

A satellite-style topographic map of Latin America and the Caribbean region, showing the Andes mountain range, the Amazon basin, and the surrounding oceans. The image is viewed from a high angle, showing the curvature of the Earth.

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# Latin America Enforcement and Security Guide



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## Introduction

In the current economic climate, it is important that lenders understand how they can enforce security and debt claims to help in assessing options in the event of default by their customers, and when structuring new lending. It is also increasingly common that a bank lending to customers in their own country will lend ancillary facilities to, or take guarantees and security from, foreign subsidiaries and counterparties.

The purpose of this comprehensive country guide is to give an overview of the steps that need to be taken to enforce both secured and unsecured claims in a range of key jurisdictions in Latin America.

On a country by country basis, this guide gives an overview of how to:

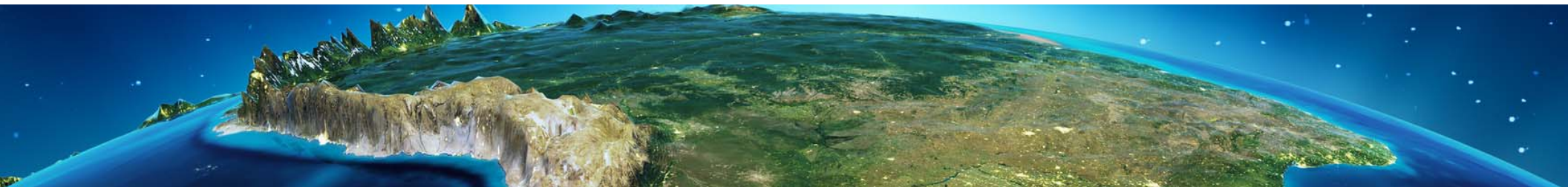
- enforce and realise security in that country;
- enforce unsecured debt claims; and
- enforce a debt 'cross-border', i.e. by obtaining a judgment in one country, and enforcing it in another.

The guide has been prepared by lawyers in each of these countries, who act regularly in enforcing secured and unsecured claims for banks, both on a domestic and a cross-border basis.

K&L Gates LLP's geographical coverage means that we, ourselves and through our network of local counsel relationships, can offer our clients banking and finance experience in structuring and documenting finance transactions as well as enforcement and restructurings in the countries covered in this guide, and in other key jurisdictions in Europe, North America, the Middle East, Africa and the Asia Pacific region.

All sections in this guide have been prepared by a firm in our network of local counsel relationships in each relevant jurisdiction as indicated.





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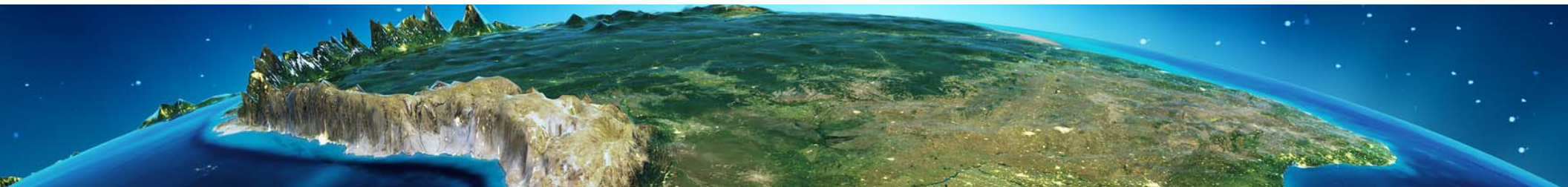
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**MORTGAGE**

1	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Mortgage:</p> <ul style="list-style-type: none"> <li>• immovable property;</li> <li>• ships (weighing over 10 tons); and</li> <li>• aircraft.</li> </ul>
2	<u>Validity/Publicity/Perfection requirements for security</u>	<ul style="list-style-type: none"> <li>• Mortgages over immovable assets must be created by means of a public deed passed before a notary public.</li> <li>• Mortgages over ships and aircrafts can be created by means of a public deed passed before a notary public or a private instrument certified by notary public.</li> </ul> <p>After the mortgage's creation, it must be registered with the corresponding Registry (Public Real Estate Registry of the jurisdiction where the property is situated/National Ship Registry/National Aircraft Registry). Once registered, the mortgage is effective in relation to third parties.</p>
3	<u>Costs and Timing of set up and perfection</u>	<ul style="list-style-type: none"> <li>• The notary public's fee; and</li> <li>• the registration costs of the Registry (Public Real Estate Registry/National Ship Registry/National Aircraft Registry).</li> </ul> <p>The registration of a mortgage can take around 3 to 6 months. Once registered its effects retract to the day of the filing. The registration lasts for 20 years on mortgages over real estate, 3 years on mortgages over ships and 7 years on mortgages over aircrafts, all renewable.</p>
4	<u>Enforcement</u>	<p>Enforcement involves a procedure before local courts in Argentina which, if successful, concludes with the sale of the immovable/ship/aircraft through public auction. Enforcement of a mortgage over immovable assets may also be conducted by an out of court procedure but it is only enforceable under certain conditions and the procedure is rarely used. Choice of jurisdiction in these cases is not allowed.</p>
5	<u>Secured creditors' position in insolvency</u>	<p>A registered mortgage grants a priority right over the underlying asset over other creditors, which includes the maximum amount of the mortgage determined in the agreement (principal, interest, costs and any other ancillary amounts). The priority depends on the chronological order of registration.</p> <p>In case of debtor's bankruptcy, there is a special procedure to enforce the mortgage.</p>





## PLEDGES

1	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	Pledges: <ul style="list-style-type: none"><li>• movable assets (credits, shares, automobiles, industrial property, ships weighing less than 10 tons, machinery, etc.); and</li><li>• in case of pledge over registrable assets, the asset is kept by the debtor. If the pledge is over non-registrable assets, then the asset is kept by the creditor.</li></ul>
2	<u>Validity/Publicity/Perfection requirements for security</u>	Created by: <ul style="list-style-type: none"><li>• a public deed passed before a notary public;</li><li>• a private instrument certified by notary public; or</li><li>• a private agreement with evidence of the effective date of its execution depending on each case.</li></ul> Then it must be registered in the corresponding Registry depending on the asset involved on the pledge. Once registered, the pledge is effective in relation to third parties. In case of pledges over company shares, the pledge must be registered in the stock ledger to be enforceable against third parties.
3	<u>Costs and Timing of set up and perfection</u>	<ul style="list-style-type: none"><li>• The notary public's fee (in case the pledges are created by means of public deed); and</li><li>• the registration costs of the Registry. Based on our experience, the registration of a pledge can take around 3 to 6 months.</li></ul> The registration lasts for a period of 5 years, and it can be renewed.
4	<u>Enforcement</u>	The enforcement involves a procedure before courts which ends with the sale of the asset through public auction.
5	<u>Secured creditors' position in insolvency</u>	A registered pledge grants a priority right over the underlying asset, which includes the maximum amount of the pledge determined in the agreement (principal, interest, costs and any other ancillary amounts). In case of debtor's bankruptcy, applicable laws establish a special procedure to enforce the pledges.





