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## Draft Model Law on Secured Transactions

### Note by the Secretariat

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## Chapter IV. The registry system

### Article 26. Establishment of a national public registry and public access

1. The Registry is established for the purpose of receiving, storing and making accessible to the public information in registered notices with respect to security rights in accordance with the provisions of this Law [and any provisions set forth in another law, decree, regulation or other act, or a combination thereof (hereinafter referred to as the “Registry Act”)].
2. Any person may submit a notice or a search request to the Registry in accordance with the provisions of this Law [and the Registry Act, if not enacted as part of this Law].

*[Note to the Commission: The Commission may wish to consider whether any of the definitions of the Registry Guide (i.e. address, amendment, cancellation, designated field, notice, registrant, registrar, registration, registration number, registry, registry record, and regulation) may need to be added to article 2 of the Registry Act (see Registry Guide, para. 9). In addition, the Commission may wish to note that some modern secured transactions laws provide for the registration of notices other than those relating to security rights (e.g. enforcement notices and notices of preferential claims) and consider whether registration of such notices should be foreseen in the draft Model Law or the Registry Act, or at least discussed in the Guide to Enactment (see Registry Guide, paras. 51 and 52). Moreover, the Commission may wish to note that the Guide to Enactment will clarify that the enacting State may wish to consider whether to implement the provisions set forth in the Registry Act in the Law or a separate act, which may be promulgated simultaneously with the Law. The Commission may also wish to note that the Guide to Enactment will clarify that, in line with recommendation 54, subparagraph (j) of the Secured Transactions Guide and recommendation 5 of the Registry Guide, the Registry should be fully electronic, if possible.]*

## Registry Act. The registry system

### A. General rules

#### Section A. General provisions

##### Article 1. One notice sufficient for multiple security rights

The registration of a single notice is sufficient to make effective against third parties multiple security rights created under multiple security agreements between the same parties.

##### Article 2. Advance registration

An initial or amendment notice may be registered before the creation of a security right or the conclusion of the security agreement to which the notice relates.

##### Article 3. Grantor’s authorization for registration

1. Registration of an initial notice must be authorized by the grantor in writing.

2. Registration of an amendment notice must be authorized by the grantor in writing, if the amendment notice seeks to:
  - (a) Add encumbered assets not included in the security agreement or other authorization of the grantor; [or]
  - (b) Add a grantor not included in the security agreement or other authorization of the grantor; [or]
  - [(c) Increase the maximum amount for which the security right to which the registration relates may be enforced.]<sup>1</sup>
3. Registration of an amendment notice that adds a grantor must be authorized by the additional grantor in writing.
- [4. Notwithstanding paragraph 3, no authorization is required for the registration of an amendment notice under article 25.]<sup>2</sup>
5. Any required authorization may be provided by the grantor before or after registration of a notice.
6. A security agreement is sufficient to constitute authorization by the grantor for the registration of a notice.
7. The Registry may not require evidence of the existence of the grantor's authorization.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will clarify that: (a) under paragraphs 1 and 2, while the grantor's authorization would be required for a registration to be effective, it would not be sufficient as there are other effectiveness requirements dealt with in other articles of the draft Model Law (e.g. article 7 below); (b) under subparagraphs 2 (a), if the secured creditor forgets to set out in the initial notice some assets included in the security agreement or other authorization of the grantor and then realizes this error, the amendment notice does not "contain a description of additional assets" and would not require the grantor's separate authorization. The Commission may also wish to consider whether authorization by the initial grantor is required for an amendment notice that adds a new grantor (subpara. 2 (b)) or whether authorization by the additional grantor is sufficient (para. 3), in which case subparagraph 2 (b) may not be necessary. The Commission may also wish to note that the Guide to Enactment will explain that registration of an amendment notice that adds encumbered assets or increases the maximum amount may affect intervening secured creditors, and therefore takes effect only when the registration of the amendment notice (not the initial notice) becomes effective (see article 12, para. 1 below). The Guide to Enactment will also explain that there is no need to register an amendment notice or obtain the authorization of the grantor with respect to "additional assets" that: (a) are the proceeds of encumbered assets described in a previously registered notice, as the security right extends to proceeds by law (see art. 10, para. 1, of the draft Model Law); and (b) are cash proceeds (money,*

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<sup>1</sup> This provision will be necessary if the enacting State implements article six, subparagraph three (e).

<sup>2</sup> This provision will be necessary if the enacting State implements option A or option B of article 25.

*receivables, negotiable instruments or funds credited to a bank account) (see art. 17, para. 1, of the draft Model Law).]*

## **Section B. Access to registry services**

### **Article 4. Public access conditions**

1. A person may submit a notice to the Registry, if that person:
  - (a) Uses the prescribed notice form; [and]
  - (b) Identifies itself in the prescribed manner[; and]
  - (c) Has paid or arranged to pay the prescribed fee].<sup>3</sup>
2. A person may submit a search request to the Registry, if that person:
  - (a) Uses the prescribed search request form[; and]
  - (b) Has paid or arranged to pay the prescribed fee].<sup>4</sup>
3. If access is refused, the Registry must communicate the reason to the registrant or searcher [without delay] [promptly].

