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Panel 2:
Contractual guide on secured transactions (Part Two):
transactional advice and regulatory considerations

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I.- Enforcement of a security rights: legal and contractual framework

II.- Methods of exercising post-default rights/remedies: Effective and efficient judicial procedures (or alternative dispute resolution mechanisms) to facilitate enforcement of rights in secured transactions

III.- Out-of-court repossession of tangible collateral

IV.- Out-of-court disposition of collateral

V.- Secondary markets – electronic platforms and limitations
## I.- Enforcement of a security rights: legal and contractual framework

<table>
<thead>
<tr>
<th>Remedies/rights provided under applicable legal provisions</th>
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<tr>
<td><strong>Remedies/rights provided in the security agreement</strong></td>
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<td>1.- Contractual terms providing for adequate remedies in case of defaults</td>
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<td>2.- Before default, no agreement waiving or varying the post-default rights</td>
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<td>3.- Compatibility of rights if their exercise is not inconsistent.</td>
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II.- Methods of exercising post-defaults rights

I.- Applicable legislation may specify different methods or proceedings for types of assets, types of security rights or condition of parties involved: SELECTING AVAILABLE METHODS

II.- Previous requirements to access to available proceedings could be a prerequisite: CARE IN DRAFTING SECURITY AGREEMENT

III.- EFFECTIVE AND EFFICIENT PROCEDURES

A). Court proceedings
   - Declarative / Executive
   - Specific expeditious proceedings

B). Arbitration:
   - Arbitrability of disputes arising under a security agreement or associated with,
   - Enforceable arbitration agreement,
   - Protection of third parties rights
Effective and efficient procedures to enforce rights: possible relevant transactional issues in a model out-of-court enforcement procedure

**PRIOR TO DEFAULT**

1. Provision in the security agreement
2. Designation of representative
3. Price estimation or criteria to value assessment
4. Notice provisions

**INITIATION**

1. Competent authority
2. Rules of auction or tender (number, minimum and maximum bids, participation of creditor)
3. Communication with other registries and authorities (insolvency registry)
4. Suspension (abusive terms)

**DISPOSITION**

1. Subsequent acts and formalities (cancellation, registration, additional needed agreements)
2. Title of adjudication
3. Additional steps for repossessing requiring court intervention
III.- Non-judicial repossession of tangible collateral

Essential preconditions:

Grantor’s consent: SECURITY AGREEMENT (typically)

Notice of default and intent to obtain possession

No objection from the person in possession

Transactional advice:

A). Drafting the security agreement including clear consent
   - Clearly specifying defaults and related remedies
   - Establishing a process detailing the grantor’s collaboration – deterrence mechanisms
   - Caution to ensure non-abusiveness of terms
   - Possible limitations on Standard Terms
   - Value estimation and distribution of proceeds (pacto marciano)
   - Smart Contracts and automatic-enforcing devices (i.e. ignition-suspension, AI-based solution, autonomous machines, cancellation of passwords, etc)
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A). Drafting the security agreement including clear consent

B). Notice of default:

*B.1. Contractual practices (in the security agreement)*

- Specifying addresses and method to notify
- Fixing a period for prior notice
- Obligation to notify change in possession and location coordinates
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**B.2. Market and institutional measures**
- Including in the Registry electronic addresses of creditors (higher-ranking/lower-ranking)
- Automatic location and tracking facilities (*IoT applications*)
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C). Objection
   - Specifying steps for the repossession process
   - Standards of good faith and commercial reasonableness
IV. Non-judicial disposition of tangible collateral

DRAFTING A PROTOCOL for disposition: method, manner, time, place and conditions, actions for disposition (sale, lease, license), form of disposition (assets individually, in groups or altogether)

PREPARING THE NOTICE contents, wording, language, time

GIVING NOTICE: identifying recipients, method, time, and

GOOD FAITH AND COMMERCIAL REASONABLENESS
- adequate method (public or private sale, auction or tender, lease or license)
- target market
- value assessment
V.- Secondary markets – electronic platforms: opportunities and limitations

MODEL 1: ELECTRONIC NOTICE BOARD

Advantages:
- centralization
- critical mass
- visibility enhancement
- wide but undefined territorial scope
- main entrance to platform (Model 2)

Limitations:
- disposition is conducted to traditional methods: fragmentation, territorial limitation and de facto decentralization
- no identification of users
- no tracking potential
- secondary market is not created
V.- Secondary markets – electronic platforms: opportunities and limitations

MODEL 2:
ELECTRONIC SECONDARY MARKET – PLATFORM

Advantages:
- centralization
- critical mass
- pre-determined territorial scope
- trust generation
- CREATION OF SECONDARY MARKET
- identification of users
- tracking facilities
- INTERNAL RULES: negotiation and transactions
- efficiency, segmentation and personalization

Limitations:
- technology dependence
- initial investment
- high level of penetration and experience in use and application of technology
Model 2: electronic secondary market - platforms

INTERNAL POLICIES:
OFFERS, PRICING
MECHANISMS,
NEGOTIATION AND
TRADING RULES,
PERFORMANCE - general?
Provided by each security agreement?

PUBLIC OR PRIVATE
OPERATOR

Ideal remote connection with competent authorities involved in post-disposition

REGISTERED
USERS
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