**RETENTION RIGHTS**

<b>1</b>	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	Retention Rights: <ul style="list-style-type: none"> <li>• every asset within the commerce that can be seized (regulated by the Civil and Commercial Code).</li> </ul>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	There are no formalities nor registration needed to exercise this right. The creditor must be legally in possession of the asset.
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	There are no costs involved and no time limits.
<b>4</b>	<u>Enforcement</u>	For the sale of the retained assets in a public auction, a court order granting the seizure and ordering the auction is needed.
<b>5</b>	<u>Secured creditors' position in insolvency</u>	The creditor has a privilege over the retained asset.



## GUARANTEE TRUSTS

<b>1</b>	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Guarantee Trusts:</p> <ul style="list-style-type: none"> <li>every credit can be guaranteed through a trust and every asset within the commerce can be placed in a trust.</li> </ul>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>Created by:</p> <ul style="list-style-type: none"> <li>a public deed passed before a notary public; or</li> <li>a private document, except when the assets placed in the trust can only be transmitted by means of a public deed.</li> </ul> <p>Then, it must be registered with the corresponding Registry (IGJ, CNV or the Trusts Registry in the Autonomous City of Buenos Aires depending on the type of assets involved). Once registered, the trust is enforceable against third parties. The trust cannot exceed 30 years counting from the date of execution of the agreement, except when the beneficiary is a legally incapable person.</p>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>The costs involved are comprised of:</p> <ul style="list-style-type: none"> <li>the notary public's fee in case it is created by means of a public deed; and</li> <li>the registration costs of the Registry.</li> </ul> <p>The timing depends mostly on how long the Registry takes to register the trust.</p>
<b>4</b>	<u>Enforcement</u>	<p>A court ruling could be necessary depending on the type of trust. The Argentine legal system accepts the possibility for the creditor to collect the assets included in a trust once the condition is met (in this case, the condition will be the breach of duty from the debtor). If the agreement does not govern the settlement proceeding, the trustee can decide the best way to settle the assets placed in the trust.</p>
<b>5</b>	<u>Secured creditors' position in insolvency</u>	<p>The debtor's bankruptcy does not affect the validity of the trust since the trust is a separate group of assets not belonging to the debtor.</p> <p>In case of insolvency of the debtor, the competent judge will establish the settlement proceeding and finally settle the trust's assets. Normally, if there is a breach of the agreement by the debtor, the trust will be settled so as to pay the creditor as explained above.</p>



## ASSIGNMENTS

<b>1</b>	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Assignments</p> <ul style="list-style-type: none"> <li>• every credit can be assigned as a security in favour of creditors.</li> </ul>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>Created by:</p> <ul style="list-style-type: none"> <li>• a public deed; or</li> <li>• a private document.</li> </ul> <p>The debtor of the assigned credit must be notified of the assignment for it to be enforceable against third parties. This notification must be done by a public instrument or private instrument bearing a true date.</p>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>The costs involved are comprised of:</p> <ul style="list-style-type: none"> <li>• the notary public's fee in case it is created by means of a public deed; and</li> <li>• costs of notification.</li> </ul> <p>The timing depends mostly on how long the debtor's notification takes.</p>
<b>4</b>	<u>Enforcement</u>	The enforcement involves an ordinary judicial process which can include precautionary measures.
<b>5</b>	<u>Secured creditors' position in insolvency</u>	There are no privileges if the debtor of the assigned credit files for a bankruptcy proceeding.



### PERSONAL GUARANTEE

1	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Personal Guarantee:</p> <ul style="list-style-type: none"> <li>• granted by an individual or legal entity and the creditor has no rights over a particular asset of the guarantor. There are two main types: <ul style="list-style-type: none"> <li>○ <i>Aval</i>: grantable under credit instruments (<i>títulos de crédito</i>); guarantor is joint and severally responsible for the fulfilment of the obligation.</li> <li>○ <i>Fiança</i>: grantable under any type of instrument; guarantor is subsidiarily responsible for the fulfilment of the obligation; guarantor has a series of benefits granted by law - which generally are requested to be waived</li> </ul> </li> </ul>
2	<u>Validity/Publicity/Perfection requirements for security</u>	Created and perfected by the execution of the principal instrument by the guarantor. A personal guarantee created under letter of guarantee ( <i>carta de fiança</i> ) must describe the guaranteed obligation and is subject to registration with Registry of Deeds and Documents (to be effective against third parties).
3	<u>Costs and Timing of set up and perfection</u>	<p>Notary and registration fees vary from state to state. They are usually calculated based on the amount of the collateralized obligation and should be verified on a case-by-case basis at the appropriate notary public or registry office.</p> <p>In the state of São Paulo, the current ceilings are (ref. year of 2016):</p> <ul style="list-style-type: none"> <li>• Notary Public: BRL39,083.62</li> <li>• Real Estate Registry Office: BRL139,353.65</li> <li>• Registry of Deeds and Documents: BRL15,221.49</li> <li>• Board of Commerce: BRL150.36</li> <li>• Traffic Department: BRL207.25</li> </ul> <p>Timing of perfection varies from case to case. In the City of São Paulo, the estimated timings are:</p> <ul style="list-style-type: none"> <li>• Notary Public: 3 business days</li> <li>• Real Estate Registry Office: 45 business days</li> <li>• Registry of Deeds and Documents: 3 business days</li> <li>• Board of Commerce: 7 business days</li> <li>• Traffic Department: 45 business days</li> </ul>
4	<u>Enforcement</u>	N/A
5	<u>Secured creditors' position in insolvency</u>	N/A





## PLEDGE

<b>1</b>	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Pledges (<i>penhor</i>) can be created over movable assets and rights; the guarantor keeps the legal title of the pledged asset/right.</p> <p>Types:</p> <ul style="list-style-type: none"> <li>• rural: for agricultural machinery and equipment, crops, inventories or animals;</li> <li>• industrial and mercantile: for industrial machinery, materials, instruments, raw materials and manufactured products;</li> <li>• rights and credit instruments: for receivables, rents, credits or credit instruments;</li> <li>• vehicles;</li> <li>• ownership interests: for quotas and shares; and</li> <li>• common: for other types of assets.</li> </ul>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>Formalized by private or public written instrument which must describe, at least:</p> <ol style="list-style-type: none"> <li>(a) total amount of the secured obligation (or its maximum amount);</li> <li>(b) term for repayment;</li> <li>(c) interest rate, if any; and</li> <li>(d) asset(s) subject to security.</li> </ol> <p>Perfection is conditioned upon registration of the security agreement with the competent registry office, as follows:</p> <ul style="list-style-type: none"> <li>• rural: Real Estate Registry Office;</li> <li>• industrial: Real Estate Registry Office;</li> <li>• rights and credit instruments: Registry of Deeds and Documents (payer of the receivables must be notified);</li> <li>• vehicles: Registry of Deeds and Documents and Traffic Department;</li> <li>• ownership interests: Registry of Deeds and Documents and Board of Commerce/Share Registry Book, as applicable; and</li> <li>• common: Registry of Deeds and Documents.</li> </ul>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>Notary and registration fees vary from state to state. They are usually calculated based on the amount of the collateralized obligation and should be verified on a case-by-case basis at the appropriate notary public or registry office. In the State of São Paulo, the current ceilings are (ref. year of 2016):</p> <ul style="list-style-type: none"> <li>• Notary Public: BRL39,083.62;</li> <li>• Real Estate Registry Office: BRL139,353.65;</li> <li>• Registry of Deeds and Documents: BRL15,221.49;</li> <li>• Board of Commerce: BRL150.36; and</li> </ul>



