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**Legal Restrictions on Security Interests  
Limit Access to Credit in Bolivia**

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## Legal Restrictions on Security Interests Limit Access to Credit in Bolivia

In Bolivia, most lenders require real estate as collateral. This practice makes it very difficult for merchants, mine owners, industrialists, professionals, and farmers to borrow against equipment, inventory, crops, or anything else they might use in the course of their trade or business.

This article asks why such a limited range of property should serve as collateral for loans. It finds the answer in the Bolivian legal, judicial, and regulatory systems: the court system operates very slowly, and the laws make it difficult for parties to make loan contracts that are enforceable without court supervision.

This article is written for both economists and lawyers. The economic problem is relatively simple: collecting any debt in Bolivia is expensive and time consuming. Only the most durable and valuable collateral is useful in such a system; therefore, most loans are ultimately secured by urban real estate, which will last beyond the time expected for a court decision and has enough value to cover at least the minimum cost of collection. The typical piece of industrial or agricultural

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equipment is worth less than the typical real estate holding and, unlike real estate, generally loses value with age. Thus, for lenders facing high fixed legal costs of repossession and sale, equipment is a much less attractive means of collateral than land.

This problem has complex legal and judicial roots. Consequently, this article covers these issues at a level of detail that may seem tedious to some legal readers; this is regrettable but unavoidable. Distinguishing technical legal terms from common usage is important. Consequently, to indicate technical legal terms for the nonlegal reader, italics are used for English legal terms, with Spanish terms in parentheses. This system also identifies legal terms for lawyers trained in only one of the legal systems, civil or common law, relevant to discussions in this article. In most cases, these terms appear in the appended glossary. In some cases, a difference between the civil and common law usage means that no equivalent term exists in the other language. In these cases, the glossary sets out the sense in which the term is used in this article.

Section I discusses how Bolivian laws governing financial instruments affect credit and economic growth. Section II discusses how Bolivian lenders actually secure their loans in the face of the severe problems that restrict the use of collateral. Section III discusses how the legal treatment of collateral affects credit and, in turn, the financing of investment and economic growth. Section IV introduces the legal issues: it defines property, explains how claims are secured by collateral, and discusses how the legal and judiciary system in Bolivia enforces those claims. Section V presents the general issue of the creation and perfection of security interests and how they are handled in Bolivia. Section VI describes how a Bolivian creditor would obtain judgment from the court in the event of a breach of a financial contract; it explains why the process is so lengthy and sets out some options for shortening the process. Section VI discusses how a Bolivian creditor would enforce such a judgment; it also explains why that process is so protracted and discusses options for reform.

## **I. How the Laws Governing Financial Instruments Affect Credit and Economic Growth**

Bolivian law envisions two broad classes of private borrowers: commercial banks and everyone else. As a practical matter, the debt of nonbank private borrowers is backed by real estate; property other than real estate cannot readily serve as collateral. This system limits the volume of credit available for productive transactions by allocating credit away from farmers who rent, from farmers with unclear title to land, and from manufacturers who need large amounts of machinery relative to their real estate holdings. The system allocates credit toward real estate development and keeps credit out of the hands of those without land. This credit system reduces economic growth and directs the benefits of growth away from the poor.

## A. HOW DO BORROWERS BACK THEIR LOANS?

Private lenders care deeply about how their debts will be repaid. Therefore, they care about what backing the borrower offers. Commercial banks borrow by taking deposits, by selling certificates of deposit, or by issuing bonds. They back their debts with their real property, their investment assets, and their expected profits. At one level, these anticipated profits depend on a bank's expected interest costs, interest receipts, and loan performance. At a deeper level, however, the quality of the backing that the bank offers depends indirectly on the quality of claims against the government. First, the Bolivian government's *de facto* and *de jure* policy of insuring depositors effectively provides a state guarantee to some of the debt of commercial banks. The state does not offer comparable guarantees for nonbank private borrowers. Second, how well a commercial bank services its own debt depends on government policies such as how freely the Central Bank rediscounts the private loans presented to it by the commercial banks and how aggressively the bank regulators force banks to recognize losses.

What backs the promises to repay by other borrowers such as consumers, industrialists, merchants, and farmers? For some loans to individuals, collateral is not necessary. To some degree, individuals, like nations, will service debts because the gain from future, larger loans exceeds the burden of servicing past, smaller loans. Accordingly, revolving funds that lend for recurring needs, like seeds for farmers, often show high servicing rates. In other cases, community pressure ensures repayment. Often community or church cooperative lenders show high servicing rates, and, no doubt, some individuals can be counted on to repay loans because they have strong moral views that loans should be repaid. These loans are unsecured but they have good backing.

But, even while some lenders will make unsecured loans, if they have intimate knowledge of the borrower, few lenders will make substantial loans under such conditions. For lenders in most countries, good collateral and good collection make good loans. In most cases in Bolivia, such borrowers secure their promises to pay either by mortgaging real estate to secure their loans<sup>1</sup> or by giving evidence of the ownership of real estate that could be attached to pay loans. Such borrowers give personal guarantees, which involve a generalized pledge of their wealth, or use a *surety* of the wealth of another. Few Bolivian borrowers secure their loans by pledging durable equipment or personal belongings. This situation has roots in problems of Bolivian law and legal procedures.

## B. COLLATERAL PROBLEMS REDUCE INVESTMENT AND GROWTH

How important are these legal obstacles compared to other factors in explaining high interest rates or reduced investment? Do legal problems in creating collateral

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1. For lawyers, real property refers to real estate as distinct from other physical or personal property. For economists, real property connotes both real estate and personal property, as distinct from nominal assets like paper securities.

explain the high interest rates facing borrowers who secure loans with real estate? Most likely, they do. Consider some frequently offered alternative explanations.

### 1. Macroeconomic Instability and High Bank Intermediation Margins

Only a small percentage of the high interest rates facing Bolivian borrowers arise from macroeconomic factors or high bank intermediation spreads. Interest rates to individuals without real estate in Bolivia run between 36 percent and 72 percent per year, versus a range of 9 percent to 14 percent in the United States—a difference of 22–63 percentage points (Table 1). Of that difference, about 8.5 percentage points arise from the risk of macroeconomic instability in Bolivia and another 5.5 percentage points arise from higher bank intermediation spreads. The additional interest rate differential—14 to 50 percentage points—arises from problems with movable property as collateral. Thus, half to three-quarters of the higher interest rates observed in Bolivia arise from the collateral problem.

**Table 1: Explaining High Interest Rates for Loans in Bolivia**

	United States	Bolivia	Difference
1. Greater Macroeconomic Risk in Bolivia: <i>[There is no risk that the U.S. government will be unable to pay its bonds in dollars, because it has the legal monopoly on printing dollars. The government of Bolivia must get its dollars by raising taxes or cutting spending. These are politically difficult actions and lead to perceptions of macroeconomic risk. The difference between the U.S. interest rate on dollar bonds and the Bolivian interest rate on dollar bonds is entirely macroeconomic risk.]</i>			
Government Borrowing Rate in Dollars	3.5%	12.0%	8.5%
2. Higher Commercial Bank Intermediation Spreads in Bolivia: <i>[Commercial banks in Bolivia have less competition than do U.S. banks so they charge more to intermediate funds. Reserve requirements are similar and do not explain differences in intermediation spreads.]</i>			
Prime Business Rate	6.0%	20.0%	
—Spread over Government Borrowing Rate	2.5%	8.0%	5.5%
3. Movable Property is Less Adequate Collateral for Loans in Bolivia: <i>[Differences in macroeconomic risk and intermediation cost apply equally to loans secured by real estate and loans secured by movable property. In the United States, loans secured by movable property have interest rates close to the interest rates on mortgages; in Bolivia, banks do not make loans secured only by movable property and informal lenders charge rates of 36 percent to 72 percent.]</i>			
Mortgage Interest Rate	8.25% (25 years)	18% (5–10 years)	
Equipment/Automobile Loan	9.30% (4 yr)– 12.7% (10 yr)	36%–72%	
Spread	1.05%–4.45%	18.00%–54.00%	13.55%–50.00%

Source: U.S. data taken from *Federal Reserve Bulletin*, July 1993, tables 1.35, 1.53, 1.56; Bolivian data from the *Bulletin of the Central Bank*. Rates for loans secured by movable collateral based on evidence given during interviews.

### 2. High Transactions Costs Relative to Loan Size

One explanation offered for the reluctance to lend for equipment rests on the supposed small size of such loans. This explanation does not hold up well under

examination. In fact, about three-fourths of the loans made by Bolivian commercial banks are for US\$10,000 or less (Table 2). Loans of that size for movable equipment are common in the United States, where the labor costs of loan processing are higher. High transactions costs cannot explain the reluctance of the Bolivian banks to make smaller loans. Rather, their reluctance arises as the bankers themselves repeatedly stress, from their belief that the movable property does not offer much value as guarantees for loans.

**Table 2: Size Distribution of Loans, Deposits, Borrowers, and Lenders**

DEPOSITS	Amount of Deposits			Number of Depositors		
	Million US\$	Percent	Cumulative Percent	Number	Percent	Cumulative Percent
\$200,000+	301.4	25.8	25.8	599	0.2	0.2
\$100,000-\$199,999	131.2	11.2	37.0	947	0.3	0.5
\$50,000-\$99,999	170.5	14.6	51.6	2,439	0.8	1.2
\$40,000-\$49,999	63.9	5.5	57.1	1,463	0.5	1.7
\$30,000-\$39,999	65.4	5.6	62.7	1,933	0.6	2.3
\$20,000-\$29,999	92.0	7.9	70.6	3,855	1.2	3.5
\$10,000-\$19,999	128.1	11.0	81.5	9,220	2.9	6.3
\$5,000-\$9,999	93.6	8.0	89.6	12,899	4.0	10.4
\$1,000-\$4,999	92.7	7.9	97.5	37,930	11.8	22.1
\$500-\$999	12.6	1.1	98.6	17,351	5.4	27.5
< \$499	16.6	1.4	100.0	233,529	72.5	100.0
Total	1,167.8	100.0		322,165	100.0	

DEPOSITS	Amount of Loans <sup>1</sup>			Number of Borrowers		
	Thousand US\$	Percent	Cumulative Percent	Number	Percent	Cumulative Percent
\$1,500,000+	314,366	18.0	18.0	108	0.1	0.1
\$1,000,000-\$1,499,999	84,551	4.8	22.8	78	0.1	0.2
\$750,000-\$999,999	94,519	5.4	28.2	134	0.2	0.4
\$500,000-\$749,999	128,572	7.4	35.6	300	0.4	0.8
\$250,000-\$499,999	229,151	13.1	48.7	752	1.0	1.7
\$100,000-\$249,999	260,431	14.9	63.6	1,708	2.2	3.9
\$75,000-\$99,999	78,548	4.5	68.1	979	1.2	5.1
\$50,000-\$74,999	88,718	5.1	73.2	1,559	2.0	7.1
\$25,000-\$49,999	141,132	8.1	81.3	4,150	5.3	12.4
\$10,000-\$24,999	157,466	9.0	90.3	10,168	12.9	25.2
< \$9,999	169,335	9.7	100.0	59,056	74.8	100.0
Total	1,746,791	100.0		78,992	100.0	

Source: Superintendency of Banks of Bolivia, Monthly Bulletin.

1. Including contingents.

### 3. Structure of Banking

Some explanations of high interest rates rest on allegations of conservative bank lending policies. But banks cannot substantially liberalize their policies

regarding collateral unless the underlying quality of collateral policy is changed. Without reform, loans secured only by movable property do present substantial additional risks. Where high bank intermediation spreads arise from too little competition, the collateral problem limits development of nonbank lenders that could compete with banks and lend for movable equipment.

### C. COLLATERAL PROBLEMS DISTORT CREDIT ALLOCATION

Restrictions on collateral distort Bolivian economic activity. Economic sectors in Bolivia, as elsewhere, differ substantially in their most profitable combinations of real estate, equipment, and human capital. Since real estate security is better in Bolivia, the legal and regulatory environment for lending operates to lower the risk of lending for real estate; this environment permits lower interest rates for such loans and leads the market to allocate more capital toward real estate-intensive operations. Hotels and commercial buildings are relatively easy to finance. By contrast, a factory operating in rented space will find it difficult to finance machinery because it cannot mortgage the real estate. A service company, such as a bus, taxi, or road transport company, that requires large inputs of durable equipment and relatively little real estate will also find financing difficult. A landless farmer, or one whose land is covered by uncertain homestead provisions, will have trouble financing equipment.

