

UNIDROIT GUIDANCE ON INTERNATIONAL BEST PRACTICE FOR SECURITY INTEREST REGISTRATION

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William Brydie-Watson
Senior Legal Officer
UNIDROIT

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INTRODUCTION TO UNIDROIT

- Independent Intergovernmental Organisation
- Set up in 1926 as organ of League of Nations
- Currently 63 Member States
 - 73.6% world population
 - 90.7% of global nominal GDP
- 127 Connected States
- Develops modern standards for commercial law
 - Treaties (Conventions, Protocols)
 - Model Laws
 - Legal Principles and Rules
 - Legal Guides
 - Best Practice Guides
 - Model Contract Clauses



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INTRODUCTION TO UNIDROIT

- Diverse Work Programme, UNIDROIT has developed over 30 instruments.
- Work often related with development, also with cutting edge best practices in access to finance
 - Contract Law
 - Investment Contracts
 - Capital Markets
 - Access to Finance
 - Law and Technology
 - Private Law and Agriculture
 - Sustainable development
 - International Procedural Law



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INTRODUCTION TO UNIDROIT

- Standard setting legislative activity, together with UNCITRAL & HCCH, the “Three Sisters”
- Work in close collaboration with International Organisations and International Financial Institutions:

• World Bank / IFC

• EBRD, ADB, AIIB

• IMF, BIS/Basel, OECD

• FAO/IFAD

• ALI/ELI



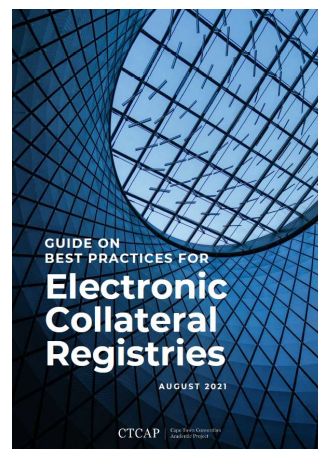
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GUIDANCE ON BEST PRACTICES FOR ELECTRONIC COLLATERAL REGISTRIES

- UNIDROIT, University of Cambridge and Aviation Working Group jointly developed the **Guide on Best Practices for Electronic Collateral Registries (BPER)**,
- Developed 2015 - 2021.
- Negotiations included from participation from international organisations (World Bank Group, EBRD, APEC), Governments (AFSA) and private sector (ISC, Aviareto, Bsystems and Piercom).



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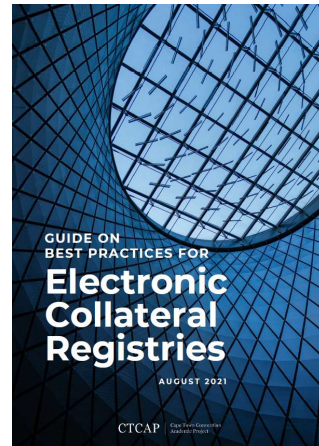


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GUIDANCE ON BEST PRACTICES FOR ELECTRONIC COLLATERAL REGISTRIES

SCOPE

- The Guide examines best practices in current use in the field of electronic registry design and operation, focusing specifically on **electronic collateral registries** (ECRs).
- The ECRs should be understood broadly. They encompass **registries for notices of security rights** as envisaged in UNCITRAL and UNIDROIT instruments, and **electronic registries established for the registration of notices relating to a specific type of transaction**, such as finance leases or assignments of receivables.
- The Guide can also apply to registry systems functionally similar to collateral registries operated by public entities, including **motor-vehicle registries, intellectual property registries, and companies registries**.



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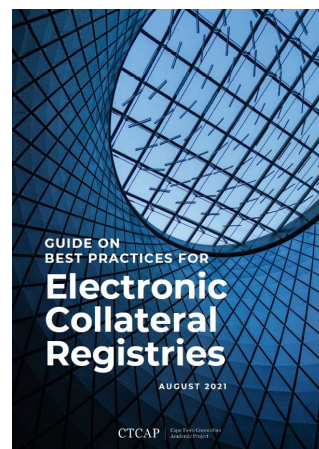
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Critical Performance Factors (CPFs)

- The Guide aims to identify **best practices that exclude or mitigate the risks and liabilities faced by ECRs in performing their core functions**.
- The Project has identified **Critical Performance Factors (CPFs)** constituting the best practice for ECRs.
- CPFs are “registry system properties and processes without which an ECR is unable to perform its core functions at a level that meets the reasonable expectations of the relevant market participants”.
- CPFs are the characteristics of an ECR that are essential for it to be considered fit for purpose.