*[Note to the Commission: The Commission may wish to consider which of the alternative set of bracketed words should be retained in paragraph 3 (and art. 5, para. 3 and other articles of the Registry Act), and whether the alternative retained should be further explained in the Guide to Enactment.]*

### **Article 5. Rejection of the registration of a notice or a search request**

1. The Registry must reject the registration of a notice if:
  - (a) No information is entered in at least one of the required designated fields; or
  - (b) The information entered in a required designated field is not legible[; or
  - (c) An amendment notice indicating the intent to extend the period of effectiveness of a registration is not submitted within the period referred to in article 13, paragraph 2].<sup>5</sup>
2. The Registry must reject a search request if:
  - (a) No information is entered in at least one of the fields designated for entering a search criterion; or
  - (b) If the information entered in a required designated field is not legible.
3. If the registration of a notice or a search request is refused, the Registry must communicate the reason to the registrant or searcher [without delay] [promptly].

<sup>3</sup> This provision will be necessary if the enacting State implements an option other than option B of article 32.

<sup>4</sup> This provision will be necessary if the enacting State implements an option other than option B of article 32.

<sup>5</sup> This provision will be necessary if the enacting State implements option A or option C of article 13, paragraph 2.

### **Article 6. No verification of information in a notice by the Registry**

1. The Registry must maintain information about the registrant's identity submitted in accordance with article 4, subparagraph 1 (b), but may not require verification of that information [or of the existence of a security agreement].
2. Except as provided in article 5, the Registry may not reject the registration, or conduct any scrutiny of the content, of a notice submitted to the Registry for registration.

*[Note to the Commission: The Commission may wish to consider the text within square brackets in paragraph 1. In line with the policy of the Secured Transactions Guide that a registration may relate to existing or potential security rights (see chap. IV, para. 3), and may take place even before conclusion of a security agreement (see rec. 67 and art. 2 above), the bracketed text is intended to clarify that the Registry may not require evidence of the existence of a security agreement. The Commission may also wish to note that the Guide to Enactment will explain that, while the date and time of registration is maintained in the public record (see art. 12, para. 3 below), the identity of the registrant is maintained in a part of the record of the registry that is not public and after cancellation of the notice is preserved in the archives together with other information contained in a registered notice.]*

## **Section C. Registration of a notice**

### **Article 7. Information required in an initial notice**

An initial notice must contain the following items of information in the field designated for entering that type of information:

- (a) The identifier and address of the grantor [and any additional information that the enacting State may decide to permit or require to be entered to assist in uniquely identifying the grantor] in accordance with article 8;
- (b) The identifier and address of the secured creditor or its representative in accordance with article 9; [and]
- (c) A description of the encumbered assets in accordance with article 10;
- [(d) The period of effectiveness of the registration in accordance with article 13];<sup>6</sup> and
- [(e) A statement of the maximum amount for which the security right to which the registered notice relates may be enforced.]<sup>7</sup>

*[Note to the Commission: The Commission may wish to note that Guide to Enactment will clarify that the additional grantor information referred to within square brackets in subparagraph (a) should be limited to information to be specified by the enacting State (e.g., a unique national personal number assigned by the enacting State, if it has such a system, and perhaps a passport number of individual*

<sup>6</sup> This provision will be necessary, if the enacting State implements option B or C of article 13.

<sup>7</sup> This provision will be necessary if the enacting State includes in its law article 6, subparagraph 3 (e), of the draft Model Law.

*grantors who do not have such an identifying number; and, with respect to legal persons, a unique number assigned by the enacting State to that entity, and some other specified unique number for entities that lack such a number). The Guide to Enactment will also explain that, if the enacting State chooses to require additional grantor information, it must also specify the consequences of the registrant's failure to provide such additional data correctly, and whether the Registry's indexing will permit searching by such additional data. In addition, the Guide to Enactment will also refer to the discussion of this matter in the Registry Guide (see paras. 167-169). Moreover, the Guide to Enactment will refer to the discussion of the description of serial number assets in the Secured Transactions Guide (see chap. IV, paras. 34-36) and the Registry Guide (see paras. 131-134 and 193-194). The Guide to Enactment will also refer to the discussion of the description of proceeds in a notice in the Registry Guide (see paras. 195-197). With respect to subparagraph (e), the Guide to Enactment will refer to the discussion in the Registry Guide (see paras. 200-204).]*

#### **Article 8. Grantor identifier**

1. Where the grantor is a natural person:
  - (a) Subject to subparagraph 1 (c), the identifier of the grantor is the name of the grantor, as it appears in [the official document in the order in which it should be used to determine the grantor's name to be specified by the enacting State];
  - (b) [The enacting State should specify which component of the grantor's name must be entered in the notice]; and
  - (c) [The enacting State should specify the way in which the grantor's name is determined if the name is changed after the issuance of the relevant document referred to in subparagraph 1 (a) and before registration.]
2. Where the grantor is a legal person, the grantor identifier is the name of the grantor that appears in [the most recent document, law or decree to be specified by the enacting State] constituting the legal person.
3. [The enacting State should specify whether additional information must be entered in the notice in special cases, such as where the grantor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

#### **Article 9. Secured creditor identifier**

1. Where the secured creditor is a natural person, the secured creditor identifier is the name of the secured creditor as it appears in [the official document in the order in which it should be used to determine the grantor's name to be specified by the enacting State].
2. Where the secured creditor is a legal person, the secured creditor identifier is the name of the secured creditor that appears in [the most recent document, law or decree to be specified by the enacting State] constituting the legal person.
3. [The enacting State should specify whether additional information must be entered in the notice in special cases, such as where the grantor is subject to

insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

#### **Article 10. Description of encumbered assets**

1. The registrant must describe in the notice the assets to be encumbered in a manner that reasonably allows its identification.
2. A description that refers to all of the grantor's movable assets within a particular category or to all of the grantor's movable assets meets the standard indicated in paragraph 1.