How much is it worth to address this problem? In Bolivia, about 10 percent of commercial bank loans are granted using movable equipment as collateral. In the United States, this number is about 40 percent. If remedying the problem of collateral led to a similar expansion in lending and drop in interest rates, total lending for equipment could rise by as much as US\$675 million. Such an increase in equipment use could increase Bolivian GDP by as much as US\$200 million a year, an increase of about 2 percent.<sup>2</sup>

### D. COLLATERAL PROBLEMS NARROW THE DISTRIBUTION OF CREDIT

While both wealth and income are distributed quite unevenly in Bolivia, real estate is distributed even more unequally. Indeed, Bolivia has one of the most concentrated patterns of land ownership in Latin America, with about 5 percent of the people owning about 95 percent of the land (Table 3). Problems with using movable property as collateral, therefore, lead the present system to distribute credit even more narrowly than the distribution of wealth. In countries with different credit-granting systems, an employed person without wealth can borrow using movable property as security. For example, a businessman in rented quarters might borrow to buy equipment or inventory and use these goods as security for the loan, or a farmer on rented or inalienable land might pledge his equipment

2. See Heywood Fleisig et al., *How Legal Restrictions on Collateral Limit Access to Credit in Bolivia* app. I (The World Bank, Report No. 13875-BO, Dec. 1994).

**Table 3: Gini Index Values for Concentration of Land Ownership in 54 Countries<sup>a</sup>**

Number of Countries in Range			
Range of Index Values	Latin American Countries	Other Non-Industrial Countries <sup>b</sup>	Industrial Countries <sup>c</sup>
.80 and over	12	3	3
.70 to .79	5	4	4
.60 to .69	0	7	4
.50 to .59	0	4	3
.40 to .49	0	3	3
Total	17	21	17

Gini Values for Selected Latin American Countries			
Bolivia	.94	Brazil	.84
Venezuela	.89	El Salvador	.83
Peru	.88	Uruguay	.82
Guatemala	.86	Dominican Republic	.79
Ecuador	.86	Honduras	.76
Colombia	.86	Nicaragua	.76
Argentina	.86	Panama	.74
Mexico	.69		

<sup>a</sup>Most available data are from the 1960s. For three countries, index values before and after land reform were available. Pre- and post-reform values are, respectively: Mexico, 0.96-0.69; Egypt, 0.81-0.67; Taiwan, 0.65-0.46.

<sup>b</sup>Countries in Asia, North Africa, Southern Europe, plus Jamaica.

<sup>c</sup>Less than 30 percent of labor force employed in agriculture.

Source: Samuel P. Huntington, *Political Order in Changing Societies* (New Haven, Conn.: Yale University Press, 1968); Table 6.2, p. 382, cited in Malcolm Bale, *LAND TENURE IN VENEZUELA*, IBRD 1992.

or his crop as collateral. Present Bolivian laws and legal procedures make such transactions nearly impossible. Not surprisingly, small farmers, small businessmen, and the poor cannot borrow in the formal banking sector. Nor can they get much credit from merchants or machinery dealers because those businesses, in turn, cannot get credit to finance their movable property: inventories and accounts receivables. Instead, these people must borrow in the informal or illegal sector, where rates are higher than they would be if the legal framework permitted competition and where borrowers are often subject to extralegal collection techniques.

## E. CONCLUSION

These effects of law on the allocation and distribution of credit reflect the rational responses of borrowers and lenders to the present legal structure of the country. These allocative and distributive effects would not, however, follow in

an environment where the legal structure made personal property a better means of collateral, as it does, for example, in Trinidad, Jamaica, the United States, and Germany. A different legal structure would yield lower interest rates without lowering risk to lenders. Such a legal structure would permit more investment in equipment at the same level of profit and, consequently, produce a higher rate of economic growth.

The policy question facing Bolivia revolves around devising an alternative legal structure that could meet these economic needs and yet remain at least as politically acceptable as the current structure. Setting up public institutions that lend for the purchase of movable property despite these legal problems will not solve the problem. Such institutions would simply find themselves with noncollectable loans and would fail for precisely the same reasons that private lenders originally refused to make such loans.

## II. Extralegal Repossession and Sale of Collateral

The use of property other than real estate as collateral would open up a large number of profitable transactions between lenders and borrowers. These transactions would increase Bolivian economic efficiency, production, and incomes. Not surprisingly, Bolivians have devised ways to bolster the value of personal property as collateral, but these solutions are not legal: the postdated check (*cheque postdativo*), theft of collateral, police harassment, misuse of the *bailment* (*depositario*) *agreement*, misuse of sale with an option to repurchase (*venta con pacto de retroventa*), and illegal pawnshops. This section explains how Bolivian laws and legal procedures criminalize these business transactions.

### A. THE POSTDATED CHECK

The borrower writes a check to the lender for the amount of the loan, but does not date the check. If the borrower does not pay the lender, the lender can threaten to deposit the check. If the borrower has insufficient funds, the check bounces; the borrower who wrote the check has committed a criminal offense.<sup>3</sup> The lender can present the returned check to the police station and have the borrower arrested. While using postdated checks to guarantee loans is a criminal offense for both borrower and lender, a survey could find no case of a person jailed for accepting a postdated check.

The postdated check is a major form of guarantee in Bolivian lending. Half the inmates in La Paz jails are imprisoned for nondrug offenses; of these, half are imprisoned for the crime of writing checks without funds. The authors interviewed

3. Código de Comercio [Bolivian Commercial Code] [C. Co.] arts. 602, 640; Código Penal [Bolivian Penal Code] [C.P.] arts. 204-205; see also Decreto Supremo [D.S.] 1943, March 6, 1950, which defines checks drawn without funds as a swindle (*estafa*) punishable under C.P. art. 637.

approximately fifteen of these inmates. In each case the "check without funds" had been written as the guarantee of a business transaction, and in each case the prisoner was a small business operator. Those imprisoned typically lacked the family connections necessary to raise the funds to cover the check. They remain in prison until the check is covered, even if that means staying imprisoned beyond the four-year maximum penalty for crimes related to the use of the check. For imprisoned women this can take on a particularly disturbing dimension, as many children live in jail with their mothers.

#### B. ABUSE OF THE *BAILMENT* (DEPÓSITO)

Under a bailment agreement, a third person is named bailee (depositario). The lender drafts the agreement requiring the borrower to name a close relative as the bailee, such as the wife, mother, or child. The bailee is responsible for turning over the collateral in the event of nonpayment. Failure to turn over the collateral is a criminal offense and the bailee can be jailed.

#### C. MISUSE OF THE *SALE WITH RESERVATION OF TITLE* (VENTA CON RESERVA DE PROPIEDAD)

The lender has the borrower execute a sale document granting the lender ownership until the total purchase price is paid.<sup>4</sup> If the borrower fails to repay, the lender gets a summary judgment and the property is passed to the lender. Sometimes the amount of the loan is a small fraction of the value of the collateral, so the debtor loses far more equity than would be the case with legal foreclosure procedures. The abuse arises from the frequent occurrence of *unconscionable contracts* where the loan is for only a small fraction of the value of the property. Under conventional foreclosure procedures, the borrower receives the difference between the selling price of the collateral and the loan due; in this case, the borrower loses the entire value of the collateral. Such contracts are typically unenforceable because they are *unconscionable*. However, a borrower with insufficient funds to exercise the option to repurchase may also lack the funds for a lawyer to press the case and will lose the property anyway.

#### D. POLICE HARASSMENT

Some lenders avoid judicial proceedings by requesting police investigation of a person whose payments are in arrears. Such investigations can lead to the debtor being jailed for minor infractions, apparently unrelated to the debt. Such harassment continues until the debt is serviced or the collateral returned. Legally,

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4. The sales agreement under reservation of title does not constitute a security interest, but merely an agreement specifying the time at which ownership passes to the buyer. See Alejandro M. Garro, *The Reform and Harmonization of Personal Property Security Law in Latin America*, 59 REVISTA JURÍDICA DE LA U.P.R. 90 (1990).

the police have no such authority; in practice, creditors prepared to pay the police can sometimes obtain their cooperation in such efforts.

#### E. FORCIBLE REPOSSESSION OF COLLATERAL

Some industrial countries permit harmless repossession: a creditor may seize collateral for a loan so long as there is no breach of the peace. A debtor wronged in the process can sue for redress. In Bolivia such peaceful seizure would, strictly speaking, be theft. Nonetheless, creditors on occasion simply seize the collateral. In some cases, repossession is done harmlessly; in other cases, bands of armed men are sent to collect equipment. Thereafter, the debtor must use the painfully slow legal system to recover the property if it was wrongfully seized.

#### F. ILLEGAL PAWNSHOPS

Informal lenders apparently grant loans with personal property as collateral. They charge interest rates above the usury ceiling and privately sell collateral illegally. These practices make it difficult to pass and enforce consumer protection legislation stipulating publicly quoted rates and clear procedures for privately selling collateral. The current practice ensures that the poor pay higher interest rates than they would if legal lenders competed under clear disclosure rules.

Extralegal solutions are socially undesirable. Lenders averse to taking risks will avoid them, making interest rates and transactions costs higher than they would be otherwise. Borrowers averse to taking risks will also avoid extralegal solutions, because sanctions in the extralegal market expose them to far greater risks to person and property than would sanctions in a country whose laws facilitated these transactions. The fundamental issue is that while private parties can contract around many defects in government performance, they will have great difficulty contracting around defects in the government's provision of a legal framework in which to exercise the right to contract.

#### G. ARREST AND IMPRISONMENT OF DEBTORS

A credible criminalized debt collection mechanism must actually imprison debtors who fail to pay. In Bolivia, those who used the foregoing security devices are typically jailed for checks without funds, fraud, or abuse of confidence.

#### H. WHO GETS ARRESTED?

Offenders can be arrested and detained or they can be arrested and subsequently freed. From 1990 through March of 1993, about one-third of those arrested in La Paz were arrested in connection with an offense broadly associated with substituting criminal sanctions for collateral (Table 4). Of those arrested, about 20 percent were detained (Table 4).

**Table 4: Arrests, Annually, With and Without Detention  
Total and Arrests Related to the Use of Checks as Collateral**

	1990:		1991:		1992:		1993 (Jan-Mar):		Total 1990-1993
	Arrested and Detained	Arrested, Not Detained	Arrested and Detained	Arrested, Not Detained	Arrested and Detained	Arrested, Not Detained	Arrested and Detained	Arrested, Not Detained	
Bad Check	75	1,215	98	942	81	1,227	12	495	4,145
Fraud	61	295	43	248	54	170	25	72	968
Abuse of Confidence	11	112	16	85	10	39	8	12	293
Total, Collateral-Related (est)	147	522	157	1,275	145	1,436	45	579	4,306
Total Arrested or Detained for All Crimes	541	2,869	661	2,654	834	2,832	314	971	11,676
Collateral-Related (est) as a Percentage of Total Crimes	27.2%	18.2%	23.8%	48.0%	17.4%	50.7%	14.3%	59.6%	36.9%

Source: Corte Superior del Distrito, Presidencia, La Paz, Bolivia. Statistics supplied to the mission, April 19, 1993.

## I. WHO IS IN JAIL?

Because different groups of offenders get jail sentences of different lengths, the number of people in jail for different crimes may differ from the number of people arrested for different crimes. Counting as collateral-related crimes only check offenses and fraud, typically both used in postdated check guarantees, would place the number of inmates imprisoned for collateral-related crimes at just under 20 percent of the jail population (Table 5). This percentage represents a heavy concentration of women inmates—over 40 percent of the women in jail are there for check and fraud offenses.

**Table 5: Inmates of La Paz Prisons by Gender and by Nature of Crime, 1993**

Crime:	Men		Women		Total	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
Minimum Estimate of Collateral-Related Crimes		14.0%		41.9%		18.3%
—Check offenses	120	8.8%	79	31.2%	199	12.3%
—Fraud	71	5.2%	27	10.7%	98	6.0%
Maximum Estimate of Collateral-Related Crimes		33.6%		60.9%		37.9%
—Economic Crimes	460	33.6%	154	60.9%	614	37.9%
Noneconomic Crimes:						
—Crimes against people	325	23.8%	33	13.4%	358	22.9%
—Crimes against property	214	15.6%	11	4.4%	225	13.9%
—Narcotics trafficking	134	9.8%	62	24.5%	196	12.9%
—Sex crimes	167	12.2%			167	10.3%
—Other	38	2.8%	3	1.2%	41	2.5%
Total:	1,368		253		1,621	

Source: Corte Superior del Distrito, Presidencia, La Paz, Bolivia. Statistics supplied to the mission, April 19, 1993.

A larger category of economic crimes would embrace other collateral-related offenses—for example, misuse of bailee and trustee agreements. About 40 percent of the La Paz jail population is imprisoned for economic crimes—about two-thirds of the women and about one-third of the men.