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The 16 Critical Performance Factors (CPFs)

1. Access Control
2. Accessibility
3. Authentication
4. Availability
5. Confidentiality
6. Continuity
7. Disposition (Disposal)
8. Integrity
9. Interoperability
10. Legal Authority and Compliance
11. Legal Authority of the Registrar
12. Reliability
13. Retention
14. Timeliness
15. Trustworthiness
16. User-Centered Design
17. Validation

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CRITICAL PERFORMANCE FACTORS



Access Control

The property of being accessible and usable upon demand by an authorised person.



Accessibility

The property of being able to obtain the use of a resource.



Authentication

The process of verifying that a person is who they claim to be.



Availability

The process of ensuring that access to the registry is authorised and restricted.



Confidentiality

The property that information is not made available or disclosed to unauthorised persons.





Continuity

The property of delivering registry services at acceptable levels within acceptable timeframes following a disruptive incident.


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 <p>Disposition (Disposal)</p> <p>The process implementing disposal of records: retention, archiving, destruction and transfer decisions.</p>	 <p>Integrity</p> <p>The property that data has not been altered or destroyed in an unauthorised manner.</p>	 <p>Interoperability</p> <p>The property of having interfaces to communicate with, or transfer data among systems (e.g. other registries) in an automated manner that does not require the user to be extensively familiar with the operation of the other systems.</p>
 <p>Legal Authority and Compliance</p> <p>The property of ensuring that the registry is established pursuant to and operates in compliance with a sound legal framework.</p>	 <p>Legal Authority of the Registrar</p> <p>The property that the registrar may exercise certain powers pursuant to a legal authority, including in the process of eliminating a detected failure.</p>	 <p>Reliability</p> <p>The property of performing required functions for a specified period of time.</p>

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 <p>Retention</p> <p>The property of preserving data in a system for a specified period of time.</p>	 <p>Timeliness</p> <p>The property of making a registration publicly searchable, and therefore effective, almost instantly after its submission.</p>	 <p>Trustworthiness</p> <p>The property of providing confidence to users and third parties that the registry performs its core functions at a level that meets or exceeds their reasonable expectations.</p>
 <p>User-Centered Design</p> <p>The property that the approach to the design and development of the registry aims to make the registry more usable by focusing on how the registry is used and applying human factors/ergonomics and usability knowledge and techniques.</p>	 <p>Validation</p> <p>The process of confirming, using objective evidence, that the requirements for a specific intended use or application have been fulfilled.</p>	

Table 1: CPF definitions (in alphabetical order)

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CPF Technical Standards (ISO)s

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Access Control ISO 207000: 2018, 27001:2013 2. Accessibility ISO 40500:2012 3. Authentication ISO 9798-1 4. Availability ISO 27000:2018 (3.7) 5. Confidentiality ISO 27000:2018 (3.10) 6. Continuity ISO 22301:2019 7. Disposition ISO 15489-1:2016 8. Integrity ISO 27040:2015 9. Interoperability ISO 27040:2015 (7), 39794-1:2019 | <ol style="list-style-type: none"> 10. Legal Authority and Compliance 11. Legal Authority of the Registrar 12. Reliability ISO 27040, 25010:2011 13. Retention ISO 27001:2013, 27040:2015 14. Timeliness ISO 25012:2008 15. Trustworthiness ISO 16363:2012 16. User-Centered Design ISO 9241-210:2019 17. Validation ISO 27000:2018, ISO9000 |
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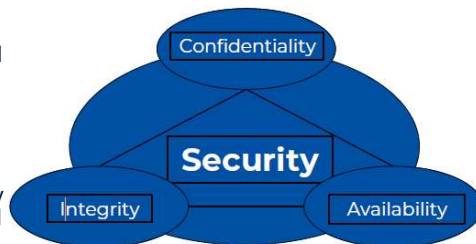


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Risk Management

- Three CPFs form the triad that can be considered core CPFs, whose performance is enhanced by, or dependent on 13 other CPFs:
- **1. Confidentiality:** Authentication and Access Control to prevent unauthorised access to confidential information.
- **2. Integrity:** Reliability, Retention, Validation, and in some cases: Authentication, Access Control, and Disposition. User-Centered Design may improve data entry accuracy. The Legal Authority of the Registrar to correct errors may be necessary from time to time.
- **3. Availability:** Accessibility, Reliability, and Continuity; in certain cases, it may require Interoperability.