*[Note to the Commission: The Commission may wish to note that this article has been aligned with recommendation 62 of the Secured Transactions Guide and recommendation 28 of the Registry Guide on which it is based (both of which provide that the standard to be complied with respect to the description of the encumbered assets in the security agreement and in the notice is the same) and article 9 of the draft Model Law. The Commission may wish to note that the Guide to Enactment will refer to the discussion of the description of encumbered assets, serial number assets and proceeds in the Registry Guide (see paras. 190-197). The Commission may also wish to consider whether the Guide to Enactment should also clarify that: (a) the description in the notice need not be identical to that in the security agreement; (b) to the extent that the description in the notice exceeds the description in the security agreement, the notice does not make effective against third parties a security right in such assets; (c) reference to an asset in a registered notice does not imply or represent that the grantor presently or in the future will have rights in the asset; and (d) a description by quantity or computational formula meets the standard indicated in this article.]*

#### **Article 11. Language of information in a notice**

The information contained in a notice must be expressed in [the language or languages to be specified by the enacting State] and in the character set determined and publicized by the Registry.

*[Note to the Commission: The Commission may wish to consider whether: (a) the character set should also be addressed in the same way the language in which information in a notice must be expressed and thus left to be specified by the enacting State rather than the Registry; (b) article 23 below or the Guide to Enactment should clarify that where the information in a registered notice is not expressed in the required language or languages the registration of the notice is ineffective or ineffective if it would seriously mislead a reasonable searcher.]*

#### **Article 12. Time of effectiveness of the registration of a notice**

1. The registration of an initial or amendment notice is effective from the date and time when the information in the notice is entered into the registry record so as to be accessible to searchers of the public registry record.
2. The registration of a cancellation notice is effective from the date and time when the information in any previously registered notice to which it relates is no longer accessible to searchers of the public registry record.

3. The Registry must indicate the date and time when the information in an initial or amendment notice is entered into the registry record so as to be accessible to searchers of the public registry record.
4. The Registry must enter information in an initial or amendment notice into the registry record [without delay] [promptly] after the notice is submitted and in the order in which it was submitted.
5. The Registry must indicate the date and time when the information in any initial or amendment notice to which a cancellation notice relates is no longer accessible to searchers of the public registry record.

### **Article 13. Period of effectiveness of the registration of a notice**

#### **Option A**

1. The registration of a notice is effective for [a period of time to be specified by the enacting State].
2. The period of effectiveness of a registration may be extended within [a period of time to be specified by the enacting State] before its expiry by the registration of an amendment notice indicating this intent in the designated field.
3. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period referred to in paragraph 1 beginning from the time the current period would have expired if the amendment notice had not been registered.

#### **Option B**

1. The registration of a notice is effective for the period of time indicated by the registrant in the designated field of the notice.
2. The period of effectiveness of a registration may be extended at any time before its expiry by the registration of an amendment notice that indicates in the designated field a new period.
3. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period indicated in the amendment notice beginning from the time the current period would have expired if the amendment notice had not been registered.

#### **Option C**

1. The registration of a notice is effective for the period of time indicated by the registrant in the designated field of the notice, not exceeding [a maximum period of time to be specified by the enacting State].
2. The period of effectiveness of a registration may be extended within [a period to be specified by the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period not exceeding the maximum period of time referred to in paragraph 1.
3. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period specified in the amendment notice

beginning from the time the current period would have expired if the amendment notice had not been registered.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that the period of effectiveness can be indicated by a reference to a number of years or an expiry date, as specified by the Registry.]*

#### **Article 14. Obligation to send a copy of a registered notice**

1. [Without delay] [promptly] after the registration of a notice, the Registry must send a copy of the notice, indicating the date and time when the registration became effective and the registration number assigned to the notice, to the person identified in the notice as the secured creditor at its address set forth in the notice.
2. Within [a short period to be specified by the enacting State] after the person identified in a registered notice as the secured creditor receives a copy of the registered notice in accordance with paragraph 1, that person must send it to the person identified in the notice as the grantor:

(a) At the address set forth in the notice; or

(b) If that person knows that the address has changed, at the most recent address known to that person or an address reasonably available to that person.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that the Registry will typically send a statement of the information in a registered notice to the secured creditor, and the secured creditor will send a copy of that statement to the grantor. Noting that any liability of the Registry for failure to comply with the obligation under this article is limited in article 31 below, the Commission may wish to address the liability of the secured creditor for failure to send a copy to the grantor and limit it to actual damages.]*

### **Section D. Amendments and cancellations**

#### **Article 15. Right to register an amendment or cancellation notice**

1. The person identified in an initial notice as the secured creditor may register an amendment or cancellation notice relating to that notice at any time.
2. [Subject to article 20, upon]<sup>8</sup> [Upon] registration of an amendment notice changing the secured creditor, only the new secured creditor may register an amendment or cancellation notice.

#### **Article 16. Information required in an amendment notice**

1. An amendment notice must contain in the relevant designated field:
  - (a) The registration number assigned by the Registry to the initial notice to which the amendment relates; and
  - (b) The information to be added, deleted or changed.

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<sup>8</sup> This bracketed wording will be necessary if the enacting State adopts options B, C or D of article 20 of the Registry Act.

2. An amendment notice may relate to one or more than one item of information in a notice.

### **Article 17. Global amendment of secured creditor information**

#### **Option A**

A person may register a single amendment notice to amend its identifier, its address or both in all registered notices in which it is identified as the secured creditor.