Economic crimes represent the largest single cause of incarceration in La Paz—more than murder, theft, narcotics, or rape. Indeed, even narrowly defined collateral-related crimes like check and fraud offenses are a more important cause of imprisonment than theft, drugs, or rape and almost as great a reason for imprisonment as murder and assault. Between 40 percent and 60 percent of women inmates are imprisoned for collateral-related crimes.

The authors spent a day at the men's and women's prison in La Paz interviewing inmates charged with economic crimes. In every case, inmates were business-people who used postdated checks or bailees' agreements to secure a business deal—for example, a truck, a liquor shipment, or a television shipment. Prior to 1994, Bolivian courts ruled that those jailed for check-related crimes were not to be freed until they had paid the civil penalty, typically equal to the amount of the check. The authors interviewed inmates who had been in jail for five to seven years and who had no prospect of release.

In August 1994, Bolivia passed the *Ley de Abolición de Prisión y Apremio Corporal por Obligaciones Patrimoniales*. This law abolished the requirement that defendants of collateral-related crimes remain imprisoned beyond the sentencing term when they did not pay the civil damages (usually the debt) arising from the crime. The law does not address the situation of inmates that have already been imprisoned and are awaiting trial and have already served more than the maximum sentence for the crime. It also overrules imprisonment sentences for several economic crimes. Overall, moreover, the imprisonment rate for collateral-related crimes did not decrease in 1994 (Table 6).

**Table 6: Inmates of Three La Paz Prisons by Gender and Nature of Crime (1994)**

Crime:	Men		Women		Total	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
Check	99	5.5	62	22.1	161	7.6
Fraud	56	3.1	16	6.8	72	3.5
Other Economic Crimes	100	5.5	12	6.1	112	5.5
Crimes Against People	397	22.4	40	17	437	21.7
Crimes Against Property	255	14.3	16	5.9	270	20.5
Narcotics Trafficking	490	27.6	79	33.6	569	28.3
Sex Crimes	190	10.7	2	0.8	192	9.5
Other	167	9.4	25	10.6	192	9.5
Total	1,764		241		1,995	

Source: Carcel de San Pedro (men only), Chonchocoro (men with final sentences, drug trafficking charges, or those classified as dangerous), and Centro de Orientación Femenina (women only). Corte Superior del Distrito, Presidencia, La Paz, Bolivia. Statistics supplied to the mission, April 19, 1995.

In addition to sentences, collateral-related crimes in 1994 also showed a striking increase in the number of arrests that did not result in the further detention of the defendant (Table 7). They represent 64 percent of such arrests. This indicates that these penal laws continue to be used as a means of coercing debtors even when there are no grounds for detention.

In considering changes in the law that speed up repossession and sale of property used as collateral, it is important to consider not just the abstract concepts of the

**Table 7: Sample of Cases of Police Arrests of Collateral-Related Crimes**

	Check	Fraud	Abuse of Confidence	Other Collateral-Related Crimes	Total Collateral-Related Crimes	Collateral-Related as a Percentage of All Crimes	Total of Cases
Arrested and Detained		47		87	134	18.5	724
Arrested Not Detained	1,370	385	83	359	2,170	64	3,352

Source: Public Ministry, "Report on Police Arrests," first quarter (April 1994).

rights of the debtor and creditor. The reality that confronts the actual borrowers in the system is also important.

### **III. Financial Instruments and Collateral: Overview of Legal Issues**

Assets may have great economic value but be useless in credit transactions if the law does not permit transfer of property rights in those assets. For example, mining machinery could represent excellent collateral for a loan in a legal system that permits the pledge of mining equipment, but not in a legal system that forbids it. Agricultural land may produce a good yield but be useless as collateral if the terms of occupancy forbid transfer of land rights or the seizure of the crop. For assets technically acceptable as collateral, such as a car or a lettuce crop, collection procedures may be so slow that the collateral loses its economic value during the collection process.

Such restrictive legal institutions can have major effects on credit markets. Reforms that make land inalienable ensure that farmers are better off because they will always own land, yet worse off because they are prevented from borrowing against the land. Under such a land policy, other compensating measures are necessary to make it possible to seize collateral like cash crops or farm equipment if the farmer is to receive secured credit at all. Similarly, when more extensive legal procedures are introduced to protect the rights of debtors, compensatory policies to maintain the speed of these legal processes are necessary if those protected are to have access to credit.

These legal issues raise several general questions: What does the law view as property? How can individuals establish claims to property when they secure a transaction with an interest in that property? If the borrower does not perform under the contract, how does the creditor obtain compensation? If compensation is necessary, how does the creditor arrange for it, including seizure and sale of the collateral? When a court judgment is required for compensation, how does the creditor execute that judgment?

## A. DEFINITION OF PROPERTY

The law defines property. This article follows the following definitions, typical in common and civil law:

- *Real Property*—real estate.
- *Fixtures*—property physically attached to but not incorporated into real estate, like carpets or most production machinery in a factory.
- *Tangible Personal Property*—inventory, equipment, farm products, or consumer goods.
- *Intangible Personal Property*—assignments of rights for payment of money, such as the accounts receivable, promissory notes, or documents of title (a warehouse receipt or a bill of lading); intangible assets of a business may include its value as an ongoing concern, good will, or the right to use a trademark, copyright, or patent.<sup>5</sup>

## B. STRUCTURING CLAIMS AGAINST PROPERTY

Claimants against property fall into two classes:

- General creditors having a general claim against a debtor's property.
- *Secured creditors* having a *security interest* in a specifically designated property of the debtor.

A *security interest* is "a right of satisfaction" from the property—the *collateral*—to which the security interest is attached. When the collateral is sold or exchanged, the claim of the *secured creditor* will be paid or satisfied in the order of its priority among all claims against the collateral. A *secured creditor* has a security interest in the designated property of the debtor. This secured claim must be satisfied before any claim of the general creditor.<sup>6</sup> The general creditor has a general claim against all past, present, or future properties of the debtor, but has no security interest in any specific property of the debtor.<sup>7</sup> A security interest in a designated property has priority over the general claim of a general creditor.<sup>8</sup> Using *security interests*, firms can borrow from suppliers, merchants, or banks and can offer their inventory as security; they can borrow to buy equipment and secure their promises to pay with that equipment; and they can borrow with loans secured by warrants that are issued by warehouses and represent claims on merchandise in the warehouse.

5. This paper uses the term *movable property* to include tangible, intangible, and fixtures property.

6. For example, a mortgagee or pledgee is a secured creditor. Código Civil [Bolivian Civil Code] [C.C.] arts. 1360, 1397, 1398, 1405, 1406, 1427, 1428.

7. C.C. art. 1335.

8. Some important public policy exceptions exist to this general rule: government liens for unpaid taxes, property that is exempt from seizure for debts, and workers' claims for severance pay and back wages are the most important. In the event that the secured creditor's claim is not satisfied by sale of the collateral, the secured creditor has a general claim against the debtor's other property for any deficiency balance.

Security interests need not be created only against tangible personal property. They may be created against intangible property, such as commercial contracts that economic agents use to assign different property rights to the goods and services in which they deal. In most civil and common law countries, many types of commercial contracts exist: sales contracts to move goods from producer to consumer; leases of goods that permit their use without ownership; consignments of goods that permit their sale without use; contracts with carriers for the shipment of goods conveying no right to use or sell; contracts with warehouses for the storage of goods; assignments of accounts receivable; promissory notes issued as evidence of debt; documents of title; and rights to payment under letters of credit that ensure that shipped goods are paid for before delivery.<sup>9</sup> Security interests may also be created using a *security* (título-valor) as collateral: a lender could have a security interest in a stock, bond, or certificate of deposit.<sup>10</sup>

Each contract assigns property rights in a manner that solves some economic problem; each contract makes some improvement in economic efficiency. A commercially useful mechanism for secured loans must minimally accomplish the following five basic tests:

- (1) It must cost little to create an enforceable security interest.
- (2) It must cost little to enforce the security interest.
- (3) The collateral must produce real commercial value for the lender when enforced.
- (4) The lender must be able to determine before the loan is made, with certainty and at little cost, whether any other lender has better claims to the collateral.
- (5) The lender must be protected from claims of third parties, including secured and unsecured creditors, the trustee in bankruptcy, and some purchasers of the collateral.<sup>11</sup>

Bolivian law permits many contracts with which creditors can secure a debt with movable property. Nothing in the Bolivian system is inconsistent with a commercially useful law system, but the Bolivian secured transactions system does not meet the five tests outlined above. Moreover, Bolivian law unnecessarily restricts the types of collateral that may be covered by security interests, especially the security interests in fixtures and personal property on which this article focuses.<sup>12</sup>

9. RICHARD E. SPEIDEL, *SALES AND SALES FINANCING* 28-29 (1984).

10. Usually this arrangement is referred to as a security agreement used as collateral (chattel paper). A lender may take as collateral all of another lender's security interests in equipment from the second lender's secured loans to its borrowers. Legal constraints in Bolivia give limited, almost nonexistent use to chattel paper.

11. JOHN A. SPANOGLE, *PROPOSED POLISH CHARGES ACT* (1992).

12. Under Bolivian law, parties cannot fully contract security interests on any collateral they choose. The asset must be specifically mentioned in the law. Moreover, the law must also define the type of contract to be used. See C.C. arts. 1417, 1418; C. Co. arts. 878, 886.

#### IV. Creation and Perfection of Security Interests

The law determines what property can serve as collateral—the object of a security interest. The law also determines the circumstances under which that property can serve as the object of a security interest. Broadly speaking, these two features of the law set out how a security interest may be created. The law also establishes the procedure for determining the position, ranking, or seniority of different security interests in the same property. This determination takes place through *perfection*—the legal process that warns all other potential creditors that a prior claim exists on the asset. This section briefly overviews Bolivian practices and then discusses the processes of creation and perfection in more detail.

Lenders may create security interests in goods that remain in the hands of the borrowers with three instruments: the *civil pledge* (*prenda civil*), the *commercial pledge* (*prenda comercial*), and the *chattel mortgage* (*hipoteca mueble*). The law states that the *civil pledge* may be used for goods used by hotels, industries, agriculture, and ranching. The *commercial pledge* must be used for other goods in commercial use that do not involve those sectors. The *chattel mortgage* regulates licensed personal property. Table 8 spells out the relationships among these instruments and types of contracts.

Table 8 contains many gaps—many economic agents, types of property, and types of contracts that are economically useful but not envisioned under the law. Any lender who nonetheless writes a loan contract will run a heightened risk of not collecting the loan.

A lender may have a security interest in a property, but what prevents another lender from taking another, more senior, security interest in the same property? *Perfection* is the legal process that warns all other potential creditors that a prior claim exists on the assets and ranks the claims of lenders. In Bolivia creditors may *perfect* the order of priority of their interests, either with or without physical possession. When an interest is perfected with physical possession, the secured party physically holds the collateral, as does a pawnshop or bonded warehouse. This physical possession warns all other potential creditors that a prior claim exists on the asset. When an interest is perfected without physical possession, however, the creditor usually must file a notice of the security interest in a public registry maintained for that purpose.

For both economic and legal reasons, the publicity is crucial for perfection. When lenders can readily determine who else has a claim against the personal property or fixture, they can also know with confidence that they can defend their claims against other potential claimants. Lenders know the law will reject the claims of those who have failed to post their claims to the collateral publicly. The general rule that all claims must be publicly registered permits a workable ranking system in which lenders can have confidence and permits an economically superior outcome. By contrast, a system that permitted secret claims would raise

the risk to all lenders, reduce lending, and produce an economically inferior outcome.

#### A. CREATION AND PERFECTION WITH PHYSICAL POSSESSION

##### 1. *Creation*

A variety of broad problems arise in Bolivia with the creation of security interests in collateral held by the lender. These problems are broadly outlined in Table 8. The most serious arises from the definition of the "floating pledge" that would be written over a homogeneous commodity like wheat in a grain elevator, cattle, or generalized inventory—where the definition is very restrictive

**Table 8: Personal Property and Fixtures that Can Serve as Collateral and the Loan Contract that Can Secure Loans Against Them**

Type of Collateral	Pledge with Transfer		Pledge Without Transfer		Chattel Mortgage
Type of Contract	Pawnshop receipt	Warehouse receipt	Civil pledge	Commercial pledge	
Any Physical Merchandise	Yes, if acceptable by pawnshop proprietor	Yes, if acceptable by warehouse proprietor	No	No	No
Licensed Property (car, boat, plane)	Yes, if acceptable	Yes, if acceptable	No	Yes, if acceptable	Yes
Licensed Property Used in Hotel, Industry, Ranching, or Agriculture	Yes, if acceptable	Yes, if acceptable	Yes	No	Yes, if acceptable
Licensed Property Used in Other Commerce	Yes, if acceptable	Yes, if acceptable	No	Yes	Yes
Unlicensed Property Used in Hotel, Industry, Ranching, or Agriculture	Yes, if acceptable	Yes, if acceptable	Yes	No	No
Documents of Sale	No	No	Not readily	Not readily	No
Revolving Inventory; Transformable Inventory; Professional Office Equipment	No	No	No	No	No
Unlicensed Property Used in Commerce Other than Hotel, Industry, Ranching, or Agriculture	Yes, if acceptable	Yes, if acceptable	No	Yes	No
Accounts Receivable, Chattel Paper	No	No	No	No	No

and raises the risk that the lender will lose the security interest in the commodity when the physical composition of that commodity changes in the normal course of business. For example, when the borrower sells some grain from inventory and replaces it with other grain, the security of the lender's claim may be undermined even when the total value of the grain in storage remains the same.