		<ul style="list-style-type: none"> <li>• Traffic Department: BRL207.25.</li> </ul> <p>Timing of perfection varies from case to case. In the City of São Paulo, the estimated timings are:</p> <ul style="list-style-type: none"> <li>• Notary Public: 3 business days;</li> <li>• Real Estate Registry Office: 45 business days;</li> <li>• Registry of Deeds and Documents: 3 business days;</li> <li>• Board of Commerce: 7 business days; and</li> <li>• Traffic Department: 45 business days.</li> </ul>
4	<u>Enforcement</u>	<p>Private procedure available?</p> <ul style="list-style-type: none"> <li>• If the debt is not paid, the debtor may privately sell the collateral if: (i) the collateral agreement provides such possibility; or (ii) the debtor allows the creditor to do so.             <ul style="list-style-type: none"> <li>✓ If neither of those options are met, the enforcement/foreclosure requires court proceedings. Under the Brazilian Code of Civil Procedure, the pledge is enforceable through an execution action.</li> </ul> </li> </ul> <p>Court involvement:</p> <ul style="list-style-type: none"> <li>• Unless the creditor meets the conditions to sell the collateral (see above), it should resort to court. In any case, the debtor may challenge either the sale or the court proceedings.</li> </ul> <p>Average timing:</p> <ul style="list-style-type: none"> <li>• Varies between 2 to 8 years.</li> </ul> <p>Average costs:</p> <ul style="list-style-type: none"> <li>• Includes: (i) court fees and expenses; (ii) attorney fees; and (iii) other expenses related to the litigation (experts etc.). Court fees and expenses vary according to the judicial district where the enforcement takes place.</li> </ul> <p>Rights of challenge for the debtor/third parties:</p> <ul style="list-style-type: none"> <li>• In case of the sale of the collateral without resorting to court, the debtor may challenge the regularity of such sale, on the grounds that: (i) the collateral agreement did not provide for the sale of the collateral; or (ii) the debtor did not consent to such sale.</li> <li>• In case of a court proceeding, the debtor may challenge: (i) the validity and enforceability of the debt secured by the pledge; (ii) the validity and enforceability of the collateral agreement (e.g. lack of proper constitution of the collateral etc.); and (iii) the enforcement of the collateral.</li> <li>• As a general rule, debtors and third parties subject to enforcement are entitled to bring a variety of defences to challenge the enforcement of the pledge.</li> </ul>



5	<u>Secured creditors' position in insolvency</u>	<p>Reorganization Proceedings: The Brazilian Reorganization and Bankruptcy Law provides for four classes of creditors. As a rule, all classes shall approve the reorganization plan.</p> <ul style="list-style-type: none"> <li>• The holder of pledge or mortgage is considered a secured creditor up to the amount of the collateral, and as a rule its credit is allocated in the secured creditors' class (Class II).</li> <li>• This position causes an impact on the voting process of the reorganization plan. As the reorganization plan rules payment conditions for all classes of creditor it does not necessarily give a better position for a secured creditor.             <ul style="list-style-type: none"> <li>○ If liquidated during the reorganization proceeding, the <u>pledge</u> may be renewed or substituted and, while the pledge is not renewed or substituted, any amount received due to the selling of the collateral shall be kept in a judicial account.</li> </ul> </li> </ul>
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### MORTGAGE

1	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Mortgage (hipoteca):</p> <ul style="list-style-type: none"> <li>• created over real properties, railways, natural resources, ships and airplanes; and</li> <li>• guarantor keeps the legal title of the mortgaged asset.</li> </ul>
2	<u>Validity/Publicity/Perfection requirements for security</u>	<p>As a general rule, formalized by public written instrument (prepared by a notary public) this must describe, at least: (a) total amount of the secured obligation (or its maximum amount); (b) term for repayment; (c) interest rate, if any; and (d) asset(s) subject to security. Perfection is conditioned upon registration of the security agreement with Real Estate Registry Office</p>
3	<u>Costs and Timing of set up and perfection</u>	<p>Notary and registration fees vary from state to state. They are usually calculated based on the amount of the collateralized obligation and should be verified on a case-by-case basis at the appropriate notary public or registry office. In the State of São Paulo, the current ceilings are (ref. year of 2016):</p> <ul style="list-style-type: none"> <li>• Notary Public: BRL39,083.62;</li> <li>• Real Estate Registry Office: BRL139,353.65;</li> <li>• Registry of Deeds and Documents: BRL15,221.49;</li> <li>• Board of Commerce: BRL150.36; and</li> <li>• Traffic Department: BRL207.25.</li> </ul> <p>Timing of perfection varies from case to case. In the City of São Paulo, the estimated timing are:</p> <ul style="list-style-type: none"> <li>• Notary Public: 3 business days;</li> <li>• Real Estate Registry Office: 45 business days;</li> <li>• Registry of Deeds and Documents: 3 business days;</li> </ul>



		<ul style="list-style-type: none"> <li>• Board of Commerce: 7 business days; and</li> <li>• Traffic Department: 45 business days.</li> </ul>
4	<u>Enforcement</u>	<p>Private procedure available:</p> <ul style="list-style-type: none"> <li>• For specific types of loans secured by mortgages - specifically loans related to the Brazilian Housing Finance System (SFH) - there is a self-help proceeding available under Decree-Law n. 70/66. However, as a general rule, enforcement of mortgages is subject to court proceedings.</li> </ul> <p>Court involvement:</p> <ul style="list-style-type: none"> <li>• As a general rule, yes (see above).</li> </ul> <p>Average timing:</p> <ul style="list-style-type: none"> <li>• For the private proceeding available under Decree-Law n. 70/66, timing varies between 6 months to 1 year. For court proceedings, average timing varies between 2 to 8 years.</li> </ul> <p>Rights of challenge for the debtor/third parties:</p> <ul style="list-style-type: none"> <li>• Debtors may challenge: (i) the validity and enforceability of the debt secured by the mortgage; (ii) the validity and enforceability of the collateral agreement (e.g. lack of proper constitution of the collateral etc.); and (iii) the enforcement of the collateral. As a general rule, debtors and third parties subject to enforcement are entitled to bring a variety of defences to challenge the enforcement of the mortgage.</li> </ul>
5	<u>Secured creditors' position in insolvency</u>	<p>Reorganization Proceedings:</p> <p>The Brazilian Reorganization and Bankruptcy Law provides for four classes of creditors. As a rule, all classes shall approve the reorganization plan.</p> <ul style="list-style-type: none"> <li>• The holder of pledge or mortgage is considered a secured creditor up to the amount of the collateral, and as a rule its credit is allocated in the secured creditors' class (Class II).</li> <li>• This position causes an impact on the voting process of the reorganization plan. As the reorganization plan rules payment conditions for all classes of creditor it does not necessarily give a better position for a secured creditor.</li> </ul>





