



General Assembly

Distr.: General
4 April 2017

Original: English

**United Nations Commission on
International Trade Law**
Fiftieth session
Vienna, 3-21 July 2017

Draft Guide to Enactment of the UNCITRAL Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Section D. Registration of an amendment or cancellation notice

Article 16. Right to register an amendment or cancellation notice

1. Article 16 is based on recommendations 73 of the Secured Transactions Guide (see chap. IV, paras. 110-116) and 19 (a), of the Registry Guide (see paras. 150 and 225-244). Paragraph 1 gives the person identified in an initial notice as the secured creditor the right to register a related amendment or cancellation notice at any time. In order to limit the risk of the registration of notices not authorized by that person, the registrant must satisfy the secure access requirements that were prescribed under article 5, paragraph 2 (see [A/CN.9/914/Add.2](#), para. 26). To ensure that the person identified in the registered notice as the secured creditor (or another person acting on its behalf) is able to register subsequent amendment and cancellation notices, the secure access details should be communicated to the registrant at the time of registration of the initial notice or as soon as possible thereafter.

2. Paragraph 2 provides that, after an amendment notice changing the person identified in a registered notice as the secured creditor has been registered, only the current secured creditor of record is entitled to register an amendment or cancellation notice. Where the change in the secured creditor identifier results from an assignment of the secured obligation, the registry system should be designed to assign new secure access details to the new secured creditor so as to prevent the previous secured creditor from registering an amendment or cancellation notice (see [A/CN.9/914/Add.2](#), para. 26). Where the change in the secured creditor identifier instead results simply from a change in the name of the secured creditor, no such precautionary step is needed since the secured creditor is still the same person.

Article 17. Information required in an amendment notice

3. Article 17 is based on recommendation 30 of the Registry Guide (see paras. 221-224; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 provides that an amendment notice must contain in the designated field the registration number assigned by the Registry to the initial notice to which the amendment relates (see art. 28, para. 1, and para. 56 below). The reason for this requirement is to ensure that the amendment notice will be associated in the registry record with the initial notice so as to be retrieved and included in a search result (see the definition of the term “registration number” in art. 1, subpara. (j), and art. 22, subpara. (b)).

4. Paragraph 1 (b) requires the amendment notice to set out the information to be “added or changed”. The term “change” includes the release of an encumbered asset or one of several grantors. Although this type of change amounts in effect to a cancellation of the registration as it relates to the relevant asset or grantor, it should be effected by registering an amendment notice and not a cancellation notice. A cancellation notice is to be used only when the purpose is to cancel the effectiveness of the registration of an initial notice and all related notices in their entirety (see the definitions of “amendment notice” and “cancellation notice” in art. 1, subparas. (b) and (c)).

5. Paragraph 2 makes it clear that an amendment notice may relate to more than one item of information in a registered notice. This means that a registrant need register only one amendment notice even if it wishes, for example, to add both a description of new encumbered assets and a new grantor. It follows that the form of amendment notice prescribed by the Registry must be designed to enable a registrant to change any and all items of information in an initial notice using a single form (see Registry Guide, Annex II, Examples of registry forms, II. Amendment notice).

Article 18. Global amendment of secured creditor information

6. Article 18 is based on recommendation 31 of the Registry Guide (see para. 242; the Secured Transactions Guide does not contain an equivalent recommendation). It addresses the scenario where there is a change in the identifier or address, or both, of the person identified in multiple registered notices as the secured creditor as a result, for example, of its relocation, its merger with another company or the assignment of all its receivables to a new secured creditor. Its purpose is to make it possible for the secured creditor of record (option A) or the Registry on the application of that person (option B) to amend the relevant information in all the registered notices by the registration of a single global amendment notice.