A lender can perfect a security interest by taking physical possession of the collateral. That is, the physical possession alone serves to notify all other potential lenders that the possessor has a security interest in the property.<sup>13</sup> For example, a pawnbroker retains the item pawned; a *field warehouse* places the inventory under the custody of the lender or the lender's agent; collateral placed in the custody of a *bailee* remains in the physical possession of the lender so long as the lender controls the document of title. In such cases, the law regards the lender as having a perfected security interest. By mere possession, the lender maintains this interest.<sup>14</sup> In some countries, but not in Bolivia, the creditor may sell the collateral with no further court action. Several important examples of perfection with physical possession exist in Bolivia. Pawnshops and warehouses are examples of the use of pledge agreements where the collateral remains in the hands or the control of the lender, the "prenda con desplazamiento."

## 2. Pawnshops

Decree Law No. 07438 (December 14, 1965) established the Caja de Ahorro y Crédito Popular (CACP), a combined public savings bank and pawnshop that would extend credit secured by personal property. Formally, CACP negotiated pledge agreements. Under DL 07438, however, in the event of a loan default when it had possession of the collateral, CACP could privately sell the collateral—that is, sell without a court-administered auction.<sup>15</sup> DL 07438 overruled the pledge provisions of the Civil and Commercial Codes, which forbid such private sales.<sup>16</sup> This law provided that CACP must maintain custody and auction the movable property given as collateral. Nonetheless, legal pawnshops no longer exist in Bolivia because the combination of usury ceilings<sup>17</sup> and interest rates that soared with inflation made private pawnshops unprofitable; nor could private pawnshops use the private sale provisions accorded to CACP. The CACP closed when the losses from its subsidized operation became unmanageable.<sup>18</sup>

13. C.C. art. 1403; C. Co. art. 882.

14. C. Co. arts. 882–885; C.C. arts. 1403–1412.

15. D.L. 07438, arts. 20–28.

16. C.C. arts. 1340, 1409; C. Co. art. 880.

17. Usury laws prevent Bolivian consumers from legally contracting to pay more than 3% in monthly interest.

18. The law for the restructure of the Agrarian Bank contains similar provisions for private sale, and it includes provisions for harmless repossession (D.S. 16699, July 5, 1979, arts. 57, 58). See also D.S. 11658, art. 64.

### 3. *Bonded Warehouses*

Bolivian law authorizes general deposit warehouses (*almacenes generales*) for the storage of goods; warehouses have the power to issue *warehouse receipts* (*certificados de depósito*) that banks may accept as collateral.<sup>19</sup> A warehouse receipt demonstrates ownership of the goods deposited in the warehouse. Endorsing the warehouse receipt can transfer ownership of the goods. Attached to the warehouse receipt is a *collateral receipt* (*bono de prenda*). Endorsing the collateral receipt can transfer the security interest in the goods.<sup>20</sup>

If the debtor does not pay the pledge credit when due, the holder of the collateral receipt for the goods held as collateral can request that the warehouse manager sell them at a private auction.<sup>21</sup> This auction may not be suspended except by order of a competent judge or by payment of the amount due plus interest and costs. The creditor will be paid from the proceeds of the auction. The secured creditor has priority over any other creditor; no legal action is required to document this priority, as the law deems the fact of the goods being in the warehouse as constituting such notice.<sup>22</sup> Warehouse receipts are readily accepted as collateral by Bolivian banks. They represent good collateral because, in the event of default on a loan, the collateral may be quickly sold.<sup>23</sup>

This framework provides evidence against the charge that Bolivian banks are excessively conservative and unreasonably unwilling to lend on collateral other than mortgages and personal guarantees. Their acceptance of warehouse receipts as collateral supports the view that lending would broaden if procedures to repossess and sell collateral were improved for other classes of property.

### 4. *Other Types of Possession*

Aside from pawnshops and warehouses, Bolivian law broadly permits businesses to make loans secured by personal property and fixtures in the lender's physical possession under the Commercial Code; nonbusiness individuals can make similar loans under the Civil Code. In these cases, however, the provisions of the Commercial and Civil Codes prohibiting private sale apply. If the borrower defaults, the creditor must go through the full court procedure for *obtaining* and *executing* judgment. These court processes are expensive and lengthy, reducing the usefulness of movable property as collateral from the lender's perspective.

19. C. Co. arts. 689-711; D.L. of Jan. 15, 1931.

20. C. Co. arts. 692(7), 694(1), 698. Art. 699 also requires giving notice, which is the responsibility of the endorser, that the security interest has been transferred to the endorsee. However, it seems that failure to give this notice would not affect the effectiveness of the endorsement.

21. C. Co. art. 706.

22. C. Co. arts. 706-711. More importantly, the fact that the warehouse receipt, which represents the stored goods, indicates that the collateral receipt has been negotiated also constitutes notice. C. Co. arts. 692(7), 694(1), 698.

23. See also Banking law (1928) art. 147; D.S. 06456, 07507, 7878, 8351, 8768, 9229, 9733, 10326, 11536, 11658 (art. 64), 13100, 16699 (arts. 57, 58), 19534, 20252; D.L. 07070 (Feb. 3, 1965).

The parties to the loan contract could privately agree to private sale and shorter procedures, but such a private agreement would be contrary to the Civil and Commercial Codes and, therefore, void.<sup>24</sup> The lender would be unable to enforce this right in court if the debtor objected. As the objection of the debtor is not improbable, the lender would not view this extra-legal agreement as substantially reducing the risk. The collateral, therefore, would not make the loan substantially less risky than an unsecured loan to the same borrower.

### 5. *Economic Problems*

Loans that rely on perfection with physical possession can severely restrict the economic usefulness of collateral to the debtor, especially where the debtor needs to use the collateral (such as retail inventory, a farm tractor, a truck, or woodworking machinery). Nor would physical possession reduce the lender's risk where the collateral was intangible; for example, physically possessing the accounts receivable of a company would yield little advantage to the debtor.

### 6. *Summary*

Perfection with physical possession plays an important role where the borrower does not need to retain physical possession of the collateral. Physical possession works well in Bolivia, in warehouses and formerly in pawnshops, even though gaps in the law could be closed and permit its expansion. This type of lending underscores the substantial role that movable collateral could play in Bolivia if the problems surrounding obtaining and executing judgment could be solved or circumvented.

## B. CREATION AND PERFECTION WITHOUT PHYSICAL POSSESSION AND WITH WRITTEN REGISTRATION

In Bolivia, when the collateral stays in the possession of the debtor, the only legal way to create a security interest is by using one of the formal agreements specified in the law. The Civil and Commercial Codes regulate two such agreements: the pledge without transfer of possession and the chattel mortgage. The chattel mortgage requires a more specific identification of the property than does the pledge and is typically used for licensed movable property. The pledge can be used for some movable property.

To be perfected, these contracts must be recorded in the appropriate registry designated by the government.<sup>25</sup> Filing such claims with the state establishes priority of claims, because potential lenders know where to look to discover whether other lenders have prior, conflicting claims to the same collateral. In the simplest example, perfection would give notice to other creditors that a senior security inter-

24. C.C. arts. 1340, 1409 and C. Co. art. 880 void any contract stipulation for private sale.

25. C.C. art. 1424; C. Co. art. 887.

est exists in the same collateral. The borrower could grant another security interest, but only one with less seniority than the first perfected security interest.

1. *The Registries*<sup>26</sup>

Bolivian law directs that different claims be registered in different registries (see Table 9). Most claims in Bolivia will be registered in one of three registries: the Real Estate Registry,<sup>27</sup> the Motor Vehicles Registry,<sup>28</sup> or the Commercial Registry.<sup>29</sup> Other registries exist, however, for licensed personal property. For example, title and security interests in an aircraft are registered in a separate registry for aircraft, and title to some copyrights and trademarks are registered in the Registro de Patentes y Marcas.

**Table 9: Place of Registration of the Loan Contract**

	Licensing Registry (motor vehicle, boat, airplane)	Real Estate Registry	Commercial Registry
Prenda Civil	Yes, if property has license number, and used in hotel, industry, agriculture, or ranching	Yes, if nonlicensed property is used in hotel, industry, agriculture or ranching	
Prenda Comercial	Yes, if property is licensed and not used in hotel, industry, agriculture, or ranching.		Yes, if property is unlicensed and not used in hotel, industry, agriculture, or ranching
Hipoteca Mueble	File against any good receiving a license number		

Registering a claim in the wrong registry typically represents a fatal defect in perfection, because a convincing case can be made that public notice is incomplete if notice is filed in a registry in which interested parties would not normally look. A creditor who misfiled a claim could, therefore, lose priority on the collateral.

All registries in Bolivia present major obstacles to the filing of claims against personal property and fixtures. The most important arises from the general barrier to public access, the key in establishing the general credibility of claims against personal property and fixtures. In addition, registries typically lack adequate computerized indexes or document retrieval systems. Consequently, retrieving

26. Bolivia's legal registries are examined at greater length in NURIA DE LA PEÑA, HEYWOOD FLEISIG & FREDERICK MILLER, *IMPROVING LEGAL REGISTRIES IN BOLIVIA TO FACILITATE LENDING* (Government of Bolivia, 1992).

27. Registro de los Derechos Reales, C.C. arts. 1538, 1566.

28. D.S. 15191, Dec. 15, 1977.

29. C. Co. art. 26.

documents is time-consuming, expensive, and subject to great uncertainty concerning priority and authenticity. Security interests against movable agricultural property, such as tractors or grain driers, as well as security interests against crops or *fixtures*—equipment attached to the land—are filed in the real estate registry office having jurisdiction over the place in which the collateral is located.<sup>30</sup> When filed, the interest makes explicit that it refers to tangible personal property or fixtures, not to the land. Under the law, the security interest is filed in this registry even if the farmer does not own the land. In practice, registry officials will not file security interests unless the borrower owns land recorded in the registry. In La Paz and Santa Cruz, at least, farmers who lack clear title to the land or who do not own land have no place where a potential creditor could file a claim or security interest.<sup>31</sup>

### C. PROBLEMS AND OPTIONS FOR SOLUTIONS

Clear rights to collateral and unambiguous rules about what happens to collateral when borrowers default would make lenders more willing to lend against that collateral. So long as borrowers understand these rules clearly and lenders fully disclose their terms, borrowers can only gain through public policies that expand their borrowing options. Since they can always refuse to borrow under these new arrangements, new options cannot hurt borrowers and can increase willingness to lend and expand access to credit.

Successful policies could expand loans secured by property that remains in the physical possession of the debtor; give clearer priority to the claim of the wholesale seller of goods so that retailers who do not own real estate could get credit against those goods; and improve the registries so that potential lenders can more easily trace claims against collateral.

### D. PASS A COMPREHENSIVE LAW OF SECURED TRANSACTIONS<sup>32</sup>

Many potentially economically important loan contracts cannot be written in Bolivia, either because gaps in the law that govern creation of security interests

30. Security interests against a crop are filed in the real estate office for the region in which the crop is grown. D.S. 16699, art. 50, July 5, 1979.

31. The registry office has no legal justification to refuse recordation. In principal, crops and equipment attached to land are deemed to be immovable property (*inmuebles por su destino*); C.C. art. 75(I). However, C.C. art. 82 identifies certain kinds of property as fixtures called *apartenencias* (*pertenencias*). Paragraph III of that article 82 expressly provides that fixtures may be subject to legal transactions independent of the immovable fixture to which they are attached.