## **FIDUCIARY TRANSFER / FIDUCIARY ASSIGNMENT**

<b>1</b>	<u><i>Types of collateral available to creditors and types of assets subject to collateral</i></u>	<p>Fiduciary Transfer (<i>alienação fiduciária</i>):</p> <ul style="list-style-type: none"> <li>• created over non-fungible assets and real properties; and</li> <li>• legal title of the asset is transferred to the creditor.</li> </ul> <p>Fiduciary Assignment (<i>cessão fiduciária</i>):</p> <ul style="list-style-type: none"> <li>• created over fungible and non-fungible assets and credit rights;</li> <li>• legal title of the asset is transferred to the creditor; and</li> <li>• it is disputable whether an entity which is not qualified as financial institution under Brazilian law could be beneficiary of this type of security.</li> </ul>
<b>2</b>	<u><i>Validity/Publicity/Perfection requirements for security</i></u>	<p>Fiduciary Transfer (<i>alienação fiduciária</i>):</p> <ul style="list-style-type: none"> <li>• formalized by private or public written instrument which must describe, at least: (a) total amount of the secured obligation (or its maximum amount); (b) term for repayment; (c) interest rate, if any; and (d) asset(s) subject to security;</li> <li>• perfection is conditioned upon registration of the security agreement with the competent registry office, as follows:             <ul style="list-style-type: none"> <li>○ real properties: Real Estate Registry Office;</li> <li>○ vehicles: Registry of Deeds and Documents and Traffic Department;</li> <li>○ ownership interests: Registry of Deeds and Documents and Board of Commerce/Share Registry Book, as applicable; and</li> <li>○ other assets: Registry of Deeds and Documents;</li> </ul> </li> </ul> <p>Fiduciary Assignment (<i>cessão fiduciária</i>):</p> <ul style="list-style-type: none"> <li>• formalized by private or public written instrument which must describe, at least: (a) total amount of the secured obligation (or its maximum amount); (b) term for repayment; (c) interest rate, if any; and (d) asset(s) subject to security; and</li> <li>• perfection is conditioned upon registration of the security agreement with the competent Registry of Deeds and Documents.</li> </ul>
<b>3</b>	<u><i>Costs and Timing of set up and perfection</i></u>	<p>Notary and registration fees vary from state to state. They are usually calculated based on the amount of the collateralized obligation and should be verified on a case-by-case basis at the appropriate notary public or registry office. In the State of São Paulo, the current ceilings are (ref. year of 2016):</p> <ul style="list-style-type: none"> <li>• Notary Public: BRL39,083.62;</li> <li>• Real Estate Registry Office: BRL139,353.65;</li> <li>• Registry of Deeds and Documents: BRL15,221.49;</li> <li>• Board of Commerce: BRL150.36; and</li> </ul>



		<ul style="list-style-type: none"> <li>• Traffic Department: BRL207.25.</li> </ul> <p>Timing of perfection varies from case to case. In the City of São Paulo, the estimated timings are:</p> <ul style="list-style-type: none"> <li>• Notary Public: 3 business days;</li> <li>• Real Estate Registry Office: 45 business days;</li> <li>• Registry of Deeds and Documents: 3 business days;</li> <li>• Board of Commerce: 7 business days; and</li> <li>• Traffic Department: 45 business days.</li> </ul>
4	<u>Enforcement</u>	<p>Private procedure available:</p> <ul style="list-style-type: none"> <li>• Fiduciary Transfer and Assignments: yes. The legal framework of the fiduciary assignment - either for movable property, receivables or real estate - provides for self-help remedies for creditors to foreclose on the collateral. However, as a general rule, movable property is enforced through execution or search and seizure procedures.</li> </ul> <p>Court involvement:</p> <ul style="list-style-type: none"> <li>• Fiduciary Transfer and Assignments: court involvement is not necessary for enforcement of fiduciary types of lien.             <ul style="list-style-type: none"> <li>o Enforcement of movable property tends to be done through court proceedings (see above).</li> <li>o Debtor or third parties may resort to court to challenge enforcement or foreclosure.</li> </ul> </li> </ul> <p>Average timing:</p> <ul style="list-style-type: none"> <li>• Fiduciary Transfer and Assignments: average timing depends on the nature of the underlying asset.             <ul style="list-style-type: none"> <li>o For movable assets, enforcement through a private procedure may take less than one day; while a court proceeding may take between days and several years.</li> <li>o For receivables, the enforcement may be automatic provided that the receivables or the collection account are under control of the creditor.</li> <li>o For real property, Federal Law n. 9,514 provides for a specific proceeding involving notification of debtor and public auctions, which usually take from 2 to 6 months.</li> <li>o Potential litigation over enforcement/foreclosure may impact on the timing of the enforcement.</li> </ul> </li> </ul> <p>Rights of challenge for the debtor / third parties:</p> <ul style="list-style-type: none"> <li>• Fiduciary Transfer and Assignments: debtor and/or third parties may challenge (i) the validity and enforceability of the debt; (ii) the validity and enforceability of the collateral documents; or (iii) irregularities in the self-help foreclosure proceedings (e.g. lack of proper notice, lack of proper release of public announcement for any auction, etc.).</li> </ul>



5	<u>Secured creditors' position in insolvency</u>	<p>Reorganization Proceeding:</p> <ul style="list-style-type: none"><li>• Fiduciary Transfer and Assignments: indebtedness is not subject to the reorganization proceeding provided that the collateral is properly and adequately formalized. In this case, the outstanding debt should be paid according to the relevant agreement.<ul style="list-style-type: none"><li>◦ As a general rule, secured creditors may not vote on the reorganization plan or on other issues of the proceeding.</li></ul></li></ul> <p>Liquidation (bankruptcy):</p> <ul style="list-style-type: none"><li>• Fiduciary Transfer and Assignment: indebtedness is not subject to the bankruptcy.</li><li>• As a rule, creditor may remove assets from debtor's premises.</li><li>• If the asset is no longer available on debtor's premises, creditor should be paid the equivalent in cash. In this case, the creditor is not subject to raking and the payment should be made immediately as soon as there is cash available.</li></ul>
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## MORTGAGE

