrator or under an agreement already existing prior to his appointment. People will only deal with the enterprise administrator during the period in which he is continuing the enterprise as a going concern if they have assurance that they will be paid amounts becoming due to them. It may in some jurisdictions be desirable to include some protection for employees in the enterprise.
28.4.3	liabilities becoming due under contracts renounced pursuant to Article 25.16 after delivery of the enforcement notice pursuant to Article 22.2 and prior to renunciation excluding any liability arising by reason of such renunciation.		
28.5	Where any amount payable by the proceeds depositary pursuant to this Article 28 is payable in a currency other than the currency held by the proceeds depositary he must purchase the necessary amount of that currency to make the payment.	28.5	The chargeholder whose debt is in a foreign currency should receive payment in that currency. The exchange risk remains the risk of the chargor.
28.6	The proceeds depositary must continue to hold the amount of the proceeds of sale attributable to any secured debt until it becomes payable.		
28.7	The secured debt is satisfied to the extent that the proceeds depositary pays proceeds of sale to a chargeholder.		
28.8	Any payment by the proceeds depositary to a non-resident chargeholder is treated for the purpose of currency exchange regulations as a payment of the secured debt by the debtor.	28.8	A foreign creditor needs the assurance that the charge gives him effective security. That is not the case if the proceeds of sale after enforcement of a charge cannot be repatriated as easily as a repayment of the original debt.

It is not possible in the model to include detailed provisions for court remedies which will be appropriate for differing jurisdictions. This will depend on local court systems and procedures. The provisions included in Articles 14.6, 23.5, 25.11.15, 25.12.3, 25.13.1 and 29 illustrate the remedies that will be required. The model provides for the enforcement of a charge without any involvement of the court. It is, therefore, essential that there exist appropriate checks to prevent abuse, and in particular the right of any interested party to apply to the court if necessary. Against that enforcement must remain a real remedy which cannot be defeated or rendered meaningless by use of court procedures.

- 29.1 If at any time after delivery of an enforcement notice pursuant to Article 22.2 a chargor, any other chargeholder with a charge over the same charged property or any other party claiming rights in the charged property disputes the creation, validity or enforceability of the charge or claims termination of the charge he may apply to the court to have the enforcement notice declared invalid. Any application under this Article 29.1 must be treated by the court as urgent business [state time limit for decision]. Notwithstanding such application until the enforcement notice is declared invalid and subject to any order made by the court pursuant to Articles 29.3 to 29.5
 - 29.1.1 the chargeholder may continue to take protective measures pursuant to Article 23; and
 - 29.1.2 the chargeholder may continue to realise the charge pursuant to Article 24; and
 - 29.1.3 where an election has been made pursuant to Article 25.3 the enterprise administrator may continue to operate the enterprise as a going concern and to realise the charge pursuant to Article 25.

29.1 This Article will need to be adapted to be consistent with the court procedures of each jurisdiction. The right to appeal has not been included but should be to the extent that it does not arise under existing law. If the charge is to be of value to the chargeholder there must be some real assurance that any proceedings will be dealt with quickly. The manner in which urgent business is defined will again vary between different jurisdictions.

It is essential that an application to the court does not by itself automatically stop all enforcement steps: by the time the court has given its decision the remedies available to the chargeholder may in practice be reduced. The chargeholder cannot sell until 60 days after the enforcement notice and the court has the power under Article 29.3 to make an interim order to prevent sale (but not protective measures) after that period (see also Article 30.1).

- 29.2 If the court declares the enforcement notice invalid the chargor or the party who applied to the court may require the chargeholder to present at the charges' registry a request for deregistration of the enforcement notice pursuant to Article 33.1.11.
- 29.3 If upon an application being made pursuant to Article 29.1 the court is
 - 29.3.1 unable to give its final decision within 60 days of the enforcement notice being delivered pursuant to Article 22.2; and

29.2 The chargeholder has an obligation to request deregistration under Article 22.6.

29.3.1 The 60 day period ties in with Articles 24.1 and 25.18.

29.3.2 satisfied that there are reasonable grounds on which to claim that the charge is not created, invalid, or not enforceable or that it has been terminated; and

29.3.3 satisfied that, after taking into account the interests of all the parties, it is appropriate to make an order pursuant to this Article 29.3;

29.3.3 The power of the court to make an interim order is restricted; if an interim order could be given as a matter of course this might be seen as significantly reducing the value of a charge.

the court may if so requested by the applicant make an interim order that the charged property may not be transferred pursuant to Article 24 or 25 until the court has rendered its final decision. The applicant is under an obligation to present at the charges' registry pursuant to Article 33.1.9 a request for registration of the interim order within seven days of it being made and pursuant to Article 33.1.12 a request for deregistration of the order within seven days of it being terminated. The applicant is liable to third parties for any loss suffered as a result of breach of this obligation.