32. For a proposal to adopt UCC article 9 to Civil Code systems, see Alejandro M. Garro, *Security Interests in Personal Property in Latin America: A Comparison with Article 9 and a Model for Reform*, 9 Hous. J. of INT'L LAW 157 (1987). Garro, *supra* note 4, at 155; R.C.C. Cumming, Q.C., *Public Registration of Security Interests in Personal Property: Some Recent Canadian Developments*, International Academy of Commercial and Consumer Law Conference, National Autonomous University School of Law, Mexico City, June 15, 16, 17, 1983, *reprinted in* REVISTA DE LA FACULTAD DE DERECHO DE MÉXICO, Tomo XXXV, Enero-Junio de 1985, Núms. 139-140-141.

do not contemplate such transactions or because it is too difficult and risky to use existing law to write such contracts. A new secured transactions law is needed to address these problems.<sup>33</sup> The revised law must specifically:<sup>34</sup>

**Give a clear and perfected security interest in the goods sold on credit, instead of the present weaker *privilegio* (privilegio).** In Bolivia, a wholesaler who advances inventory to a retailer, such as a peddler, gets a *privilegio* in the goods sold to the retailer on credit, without negotiating another agreement, such as a pledge. Such a wholesaler has a weak priority in claims over these goods in the event of bankruptcy. The wholesaler will also lose its vendor's lien (*privilegio*) upon sale of the merchandise by the retailer. The existing Bolivian vendor's lien system lacks key features that the secured transactions law needs to provide to encourage lending. Moreover, wholesalers and dealers cannot represent to their banks that such extensions of credit are sound. Consequently, commercial banks will not refinance such extensions of credit by merchants and dealers. If they did, the superintendent of banks would be acting appropriately in objecting.

**Permit security interests to continue in the proceeds of the collateral.** Under Bolivian law the creditor loses the security interest in the collateral when the collateral is sold or transformed.<sup>35</sup> The risk to the lender is increased, because the security interest does not continue in the proceeds of the collateral. For example, a creditor with a security interest in collateral would no longer have a security interest in the cash realized from the sale of the collateral. The law increases the transaction costs of financing by requiring repeated redrafting of security agreements. For example, a supplier selling wool on credit to a maker of blankets would require a new security for each transformation of the wool—from wool to yarn to woven fabric to trimmed product. Instead, the law could specify that the security interest continues with the good no matter how it is transformed.

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33. The United States Commission on International Trade Law authorized the Secretary General to undertake a study for a law on security interests in 1968 *Official Records of the General Assembly General Observations*, [1970] 1 UNCITRAL Y.B. 74 U.N. Doc. A/CN.9/6396. Professor Ulrich Drobnig of the Max Planck Institute for Foreign and Private International Law completed this study in 1977. *Report of the Secretary-General: Study on Security Interests*, [1977] 8 UNCITRAL Y.B. 171, U.N. Doc. A/CN.9/131. The study assessed the feasibility of a uniform law on security interests to assist international sales. The Drobnig study, going one step further, recommends a unified law on security interests. The Drobnig Study also points out the importance and magnitude of the restrictions on collateral in various civil law countries. The UNCITRAL study, however, did not specifically link the restrictions on collateral with economics (issues such as access to credit were not considered). In 1979, the Secretary General submitted to the Commission a report on the feasibility of uniform rules on security interests and their possible content. *Report of the Secretary-General: Security Interests; Feasibility of Uniform Rules to Be Used in the Financing of Trade*, [1979] 10 UNCITRAL Y.B., 86 U.N. Doc. At this time, the Commission concluded that

the subject matter of security interests is of sufficient importance for it to continue work in respect of it. The importance derives from the fact that, while the use of security interests is an important means of financing commercial transactions, the law in most States is rudimentary and as such is not appropriate to respond to the needs of modern commerce.

However, UNCITRAL did not continue this work, following suggestion that the commission await the conclusion of other studies before undertaking further work on its own.

34. See Fleisig, *supra* note 2, app. III.

35. See C.C. art. 1421(4). A creditor could rely on the civil law doctrine of real subrogation. However, since article 1421(4) does not address this problem squarely, the uncertainty is too great for a lender to rely on any doctrinal theory for recovery.

**Permit floating security interests.** Bolivian law does not expressly allow security interests in a group of goods. This limitation makes financing inventory very difficult. If a manufacturer borrows and wants to offer its inventory as collateral, the manufacturer must identify every inventory item; new items entering inventory are not part of the collateral offered. A farmer could pledge \$100,000 worth of cattle, rather than enumerate each member of the herd of cattle. A floating security interest would make it possible to secure a loan with whatever assets happen to be part of the inventory.

**Increase the use of accounts receivable as collateral by avoiding the notice-and-notarization requirement.** When a merchant has made many sales on credit, these accounts receivable can serve as collateral for another loan. For example, the merchant could take the accounts receivable to a bank to secure financing to continue the merchant's own sales on credit. Bolivian law imposes burdensome requirements on using accounts receivable as collateral. The merchant wishing to use accounts receivable as collateral must transfer the accounts to the lender by notifying his customers of the assignment or by acknowledging the assignment in writing before a judge or a notary public.<sup>36</sup> This requirement can be very costly to a merchant. In some cases, merchants will want to continue collecting from their customers without the customer knowing of the sale. In other cases, merchants make many small credit transactions each day and the transaction costs are prohibitive. Registration of security interests in accounts receivable can be used to rank claims and security interests in the accounts at the same time that it can completely avoid the need to give priority by transferring the accounts.

## E. IMPROVE THE OPERATION OF LEGAL REGISTRIES

### 1. *Enforce the Laws That Permit Public Access to the Registries*

Without direct public access, lenders cannot determine their priority in actual or contemplated secured transactions.<sup>37</sup>

### 2. *Improve Technical Functioning*

Records must be stored in ways such that information can be retrieved by all concerned parties in a timely manner. Index systems should, for all registries, identify secured interests by the name of the borrower, the serial number of the collateral (if requested), and should be computerized, with full public access.<sup>38</sup> This system would improve the attractiveness of non-real estate collateral and would speed up court debt-collection processes that depend on requesting informa-

36. See C.C. arts. 389, 390, 391. Notice should be required for the protection of the customer, so that the customer does not pay the wrong person. But notice should not be required for other creditors.

37. See Fleisig, *supra* note 2, app. II.

38. See Alejandro M. Garro, *Recordation in Argentine Law*, 15 *Revista Jurídica de la Universidad Interamericana de Puerto Rico* 175-220 (Jan.-Apr. 1981); Douglas Whalan, *Immediate Success of Registration of Title to Land in Australia and Early Failures in England*, 2 *N.Z.U.L. REV.* 416 (1985); Paul R. Welshons, *The Mini-Computerization of an Abstract Office*, *TITLE NEWS*, Feb. 1984, at 8; M. Scott Stovall, *Efficiency "From the Ground up,"* *TITLE NEWS*, June-July 1984, at 15; *Beginning an Automated Title Operation*, *TITLE NEWS*, Sept.-Oct. 1985, at 11; Herbert N. Morgan, *Workshop: Automation in the Local Title Office*, *TITLE NEWS*, Jan. 1984; Richard J. Oliver, *Automation: What Agents and Underwriters Should Expect*, *TITLE NEWS*, Jan.-Feb. 1985, at 30; David L. Druy, *Computerization Increases Productivity*, *TITLE NEWS*, Sept.-Oct. 1986, at 13.

tion from these registries. In particular, the Commercial Registry must be computerized and indexed if nonlicensed machinery is to serve as collateral. Registry reform should distinguish between creating an index, which is essential; computerizing the index, which is desirable but not as urgent; and computerizing record retrieval, which is typically still less urgent.

### *3. Clarify the Identification of the Registry to Be Used for Different Types of Collateral*

Under the Civil Code, secured interests against nonlicensed goods for hotels, farmers, and small industries are filed with the real estate registry office. Under the Commercial Code, secured interests against nonlicensed goods for large industries and merchants are filed in the commercial registry.<sup>39</sup> This division invites confusion between small and large industry and between multiproduct enterprises. Options for improvement include producing a unified system of regulations that allocates chores to registries with less ambiguity and computerizing cross-references among directories.

### *4. Enforce the Law That Permits Filing Security Interests in the Real Estate Registry Even When the Borrower Owns No Real Estate*

Bolivian law states that secured interests against agricultural crops and agricultural equipment are to be filed in the real estate registry of the district in which the crops or agricultural equipment are located.<sup>40</sup> Under the law, the farmer need not own land; nor does the security interest in the crops or equipment need to be filed along with the land. Contrary to the law, however, Bolivian registries have sometimes refused to file security interests against borrowers that do not own land. It is essential that registries permit such filings.

### *5. Centralize the Filing of Security Interests in Goods*

A central registry for security interests in goods could give creditors important advantages and expand lending. Creditors could avoid confusion about where to file their security interests. The place of filing now depends either on the domicile of the debtor or on the location of the goods. Creditors can lose their priority on the collateral if, not knowing where the debtor resides or the location of the goods, they file their interest in the wrong place. Central registration would allow creditors to file a security interest valid for the entire country.

### *6. Limit Procedures Prior to Registration*

Bolivian law often requires individuals to comply with notarizations, certificates, certificates of mapping, certificates of residency, or acknowledgments of

39. C.C. art. 1424; C. Co. art. 887.

40. D.S. 16699, art. 56; C.C. art. 1424.

payments of duties or fees before filing in the registry. These steps need to be evaluated for their economic feasibility because by raising transaction costs they discourage parties from complying.

#### 7. *Use Standard Forms and Model Contracts for Commonly Registered Documents*

A great deal of time is spent reading and transcribing the content of deeds in registries. Standard forms certified by the law as acceptable could speed processing and lower the cost of registry processing and the private cost of preparation.

### V. Obtaining Judgments in Bolivia

When the parties to a contract dispute the facts of its performance, they will *obtain judgment*; they will follow some procedure, binding on both creditor and debtor, and settle the dispute. A creditor with a security interest, for example, may conclude that the debtor has not honored the terms of the agreement by not making payments on the loan. Sometimes the parties do not dispute the facts of the case; the debtor may concede that payment is impossible and freely give up the collateral to satisfy the debt. Or the debtor may dispute the facts and block repossession of the collateral. The debtor may present *defenses* to justify nonpayment. For example, the debtor may claim that the signature on the note is someone else's and that the debt is owed by another, or that payment has already been made.

The rules of civil procedure in Bolivia are such that obtaining judgment takes a long time. The law also limits the ability of private parties to make contracts that attempt to bypass this lengthy judgment process.

To determine the typical experience faced by creditors in court-administered collections, we examined more than 500 court-processed debt collection cases. Fewer than half these cases brought to court were collected under court supervision. The court operates under rules of civil procedure that call for a judge to reach a judgment in eight days and, if there is no appeal, to execute the judgment in another three days. The practice is quite different; on average, cases required 670 days to be carried to the point of collection.

This process is simply too lengthy to make most movable property usable as collateral because livestock die, equipment depreciates, inventory becomes shopworn, accounts receivable are paid to the wrong person. Only real estate will preserve its value over a collection period this long. Businesses, banks, and the superintendent of banks understand this situation and react accordingly. Consequently, movable property is not acceptable as collateral from borrowers who have no real estate to back up their loans, and the credit structure remains tied to real estate.

## A. PROBLEMS AND OPTIONS FOR SOLUTION

Obtaining judgment takes a long time in Bolivia and is expensive. Thus, lenders are reluctant to accept consumer durables and inventory as collateral because their value will usually be negligible by the time judgment is obtained. Lenders are equally reluctant to make loans too small to cover the sizeable costs of collection. Therefore, lenders demand collateral that will last as long as it takes to secure judgment and is of sufficient value to cover the high costs of litigation. Improving registries or the definition of security interest cannot, by itself, solve this problem.

Two broad strategies exist for attacking this problem. One relies on changing the legal procedures for obtaining judgment to permit consenting private parties to move outside the judiciary system for routine debt cases; the second centers on legal and judicial reform.

## B. PERMITTING PRIVATE NONJUDICIAL ENFORCEMENT OF LOAN CONTRACTS

### 1. *Bypass the Execution Procedure by Permitting Nonjudicial Repossession of Collateral*<sup>41</sup>

To expand access to credit, the law must give creditors an expeditious way to enforce collection.<sup>42</sup> If creditors are permitted to seize the collateral from debtors without *disturbing the peace*, they can bypass slow procedures for obtaining judgment. This method of repossession would make those foreclosures much faster and, by removing a large class of transactions from the court, permit the remaining transactions to be handled faster. Such a system protects debtors differently from the procedure outlined under Bolivia's laws. In the first instance, the only question asked of the debtor is whether he or she has paid. If the debtor has not paid, the creditor may seize and sell the collateral. In subsequent proceedings, the debtor may raise all legally permitted defenses of nonpayment. The debtor is also entitled to damages in the event of wrongful repossession of the collateral. Consumer debtors typically have more safeguards than business debtors. All debtors are empowered to recover from the secured party any loss caused by failure to observe the general rules governing harmless repossession and pri-

41. See Fleisig, *supra* note 2, app. IV.

42. The success of a comprehensive secured transactions law lies in giving creditors considerable freedom to enforce their security interests.