#### **Option B**

[A person may request the Registry to register a single amendment notice to amend its identifier, its address or both in all registered notices in which it is identified as the secured creditor.]

[Upon the request of the person identified in multiple registered notices as the secured creditor, the Registry must amend its identifier, its address or both in all registered notices.]

[The enacting State may wish to specify a way for the Registry to amend the identifier, address or both of the person identified as the secured creditor in multiple notices upon the request of that person.]

*[Note to the Commission: The Commission may wish to consider whether this article could be made optional and reduced to option A with a note in the Guide to Enactment that, if the enacting State wishes to provide this service, it should enact this article (option A) and require the Registry to provide a mechanism to enable the secured creditor to register such an amendment and an internal software program to execute the change. If the Commission decides to retain options A and B, it may wish to consider the alternative wordings for option B. The first, which reflects option B of recommendation 31 of the Registry Guide, states that the secured creditor may request a global amendment but does not clearly address the question whether the Registry has to meet that request. The second is intended to state clearly that, upon request of the secured creditor, the Registry has to make the global amendment. The third is intended to leave the matter to the enacting State. The Commission may also wish to consider whether this article or the Guide to Enactment should clarify that this amendment function covers the following situations: (a) where a person identified in multiple notices as the secured creditor simply changes its name, its address or both; (b) the name, the address or both of a person identified in multiple notices changes as a result of a merger with another financing institution; and (c) the name, the address or both of a person identified in multiple notices changes as a result of an assignment of all secured obligations to another financing institution (see Registry Guide, para. 242). The Commission may also wish to note that the Guide to Enactment will explain that, if an enacting State adopts the option A, it will need to establish special access procedures to enable a person to identify all notices in which it is identified as the secured creditor and to register a global amendment notice, since the identifier of the secured creditor is not a search criterion generally available to the public for searching the public registry record.]*

**Article 18. Information required in a cancellation notice**

A cancellation notice must contain in the designated field the registration number assigned by the Registry to the initial notice to which the cancellation relates.

*[Note to the Commission: The Commission may wish to note that, with respect to the impact of a cancellation notice not authorized by the person identified in the initial or amendment notice as the secured creditor, the Guide to Enactment will refer to article 20 below.]*

**Article 19. Compulsory registration of an amendment or cancellation notice**

1. The secured creditor must register an amendment or cancellation notice if:
  - (a) The registration of an initial or amendment notice was not authorized by the grantor or the notice contains information that exceeds the scope of the grantor's authorization;
  - (b) The registration of an initial or amendment notice was authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded;
  - (c) The security agreement to which the registered notice relates has been revised in a way that makes the information contained in the notice incorrect or insufficient and the grantor has not otherwise authorized the registration of a notice containing that revised information; or
  - (d) The security right to which the notice relates has been extinguished and there is no further commitment by the secured creditor to extend credit secured by the encumbered assets to which the notice relates.
2. In a case falling within subparagraphs 1 (b) to (d), the secured creditor may charge the grantor any fee agreed between them for registering the appropriate amendment or cancellation notice.
3. If any of the conditions set out in paragraph 1 are met, the grantor is entitled to request the secured creditor in writing to register an amendment or cancellation notice.
4. Notwithstanding paragraph 2, no fee or expense may be charged or accepted by the secured creditor for complying with a written request from the grantor in accordance with paragraph 3.
5. If the secured creditor does not comply with the grantor's written request referred to in paragraph 3 within [a short period to be specified by the enacting State] after its receipt, the grantor is entitled to seek the registration of an amendment or cancellation notice through [a summary judicial or administrative procedure to be specified by the enacting State].
6. The grantor is entitled to seek the registration of an amendment or cancellation notice in accordance with the procedure referred to in paragraph 5 even before the expiry of the time period specified therein, provided that [the enacting State should introduce appropriate measures to protect the secured creditor].

7. An amendment or cancellation notice in accordance with paragraph 5 or 6 is registered by

**Option A**

the Registry [without delay] [promptly] upon receipt of the notice with a copy of the relevant order.

**Option B**

[the judicial or administrative officer to be specified by the enacting State] [without delay] [promptly] upon the issuance of the relevant order with a copy of the order.

*[Note to the Commission: The Commission may wish to consider whether the word “information” in subparagraphs 1 (a) and (c) should be qualified or limited to information, a change of which may have a negative impact on the grantor’s rights or obligations, such as the description of the encumbered assets or the maximum amount. If, for instance, the security agreement is revised to change the secured creditor’s name and address, the grantor should have no right to compel the registration of an amendment notice changing the name and address of the secured creditor. The Commission may also wish to note that paragraph 7 has been aligned with recommendation 33, subparagraph (g), of the Registry Guide on which it is based. The Commission may also wish to consider whether the draft Model Law should include an article inviting the enacting State to identify the court or other authority that has jurisdiction to consider a request under this article and all relevant articles of the draft Model Law and the Registry Act.]*

**Article 20. Amendment or cancellation notices  
not authorized by the secured creditor**

**Option A**

The registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the person identified in the initial [or amendment] notice as the secured creditor.

**Option B**

1. Subject to paragraph 2, the registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the person identified in the initial [or amendment] notice as the secured creditor.
2. The unauthorized registration of an amendment or cancellation notice does not affect the priority of the security right to which it relates as against the right of a competing claimant [which arose before the registration and] over which the security right had priority before the registration.

**Option C**

The registration of an amendment or cancellation notice is ineffective unless authorized by the person identified in the initial [or amendment] notice as the secured creditor.