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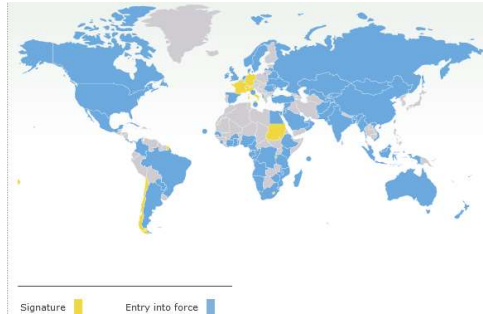


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REGISTRIES UNDER UNIDROIT INSTRUMENTS

The Cape Town Convention and its Protocols

- The Cape Town Convention system is one of the most successful international commercial law instruments in history.
 - Uniform legal regime created by treaty to increase certainty and reduce risk in the financing and leasing of certain types of uniquely identifiable, mobile high value equipment used in specific industry sectors.
 - Separate international registries established under each Protocol:
1. **Aircraft Protocol (2001)**
 2. **Rail Protocol (2007)**
 3. **Space Protocol (2009)**
 4. **Mining, Agricultural and Construction Protocol (2019)**



- **CTC: 84 Contracting States**
- **Viet Nam CTC and Aircraft Protocol: 2014**

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REGISTRIES UNDER UNIDROIT INSTRUMENTS

The Cape Town Convention and its Protocols

THE MAC PROTOCOL

- Newest Protocol to the Cape Town Convention. Large economic impact:
- MAC Protocol predicted to increase the stock of MAC equipment by **\$90 billion**
- Total impact on **global GDP equivalent to \$30 billion a year**
- Increase GDP **\$23 billion (developing)**
- Increase GDP **\$7 billion (developed)**



<https://www.unidroit.org/english/documents/2018/study72k/1808-final-mac-protocol-ea.pdf>

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REGISTRIES UNDER UNIDROIT INSTRUMENTS

The MAC International Registry and Viet Nam

- The asset-based mining, agriculture and construction equipment international registry will **operate separately to domestic registries**.
- International interests registered in the international registry have priority over domestic interests.
- Article XVI of the MAC Protocol allows Contracting States to designate domestic entry points into the International Registry, which **allows interaction between domestic registries and the MAC Registry**.
- MAC Protocol Registry to be operational by 2024, **Viet Nam encouraged to ratify MAC Protocol**.



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REGISTRIES UNDER UNIDROIT INSTRUMENTS

The Model Law on Factoring

- UNIDROIT is currently developing a **Model Law on Factoring (involving IFC, UNCITRAL)**, which will be adopted in May 2024.
- The MLF will provide model provisions for States that have already reformed their secured transactions law but wish to consider implementing **additional specific rules to improve their legal framework for factoring**.
- The MLF provides for a transferor-based registry for the registration of notices of transfers (including security transfers). Registry rules set out in Annexe A, rather than directly in Chapter IV.
- As Viet Nam already has already reformed its secured transactions law, **Viet Nam should consider the Model law on Factoring provisions to ensure that transfers of receivables can be properly registered in the domestic collateral registry**.

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FURTHER INFORMATION



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International Institute for the Unification of Private Law
Institut international pour l'unification du droit privé

William Brydie-Watson
Senior Legal Officer
w.brydie-watson@unidroit.org

Electronic Registries Guide:

<https://unidroitfoundation.org/e-registry-best-practice/>

MAC Protocol:

<https://www.unidroit.org/instruments/security-interests/mac-protocol/overview/>

Model Law on Factoring:

<https://www.unidroit.org/work-in-progress/factoring-model-law/>

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