29.4 A chargor, any other chargeholder with a charge over the same charged property or any other party claiming rights in the charged property who alleges that the chargeholder, the enterprise administrator or the proceeds depository has failed to comply with the requirements of Articles 22 to 28 may apply to the court for an order

29.4/5 Articles 29.1 to 29.3 provide for court action relating to the validity of the enforcement notice which necessarily will affect the whole enforcement proceedings. Articles 29.4 and 29.5 relate to matters arising during enforcement proceedings.

29.4.1 to declare any measure taken which was not in compliance with the requirements of Articles 22 to 28 invalid subject to Article 26;

29.4.2 requiring the chargeholder, the enterprise administrator or the proceeds depository to comply with those requirements;

29.4.3 for such other matter as the court considers appropriate.

29.5 A chargor, any other chargeholder with a charge over the same charged property or any other party claiming rights in the charged property who alleges that the chargeholder, the enterprise administrator or the proceeds depository has taken in relation to enforcement of a charge measures to which he is not entitled may apply to the court for an order

29.5.1 to declare the measures to which the application relates invalid subject to Article 26;

29.5.2 requiring the chargeholder, the enterprise administrator or the proceeds depository to refrain from taking any further measures to which he is not entitled;

29.5.3 for such other matter as the court considers appropriate.

Article 30. Damages

A chargor, any other chargeholder with a charge over the same charged property or any other party claiming rights in the charged property has an action in damages

- 30.1 in the case of an enforcement notice declared invalid by the court pursuant to Article 29.1, for any loss suffered by any of them as a result of enforcement; and
- 30.2 for any loss suffered as a result of any failure by a chargeholder, charge manager, enterprise administrator or proceeds depository to comply with the requirements of Articles 22 to 28 or as a result of any measure taken by any such person in relation to enforcement of a charge to which he is not entitled.

Article 31. Insolvency Principles

The provisions to be included to cover the event of the insolvency of the chargor have to be drafted jurisdiction by jurisdiction to take into account local insolvency rules. The following basic principles must be respected:

1. The charge remains valid notwithstanding insolvency.
2. Any right to set aside a charge as an act in the period immediately prior to insolvency is in the same terms as for other pre-insolvency acts.
3. Either the charge remains enforceable by the chargeholder separately from insolvency proceedings or the liquidator is under an obligation to transfer the charged property rapidly at a fair price and to satisfy the chargeholder's claim out of the proceeds of sale.
4. The creditors who may rank ahead of the chargeholder in respect of the proceeds of sale are limitatively defined.

Article 32. Termination of a Charge

- 32.1 A charge terminates if and to the extent that
 - 32.1.1 the chargor and the chargeholder so agree; or
 - 32.1.2 the secured debt is satisfied or otherwise ceases to exist; or
 - 32.1.3 the charged property ceases to exist; or

Article 30

A chargeholder who takes enforcement proceedings without being sure of his rights does so at his own risk. In addition to other court remedies those involved in taking enforcement proceedings may be sued in damages if the enforcement notice is declared invalid or if they do not comply with legal requirements or take measures to which they are not entitled. This will often in practice be a significant deterrent against wrongful or reckless enforcement.

Article 31

If a charge falls away on the chargor's insolvency it gives little useful protection to the chargeholder. It is not possible in the model to set out more than the basic principles that should apply in the case of insolvency. The manner in which those principles are made to work in practice has to be determined by reference to the local law.

Article 32

- 32.1 In the events set out in Article 32 a charge may terminate wholly or partially (note the words 'to the extent that').
 - 32.1.1 The chargor and the chargeholder can always agree to terminate the charge.
 - 32.1.2 If there is no secured debt there can be no charge. However, the chargor and chargeholder have wide freedom in describing the secured debt (see Article 4).
 - 32.1.3 If there is no charged property there can be no charge. Again the freedom in describing the charged property is wide (see Article 5).