**Option D**

1. Subject to paragraph 2, the registration of an amendment or cancellation notice is ineffective unless authorized by the person identified in the initial [or amendment] notice as the secured creditor.
2. The unauthorized registration of an amendment or cancellation notice is nonetheless effective as against a competing claimant whose right was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, provided that it did not have knowledge that the registration was unauthorized at the time it acquired its right.

*[Note to the Commission: The Commission may wish to note that the matter addressed in this article was not dealt with in the Secured Transactions Guide but it was discussed in the Registry Guide (paras. 249-259). In addition, the Commission may wish to consider whether options C and D of this article are compatible with the Secured Transactions Guide (rec. 74) and the Registry Guide (rec. 20), according to which upon registration of a cancellation notice, information contained in a registered notice is to be removed from the public registry record and archived. Moreover, the Commission may wish to consider the bracketed text in options A and C and paragraph 1 of options B and D (“or amendment notice”), which is intended to address the situation where the secured creditor identified in the initial notice assigned its rights. Presumably, an amendment notice will be registered naming the assignee as the secured creditor and any subsequent amendment or cancellation notice would require the authorization of the secured creditor identified in that amendment notice. The Commission may also wish to consider the application of paragraph 2 in options B and D where there is more than one security right or more than one competing claimant, since the operation of these provisions may give rise in that scenario to circular priority problems. The Commission may further wish to consider the application of paragraph 2 where the competing claimant is a secured creditor whose right arose from a security agreement entered into before the cancellation but was registered after the cancellation. Finally, the Commission may wish to consider whether the Guide to Enactment should clarify that the choice of an option would depend on the policy decision to be made with respect to the design of the registry system. For example, in a two-level security registry system where the user obtains a password-protected account and gets a special code to register an amendment or cancellation, option A may be appropriate; or if an enacting State chooses an “open drawer” system where all information in the file is available to searchers and the registry is given no authority to do anything but accept, retain and disclose all information, options B, C or D may be appropriate.]*

**Section E. Searches****Article 21. Search criteria**

A search of the public registry record may be conducted according to:

- (a) The identifier of the grantor; or
- (b) The registration number assigned to the initial notice.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that, if a State adopts unique numbers as grantor identifiers (whether individuals or entities) or serial numbers for describing specified types of asset, a search may be conducted by using the relevant number or serial number as a search criterion (see note to article 7 above).]*

#### **Article 22. Search results**

1. Upon submission of a search request, the Registry must provide a search result that indicates the date and time when the search was performed and:

##### **Option A**

(a) Sets forth all information in each registered notice that contains information matching the search criterion exactly; or

(b) Indicates that no registered notice contains information matching the search criterion exactly.

##### **Option B**

(a) Sets forth all information in each registered notice that contains information matching the search criterion:

(i) exactly; or

(ii) [where the search criterion is the grantor identifier,] closely;

(b) Indicates that no registered notice contains information matching the search criterion:

(i) exactly; or

(ii) [where the search criterion is the grantor identifier,] closely.

2. Upon request by a searcher, the Registry must issue an official search certificate indicating the search result.

3. A search certificate may be in the form of a written search result issued by the Registry and is proof of its contents in the absence of evidence to the contrary.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that: (a) no reference is made to the currency date, as the currency date is the date of the search, since, under the draft Model Law, registration of a notice becomes effective when the information in the notice has been entered in the registry so as to be available to searchers (see Registry Guide, para. 273); and (b) close matches in option B have to be limited to a Registry with electronic search logic that is specified and publicized (e.g., ignoring entity-type identifiers that are at the end of the identifier, such as S.A., Inc. or Corp.) and not be a matter of Registry or judicial imagination. In addition, the Commission may wish to consider the bracketed text in subparagraphs (a) and (b) of option B, which is intended to clarify that close matches apply only to searches against the grantor identifier (except if the grantor identifier consists of numbers) and not the registration number if the enacting State implements a close-match system. The Guide to Enactment will also clarify that exact matches burden registrants to get it*

*right, while close matches burden searchers to also search under a broader acceptable version of the search criterion.]*

## **Section F. Errors and post-registration changes**

### **Article 23. Registrant errors in required information**

1. An error in the grantor identifier entered in a notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor's correct identifier as the search criterion.
2. An error in required information other than the grantor's identifier entered in a notice does not render the registration ineffective unless the error would seriously mislead a reasonable searcher.
3. An error in the grantor identifier entered in a notice does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice.
4. An error in the description of an encumbered asset in a notice does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described.
- [5. Notwithstanding paragraph 2, an error in the period of effectiveness of registration<sup>9</sup> or the maximum amount for which the security right may be enforced entered in a notice,<sup>10</sup> does not render the notice ineffective, except to the extent it seriously misled third parties that relied on the information set out on the notice.]

*[Note to the Commission: The Commission may wish to note that the text at the end of paragraph 4 ("except to the extent ..."), which is drawn from recommendation 29, subparagraph (c), of the Registry Guide, which in turn is drawn from recommendation 66 of the Secured Transactions Guide, may give rise to circular priority problems and thus consider whether the test in paragraph 2 should apply generally without this qualification. In this connection, the Commission may wish to note that: (a) the reference to a reasonable searcher in paragraph 2 means that the test in this paragraph is objective (that is, it is not necessary for a competing claimant to establish that it was actually misled as a result of the error in order for an error that would be seriously misleading from the perspective of a reasonable searcher to render a registration ineffective); and (b) the reference in paragraph 5 to parties that actually relied to their detriment on an erroneously stated registration period or maximum amount in a registered notice means that the test in this paragraph is subjective (that is, a third party challenging the notice needs to establish that it was actually misled as a result of the error; see Secured Transactions Guide, chap. IV, paras. 84 and 96).]*

### **Article 24. Post-registration change of the grantor's identifier**

1. If the grantor's identifier changes after a notice is registered and the secured creditor registers an amendment notice indicating the new identifier of the grantor within [a short period of time to be specified by the enacting State] after the change,

<sup>9</sup> This provision will be necessary, if the enacting State implements option B or C of article 13.