1	<p><u>Types of collateral available to creditors and types of assets subject to collateral</u></p>	<p>Mortgage:</p> <ul style="list-style-type: none"> <li>immovable property such as real estate, as well as exploitation concessions (mining, transportation, electric and public utility concessions).</li> </ul> <p>Exceptionally, an obligor may grant a special type of mortgage known as a “production unit mortgage”, which enables the grantor to include under a single mortgage a group of assets of a different nature, both movable property and real estate (i.e. buildings, equipment, machinery) as long as they all pertain to a single production unit.</p>
2	<p><u>Validity/Publicity/Perfection requirements for security</u></p>	<p>Mortgages are created by means of the execution of a private document (the mortgage agreement) and a public deed between the obligor and the lender (or the corresponding security agent) and will be valid and perfected once registered before the Public Registry.</p> <p>Mortgages over real estate and buildings must be registered in the electronic record of the relevant asset in the Immoveable Property Registry (<i>Registro de Propiedad Inmueble</i>). Mortgages over concessions must be registered in the Public Registry of Concessions for the Exploitation of Public Services (<i>Registro de Concesiones para la Explotación de los Servicios Públicos</i>) or, in the case of mining concessions, in the Mining Rights Registry (<i>Registro de Derechos Mineros</i>).</p>
3	<p><u>Costs and Timing of set up and perfection</u></p>	<p>The costs involved in the registration of mortgages are comprised of:</p> <ul style="list-style-type: none"> <li>public Notary fees (required for execution of an agreement as a public deed), which will vary depending on designated Public Notary and are customarily calculated taking into consideration the secured amount (in a range between USD 500 and USD 5,000 or more); and,</li> <li>public Registry fees. As of the date of this document, registry fees are set at 0.75/1,000 over the total secured amount (when less or equal than approximately USD 10,000) or 1.5/1,000 if the secured amount exceeds such amount, with a limit of one Referential Tax Unit (currently S/. 3,950), which is equivalent to approximately USD 1,128, with an additional S/. 31 (equivalent to approximately USD 9) qualification fee.</li> </ul>
4	<p><u>Enforcement</u></p>	<p>Mortgages shall always be enforced through court proceedings.</p>
5	<p><u>Secured creditors’ position in insolvency</u></p>	<p>The borrower is subject to an insolvency procedure under the Peruvian Insolvency Act (<i>Ley General del Sistema Concursal</i>). The priority rights of secured creditors shall be subordinated to the rights of workers (in connection with their compensation and benefits) and payment of contributions to social security programs.</p> <p>Nevertheless, secured creditors have priority over:</p> <ul style="list-style-type: none"> <li>tax claims (including fines, interest and penalty feed owed to the Peruvian State); and</li> </ul>





	<ul style="list-style-type: none"> <li>unsecured creditors.</li> </ul>
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### PLEDGES

<b>1</b>	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Pledges:</p> <ul style="list-style-type: none"> <li>movable property such as inventories, vehicles, ships, shares, credit rights, bank accounts, receivables, cash flows, machinery, plantations and, generally, all movable assets (except for specific exceptions).</li> </ul>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>Pledges are created by means of the execution of a private agreement between the obligor and the lender (or the corresponding security agent). In order to file the agreement for registration before the Public Registries, a public deed must previously be granted before a Public Notary. The perfection of the pledge (to achieve enforceability against third parties) and a stronger level of publicity against third parties will be obtained by registering the pledge in the Contracts Public Registry (<i>Registro Mobiliario de Contratos</i>).</p> <p>Some pledges have some peculiarities, as follows:</p> <ul style="list-style-type: none"> <li>Shares pledges: the perfection of the pledge is obtained once the pledge is registered in the relevant stock ledger of the company. In order to give the pledge a stronger level of publicity against third parties, share pledges are usually registered in the Contracts Public Registry (Registro Mobiliario de Contratos) as well.</li> <li>Inventory pledges: if the inventory assets are registered in the Public Registries, the pledge must also be registered in the Movable Assets Registry (Registro Jurídicos de Bienes Muebles) in connection with such assets.</li> <li>Pledges over credit rights: necessary to notify the debtor about the creation of the pledge in order for the pledge to be enforceable against the debtor.</li> </ul>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>The costs involved in the registration of pledges are comprised of:</p> <ul style="list-style-type: none"> <li>Public Notary fees (required for execution of agreement as a public deed), which will vary depending on designated Public Notary and are customarily calculated taking into consideration the secured amount (in a range between USD 500 and USD 5,000 or more); and</li> <li>Public Registry fees. As of the date of this document, registry fees are set at 0.75/1,000 over the total secured amount (when less or equal than approximately USD 10,000) or 1.5/1,000 if the secured amount exceeds such amount, with a limit of one Referential Tax Unit (currently S/. 3,950), which is equivalent to approximately USD 1,128, with an additional S/. 10 (equivalent to approximately USD 3) qualification fee.</li> </ul>



4	<u>Enforcement</u>	May be enforced through court proceedings or may contain an agreement between pledge and beneficiary regulating an out of court foreclosure process. Usually, an out-of-court foreclosure would be much faster and more efficient than a court proceeding.
5	<u>Secured creditors' position in insolvency</u>	<p>In case the borrower is subject to an insolvency procedure under the Peruvian Insolvency Act (<i>Ley General del Sistema Concursal</i>), the priority rights of secured creditors shall be subordinated to the rights of workers (in connection with their compensation and benefits) and payment of contributions to social security programs.</p> <p>Nevertheless, secured creditors have priority over: (i) tax claims (including fines, interest and penalty fees owed to the Peruvian State); and, (ii) unsecured creditors.</p>



## **GUARANTEE TRUST**

<b>1</b>	<u>Types of collateral available to creditors and types of assets subject to collateral</u>	<p>Guarantee Trust (<i>fideicomiso</i>): through which assets and rights are transferred to a trust, in <i>dominio fiduciario</i>, creating an autonomous and independent estate administered by a trustee (<i>fiduciario</i>) for the benefit of creditors, in the terms and conditions established in the trust agreement.</p> <p>The guarantee trust may include all types of the relevant assets and rights of an obligor, to the extent permitted by law (i.e. immovable property such as real estate or infrastructure concessions and movable property such as bank accounts, contracts, shares, receivables, cash flows, credit rights, machinery, inventories, plantations, etc.).</p> <p>As per the General Banking Law (<i>Ley General del Sistema Financiero</i>), only entities that are duly authorized to act as a trustees by the Superintendence of Banking and Insurance may act as such (in addition to authorized trustee entities, banks may also perform such function).</p>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>The Guarantee Trust (<i>fideicomiso</i>) will be created upon the execution of a trust agreement. In order to obtain enforceability against third parties, the agreement must be executed as a public deed and registered in the Contracts Public Registry (Registro Mobiliario de Contratos) and, in case the assets comprised in the trust are registered assets (i.e. real estate and certain movable assets such as vehicles, aircraft, etc.), it must also be registered in the relevant registry.</p>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>Similar costs (as compared to those applying to mortgages and pledges) are applicable to guarantee trusts, depending of the type of assets (immovable or movable) transferred to the trust.</p> <p>General timing for registration of pledges in the relevant public registries is 60 business days.</p>
<b>4</b>	<u>Enforcement</u>	<p>May be enforced through court proceedings. Guarantee trusts may also be enforced out of court by the trustee, who shall act in accordance with the terms and conditions provided in the relevant trust agreement.</p>
<b>5</b>	<u>Secured creditors' position in insolvency</u>	<p>In case the borrower is subject to an insolvency procedure under the Peruvian Insolvency Act (<i>Ley General del Sistema Concursal</i>), the priority rights of secured creditors shall be subordinated to the rights of workers (in connection with their compensation and benefits) and payment of contributions to social security programs.</p> <p>Nevertheless, secured creditors have priority over: (i) tax claims (including fines, interest and penalty fee owed to the Peruvian State); and, (ii) unsecured creditors.</p>





