

**General Assembly**

Distr.: General
3 June 2016

Original: English

**United Nations Commission
on International Trade Law**
Forty-ninth session
New York, 27 June-15 July 2016

Draft Model Law on Secured Transactions**Compilation of comments****Note by the Secretariat****Contents**

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I. Introduction

1. At its twenty-eighth and twenty-ninth sessions (Vienna, 12-16 October 2015, and New York, 8-12 February 2016, respectively), Working Group VI (Security Interests) adopted a draft model law on secured transactions (the “draft Model Law”) (A/CN.9/865 and A/CN.9/871) and, at its twenty-ninth session, decided to submit it to the Commission on the understanding that the Secretariat would make the text of the draft Model Law available to States for comment (A/CN.9/871, para. 91).
2. This note sets forth, with minimal editorial modifications, the third compilation of comments received from Governments (the first compilation is contained in document A/CN.9/886 and the second in document A/CN.9/887).

II. Comments on the draft Model Law

Republic of Korea

[Original: English]
Date: 27 May 2016

Chapter I. Scope of application and general provisions

3. Article 1(2): The bracketed text should be deleted and the matter addressed in each relevant provision. On balance, this approach would provide more clarity in particular to enacting States that are not familiar with the legal framework or terminology used in the draft Model Law.
4. Article 2(j): The bracketed text in the definition of the term “default” needs to be retained as is. It clarifies that the parties may define default in their agreement.
5. Article 2(p): The definition of the term “insolvency representative” is not necessary and needs to be deleted as this term appears only in the definition of the term “competing claimant” in article 2(e). This and other insolvency terms should be left to the insolvency law of the enacting State.
6. Article 2: The term “movable asset” needs to be defined in article 2, as it is a key concept that appears frequently in the draft Model Law.
7. Article 2(z): The bracketed text in the definition of the term “possession” needs to be retained as is. As pointed out in the note, indirect possession is also a method of creation of a security right. In addition, to avoid the tautology, the term “possession” in the definition should be replaced with another term, such as “control”. Moreover, the term “actual” should be deleted or replaced with another term as it may conflict with the notion of indirect possession.

Chapter III. Effectiveness of a security right against third parties

8. Article 19: A new paragraph should be added to deal with the automatic third-party effectiveness of a security right in tangible assets commingled in a mass or product. This would reflect the policy of recommendation 44 of the Secured Transaction Guide. In addition, this paragraph would complete the set of rules that

deal with commingled assets (i.e. article 11 for creation issues and article 40 for priority issues).

9. Article 22, Note to the Commission: The issue addressed in the Note may be better addressed in the Guide to Enactment rather than in article 22.

Draft Model Registry Rules

10. Article 5, Note to the Commission: An additional paragraph should be inserted in article 5 to deal with the issue raised in the Note. This paragraph would emphasize the public character of the Registry and prevent registry staff from arbitrarily refusing access.

11. Article 24(6): The term “reasonable” should be added before the words “third parties” to clarify that it does not aim to provide protection for unreasonable reliance by third parties on erroneous information. A similar approach is followed in article 24(2) and (4) which refers to a “reasonable searcher”. In addition, the additional words suggested in the Note to the Commission for inclusion to article 24(6) are not necessary and the current text should be retained as is. The Guide to Enactment could explain further the meaning of paragraph 6.

Chapter V. Priority of a security right

12. Article 35(1), Note to the Commission: The issue raised in the Note may be better addressed in the Guide to Enactment than in article 35.

13. Article 49(5): This provision needs to be revised to address the rights of holders of non-intermediated securities in a more upfront manner, as in articles 44(2) and 47(3).

Chapter VII. Enforcement of a security right

14. Article 78(4)(b): The deadline included in this provision adds an extra rule that is not contained in recommendation 158 of the Secured Transaction Guide, on which this provision is based. This is a welcome addition. Requiring written consent from interested persons within a short period of time seems to be a reasonable way of articulating the requirements for the acquisition of the encumbered asset in partial satisfaction of the secured obligation.

15. Article 79(5): The bracketed text needs to be deleted. This text does not appear in recommendation 163 of the Secured Transaction Guide, and appear within square brackets in this provision, which means that it has not been possible to reach a decision in this regard. In addition, the requirement in the bracketed text may be inconsistent with existing legal doctrines in some States.

Chapter VIII. Conflict of laws

16. Article 85, Note to the Commission: This provision needs to be retained as is for it to apply also to security right in receivables secured by immovable property. While a secured creditor who wishes to obtain a security right in such receivables may not know that they are secured by immovable property, this would not seriously impair the rights of the secured creditor since receivables secured by a mortgage would normally provide a higher level of security.

17. Article 98, Note to the Commission: The current version should be retained as is. It reflects the same rules as the text in the Note but in a more reader-friendly way.

Chapter IX. Transition

18. Article 101(2): This provision is problematic in the sense that it does not give definite guidance regarding the continuation of enforcement proceedings, but rather seems to present two opposite options. If the enacting State is to choose, these options should be presented as option A and option B. Recommendation 229 of the Secured Transaction Guide, on which this provision is based and which opts for the continuation of enforcement, should also be taken into consideration.

19. Article 104(1), Note to the Commission: This provision needs to be deleted. It seems to be inconsistent with article 103(3) and the reference to advance registration may cause unnecessary confusion.