<sup>10</sup> This provision will be necessary, if the enacting State implements article 7, subparagraph (e).

the security right to which the notice relates remains effective against third parties and retains whatever priority it had over the rights of competing claimants before the change.

2. If the secured creditor registers an amendment notice after the expiration of the time period indicated in paragraph 1:

(a) A security right with respect to which a notice is registered or which is otherwise made effective against third parties after the change in the grantor's identifier but before the registration of the amendment notice has priority over the security right to which the amendment notice relates; and

(b) A person that buys, leases or licenses the encumbered asset after the change in the grantor's identifier but before the registration of the amendment notice acquires its rights free of the security right to which the amendment notice relates.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that: (a) if the secured creditor registers the amendment notice during the "grace period" contemplated in paragraph 1 of this article, the third-party effectiveness and priority of its security right is preserved as against the categories of competing claimants described in this article even if they acquired their rights prior to the registration of the amendment notice; (b) while a secured creditor's failure to register an amendment notice adding the grantor's new identifier has the negative priority consequences against the categories of competing claimants described in this article, it does not prejudice the third-party effectiveness or priority of its security right as against other categories of competing claimants such as the grantor's insolvency representative; (c) while the "grace period" begins to run from the time of the name change regardless of whether or not the secured creditor actually knew about the name, the registration of an amendment notice after the expiry of that grace period will still protect the secured creditor as against the categories of competing claimants described in this article if their rights arise after the registration; and (d) an amendment notice must be registered for the purposes of the rules stated in this article only if the name change would make the registration irretrievable by a searcher using the new name of the grantor as the search criterion. The Commission may wish to consider whether all those issues should be addressed explicitly in the priority chapter of the draft Model Law.]*

## **Article 25. Post-registration transfer of an encumbered asset**

### **Option A**

1. If an encumbered asset covered by a registered notice is transferred after the notice is registered and the secured creditor registers an amendment notice adding the transferee's identifier and address as a new grantor within [a short period of time to be specified by the enacting State] after the secured creditor acquires knowledge of the transfer, the security right to which the initial notice relates remains effective against third parties and retains whatever priority it had over the rights of competing claimants before the transfer.

2. If the secured creditor registers an amendment notice after the expiration of the time period indicated in paragraph 1:

(a) A security right created by the transferee with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before the registration of the amendment notice has priority over the security right to which the amendment notice relates; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before the registration of the amendment notice acquires its rights free of the security right to which the amendment notice relates.

### **Option B**

1. If an encumbered asset covered by a registered notice is transferred after the notice is registered and the secured creditor registers an amendment notice adding the transferee's identifier and address as a new grantor within [a short period of time to be specified by the enacting State] after the transfer, the security right to which the initial notice relates remains effective against third parties and retains whatever priority it had over the rights of competing claimants before the transfer.

2. If the secured creditor registers an amendment notice after expiration of the time period indicated in paragraph 1:

(a) A security right created by the transferee with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before the registration of the amendment notice has priority over the security right to which the amendment notice relates; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before the registration of the amendment notice acquires its rights free of the security right to which the amendment notice relates.

### **Option C**

A security right to which the notice relates remains effective against third parties and retains its priority notwithstanding a transfer of the encumbered asset covered by the registered notice.

*[Note to the Commission: The Commission may wish to consider making a decision as to which of the options in this article is preferable, rather than leaving the matter to each enacting State. In addition, the Commission may wish to consider whether it should be clarified in this article or in the Guide to Enactment that this article does not apply to outright transfers of receivables. Outright transfers of receivables fall within the scope of the draft Model Law and the transferee must register in order to make its right effective against third parties in the same way as a secured creditor that acquires a security right in receivables. Moreover, the Commission may wish to note that the Guide to Enactment will clarify that, if a State adopts option A or B and article 33, it will have a different rule for post-registration transfers of intellectual property, while if it adopts option C, it will not need to implement article 33, which includes the same rule with respect to transfers of intellectual property. The Commission may also wish to consider whether article 33 should be merged with or follow this article.]*

## Section G. Organization of the Registry and the registry record

### Article 26. Appointment of the registrar

The [the appropriate executive or ministerial authority to be specified by the enacting State] is authorized to appoint and dismiss the registrar, and determine the registrar's duties.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that the relevant authority may determine the registrar's duties in the relevant law, decree, regulation or similar act.]*

### Article 27. Organization of information in registered notices

1. The Registry must assign a unique registration number to a registered initial notice and all registered amendment or cancellation notices that contain that number must be associated with the initial notice in the registry record.
2. The Registry must organize the registry record so that the information in a registered initial notice and in any associated registered notice can be retrieved by a search of the registry record that uses the identifier of the grantor or the registration number assigned to the initial notice as the search criterion.
3. Upon registration of an amendment or cancellation notice, the Registry may not delete or modify information contained in any associated registered notice[, and the registration of an amendment or cancellation notice does not have that effect].