### GUARANTEE TRUSTS

1	<u>Types of security available to creditors and types of assets subject to security</u>	Guarantee Trust on any kind of assets.
2	<u>Validity/Publicity/Perfection requirements for security</u>	In the case of a Guarantee Trust, a deed must be granted (before a Notary Public) and must be registered before the National Registry of Personal Acts in order to be enforceable against third parties. It also requires the effective delivery (" <i>tradición</i> ") of the goods to the Trustee and in case of registrable assets, the registry of the transfer in one of the various registries depending on the type of goods that serves as guarantee (i.e. the National Registry of Movable Property ( <i>Registro de la Propiedad, Sección Mueble</i> ), the National Registry of Intellectual Property ( <i>Registro Nacional de la Propiedad Intelectual</i> ) and the National Registry of Real Estate ( <i>Registro de la Propiedad, Sección Inmueble</i> )).
3	<u>Costs and Timing of set up and perfection</u>	<ul style="list-style-type: none"> <li>• Taxes ("<i>montepíos</i>") are 15.5% of the 3% of the value of the secured debt. Plus, the registration tax UYU 2530 (approx. USD90).</li> <li>• On average, approximately 30 days.</li> </ul>
4	<u>Enforcement</u>	<p>A private procedure is available for the enforcement of the assets which are the object of the Guarantee Trust. Please note that scholars have different opinions relating to enforcement in cases where the asset subject to a Guarantee Trust is real estate.</p> <ul style="list-style-type: none"> <li>• Enforcement does not need to be done through the courts. The timing shall depend on the agreed process of the enforcement of the Guarantee Trust.</li> <li>• As the process is entirely private and the assets are under the control of a third party (the fiduciary), the costs shall depend on the process agreed by the parties.</li> <li>• Any debtor or third party may request judicial measures to stop the private enforcement. However, they must grant a guarantee in favour of the court for the damages the measure may produce.</li> <li>• If the enforcement is cancelled due to the termination of the debt, then the Fiduciary shall return the assets to the debtor after the release process agreed in the Guarantee Trust.</li> </ul>
5	<u>Secured creditors' position in insolvency</u>	In case of bankruptcy, assets included in a Guarantee Trust are excluded from the bankruptcy courts.





### **PLEDGE ON MOVABLE ASSETS**

1	<u>Types of security available to creditors and types of assets subject to security</u>	Pledge on movable assets (pledge with “delivery” of the asset to the creditor).
2	<u>Validity/Publicity/Perfection requirements for security</u>	The consent of the owner of the pledged assets and the transfer to the creditor or depositary is required. A contract is recommended. Note that certain assets such as shares and other securities have specific requirements for the perfection on the pledge.
3	<u>Costs and Timing of set up and perfection</u>	Cost (other than notaries or lawyer fees for drafting the documents) would only apply if a Notary Public certifies the signatures. This is not mandatory but advisable in some cases. In this scenario, taxes ( “montepíos”) are 15,15% of the fees that Notaries should charge as indicated by the Notaries Association (which rank between 3 Re-adjustable Units (approx. USD 95) up to 40 Re-adjustable Units (approx. USD 1,300)). Note that if the Notary participates in drafting the pledge agreement other fees may apply. On average, timing is approximately 20 days.
4	<u>Enforcement</u>	<p>There is a private and a public procedure available for the enforcement of the pledge. Pledged movable assets under the Civil Code can be assigned to the creditor under express authorization of the debtor (Section 2301 of the Uruguayan Civil Code).</p> <p>If the enforcement process is private, courts are not required to intervene in the process. If a public auction of the assets was chosen, then the creditor must obtain an order from the judge in order to carry one with such public auction.</p> <p>A public auction generally takes between 1 to 3 years. Private enforcement has shorter terms and will depend on the agreed process.</p> <p>When the enforcement process is entirely private, the costs shall depend on the process agreed by the parties. In case of public auction, it may cost 12% to 15% of the defaulted debt, which is split between taxes and average fees.</p> <p>If the enforcement is cancelled due to the termination of the debt, then the creditor or the depositary shall return the assets to the debtor.</p>
5	<u>Secured creditors’ position in insolvency</u>	In case of bankruptcy, all assets of the debtor are part of the common guarantee of the creditors. However, the pledged creditor has a first-degree guarantee against the pledged asset that can be enforced after 120 days since the bankruptcy declaration (legal stay imposed by law). After the secured creditor has been repaid any remaining amounts left after the enforcement of the guarantee shall benefit the rest of the unsecured creditors.



### **REGISTERED PLEDGE ON MOVABLE ASSETS**

1	<u>Types of security available to creditors and types of assets subject to security</u>	Registered pledge on movable assets (pledge without “delivery”, i.e. The debtor remains in possession of the pledged asset).
2	<u>Validity/Publicity/Perfection requirements for security</u>	A deed must be granted (done before a Notary public) and must be registered in order to be enforceable against third parties in the National Registry for Pledge without Transfer (Registro Nacional de Prendas sin Desplazamiento).
3	<u>Costs and Timing of set up and perfection</u>	Notaries are necessary for this type of pledge. Taxes will apply at a rate of 15,15% of the fees that Notaries should charge as indicated by the Notaries Association (which rank between 3 Re-adjustable Units (approx. USD 95) up to 40 Re-adjustable Units (approx. USD 1,300)). Note that if the Notary participates in drafting the pledge agreement other fees may apply; the above is used only to calculate the “ <i>montepío</i> ”. Plus, the registration tax is UYU 2530 (approx. USD90). On average, approximately 20 days.
4	<u>Enforcement</u>	There is a private and a public procedure available for the enforcement of the pledge. Pledged movable assets under the Civil Code can be assigned to the creditor under express authorization of the debtor (Section 2301 of the Uruguayan Civil Code). <ul style="list-style-type: none"> <li>• If the enforcement process is private, courts are not required to intervene in the process. If a public auction of the assets was chosen, then the creditor must obtain an order from the judge in order to carry one with such public auction.</li> <li>• A public auction generally takes between 12 months to 3 years. Private enforcement has shorter terms and will depend on the agreed process.</li> <li>• When the enforcement process is entirely private, the costs shall depend on the process agreed by the parties. In case of public auction, it may cost 12% to 15% of the defaulted debt, between taxes and average fees.</li> <li>• If the enforcement is cancelled due to the termination of the debt, then the creditor or the depositary shall return the assets to the debtor.</li> </ul>
5	<u>Secured creditors’ position in insolvency</u>	In case of bankruptcy, all assets of the debtor are part of the common guarantee of the creditors. However, the pledged creditor has a first-degree guarantee against the pledged asset that can be enforced after 120 days since the bankruptcy declaration (legal stay imposed by law). After the secured creditor has been repaid any remaining amounts left after the enforcement of the guarantee shall benefit the rest of the unsecured creditors.



## MORTGAGE

1	<u>Types of security available to creditors and types of assets subject to security</u>	Mortgage (real estate, vessels and planes).
2	<u>Validity/Publicity/Perfection requirements for security</u>	A mortgage must be granted in a public deed and needs to be registered at the relevant registry to be perfected.
3	<u>Costs and Timing of set up and perfection</u>	Taxes (" <i>montepíos</i> ") are 15,15% of the 3% of the value of the secured debt (if the mortgage is granted to secure the payment balance of the purchase price of such real estate, instead, a 3%, 1.5% will apply). Plus, "Fondo Gremial" and the registration tax, being the latter UYU 2,530 (approx. USD90). On average, timing is approximately 45 days.
4	<u>Enforcement</u>	<ul style="list-style-type: none"> <li>• All mortgages need to be foreclosed through a public auction.</li> <li>• Court involvement is necessary in order to obtain the foreclosure of a mortgaged asset.</li> <li>• In general it takes between 12 months to 3 years.</li> <li>• It may cost around 12% to 15% of the total unpaid debt.</li> <li>• If the enforcement is cancelled due to the termination of the debt, then the creditor and the debtor shall agree on the cancellation of the registry of the mortgage before the Public Registry.</li> </ul>
5	<u>Secured creditors' position in insolvency</u>	In case of bankruptcy, all assets of the debtor are part of the common guarantee of the creditors. However, the mortgagee has a first-degree guarantee against the mortgaged asset that can be enforced after 120 days since the bankruptcy declaration (legal stay imposed by law). After the secured creditor has been repaid any remaining amounts left after the enforcement of the mortgage shall benefit the rest of the unsecured creditors.