7. To effectuate the amendment of secured creditor information in multiple notices through the registration of a single global amendment notice, the registry record must be organized in a manner that enables the retrieval of all registered notices in which a particular person is identified as the secured creditor. To avoid the risk of the registration of unauthorized global amendment notices, the Registry should institute the secure access requirements prescribed under article 5, paragraph 2, to ensure that the person requesting or effecting a global amendment is in fact the secured creditor of record (see [A/CN.9/914/Add.2](#), para. 26).

Article 19. Information required in a cancellation notice

8. Article 19 is based on recommendation 32 of the Registry Guide (see paras. 243 and 244; the Secured Transactions Guide does not contain an equivalent recommendation). It requires a cancellation notice to contain in the designated field the registration number assigned by the Registry under article 28, paragraph 1, to the initial notice to which the cancellation notice relates. The registration number is the only item of information required to be included in a cancellation notice (see Registry Guide, Annex II, Examples of registry forms, III. Cancellation notice).

9. The inclusion of the registration number in a cancellation notice ensures that the cancellation notice extends to the information in all registered notices containing that number (see the definition of the term “registration number” in art. 1, subpara. (j)). To minimize the risk of the inadvertent registration of cancellation notices, the prescribed cancellation notice form should expressly indicate the effect of a cancellation (see Registry Guide, Annex II, Examples of registry forms, III. Cancellation notice; with respect to the effectiveness of a cancellation notice not authorized by the secured creditor, see paras. 19-27 below).

Article 20. Compulsory registration of an amendment or cancellation notice

10. Article 20 is based on recommendations 72 of the Secured Transactions Guide (see chap. IV, paras. 107 and 108) and 33 of the Registry Guide (see paras. 260-263). It should be read in conjunction with article 2 which requires the person identified as the grantor in a registered notice to authorize its registration.

11. Paragraph 1 (a) obligates the secured creditor to register an amendment notice deleting encumbered assets from the description in the registered notice if the grantor identified in the notice did not authorize the registration of a notice in relation to those assets and has informed the secured creditor that it will not do so. For example, the secured creditor may have registered an initial notice covering “all assets” of the grantor but the security agreement between the parties covers only a specific tangible asset and the grantor informs the secured creditor that it does not contemplate entering into any further security agreement. Even if the grantor separately authorized the registration of a notice covering “all assets”, paragraph 1 (c) obligates the secured creditor to amend the description in its registered notice if the grantor subsequently withdraws its authorization, provided that no security agreement covering those assets is concluded thereafter (since this would automatically constitute a new authorization under art. 2).

12. Paragraph 1 (b) addresses the scenario where the security agreement to which a registered notice relates is revised to release some of the initially encumbered assets from the security right. In this scenario, the secured creditor is obligated to register an amendment notice to delete the released assets from the description in the registered notice provided that the grantor did not authorize the registration of a notice covering the released assets otherwise than by entering into the initial security agreement. Even if the grantor executed a separate agreement authorizing the secured creditor to make the registration, paragraph 1 (c) obligates the secured creditor to register an amendment notice deleting the released assets if the grantor subsequently withdraws that authorization, provided that the parties have not entered into a new security agreement covering the released assets.

13. Enacting States that implement article 8, subparagraph (e), will need to adopt paragraph 2 which requires a secured creditor to register an amendment notice reducing the maximum amount specified in a registered notice if: (a) the grantor only authorized the registration of a notice in the reduced amount; or (b) the security agreement to which the notice relates has been revised to reduce the maximum amount.

14. Paragraphs 3 (a) and 3 (b) obligate the secured creditor to register a cancellation notice where the grantor identified in a registered notice either did not authorize the registration and has informed the secured creditor that it will not do so, or subsequently withdrew its authorization and the parties did not enter thereafter into a security agreement. A cancellation notice must also be registered if the obligation secured by the security right to which the registered notice relates has been extinguished (see para. 3 (c)). It should be noted that, under article 12 of the Model Law, a security right is extinguished upon full payment or other satisfaction of the secured obligation, provided that there is no further commitment by the secured creditor to extend any further secured credit.