Essentially, the model rules should be oriented toward permitting secured creditors considerable freedom in the exercise of their remedies, irrespective of the location of title to the collateral. These remedies should include the right to agree on forfeiture clauses, the right to take possession of the collateral after default with the consent of the debtor, the right to pursue the debtor for any deficiency remaining after realization of the security (except where this had arisen from the secured creditor's failure to act in a commercially reasonable manner), and the right to private foreclosure. Alejandro M. Garro, *The Reform and Harmonization of Personal Property Security Law in Latin America*, 59 REVISTA JURÍDICA U.P.R. 53 (1990).

vate sale.<sup>43</sup> In addition, and consistent with the parties' right to freely contract, the law may allow the debtor to agree with the creditor on other alternate collection measures.

Banco Agrícola Boliviano provides an important example of how these reforms could change lending and credit access. Banco Agrícola Boliviano, alone among Bolivian financial institutions, had the power of harmless repossession and used it effectively in making small loans for equipment to farmers in the altiplano. The policy problem for Bolivia arises not from problems in the constitutionality of the process. Rather it arises from devising effective ways to extend this power to more economic agents while still regulating it in the public interest.

Similar advantages would accrue from expanded powers to offset, which give the bank creditor the legal power to take debt payments out of the debtor's deposits in that bank. Gains would also arise from laws where the debtor is precluded from raising some defenses. This power requires safeguards similar to those that must surround harmless repossession.

As with harmless repossession, the projected law could authorize the right of a creditor to use self-help to repossess collateral upon default.<sup>44</sup> However, in order to protect the general public, in no case could a creditor breach the peace by using violence, actual or potential force, intimidation, fraud, or trickery. Any activity that violates the public order (not just violation of the law), or any violent activity that is fraught with the likelihood of resulting in violence, should be prohibited. Moreover, the law should specifically forbid creditors from using the assistance, or even the mere presence, of any government official, including the police.<sup>45</sup>

In some other legal systems, different groups of borrowers receive different degrees of protection. For example, some legal systems give consumers more rights than does Bolivian law. Consumers do not operate professionally in the credit market and little social gain arises from having consumers consult lawyers over routine transactions. In such cases, business borrowers are relieved from following special safeguards that apply to consumers.<sup>46</sup> Sellers may be prohibited

43. U.C.C. § 9-507 (1977).

44. Under all legal systems it is difficult to reconcile the due process rights of a defaulting debtor and the economic need to provide creditors with efficient means to enforce their rights. The Bolivian Civil Code presents some conflicting provisions regarding self-help repossession. Some provisions forbid parties to take justice in their own hands (C.C. art. 1282) and some provisions require that the creditor obtain a court order before repossessing collateral (C.C. arts. 1465, 1467). The Bolivian Supreme Court has not dealt specifically with this issue.

45. William M. Burke & David J. Reber, *State Action, Congressional Power and Creditor's Rights: An Essay on the Fourteenth Amendment*, 47 S. CAL. L. REV. 1, 5 (1973).

46. Although Bolivian law provides for a division between business and nonbusiness borrowers and business and nonbusiness transactions (C. Co. arts. 1, 8), business borrowers cannot waive many rights and defenses accorded to them under the law. See C.C. arts. 1340, 1282; C. Co. art. 880; Código de Procedimiento Civil [Code of Civil Procedure] [C.P.C.] arts. 90, 179, 252, 498. A less restrictive way of protecting debtors lies in enacting a general law applicable to all secured transactions and, within the same law, providing for special considerations whenever the collateral qualifies as consumer goods.

from taking commercial article, such as a promissory note negotiable for all purposes. The consumer would retain the right to refuse to pay if the goods were not as represented. In the United States, for example, a consumer may justify refusal to make a payment on an auto loan held by a third party by alleging that the car does not work; a business may not refuse to make a payment on that ground, but may enter into a civil suit against the dealer.<sup>47</sup> The United States Congress has enacted statutes concerning interest rate disclosure, loss of cash machine cards, and check clearing that apply to consumers but typically not to businesses. Restricting these rights to consumers alone can serve the purpose of protecting less sophisticated borrowers, while more sophisticated business borrowers can get access to more credit on better terms.

### C. IMPROVE THE ADMINISTRATION OF JUSTICE

Numerous thoughtful suggestions have been made about improving the administration of justice. Some suggestions revolve around improving the selection and training of judges; others around changing procedures specified generally under the Civil Code, particularly as practiced in Latin America. Such changes include introducing oral argument, improving equipment, modernizing systems of case load management, and instituting fines against judges for improper conduct. Several broad remedies exist to correct the slow court procedures, including amending the law to permit more actions to fall under the faster coercive and summary procedures, devising faster and more restricted procedures for introducing evidence, speeding up court processes by making court administration more efficient,<sup>48</sup> and amending the arbitration laws.<sup>49</sup>

This study does not judge the desirability of these reforms. The authors believe, however, that the problems of legal impediments to credit access arising from restrictions on the use of collateral can be addressed with the specific remedies mentioned above and do not require general reform of the judiciary. The wider

47. See 16 C.F.R. §§ 433.1-433.3 (1995). These provisions supersede state commercial code provisions on the negotiability of consumer installment paper.

48. See Kstanze Pett, *Civil Justice and Its Reform in West Germany and the United States*, 13 JUST. SYS. J., Fall 1988, at 186; Doris M. Provine & Carol Seron, *Innovation and Reform in Courts: A Cross Cultural Perspective*, 13 JUST. SYS. J., Fall 1988, at 158; *Crisis de la Justicia y Reformas Procesales*, 1 CONGRESO DE DERECHO PROCESAL DE CASTILLA Y LEÓN 1 (Ministerio de Justicia, Secretaría General Técnica, Centro de Publicaciones, Madrid, 1988); IGNACIO DE OTTO, *ESTUDIOS SOBRE EL PODER JUDICIAL* 1 (Ministerio de Justicia, Secretaría General Técnica, Centro de Publicaciones, Madrid, 1989).

49. Bolivia's laws do not reflect modern trends on arbitration, when compared to modern arbitration laws, such as the UNCITRAL Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law in 1985, or the 1988 Spanish arbitration law. Bolivia's major legal deficiencies in arbitration include the following: the requirement that arbitrators be lawyers; the lack of authority of the arbitral tribunal to enforce provisional orders; the lack of freedom of the parties to determine the place of arbitration, to appoint independent experts, and to take certain types of evidence; and the judicial court's broad authority to review the arbitral tribunal's findings of facts. See C.P.C. arts. 712-746; C. Co. arts. 1483-1486.

use of movable property as collateral in Great Britain and the United States appears to arise more from the unique features of the law, especially article 9 of the U.S. Uniform Commercial Code. Differences in performance of courts between these countries and the better managed Civil Code countries of Europe do not display compelling evidence that one model is superior to another, but the differences in the use of movable property as collateral are readily ascertainable.

## VI. Enforcing Judgment

In Bolivia, to conclude the judgment process, the victorious plaintiff must *enforce* judgment. Because the Code of Civil Procedure sets out lengthy steps for enforcement, the same economic problems arise as in obtaining judgment.<sup>50</sup>

Suppose the debtor fails to perform, the creditor sues, and the court finds in the creditor's favor. How does the creditor gain physical possession of the collateral and the right to sell the collateral? How does the creditor gain the right to the proceeds from the sale of the collateral and the right to seize more of the debtor's property if the sale of the original collateral is insufficient to cover the debt? Depending on the *relief* requested from the court, the plaintiff may obtain a court judgment stating: the defendant owes the plaintiff a specific sum of money; the defendant is liable to the plaintiff for certain damages of the plaintiff yet to be determined, the defendant is liable for *specific performance*, such as returning the collateral.

While these are the most common outcomes, few general restrictions apply to how the plaintiff may request the court to rule.

Enforcement of judgment typically moves through three stages: the court determines the amount owed; the court orders the attachment and seizure of the collateral; and the court orders the public auction of the collateral. Final decisions that involve *specific performance*, such as determining an obligation to give something back, must be specified in the contract. For example, suppose a vendor sells a machine, reserving the ownership of the machine until the purchaser completely pays the purchase price; the purchaser subsequently defaults on the payment; and the vendor claims possession of the machine. The final holding in the case might order the purchaser to give the machine back to the vendor, because the original contract specified that the creditor retain title to the goods in question, and the creditor so petitioned (*interdicto de recobrar la posesión*).<sup>51</sup> Otherwise, the court may not adjudicate the goods back to the creditor but must proceed as before with attachment, seizure, and public auction. Since the process for attachment, seizure, and public auction is very slow, sellers draft agreements reserving the ownership of the goods to avoid these steps and, instead, seek a final decision to recover the goods.

50. The literal translation of "proceso de ejecución de sentencia" is "enforcement of judgment procedure." C.P.C. arts. 514-561.

51. C.P.C. arts. 607-613.

The final decision to recover the goods will be enforced under a judgment procedure for repossession. A court order is issued to seize the goods and give them back to the creditor; this order will be enforced if necessary by the judicial police.<sup>52</sup>

However, if the debtor does not comply with the court order, and the judicial police cannot enforce it (for example, the police break into the debtor's house to seize the property but find nothing), or there is a deficiency judgment (for example, when the current value of the collateral does not cover the debt), the court will proceed through the steps to determine a specific amount owed, attach and seize enough of the debtor's movable or immovable assets to satisfy the debt, and publicly auction these assets.

Bolivian law makes no provision for *private sale*,<sup>53</sup> where a creditor, without further assistance of the court, can dispose of the collateral provided by the debtor. All liquidations occur at public auction, which involves substantial costs and additional delays. If the amount raised by this sale fails to cover the judgment, the plaintiff will return to court for another order to seize and sell other property of the debtor. This process continues until the judgment is satisfied.

The plaintiff will not receive payment immediately after the auction. Once the property or the goods attached or given as collateral are sold, the proceeds of the sale are deposited with the court and held until the judge issues an order approving the outcome of the auction.<sup>54</sup> The court pays the proceeds of the sale only after the plaintiff files a final claim for *liquidated damages* (*liquidación*) and the court approves it. The final claim will contain the total amount that the debtor owes to date, accounting for inflation, devaluation, or adjustment to the current exchange rate if the amount was payable in a foreign currency and the legal fees of the winning party. Any legal interest is currently accrued at 6 percent. The other party may oppose, on the grounds that the accounting is erroneous, and the court will hear arguments from both sides.<sup>55</sup> This process for payment typically takes at least three weeks.

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52. Any court order may be enforced by using force, with the assistance of the judicial police if so required. For example, if at the time for seizure the defendant does not open the door for the officer of the court, the officer will request that the police (usually judicial police will accompany the officer) break into the dwelling.

53. However, if a seller sold the goods under a sales agreement with reservation of title and the enforcement of a final decision was a court-ordered repossession that brought those goods back to seller, a seller may sell those goods without any further acknowledgments by the court. This private sale procedure takes place if, and only if, the seller had previously obtained a final decision in the matter that supported the seller's title and possession of the goods sold. The trial will establish that the defendant is in default and notifies the debtor of the creditor's claim in the collateral. The final decision will consider any surplus, but will not require the debtor's agreement to a strict foreclosure. The seller may privately sell the goods, or keep them, but only after this final court decision is enforced.

54. C.P.C. art. 545.

55. *Id.*

## A. PROBLEMS AND OPTIONS FOR SOLUTION

The length of time required to obtain and execute judgment makes it unprofitable to lend against collateral with a short economic life or collateral whose value falls short of the typical legal fee to obtain and execute a judgment. The options include procedural rules that regulate the creditor-controlled sales of collateral in a law of secured transactions. The policy framework for those rules must balance a debtor's rights to due process against the need for expeditious foreclosure. The law should set a procedure to assure that sales will take place in a commercially reasonable manner, thereby assuring a reasonable market price for the collateral. The law should not attempt to specify such features as how many times the auction should be announced, in what location, or in what newspaper.<sup>56</sup> Rather, the procedures should regulate the standard of commercial reasonableness.

### 1. *Creditor-Controlled Sales*

Instead of prohibiting the parties from stipulating private sale in their contracts, Article 880 of the Commercial Code and Articles 1340 and 1409 of the Civil Code should be abolished and a sale controlled by the creditor must be specifically allowed under the law.<sup>57</sup> To protect debtors against an unfair disposition of the collateral, a standard of commercial reasonableness should be enacted, requiring that the seller be held to such standard. For example, a standard of commercial reasonableness requires creditors to sell goods in the customary manner for dealers in that type of goods. Delay in the disposition of perishable collateral, or any goods likely to reduce in value quickly, may constitute failure to act in a commercially reasonable manner and the creditor would lose any rights to a deficiency if the sale did not cover the debt.