## CREDIT ASSIGNMENT

1	<u>Types of security available to creditors and types of assets subject to security</u>	Assignment of receivable credits.
2	<u>Validity/Publicity/Perfection requirements for security</u>	Assignments of receivable credits require a contract between the assignor and the assignee, and a notification to the assigned debtor with the exhibition of the title of debt and the assignment to the debtor.
3	<u>Costs and Timing of set up and perfection</u>	<ul style="list-style-type: none"> <li>• Costs would apply only if the participation of a Notary Public is needed (to certify signatures), in such case taxes are 15.15% of the 2% of the price for the credit assignment. In case the debtor has to be notified of the assignment by a notary, other costs would apply.</li> <li>• On average, approximately 20 days.</li> </ul>
4	<u>Enforcement</u>	The debt is not cancelled unless paid to the assignee after the assignment has occurred. In case of default of the assigned debtor, the assignee must seek relief from a court in order to enforce the payment of the credit.
5	<u>Secured creditors' position in insolvency</u>	In case of bankruptcy of the assignor, assigned credits are excluded from the bankruptcy courts if the assignor is bankrupt. In case of bankruptcy of the assigned debtor, the assignee is a common creditor if the credit did not have additional guarantees.





### **SECURITY AGREEMENTS OVER MOVABLE ASSETS**

1	<p><u>Types of security available to creditors and types of assets subject to security</u></p>	<p><u>Security Agreements over Movable Assets:</u> Pursuant to Law 1676 of 2014, security agreements over movable assets should be understood as any operation that has an effect to guarantee certain obligations with the guarantor's movable assets.</p> <p>There is a wide scope of the types of security interests that can be created, including, among others, civil and commercial pledge agreements, with or without tenancy, pledge agreements over commercial establishments, pledge agreements over shares, pledge agreements over patents or any other rights of similar nature.</p> <p>According to Law 1676, the following are the types of movable assets over which a security interest can be created:</p> <ul style="list-style-type: none"> <li>• Existing and future rights.</li> <li>• Patrimonial rights derived from intellectual property.</li> <li>• Rights over money deposits.</li> <li>• Securities, shares and interests representing equity capital of a corporate entity.</li> <li>• Contractual rights.</li> <li>• In general, any movable assets.</li> </ul>
2	<p><u>Validity/Publicity/Perfection requirements for security</u></p>	<p>Security agreements become valid upon perfection, which occurs with the execution of a written private agreement including, at least, the following:</p> <ul style="list-style-type: none"> <li>• Names and identity of the parties.</li> <li>• Maximum amounts covered by the guarantee.</li> <li>• Description of the movable assets over which the security agreement is granted.</li> <li>• Description of the guaranteed obligations, present or future, or the applicable rules for identifying an undetermined obligation.</li> </ul> <p>Once a security interest has been perfected, it must be filed for its registry before the National Registry of Securities – Registro Nacional de Garantías Mobiliarias-, and before any other special relevant authority (i.e. registry for vehicles, intellectual property, etc.). Upon its proper registration, such security interest becomes enforceable before third parties.</p> <p>Any amendments or supplements to the security interest must be filed with the National Registry of Securities.</p>
3	<p><u>Costs and Timing of set up and perfection</u></p>	<p>Filing for registration can be done electronically at: <a href="https://www.garantiasmobiliarias.com.co/">https://www.garantiasmobiliarias.com.co/</a></p> <p>Timing for effective registration, after due filing, can be 1-2 business days.</p> <p>Cost for registration is currently COP\$35.000.</p>



4	<u>Enforcement</u>	<p>According to Law 1676, the parties involved in a security may agree on private foreclosure processes and the guarantor may authorize the creditor to freely sell the collateral or to seize possession.</p> <p>Notwithstanding the foregoing, the parties can agree that the property can be sold in a judicial proceeding and the resulting proceeds will be applied to payment of the secured obligation. Under a judicial proceeding, a secured creditor has the possibility to claim, the adjudication of the asset if certain conditions are fulfilled.</p> <p>Law 1676 provides that security agreements may be enforced through any of the following options:</p> <ul style="list-style-type: none"><li>• Ordinary proceedings applicable to any kind of security and contained in Colombian General Procedure Code (Código General del Proceso).</li><li>• Direct payment from the movable assets which are object of the Security Agreement (“Direct Payment”).</li><li>• Special enforcement proceeding provided by Law 1676 (“Special Enforcement Proceeding”).</li></ul> <p>As for the Direct Payment, Law 1676 provides that the guaranteed party under a Security Agreement may enforce its security by directly requesting to the debtor the property transfer of the movable assets subject to the Security Agreement. This request may be done directly by the guaranteed party without the need of a formal request before a judge.</p> <p>Additionally, Law 1676 provides that the parties under a Security Agreement may agree on the Special Enforcement Proceeding, where enforcement takes place before a Notary Public or the Chamber of Commerce, which will be responsible for enforcing the security. Under the Special Enforcement Proceeding, the debtor may be able to raise a defence against enforcement and the Notary Public or the Chamber of Commerce, as applicable, shall decide upon the merits and on the sale or assignment of the movable assets subject to the Security Agreement.</p> <p>To enforce a Security Agreement by means of a Direct Payment or by the Special Enforcement Proceeding, it is mandatory that the Security Agreement expressly provides for such possibility.</p> <p>When all the obligations guaranteed by a Security Agreement have been fulfilled or the enforcement has been completed, the guarantor may request the secured creditor for the cancellation of the registration of the Security Agreement. If the secured creditor does not comply with the guarantor’s request within fifteen (15) days from the request, guarantor may submit the request for cancellation before any Notary Public, accompanied with the payment certification or a copy of payment receipts.</p>
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5	<u>Secured creditors' position in insolvency</u>	<p>Pursuant to Law 1676, secured parties are prevented from enforcing any type of securities over movable or immovable assets that have been perfected prior to the reorganization proceeding if they cover assets which are necessary for the guarantor to perform its economic activity.</p> <p>Once the reorganization proceeding is concluded and a reorganization agreement has been executed by the creditors and the debtor, those creditors guaranteed by a security interest will have the right to receive payment with preference over any other party participating in the reorganization agreement. As for those guarantees over assets which are not necessary for the proper performance of the economic activity of the guarantor, the guaranteed party will be able to directly enforce its security without having to be included in the reorganization proceeding.</p> <p>In liquidation and winding up proceedings, such secured assets may be excluded from the assets of the debtor. In this sense, assets subject to a security interest may be excluded from the distribution of assets to general creditors, and thus directly assigned to the relevant secured creditor to satisfy its debt.</p>
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### Commercial Trusts