15. Paragraph 4 prohibits the secured creditor from charging any fee for complying with its obligations under paragraphs 1 (a), 1 (c), 2 (a), 3 (a) and 3 (b). These provisions require a secured creditor to amend or cancel a registration either because it was never authorized by the grantor or because the grantor's initial authorization was withdrawn owing to the failure of the parties to subsequently conclude a security agreement. In these circumstances, it is appropriate to impose the cost on the secured creditor.

16. To protect grantors against the risk of non-compliance by a secured creditor with its obligation under paragraphs 1, 2 and 3, paragraph 5 gives the grantor the right to send a formal written request to the secured creditor to register the appropriate amendment or cancellation notice. If the secured creditor does not comply with the request before the expiry of the period specified by the enacting State, paragraph 6 entitles the grantor to apply for an order compelling registration of the appropriate notice. If the person identified as the secured creditor in the notice is not the actual secured creditor but its representative, and the actual secured creditor is no longer contactable, the grantor should be entitled to send its request to the representative.

17. If the secured creditor does not comply with the grantor's request under paragraph 5 within the period of time specified by the enacting State, paragraph 6 entitles the grantor to apply for an order compelling registration of the appropriate notice. In order to ensure speedy and efficient relief for the grantor, it is suggested that a short period (e.g. 14 days) is appropriate. This is in line with the rationale underlying the requirement in paragraph 6 for the enacting State to establish a summary judicial or administrative procedure for obtaining the order. Depending on local considerations, the enacting State may decide to use an existing administrative or judicial summary procedure or it may decide to set up a new procedure administered, for example, by the Registrar or registry staff. As noted in the Registry Guide (see para. 262), while the process should be speedy and inexpensive, it should also incorporate appropriate safeguards to protect the secured creditor

against an unwarranted demand by the grantor (for example, by requiring the relevant authority to notify the secured creditor of the grantor's application and give the secured creditor a reasonable opportunity to respond).

18. Once an order for registration has been issued pursuant to the procedure established by the enacting State under paragraph 6, paragraph 7 requires the Registry to register the appropriate notice "upon receipt of a request with a copy of the relevant order" (if the enacting State decides under para. 6 to designate a court or other external body to administer the procedure) or "upon the issuance of the relevant order" (if the enacting State decides under para. 6 to vest the Registry with the authority to administer the procedure).

**Article 21. Effectiveness of the registration of an amendment or
cancellation notice not authorized by the secured creditor**

19. Article 21 addresses the effectiveness of the registration of an amendment or cancellation notice where the registration was not authorized by the secured creditor of record. The options set out in article 21 are based on the discussion of the matter in the Registry Guide (see paras. 249-259).

20. An unauthorized registration of an amendment or cancellation notice may occur as a result of fraud or error by a third party or even by a member of the registry staff (for corrections of errors by the Registry, see art. 31). The issue is whether and to what extent conclusive effect should nonetheless be given to the unauthorized registration for the purposes of determining the third-party effectiveness and priority of the related security right as against a competing claimant. In choosing among these options, enacting States will need to decide whether the balance should favour reliability of the registry record for searchers including prospective secured creditors (options A and B), or protection of registered secured creditors against the risk of losing the third-party effectiveness or priority status of their security right (options C and D). It should be emphasized that regardless of which option is used the risk of the unauthorized registration of amendment or cancellation notices is greatly reduced by the requirement for the enacting State to prescribe secure access procedures for registering amendment and cancellation notices (see art. 5 and [A/CN.9/914/Add.2](#), para. 26).

21. Under option A, the registration of an amendment or cancellation notice is effective whether or not it was authorized by the person identified as the secured creditor in the registered notice to which the amendment or cancellation notice relates.

22. Option B is a variation of option A. While recognizing the general effectiveness of an unauthorized amendment or cancellation notice, it preserves the priority of the security right to which the unauthorized registration relates as against the right of a competing claimant over whom the security right covered by that registered notice had priority prior to the unauthorized registration of the amendment or cancellation notice. This option is predicated on the rationale that such a claimant by definition could not have been prejudiced by relying on the unauthorized registration.