### 2. *Notification of Debtors and Junior Secured Creditors Before Resale*

The law must allow the secured creditor deficiency only if the creditor complies with the legal requirements for private sale. The law must always allow the debtor a redemption period, during which collateral can be reclaimed upon payment.<sup>58</sup> The law should void any stipulation allowing the debtor to waive the right to redeem collateral before foreclosure. The debtor should also be able to recover damages arising from any wrongful repossession, including cases where the

56. For example, pursuant to the policy followed by the Model Code of Civil Procedure, the parties can agree to sell the property in the judicial public auction without reserve and without base. Código Procesal Civil y Procesal Penal Modelo para Iberoamerica art. 325.1.

57. A creditor-controlled sale can be either a public sale, for example, an auction arranged by the creditor, not by the court, or a private sale in which the seller negotiates with an individual buyer.

58. Such a provision is made under U.S. law. See UCC § 9-506 (1977).

debtor actually did not default or where the creditor in fact had no security interest in the repossessed property.<sup>59</sup>

### 3. *Strict Foreclosure in Limited Cases*

Once the secured creditor recovers collateral, the creditor may keep the collateral in satisfaction of the secured debt (*strict foreclosure*). As a policy matter, the law may provide that the parties may not agree to *strict foreclosure* in advance of the debtor's default and after notice, or may prohibit *strict foreclosure* against a consumer that has (a) paid 60 percent of the debt or (b) objects. *Strict foreclosure* may not allow the creditor any deficiency, nor should it protect the debtor of any surplus.

## VII. Conclusion

The problems that Bolivia faces in channeling the funds of savers into high return investment opportunities exacts a high price through reducing production there. The barrier to this flow of funds arises from the risk that lenders face in making loans to borrowers not intimately known to them.

In industrial economies, lenders manage this risk by using collateral for loans. In North America, that risk is particularly lowered by using personal property as collateral. In Bolivia, problems in the creation, perfection, and execution of security interests make personal property nearly useless as collateral for loans. Many feasible options exist to address these problems. The return from adopting them in Bolivia would be immense.

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59. National procedures differ: legal costs are not always recoverable under U.S. law; U.K. law and Bolivian law do permit recovery of legal costs by the winning party. See Código Procesal Civil y Procesal Penal Modelo para Iberoamérica art. 328.

## Glossary<sup>1</sup>

English	Spanish	Explanation/Comments
• answer	• contestación de demanda	Defendant's answer to the complaint
• antichresis	• anticresis	
• appeal	• apelación —en efecto devolutivo  —en efecto suspensivo	—Does not suspend execution.  —Does suspend execution.
• as a matter of law, de jure	• de puro derecho	Under civil law a motion to decide the case as a matter of law is similar to a motion for judgment or a motion for summary judgment. If granted, the judge will immediately decide the case because no material fact is in controversy.
• at issue	• en controversia	The parties are at issue when certain facts or points of law are disputed between them at the litigation.
• attachment	• embargo	
• bailee	• depositario	
• bailment agreement	• contrato de depósito	Agreement under which one party (bailor) will deliver personal property to another (bailee) to take care of it.
• banking law foreclosure procedure	• proceso coactivo bancario	
• bearer paper	• documento traspasable, al portador	
• chattel mortgage	• hipoteca mueble	
• chattel mortgage with conveyance	• prenda con desplazamiento	

1. The translation and explanation of words relate specifically to their use in the text.

English	Spanish	Explanation/Comments
• chattel mortgage without conveyance	• prenda sin desplazamiento	
• chattel, tangible personal property	• bienes muebles	Excludes intangible personal property.
• civil procedures	• procedimientos: proceso ordinario proceso sumario proceso sumarísimo proceso ejecutivo	
• collateral receipt	• vale de prenda	A negotiable instrument always issued in connection with the warehouse receipt and always attached to it. This instrument incorporates a security interest (prenda) against the goods of the warehouse receipt (Cod. Com., Art. 691).
• complaint	• demanda	The first pleading of the plaintiff setting out the facts on which the claim for relief is based.
• demurrer	• excepciones previas	In demurring the answering party requests a dismissal of the action on the grounds of misjoinder of parties, lack of jurisdiction, lack of venue, payment, statute of limitation, etc.
• deposit in warehouse agreement	• contrato de depósito en almacenes generales	The certificate issued by the warehouse is the warehouse receipt.
• discountable bill	• letra negociable	
• discovery	• prueba	In Civil Code countries there is no pretrial discovery.
• draft, bill of exchange	• letra de cambio	
• easement	• servidumbre	
• endorsement	• endoso	

English	Spanish	Explanation/Comments
<ul style="list-style-type: none"> <li>enjoyment of the property of another</li> </ul>	<ul style="list-style-type: none"> <li>uso, usufructo</li> </ul>	<p>Includes appropriation of the proceeds of the goods or property as different from the mere right to possess: for example, a renter enjoys the use of the property while a consignee does not.</p>
<ul style="list-style-type: none"> <li>exchange</li> </ul>	<ul style="list-style-type: none"> <li>bolsa de valores</li> </ul>	
<ul style="list-style-type: none"> <li>final decision or final judgment</li> </ul>	<ul style="list-style-type: none"> <li>sentencias pasadas en autoridad de cosa juzgada</li> </ul>	
<ul style="list-style-type: none"> <li>foreclosure procedure</li> </ul>	<ul style="list-style-type: none"> <li>public auction</li> </ul>	
<ul style="list-style-type: none"> <li>holder in due course</li> </ul>	<ul style="list-style-type: none"> <li>tenedor legítimo de buena fé</li> </ul>	
<ul style="list-style-type: none"> <li>homestead</li> </ul>	<ul style="list-style-type: none"> <li>bien de familia</li> </ul>	
<ul style="list-style-type: none"> <li>interlocutory decision</li> </ul>	<ul style="list-style-type: none"> <li>sentencias interlocutorias</li> </ul>	<p>Intermediate, not final, decisions in the case.</p>
<ul style="list-style-type: none"> <li>judgment lien</li> </ul>	<ul style="list-style-type: none"> <li>embargo judicial</li> </ul>	<p>When judgment has been entered in a civil case, and the party liable for the judgment fails to pay it, the judgment creditor may file a lien against the property of the liable party to give notice that the property is subject to sale to satisfy the judgment.</p>
<ul style="list-style-type: none"> <li>legal acts</li> </ul>	<ul style="list-style-type: none"> <li>actos jurídicos</li> </ul>	<p>Any act of a human being that has a legal effect, for example, to contract.</p>
<ul style="list-style-type: none"> <li>lien</li> </ul>	<ul style="list-style-type: none"> <li>gravamen</li> </ul>	<p>A security interest in property.</p>
<ul style="list-style-type: none"> <li>mortgage</li> </ul>	<ul style="list-style-type: none"> <li>hipoteca</li> </ul>	
<ul style="list-style-type: none"> <li>mortgage (includes both mortgage or chattel mortgage and antichresis)</li> </ul>	<ul style="list-style-type: none"> <li>pignoración</li> </ul>	<p>A secured interest on real or personal property. The term denotes both anticresis and prenda agreements.</p>

English	Spanish	Explanation/Comments
<ul style="list-style-type: none"> <li>• motion</li> </ul>	<ul style="list-style-type: none"> <li>• moción, petición, recurso</li> </ul>	<p>An application to the court requesting an order or ruling in favor of the applicant.</p>
<ul style="list-style-type: none"> <li>• negotiable instrument</li> </ul>	<ul style="list-style-type: none"> <li>• instrumento negociable o título-valor</li> </ul>	<p>Instruments including, but not limited to: bills of exchange, promissory notes, checks, bonds, mortgage bonds, debentures, etc. They could be pledged without agreement or filing since the security interest is perfected with the physical possession of the instrument.</p>
<ul style="list-style-type: none"> <li>• note, promissory note</li> </ul>	<ul style="list-style-type: none"> <li>• pagaré</li> </ul>	
<ul style="list-style-type: none"> <li>• pawnbroker</li> </ul>	<ul style="list-style-type: none"> <li>• casa de empeño, monte de piedad</li> </ul>	
<ul style="list-style-type: none"> <li>• peremptory challenges, demurrer</li> </ul>	<ul style="list-style-type: none"> <li>• excepciones perentorias</li>   <li>• excepciones dilatorias</li> </ul>	<p>—Peremptory challenges against a complaint that, if accepted, will dismiss the proceedings, e.g., a demurrer founded on statute of limitation.</p> <p>—May only delay the proceeding until they are decided.</p>
<ul style="list-style-type: none"> <li>• perfected instrument</li> </ul>	<ul style="list-style-type: none"> <li>• instrumento perfecto, documento perfecto</li> </ul>	
<ul style="list-style-type: none"> <li>• pledge of agricultural equipment, or chattel mortgage on farm machinery and livestock</li> </ul>	<ul style="list-style-type: none"> <li>• prenda agraria</li> </ul>	<p>It is a “prenda civil sin desplazamiento” under the Civil Code provisions</p>

English	Spanish	Explanation/Comments
<ul style="list-style-type: none"> <li>pledge, security interest, or lien on personal property</li> </ul>	<ul style="list-style-type: none"> <li>prenda (a type of gravámen)               <ul style="list-style-type: none"> <li>-prenda civil con desplazamiento</li> <li>-prenda civil sin desplazamiento</li> <li>-prenda comercial con desplazamiento</li> <li>-prenda comercial sin desplazamiento</li> </ul> </li> </ul>	Different types exist: under the Civil Code and the Commercial Code; they can be with or without delivery of the goods to the creditor in both cases.
<ul style="list-style-type: none"> <li>preservation of testimony</li> </ul>	<ul style="list-style-type: none"> <li>audiencia de testigos fuera del período de prueba</li> </ul>	Depositions taken before trial in case the witness may not be available later.
<ul style="list-style-type: none"> <li>priority</li> </ul>	<ul style="list-style-type: none"> <li>prelación, privilegio</li> </ul>	
<ul style="list-style-type: none"> <li>private sale</li> </ul>	<ul style="list-style-type: none"> <li>venta privada de bienes</li> </ul>	Sale of collateral by the creditor upon default, without judicial intervention.
<ul style="list-style-type: none"> <li>public policy provisions</li> </ul>	<ul style="list-style-type: none"> <li>leyes de orden público</li> </ul>	Provisions that, under civil law, may not be changed by the contracting parties.
<ul style="list-style-type: none"> <li>real estate</li> </ul>	<ul style="list-style-type: none"> <li>inmuebles</li> </ul>	
<ul style="list-style-type: none"> <li>sale with an option to repurchase</li> </ul>	<ul style="list-style-type: none"> <li>venta con pacto de retroventa</li> </ul>	
<ul style="list-style-type: none"> <li>security, bond, registered security</li> </ul>	<ul style="list-style-type: none"> <li>título-valor</li> </ul>	
<ul style="list-style-type: none"> <li>seizure</li> </ul>	<ul style="list-style-type: none"> <li>secuestro</li> </ul>	
<ul style="list-style-type: none"> <li>service of process</li> </ul>	<ul style="list-style-type: none"> <li>notificación</li> </ul>	Court's communication of the process or the court papers to the defendant.

English	Spanish	Explanation/Comments
<ul style="list-style-type: none"> <li>• sheriff notice or receipt after he has levied and sold property of the judgment debtor</li> </ul>	<ul style="list-style-type: none"> <li>• acta de embargo</li> </ul>	
<ul style="list-style-type: none"> <li>• small claim procedure</li> </ul>	<ul style="list-style-type: none"> <li>• proceso sumario o proceso sumarísimo</li> </ul>	
<ul style="list-style-type: none"> <li>• statutory mortgage</li> </ul>	<ul style="list-style-type: none"> <li>• hipoteca legal</li> </ul>	Mortgage established by law.
<ul style="list-style-type: none"> <li>• subpoena</li> </ul>	<ul style="list-style-type: none"> <li>• cédula de notificación</li> </ul>	Court document that sets out a court order.
<ul style="list-style-type: none"> <li>• suit for payment</li> </ul>	<ul style="list-style-type: none"> <li>• proceso ejecutivo</li> </ul>	Similar to a small claim procedure under judgment affidavit.
<ul style="list-style-type: none"> <li>• sum certain</li> </ul>	<ul style="list-style-type: none"> <li>• suma cierta</li> </ul>	
<ul style="list-style-type: none"> <li>• to perfect a security agreement</li> </ul>	<ul style="list-style-type: none"> <li>• perfeccionar un documento</li> </ul>	
<ul style="list-style-type: none"> <li>• warehouse receipt</li> </ul>	<ul style="list-style-type: none"> <li>• certificado de depósito en almacenes generales o "warrant"</li> </ul>	Under the Civil Law system is considered a negotiable instrument.
<ul style="list-style-type: none"> <li>• writ</li> </ul>	<ul style="list-style-type: none"> <li>• mandamiento, orden judicial</li> </ul>	A mandatory precept issued to compel a person to do something therein mentioned. It is issued by the court and directed to the sheriff or other officer authorized to execute it. It usually contains directions as to what is required to be done.
<ul style="list-style-type: none"> <li>• writ of execution to levy and sell</li> </ul>	<ul style="list-style-type: none"> <li>• mandamiento de embargo</li> </ul>	In Bolivia, it will only establish a judgment lien on the debtor's property; a public auction will take place later.