32.1.4 the charged property is changed or incorporated with another thing or right in such a manner that it ceases to exist in identifiable or separable form; or	32.1.4 A charge over raw materials will usually terminate when they are used in a manufacturing process which the chargor is entitled to do under Article 15.3.1. This does not necessarily leave the chargeholder without any protection. He may agree with the chargor to create a charge over the work-in-progress and/or the finished product as well (see commentary to Article 5.10).
32.1.5 the charged property becomes part of another thing or right in such manner that the charged property and the other thing or right are transferable as a single item; or	32.1.5 A charge over components of a machine will usually terminate when they are put together to make the machine.
32.1.6 the charged property becomes owned by the chargeholder; or	32.1.6 A person cannot hold a charge over property he owns.
32.1.7 in the case of an unpaid vendor's charge, as provided in Article 9.4; or	32.1.7 An unpaid vendor's charge is of a limited six month duration unless converted into a registered charge.
32.1.8 in the case of a possessory charge pursuant to Article 10, if possession of charged property ceases; or	32.1.8 See also commentary to Article 10.2.
32.1.9 the secured debt is transferred and the transfer does not extend to the charge; or	32.1.9 Although the chargor does not have to be the debtor (see Article 4.3.1) the charge must always be held by the person to whom the secured debt is owed.
32.1.10 a third party acquires title to charged property free from the charge pursuant to Article 21.2; or	
32.1.11 a person acquires title to charged property free from any charge pursuant to Article 26.1.	
32.2 A charge also terminates if the chargor or another chargeholder with a charge over the same charged property	32.2 There can be circumstances where a chargor or a subsequent chargeholder wish to remove a charge given in respect of a debt which is not yet payable. Article 32.2 gives a procedure for doing this. The chargeholder has his charge replaced by a charge over a cash deposit which may belong either to the chargor or to the other chargeholder. The extra 30 per cent. is designed to cover additional amounts pursuant to Article 4.6. The exact meaning of 'prime bank' has to be defined separately for each jurisdiction.
32.2.1 deposits a sum equal to 130 per cent. of the maximum amount of the secured debt referred to in Article 4.5 or, in the case of an unpaid vendor's charge, of the unpaid part of the purchase price referred to in Article 9.2.1 and in the same currency as the secured debt with a prime bank on terms agreed with the chargeholder or failing agreement on commercial terms then prevailing for similar sums in that currency; and	
32.2.2 grants to the chargeholder whose charge is being terminated a registered charge over the sum deposited pursuant to Article 32.2.1 in order to secure the debt previously secured by the charge that is terminated.	

- 32.3 Upon termination of a charge the chargeholder must
- 32.3.1 in the case of a registered charge, register the termination of the charge pursuant to Article 33.1.10; or
 - 32.3.2 in the case of a possessory charge, return the charged property to the chargor unless otherwise agreed between chargor and chargeholder.

32.3 The obligation is on the chargeholder to register termination of the charge.

Part 5. Registration

Article 33. Supplementary Registration Statement

- 33.1 In order to obtain registration of
- 33.1.1 an amendment to a charging instrument; or
 - 33.1.2 the subsequent appointment of a charge manager; or
 - 33.1.3 the termination of the appointment of a charge manager; or
 - 33.1.4 the transfer of a secured debt extending to a charge; or
 - 33.1.5 a charge against the name of a person who has acquired title to charged property; or
 - 33.1.6 an enforcement notice; or
 - 33.1.7 the termination of the appointment of an enterprise administrator; or
 - 33.1.8 the appointment of a new enterprise administrator; or
 - 33.1.9 an interim order made under Article 29.3; or
 - 33.1.10 the termination of a registered charge; or
- in order to obtain deregistration of
- 33.1.11 an enforcement notice; or
 - 33.1.12 an interim order made under Article 29.3;
- a supplementary registration statement must be presented at the charges' registry.

- 33.2 A supplementary registration statement presented pursuant to Article 33.1 must

- 33.2.1 identify the charge by reference to the chargor, the date of registration (in the case of a registered charge) and other information as necessary; and
- 33.2.2 state the purpose of the supplementary registration statement; and
- 33.2.3 comply with the requirements of Article 33.3.