23. If an enacting State decides to adopt option A or option B, it will need to also implement option B of article 30 which obligates the Registry to remove information in a registered notice from the public registry record and archive it upon registration of a cancellation notice. It will also need to implement option A of article 13, paragraphs 4 and 5, dealing with the time of effectiveness of the registration of a cancellation notice.

24. Option C is at the opposite end of the spectrum from option A. It provides that the registration of an amendment or cancellation notice is ineffective, unless authorized by the secured creditor of record. Under this approach, a searcher will need to conduct off-record inquiries to verify whether the registration of an amendment or cancellation notice was in fact authorized by the secured creditor.

25. Option D is a variation of option C. It preserves the effectiveness of an unauthorized registration of an amendment or cancellation notice as against a competing claimant who acquired its right in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, and who did not have knowledge that the registration was unauthorized when it acquired its right. This qualification differs from the qualification in option B above insofar as it requires the competing claimant to provide factual evidence that it actually searched and relied on the registry record prior to acquiring its right in order to prevail over the secured creditor whose registration was amended or cancelled without authority.

26. If an enacting State decides to adopt option C or option D, it will need to implement option B of article 30, which obligates the Registry to remove information in registered notices from the public registry record and archive it only upon the expiry of the period of effectiveness of the registration of the notice. Under option C or D, all amendment and cancellation notices need to remain in the public registry record for searchers to discover whom to contact to verify whether the amendment or cancellation was authorized. If all the relevant notices were instead removed from the public record upon registration of a cancellation notice, searchers would have no means of discovering from a search of the registry that a security right binding on them may potentially still exist.

27. Searchers may not necessarily appreciate that registered amendment and cancellation notices may not be legally effective. Accordingly, enacting States that implement options C or D may wish to include a note on search results advising searchers of the need to conduct off-record inquiries to verify whether the registration of an amendment or cancellation notice was authorized by the secured creditor of record.

Section E. Searches

Article 22. Search criteria

28. Article 22 is based on recommendation 54 (h) of the Secured Transactions Guide (see chap. IV, paras. 31-36) and 34 of the Registry Guide (see paras. 264-265). It sets out the two criteria according to which any person may conduct a search of the public registry record.

29. Under subparagraph (a), the first and principal search criterion is the identifier of the grantor. The identifier of the grantor is its name, determined according to the rules set out in article 9. If an enacting State decides to require “additional information” to be entered in a separate field to assist in uniquely identifying a grantor, this additional information neither constitutes a part of the name search criterion nor an alternative search criterion (see art. 8, subpara. (a)). Rather it will simply appear as additional information in a search result. Accordingly, search request forms should not be designed to require entry of any additional information.

30. Under subparagraph (b), the registration number assigned to an initial notice in accordance with article 28, paragraph 1, constitutes an alternative search criterion. A search by registration number gives secured creditors an efficient means of identifying and retrieving a registered notice for the purposes of registering an amendment or cancellation notice. Searches by registration number generally will not be conducted by third parties as they typically will not know the relevant registration number. In those registry systems that establish accounts for users, it may not be necessary to provide for indexing and searching according to registration numbers as the history of registrations is stored and easily accessible to the holder of that account.

31. If the enacting State decides to introduce the serial number of goods as a search criterion, it will need to list the serial number of the asset as an additional search criterion in this article. It will also need to design the registry system so that

registered notices can be searched and retrieved by serial number. (see Registry Guide, para. 266, and [A/CN.9/914/Add.2](#), para. 45).

32. To allow the registration of global amendment notices, as provided in article 18, the registry record must be organized to permit registered notices to be identified and retrieved by reference to the relevant secured creditor. For public policy reasons relating to privacy and confidentiality, the name or other identifier of the secured creditor should not be an available criterion for general public searching (see Secured Transactions Guide, chap. IV, para. 81 and Registry Guide, para. 267).