## Glossary<sup>2</sup>

Spanish	English	Explanation/Comments
<ul style="list-style-type: none"> <li>• acta de embargo</li> </ul>	<ul style="list-style-type: none"> <li>• sheriff notice or receipt after he has levied and sold property of the judgment debtor</li> </ul>	
<ul style="list-style-type: none"> <li>• actos jurídicos</li> </ul>	<ul style="list-style-type: none"> <li>• legal acts</li> </ul>	Any act of a human being that has a legal effect, for example, to contract.
<ul style="list-style-type: none"> <li>• anticresis</li> </ul>	<ul style="list-style-type: none"> <li>• antichresis</li> </ul>	
<ul style="list-style-type: none"> <li>• apelación</li> <li>—en efecto devolutivo</li> <li>—en efecto suspensivo</li> </ul>	<ul style="list-style-type: none"> <li>• appeal</li> </ul>	<p>—Does not suspend execution.</p> <p>—Does suspend execution.</p>
<ul style="list-style-type: none"> <li>• audiencia de testigos fuera del período de prueba</li> </ul>	<ul style="list-style-type: none"> <li>• preservation of testimony</li> </ul>	Depositions taken before trial in case the witness may not be available later.
<ul style="list-style-type: none"> <li>• bien de familia</li> </ul>	<ul style="list-style-type: none"> <li>• homestead</li> </ul>	
<ul style="list-style-type: none"> <li>• bienes muebles</li> </ul>	<ul style="list-style-type: none"> <li>• chattel, tangible personal property</li> </ul>	Excludes intangible personal property.
<ul style="list-style-type: none"> <li>• bolsa de valores</li> </ul>	<ul style="list-style-type: none"> <li>• exchange</li> </ul>	
<ul style="list-style-type: none"> <li>• casa de empeño, monte de piedad</li> </ul>	<ul style="list-style-type: none"> <li>• pawnbroker</li> </ul>	
<ul style="list-style-type: none"> <li>• cédula de notificación</li> </ul>	<ul style="list-style-type: none"> <li>• subpoena</li> </ul>	Court document that sets out a court order.
<ul style="list-style-type: none"> <li>• certificado de depósito en almacenes generales o “warrant”</li> </ul>	<ul style="list-style-type: none"> <li>• warehouse receipt</li> </ul>	Under the Civil Law system is considered a negotiable instrument.
<ul style="list-style-type: none"> <li>• contestación de demanda</li> </ul>	<ul style="list-style-type: none"> <li>• answer</li> </ul>	Defendant’s answer to the complaint.
<ul style="list-style-type: none"> <li>• contrato de depósito</li> </ul>	<ul style="list-style-type: none"> <li>• bailment agreement</li> </ul>	Agreement under which one party (bailor) will deliver personal property to another (bailee) to take care of it.

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2. The translation and explanation of words relate specifically to their use in the text.

Spanish	English	Explanation/Comments
• contrato de depósito en almacenes generales	• deposit in warehouse agreement	The certificate issued by the warehouse is the warehouse receipt.
• de puro derecho	• as a matter of law, de jure	Under civil law a motion to decide the case as a matter of law is similar to a motion for judgment or a motion for summary judgment. If granted, the judge will immediately decide the case because no material fact is in controversy.
• demanda	• complaint	The first pleading of the plaintiff setting out the facts on which the claim for relief is based.
• depositario	• bailee	
• documento traspasable, al portador	• bearer paper	
• embargo	• attachment	
• embargo	• judgment lien	When judgment has been entered in a civil case, and the party liable for the judgment fails to pay it, the judgment creditor may file a lien against the property of the liable party to give notice that the property is subject to sale to satisfy the judgment.
• en controversia	• at issue	The parties are at issue when certain facts or points of law are disputed between them at the litigation.
• endoso	• endorsement	

<b>Spanish</b>	<b>English</b>	<b>Explanation/Comments</b>
<ul style="list-style-type: none"> <li>• excepciones previas</li> </ul>	<ul style="list-style-type: none"> <li>• demurrer</li> </ul>	<p>In demurring the answering party requests a dismissal of the action on the grounds of misjoinder of parties, lack of jurisdiction, lack of venue, payment, statute of limitation, etc.</p>
<ul style="list-style-type: none"> <li>• excepciones perentorias</li>   <li>• excepciones dilatorias</li> </ul>	<ul style="list-style-type: none"> <li>• peremptory challenges, demurrer</li> </ul>	<p>—Peremptory challenges against a complaint that, if accepted, will dismiss the proceedings, e.g., a demurrer founded on statute of limitation.</p> <p>—May only delay the proceeding until they are decided.</p>
<ul style="list-style-type: none"> <li>• gravamen</li> </ul>	<ul style="list-style-type: none"> <li>• lien</li> </ul>	<p>A security interest in property.</p>
<ul style="list-style-type: none"> <li>• hipoteca</li> </ul>	<ul style="list-style-type: none"> <li>• mortgage</li> </ul>	
<ul style="list-style-type: none"> <li>• hipoteca legal</li> </ul>	<ul style="list-style-type: none"> <li>• statutory mortgage</li> </ul>	<p>Mortgage established by law</p>
<ul style="list-style-type: none"> <li>• hipoteca mueble</li> </ul>	<ul style="list-style-type: none"> <li>• chattel mortgage</li> </ul>	
<ul style="list-style-type: none"> <li>• inmuebles</li> </ul>	<ul style="list-style-type: none"> <li>• real estate</li> </ul>	
<ul style="list-style-type: none"> <li>• instrumento negociable o título-valor</li> </ul>	<ul style="list-style-type: none"> <li>• negotiable instrument</li> </ul>	<p>Instruments including, but not limited to: bills of exchange, promissory notes, checks, bonds, mortgage bonds, debentures, etc. They could be pledged without agreement or filing since the security interest is perfected with the physical possession of the instrument.</p>
<ul style="list-style-type: none"> <li>• instrumento perfecto, documento perfecto</li> </ul>	<ul style="list-style-type: none"> <li>• perfected instrument</li> </ul>	

Spanish	English	Explanation/Comments
• letra de cambio	• draft, bill of exchange	
• letra negociable	• discountable bill	
• leyes de orden público	• public policy provisions	Provisions that, under civil law, may not be changed by the contracting parties.
• mandamiento de embargo	• writ of execution to levy and sell	In Bolivia, it will only establish a judgment lien on the debtor's property; a public auction will take place later.
• mandamiento, orden judicial	• writ	A mandatory precept issued to compel a person to do something therein mentioned. It is issued by the court and directed to the sheriff or other officer authorized to execute it. It usually contains directions as to what is required to be done.
• moción, petición, recurso	• motion	An application to the court requesting an order or ruling in favor of the applicant.
• notificación	• service of process	Court's communication of the process or the court papers to the defendant.
• pagaré	• note, promissory note	
• perfeccionar un documento	• to perfect a security agreement	
• pignoración	• mortgage (includes both mortgage or chattel mortgage and antichresis)	A secured interest on real or personal property. The term denotes both (antichresis) and (prenda) agreements.
• prelación, privilegio	• priority	

Spanish	English	Explanation/Comments
<ul style="list-style-type: none"> <li>• prenda (a type of gravámen)</li> <li>-prenda civil con desplazamiento</li> <li>-prenda civil sin desplazamiento</li> <li>-prenda comercial con desplazamiento</li> <li>-prenda comercial sin desplazamiento</li> </ul>	<ul style="list-style-type: none"> <li>• pledge, security interest, or lien on personal property</li> </ul>	<p>Different types exist: under the Civil Code and the Commercial Code; they can be with or without delivery of the goods to the creditor in both cases.</p>
<ul style="list-style-type: none"> <li>• prenda agraria</li> </ul>	<ul style="list-style-type: none"> <li>• pledge of agricultural equipment, or chattel mortgage on farm machinery and livestock</li> </ul>	<p>It is a “prenda civil sin desplazamiento” under the Civil Code provisions.</p>
<ul style="list-style-type: none"> <li>• prenda con desplazamiento</li> </ul>	<ul style="list-style-type: none"> <li>• chattel mortgage with conveyance</li> </ul>	
<ul style="list-style-type: none"> <li>• prenda sin desplazamiento</li> </ul>	<ul style="list-style-type: none"> <li>• chattel mortgage without conveyance</li> </ul>	
<ul style="list-style-type: none"> <li>• procedimientos: proceso ordinario proceso sumario proceso sumarísimo proceso ejecutivo</li> </ul>	<ul style="list-style-type: none"> <li>• civil procedures</li> </ul>	
<ul style="list-style-type: none"> <li>• proceso coactivo bancario</li> </ul>	<ul style="list-style-type: none"> <li>• banking law foreclosure procedure</li> </ul>	
<ul style="list-style-type: none"> <li>• proceso ejecutivo</li> </ul>	<ul style="list-style-type: none"> <li>• suit for payment</li> </ul>	<p>Similar to a small claim procedure under judgment affidavit.</p>
<ul style="list-style-type: none"> <li>• proceso sumario o proceso sumarísimo</li> </ul>	<ul style="list-style-type: none"> <li>• small claim procedure</li> </ul>	
<ul style="list-style-type: none"> <li>• prueba</li> </ul>	<ul style="list-style-type: none"> <li>• discovery</li> </ul>	<p>In Civil Code countries there is no pretrial discovery.</p>
<ul style="list-style-type: none"> <li>• public auction</li> </ul>	<ul style="list-style-type: none"> <li>• foreclosure procedure</li> </ul>	
<ul style="list-style-type: none"> <li>• secuestro</li> </ul>	<ul style="list-style-type: none"> <li>• seizure</li> </ul>	
<ul style="list-style-type: none"> <li>• sentencias interlocutorias</li> </ul>	<ul style="list-style-type: none"> <li>• interlocutory decision</li> </ul>	<p>Intermediate, not final, decisions in the case.</p>

Spanish	English	Explanation/Comments
<ul style="list-style-type: none"> <li>• sentencias pasadas en autoridad de cosa juzgada</li> </ul>	<ul style="list-style-type: none"> <li>• final decision or final judgment</li> </ul>	
<ul style="list-style-type: none"> <li>• servidumbre</li> </ul>	<ul style="list-style-type: none"> <li>• easement</li> </ul>	
<ul style="list-style-type: none"> <li>• suma cierta</li> </ul>	<ul style="list-style-type: none"> <li>• sum certain</li> </ul>	
<ul style="list-style-type: none"> <li>• tenedor legítimo de buena fé</li> </ul>	<ul style="list-style-type: none"> <li>• holder in due course</li> </ul>	
<ul style="list-style-type: none"> <li>• título-valor</li> </ul>	<ul style="list-style-type: none"> <li>• security, bond, registered security</li> </ul>	
<ul style="list-style-type: none"> <li>• uso, usufructo</li> </ul>	<ul style="list-style-type: none"> <li>• enjoyment of the property of another</li> </ul>	<p>Includes appropriation of the proceeds of the goods or property as different from the mere right to possess: for example, a renter enjoys the use of the property while a consignee does not.</p>
<ul style="list-style-type: none"> <li>• vale de prenda</li> </ul>	<ul style="list-style-type: none"> <li>• collateral receipt</li> </ul>	<p>A negotiable instrument always issued in connection with the warehouse receipt and always attached to it. This instrument incorporates a security interest, (prenda), against the goods of the warehouse receipt (Cod. Com., Art. 691).</p>
<ul style="list-style-type: none"> <li>• vale de prenda</li> </ul>	<ul style="list-style-type: none"> <li>• collateral receipt</li> </ul>	
<ul style="list-style-type: none"> <li>• venta con pacto de retroventa</li> </ul>	<ul style="list-style-type: none"> <li>• sale with an option to repurchase</li> </ul>	
<ul style="list-style-type: none"> <li>• venta privada de bienes</li> </ul>	<ul style="list-style-type: none"> <li>• private sale</li> </ul>	<p>Sale of collateral by the creditor upon default, without judicial intervention.</p>