Article 33

- 33.1 This sets out a limitative list of all those matters which may be the subject of supplementary registration.

- 33.2 The first requirement in all cases is to identify the charge to which the supplementary registration relates and the purpose of the supplementary registration.

- 33.3 A supplementary registration statement presented pursuant to Article 33.1 must also include
- 33.3.1 in the case of an amendment to a charging instrument pursuant to Article 7.5
 - 33.3.1.1 the date of the charging instrument; and
 - 33.3.1.2 the date of the amendment; and
 - 33.3.1.3 signatures by or on behalf of the chargor and the chargeholder; or
 - 33.3.2 in the case of the subsequent appointment of a charge manager pursuant to Article 16
 - 33.3.2.1 identification of the charge manager; and
 - 33.3.2.2 signatures by or on behalf of the chargeholder and the charge manager; or
 - 33.3.3 in the case of the termination of the appointment of a charge manager pursuant to Article 16
 - 33.3.3.1 identification of the charge manager; and
 - 33.3.3.2 signature by or on behalf of the chargeholder or the charge manager; or
 - 33.3.4 in the case of the transfer of a secured debt extending to a charge pursuant to Article 18.1
 - 33.3.4.1 identification of the transferor and the new chargeholder; and
 - 33.3.4.2 signatures by or on behalf of the transferring chargeholder and the new chargeholder; or
 - 33.3.5 in the case of registration of a charge against the name of a person who has acquired title to charged property as referred to in Article 21.6
 - 33.3.5.1 identification of the person who has acquired title; and
 - 33.3.5.2 signature by or on behalf of the chargeholder; or
 - 33.3.6 in the case of an enforcement notice delivered pursuant to Article 22.2
 - 33.3.6.1 the date of delivery of the enforcement notice; and
- 33.3.2 The appointment of the charge manager at the time of the creation of the charge is registered pursuant to Article 8.4.1.
- 33.3.5 This is another example of a case where a charge can be registered against a person without his having to sign the registration statement (see also Article 8.4.6.2).

33.3.6.2	where the enforcement notice relates to an unpaid vendor's charge or a possessory charge the information required to register such a charge pursuant to Articles 8.4 to 8.6; and	33.3.6.2	See commentary to Article 22.7.1.2.
33.3.6.3	where an election has been made pursuant to Article 25.3, a statement that this is the case; and	33.3.6.3	If the election is not registered it is not effective.
33.3.6.4	signature by or on behalf of the chargeholder; or		
33.3.7	in the case of termination of the appointment of an enterprise administrator pursuant to Article 25.11	33.3.7/8	The chargeholder is under an obligation to register the termination or new appointment (see Article 25.15).
33.3.7.1	identification of the enterprise administrator; and		
33.3.7.2	signature by or on behalf of the chargeholder; or		
33.3.8	in the case of appointment of a new enterprise administrator pursuant to Article 25.12		
33.3.8.1	identification of the enterprise administrator; and		
33.3.8.2	signatures by or on behalf of the chargeholder and the enterprise administrator; or	33.3.8.2	The enterprise administrator has to sign the registration statement for his appointment but not for its termination (see Article 33.3.7.2).
33.3.9	in the case of an interim order made under Article 29.3		
33.3.9.1	a description of the interim order; and		
33.3.9.2	identification of the person who applied for the order; and		
33.3.9.3	signature by or on behalf of the person who applied for the order; or		
33.3.10	in the case of the termination of a registered charge pursuant to Article 32, signature by or on behalf of the chargeholder; or	33.3.10	The termination is registered but the record that the charge existed remains on the register.
33.3.11	in the case of deregistration of an enforcement notice pursuant to Article 22.6	33.3.11/12	In the case of an enforcement notice or an interim order it is deregistered so that no record of its prior existence remains on the register.
33.3.11.1	the date of delivery of the enforcement notice; and		
33.3.11.2	signature by or on behalf of the chargeholder; or		

33.3.12 in the case of deregistration of an interim order made under Article 29.3

33.3.12.1 a description of the interim order; and

33.3.12.2 signature by or on behalf of the person who applied for the order.

33.4 Where there is more than one chargor a separate supplementary registration statement must be presented for each chargor.

33.4 See commentary to Article 8.7.

Article 34. Registration Procedure

Article 34

Article 34 contains minimum registration procedures which will need to be supplemented according to the system of registration that is used.