*[Note to the Commission: The Commission may wish to consider: (a) whether the term "registration number" and other Registry-related terms should be defined in article 2 of the draft Model Law or the Registry Act (see note to article 26 of the draft Model Law above); and (b) the bracketed text in paragraph 3.]*

### Article 28. Integrity of information in the registry record

1. Except as provided in articles 29 and 30, the Registry may not amend or remove information contained in the registry record.
2. The Registry must ensure that information contained in the registry record is preserved and may be reconstructed in the event of loss or damage.

*[Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that reconstruction of the registry record requires the creation of a back-up or security copy aimed at preserving records, presumably in a different location.]*

### Article 29. Removal of information from the public registry record and archival

1. Upon the expiry of the period of effectiveness of a notice in accordance with article 13 or upon registration of a cancellation notice in accordance with article 18 or 19, the Registry must remove information in a registered notice from the public registry record.
2. The Registry must archive information removed from the public registry record in accordance with paragraph 1 for [a period at least co-extensive with its prescription period for disputes arising from a security agreement to be specified by

the enacting State] in a manner that enables the information to be retrieved by the Registry in accordance with article 27.

**[Article 30. Correction of errors by the Registry**

1. [Without delay] [promptly] after discovering that it made an error or omission in entering into the registry record the information contained in a notice submitted for registration or erroneously removed from the registry record information contained in a registered notice, the Registry must

**Option A**

register a notice to correct the error or omission, or restore the erroneously removed information, and send a copy of the registered notice to the person identified in the notice as the secured creditor.

**Option B**

inform the person identified in the registered notice as the secured creditor so as to enable that person to register a notice to correct the error or omission or restore the erroneously removed information.

2. The registration of a notice referred to in paragraph 1 is effective

**Option A**

as of the time the information in the notice becomes accessible to searchers of the registry record.

**Option B**

as of the time the information in the notice becomes accessible to searchers of the registry record, except that the security right to which the notice relates has the priority it would otherwise have had over the right of a competing claimant but for the Registry's error or omission or the Registry's erroneous removal of the information.

**Option C**

as of the time it would have been effective if the error or omission had never been made or the information had never been erroneously removed.

**Option D**

as of the time it would have been effective if the error or omission had never been made or the information had never been erroneously removed, except that the security right to which the notice relates is subordinate to the right of a competing claimant that acquired a right in the encumbered asset in reliance on a search of the public registry record made before the notice was registered, provided the competing claimant did not have knowledge of the error or omission or the erroneous removal of the information at the time it acquired its right.

*[Note to the Commission: The Commission may wish to note that, in accordance with a decision of the Working Group, this article has been aligned with*

article 20 (see A/CN.9/836, para. 106). However, the Commission may also wish to note that the issue of the impact of notices correcting Registry errors on the effectiveness and priority of the security right to which the correction relates as against intervening third-party rights is different than the issue addressed in article 20 (effectiveness of the registration of amendment or cancellation notices that are not authorized by the secured creditor). The Commission may thus wish to consider that: (a) paragraph 1 should be retained so as to ensure that the Registry is authorized to correct its errors; and (b) paragraph 2 should be deleted, as it may not be possible to come up with a set of alternative rules (as attempted in para. 2 of art. 30 above) equivalent to the set of options reflected in article 20. If this approach were adopted, a notice registered to correct a Registry error or omission (or to restore erroneously removed information) would take effect only as of the time the information in the notice becomes searchable (in accordance with the general rule reflected in article 12). As a result, the secured creditor who was the victim of the Registry's error might find itself subordinated to a competing claimant who acquired a right in the encumbered asset before the registry record was corrected. In that event, its only recourse would be to claim compensation against the Registry subject to any limitation on the liability of the Registry under article 31.]

### **Article 31. Limitation of liability of the Registry**

#### **Option A**

Any liability that the Registry may have under other law is limited for loss or damage caused by:

(a) An error or omission in a search result issued to a searcher or in a copy of a registered notice sent to the secured creditor [up to a maximum amount to be specified by the enacting State]; [and]

(b) An error or omission in entering or failing to enter information in the registry record or in erroneously removing information from the registry record [up to a maximum amount to be specified by the enacting State] [;

(c) A failure of the Registry to send to a copy of the registered notice to the person identified in the notice as the secured creditor in accordance with article 14, paragraph 1; and

(d) The provision of false or misleading information to a registrant or searcher].

#### **Option B**

Any liability that the Registry may have under other law for loss or damage caused by an error or omission in the administration or operation of the Registry is limited to [the enacting State to specify the amount.]

#### **Option C**

The Registry is not liable for loss or damage caused to a person by an error or omission in the administration or operation of the Registry.

[*Note to the Commission: The Commission may wish to note that the Guide to Enactment will explain that: (a) option A is intended to leave the issue of the*

liability of the Registry (or the enacting State) for loss or damage to other law of the enacting State and, if liability is foreseen by that other law, to limit that liability to the types of errors or omissions listed in option A (which may be covered by a compensation fund that the Registry (or the enacting State) may wish to establish and pay from the registry fees); (b) option B is intended to leave any liability that the Registry (or the enacting State) may have for loss or damage caused by an error or omission in the administration or operation of the Registry to other law, and to limit it to an amount to be specified by the enacting State; and (c) option C is intended to exclude any liability of the registry (or the enacting State) for an error or omission in the administration or operation of the Registry. The Guide to Enactment will also explain that subparagraph (b) of option A is intended to cover the liability of the Registry in entering or failing to enter in the registry record information submitted by a registrant in a paper notice form. It is not intended to address any liability of the Registry for entering or failing to properly or completely enter information in the registry record directly submitted by a registrant electronically, since it would be impossible for the registrant to prove that this was due to the fault of the Registry as opposed to the registrant's own error or omission. The Commission may also wish to consider subparagraphs (c) and (d), which appear within square brackets in option A. Subparagraph (c) is intended to address and limit any liability that the Registry may have under other law for loss or damage caused by a failure of the Registry to send a copy of the registered notice to the secured creditor who can then verify the accuracy and completeness of the information. Subparagraph (d) is intended to limit any liability that the Registry may have under other law for loss or damage caused by false or misleading information provided by the Registry to registrants or searchers.]