<b>1</b>	<u>Types of security available to creditors and types of assets subject to security</u>	<p><b>Commercial Trusts:</b> Pursuant to the Colombian Commerce Code, Commercial Trusts are contracts by virtue of which a grantor (the “Grantor”) transfers to a trust company (the “Trust Company”) –entities regulated by the Colombian government– one or several assets (the “Trusted Assets”), and the Trust Company commits to manage or transfer the Trusted Assets according to a specific purpose (defined or established by Grantor) in favor of such Grantor or a third person (“Beneficiary”).</p> <p>Commercial Trusts serve as guarantees of obligations of the Grantor or any third party, maintaining the Trusted Assets as collateral. The guaranteed obligations must be set forth in the Commercial Trust agreement. Any type of asset of the Grantor can be held by a Trust Company.</p> <p>Trusted Assets are separated from the ownership of the Grantor. A trust is deemed as a separate legal entity for ownership purposes under Colombian law.</p>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>The Colombian Commercial Code requires that commercial trust agreements be granted by written private documents.</p> <p>In case the trusted assets are real estate properties, the commercial trust must be granted by a public deed before a Notary Public to be valid. The public deed must be registered before the Public Instruments Register Offices – Oficina de Registro de Instrumentos Publicos.</p>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>In addition to fees charged by the Trust Company, notarial fees of the public deed of real estate trust agreements may vary depending on the valuation of the property. Approximately 0.5% of the real estate valuation.</p>
<b>4</b>	<u>Enforcement</u>	<p>The enforcement will be subject to ordinary proceedings regulated by the Colombian General Procedure Code (Código General del Proceso) before Colombian ordinary judges. Procedural rules are deemed by Colombian law as public order laws, and cannot be validly waived or otherwise agreed.</p>
<b>5</b>	<u>Secured creditors’ position in insolvency</u>	<p>In corporate reorganization proceedings the enforceability Trust Agreements will be suspended. Nonetheless, if the enforceability of such guarantees was agreed within the reorganization agreement they could be enforced.</p> <p>If the debtor enters an insolvency proceeding, the creditor will have the right to receive payment of the secured obligation according to the legally prescribed rules of priority.</p>





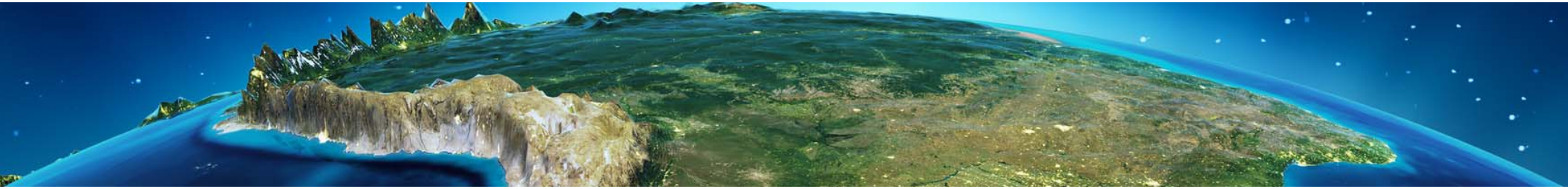
## **MORTGAGES**

<b>1</b>	<u>Types of security available to creditors and types of assets subject to security</u>	<p><b>Mortgages:</b> Mortgages are security interests created over real estate properties in order to secure the fulfillment of a principal obligation. Pursuant to Colombian law, mortgages can be open or closed:</p> <ul style="list-style-type: none"> <li>• Closed mortgages secure a sole and individual obligation.</li> <li>• Open mortgages are created to secure all obligations of a debtor owed to the creditor.</li> </ul>
<b>2</b>	<u>Validity/Publicity/Perfection requirements for security</u>	<p>A mortgage agreement must be documented through a public deed before a Notary Public and registered with the Public Instruments Register Offices – Oficina de Registro de Instrumentos Publicos.</p> <p>Mortgages over real estate properties only become enforceable against third parties once they are registered in the Public Instruments Register Office – Oficina de Registro de Instrumentos Publicos.</p>
<b>3</b>	<u>Costs and Timing of set up and perfection</u>	<p>The fees arising from the creation of a mortgage are the following:</p> <ul style="list-style-type: none"> <li>• Notarial fees are approximately 0.3% of the purchase price of the land.</li> <li>• Registration fees are approximately of 0.5% of the purchase price of the land.</li> <li>• Registration tax is approximately 1% of the disbursed amount at the moment of the registration.</li> </ul>
<b>4</b>	<u>Enforcement</u>	<p>The enforcement will be subject to ordinary proceedings regulated by the Colombian General Procedure Code (Código General del Proceso) before Colombian ordinary judges. Procedural rules are deemed by Colombian law as public order laws, and cannot be validly waived or otherwise agreed.</p>
<b>5</b>	<u>Secured creditors' position in insolvency</u>	<p>In corporate reorganization proceedings the enforceability of Mortgages will be suspended. Nonetheless, if the enforceability of such guarantees was agreed within the reorganization agreement they could be enforced.</p> <p>If the debtor enters an insolvency proceeding, the creditor will have the right to receive payment of the secured obligation according to the legally prescribed rules of priority. Mortgages are in the third tier of priority, superseded by health and burial expenses, labor and tax payments, and secured creditors by garantías mobiliarias.</p>



**PERSONAL GUARANTEES**

1	<u>Types of security available to creditors and types of assets subject to security</u>	Personal Guarantees ( <i>fianza</i> ): By means of this guarantee, one or more persons (the “Guarantors”) are liable for a third party obligation, committing themselves with the creditor to comply with an obligation if the principal debtor does not fulfill its obligations.
2	<u>Validity/Publicity/Perfection requirements for security</u>	Personal guarantees can be granted by private documents and they need no special registry. Also, they do not need any further publicity requirements for their perfection.
3	<u>Costs and Timing of set up and perfection</u>	With the execution of the private document they are considered perfected and there are no additional costs.
4	<u>Enforcement</u>	The enforcement will be subject to ordinary proceedings regulated by the Colombian General Procedure Code (Código General del Proceso) before Colombian ordinary judges. Procedural rules are deemed by Colombian law as public order laws, and cannot be validly waived or otherwise agreed.
5	<u>Secured creditors’ position in insolvency</u>	N/A



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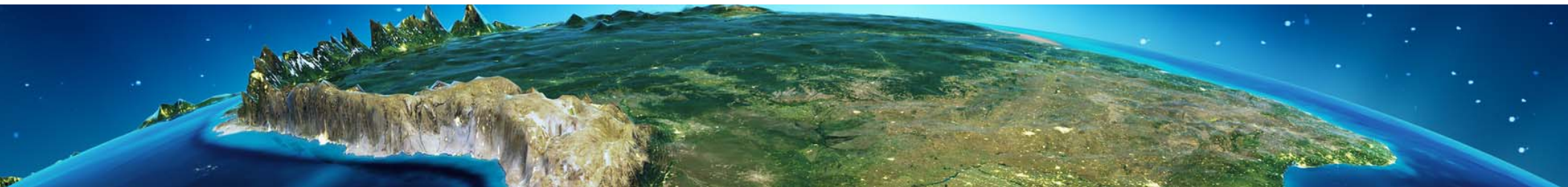
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