34.1 The registrar may accept a registration statement pursuant to Article 8 or a supplementary registration statement pursuant to Article 33 in such form as he deems fit and can only refuse to register

34.1 The registration system must be rapid. The practical value of a charge will be reduced if the registrar can delay while considering whether or not to register. The registrar therefore has to check only that the matters provided under Articles 8 or 33 have been included.

34.1.1 if the registration statement or supplementary registration statement does not comply with the requirements of Article 8 or 33; or

34.1.2 if the required registration fee is not paid.

34.1.2 The level of fee payable must not be so high as to discourage the granting of charges.

34.2 Upon acceptance of a registration statement or a supplementary registration statement the registrar must immediately

34.2 When a statement is accepted registration must be immediate. The copy may be used by the chargeholder as proof that the statement was accepted for registration. Where, as is likely, the register is in computerised form appropriate adaptation of procedures should be made.

34.2.1 mark the time and date of presentation and the stamp of the registration office on the registration statement or supplementary registration statement and, if supplied, on a copy; and

34.2.2 place the registration statement or supplementary registration statement on the register against the name of the chargor and hand the copy, if supplied, to the presenter.

34.3 If the registrar refuses to accept a registration statement or a supplementary registration statement for one of the reasons in Article 34.1 he must at the same time notify the person presenting the registration statement or supplementary registration statement in writing of the reasons for his refusal and that person may present

34.3 If the registrar refuses to accept a statement he has to give the person presenting the opportunity to present a revised statement. He can only refuse for the reasons set out in Article 34.1.

34.3.1 a new registration statement within the 30 day period pursuant to Article 8.1 or, if later, within 15 days of such notification; or

34.3.2 a new supplementary registration statement within seven days in the cases referred to in Articles 33.1.6 to 33.1.9 or at any time in any other case.

34.4 The time of registration is the time when the registration statement or supplementary registration statement is presented at the charges' registry or, where Article 34.3 applies, the time when the new registration statement or new supplementary registration statement is presented at the charges' registry.

34.4 The time marked pursuant to Article 34.2.1 will in practice serve as evidence of the time of registration.

Article 35. Access to the Register

Any person may against payment of the required fee have access to the register and receive a copy of any entry on it.

Article 35

More detailed provisions regarding access may be required but the fundamental principle is that it is open to all.

Schedule 1. Charging Instrument (Article 7.2 MLST)

Charging Instrument

1. [Name of chargor]

[Address of chargor]

[Other identification of chargor as necessary]

agrees to grant to

[Name of chargeholder]

[Address of chargeholder]

[Other identification of chargeholder as necessary]

a charge of the things and rights described below to secure the debt described below.

2. The debt secured by the charge is [describe secured debt].

3. [Include identification of person owing the secured debt if not chargor.
For a possessory charge state maximum amount of secured debt]

4. The things and rights charged are [describe charged property].

5. [Other matters pursuant to Article 7.5]

Signature of chargor and date of signature

Signature of chargeholder

Schedule 2. Registration Statement (Article 8.3 MLST)

Registration Statement

1. [Name, address and other identification as necessary of chargor]
2. [Name, address and other identification as necessary of person owing the secured debt (if not the chargor)]
3. [Name, address and other identification as necessary of chargeholder]
4. [Name address and other identification as necessary of charge manager (if appointed)]
5. [Identification of the secured debt]
6. [Maximum amount of the secured debt]
7. [Identification of the charged property]
8. [If appropriate] The charge is an enterprise charge.
9. [Date of the charging instrument] [Except where an unpaid vendor's charge is being converted into a registered charge]
10. [Where an unpaid vendor's charge is being converted into a registered charge]
 - 10.1 This registration statement is for the conversion of an unpaid vendor's charge into a registered charge.
 - 10.2 [Date on which charged property was transferred to the chargeholder]
 - 10.3 [Date and identification of the written agreement giving rise to the unpaid vendor's charge]
11. [Where a possessory charge is being converted into a registered charge]
 - 11.1 This registration statement is for the conversion of a possessory charge into a registered charge.
 - 11.2 [Date on which possession of the charged property was given] [If later than the date of the charging instrument]

Signature of chargor
appointed)

Signature of charge manager (if

[Or where an unpaid vendor's charge or a possessory charge is being converted into a registered charge

Signature of chargeholder]