### **Article 32. Registry fees**

#### **Option A**

The Registry may charge [the fees at cost-recovery level or lower to be specified by the enacting State] for [the services to be specified by the enacting State].

#### **Option B**

The Registry may not charge any fee for its services.

*[Note to the Commission: The Commission may wish to note that one of the key objectives of an effective and efficient secured transactions law is to enhance certainty and transparency by providing for registration of a notice in a general security rights registry (rec. 1, subpara. (f), of the Secured Transactions Guide). This objective cannot be achieved if the Registry is used as an opportunity to generate revenue, as borrowers in low-value transactions will not be able to bear the cost of registration, and borrowers in high-value transactions will be discouraged to use the Registry. Accordingly, the Secured Transactions Guide, recommends that registry fees, if any, should be set a cost-recovery level to encourage registrants and searches to use the registry services (see Secured Transactions Guide, chap. IV, para. 37, and recommendation 54, subparagraph (i)). Following the same policy, the Registry Guide, sets forth in an indicative way three options, namely a cost-recovery option, a no-fee or fee-below cost-recovery option and an option leaving fees to be determined, in one of the two other options,*

not in the regulation, but in a decree to be enacted later (see Registry Guide, paras. 274-280, and rec. 36).

In line with the above-mentioned considerations, three options are presented in article 32. There may be other options and, in particular, a fee structure might distinguish between electronic and paper use of the registry, where the fee differential might be designed to stimulate electronic use rather than paper use in an enacting State that offers both. Irrespective of the option a State decides to enact, it may wish to provide that the Registry may enter into an agreement with a person to establish a Registry user account to facilitate the payment of fees and the identification of the registrant. Similarly, irrespective of the option it decides to adopt, the enacting State may wish to specify the Registry fees in its Registry Act and allow the administrative authority supervising the Registry (e.g., a ministry or the central bank) to modify the fees and methods of payment by decree. This may be necessary, for example, if experience shows that one or the other fee is too low or too high, or that the method payment initially chosen is not sufficiently time- or cost-efficient. Another variant of this approach is to leave the determination or modification of Registry fees to the administrative authority supervising the Registry.

Option A provides for fees for all Registry services but only at a cost-recovery level or lower. This cost-recovery option has several variants. One variant is to limit fees to registration services and to provide that all searching services are free of charge. The advantage of this option is that it will encourage and facilitate the due diligence that potential financiers have to do and reduce risks and disputes. Another variant is to limit fees to the registration of an initial notice and to provide that the registration of any subsequent notice and searching services are free of charge. This option has the benefit of ensuring that the enacting State will receive the revenue that it desires to derive at the earliest time. In addition, this variant will remove fee issues from, and thus simplify, all subsequent transactions and searches. Moreover, this variant will encourage registrants to register cancellation notices and relieve grantors from incurring time and expense to initiate proceedings to force cancellations or amendments. Another variant for States that enact option B or C of article 13 (allowing a registrant to select the period of effectiveness) is to charge fees on a sliding scale, depending on the period selected by the registrant in an initial notice and any amendment notice that extends the period of effectiveness of a notice. This approach has the advantage of discouraging registrants from entering an inflated period in a notice out of an excess of caution (see Registry Guide, para. 277).

Option B is based on the assumptions that: (a) according to best practices, registries in the future will most likely be all electronic, and thus the cost of their establishment and operation should be minimal; and (b) that cost should be borne by the State, as the Registry is a key component of the public purpose of a modern secured transactions law to enhance the availability of more credit at lower cost and with greater speed and efficiency, and not simply a private benefit for grantors and secured creditors. Like option A, option B also has several variants. One variant is to offer free registration services for a limited start-up period in order to encourage acclimatization to and use of the registry system. Another variant is to charge no fee only for certain types of services (e.g., the registration of an amendment and cancellation notice, or for searching services, the registration of a

*notice aimed at restoring an erroneously cancelled notice or for registration of a notice aimed at preserving third-party effectiveness achieved by registration in a registry operating under prior law).]*

## **B. Asset-specific rules**

### **Article 33. Post-registration transfer of encumbered intellectual property**

A security right in intellectual property to which the notice relates remains effective against third parties and retains its priority notwithstanding a transfer of the encumbered intellectual property covered by the registered notice.

*[Note to the Commission: The Commission may wish to consider whether this article should be merged with or follow article 25 (post-registration transfer of an encumbered asset). The Commission may also wish to note that the Guide to Enactment will explain that, while this article is based on recommendation 244 of the Intellectual Property Supplement, its formulation has been aligned with the formulation of option C of article 25. The Guide to Enactment will also explain that, if a State adopts option C of article 25, it will not need to implement this article. Finally, the Guide to Enactment will explain that this article does not address the question whether the transferee acquires the encumbered intellectual property free or subject to the security right (which is addressed in art. 43 of the draft Model Law).]*

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