Article 23. Search results

33. Article 23 is based on recommendation 35 of the Registry Guide (see paras. 268-273; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 sets out the required content of search results provided by the Registry in response to a search request. The search result must first indicate the date and time when the search was performed.

34. Paragraph 1 does not adopt the approach followed in some States in which search results are required to include a “currency date” indicating that the search result includes only information contained in notices that were registered as of that date (as opposed to the actual date on which the search result was issued). Currency dates are only used in systems in which a registration is considered effective when submitted to the registry. Under the Model Law, a registration becomes effective only when the information in a notice submitted to the Registry has been entered into the registry record so as to be accessible to searchers (see art. 13, para. 1). Thus, the “currency date” is always the actual date and time of the search (see Registry Guide, para. 273).

35. With respect to the substantive content of the search result, paragraph 1 contemplates that an enacting State may adopt one of two options. Option A contemplates that the enacting State’s registry system is designed to only retrieve notices that exactly match the identifier of the grantor entered by the searcher in a search request. Option B contemplates that the enacting State’s registry system is designed to also retrieve notices that closely match the identifier of the grantor entered by the searcher. Option B builds on a certain degree of forgiveness for registrant error in entering the identifier of the grantor. The extent of close matches disclosed in States that adopt option B depends on the specific close-match search programme or logic used by the Registry. The enacting State should not implement a search logic that could potentially result in a long list of close matches since this would make it too difficult for a searcher to determine which, if any, of the registered notices that closely match the search criterion entered refer to the grantor that the searcher is inquiring about.

36. Option A should be read in conjunction with article 24, paragraph 1, which provides that an error by a registrant in entering the grantor identifier in a notice does not render the registration of the notice ineffective if the information in the notice would be retrieved by a search of the registry record using the grantor’s correct identifier as the search criterion. Option B should be read in conjunction with article 24, paragraph 2, under which the registration of a notice that contains an error in the grantor’s identifier might still be effective if the name that was entered by the registrant is a sufficiently close match to result in the notice being retrieved on a search using the grantor’s correct identifier.

37. Paragraph 2 obligates the Registry to issue an official search certificate setting out a search result upon the request of a searcher. Paragraph 3 dispenses with the need to obtain an official search certificate, for example, for the purposes of subsequent disputes, by providing that a written search result that purports to have been issued by the Registry is proof of its contents in the absence of evidence to the contrary. A written search result for this purpose would include a print-out of a search result performed electronically.

Section F. Errors and post-registration changes

Article 24. Registrant errors in required information

38. Article 24 is based on recommendations 58 and 64-66 of the Secured Transactions Guide (see chap. IV, paras. 66-74, and 82-97) and 29 of the Registry Guide (see paras. 205-220). Its overall aim is to provide guidance on when the effectiveness of a registration may be challenged owing to errors committed by registrants in entering the information in notices submitted to the Registry.

39. Paragraphs 1 and 2 address errors on the part of a registrant in entering the grantor identifier in a registered notice. Paragraph 1 provides that the effectiveness of the registration cannot be challenged if the information in the registered notice would be retrieved by a search of the public registry record using the grantor's correct identifier (determined under art. 9) as the search criterion (see option A of art. 23, and para. 36 above). Paragraph 2, which appears in square brackets, should be adopted by enacting States that implement option B of article 23 under which search requests will also retrieve registered notices in which the grantor identifiers closely match the identifier entered by a searcher (see para. 36 above). In enacting States that adopt this option, paragraph 2 provides that an error on the part of a registrant in entering the grantor identifier does not render the registration ineffective if the information in the notice would still be retrieved as a "close match" by a search using the grantor's correct identifier "unless the error would seriously mislead a reasonable searcher." For example, the registered notice identifies the grantor as "Jack McDonald" and the correct name of the grantor is in fact "John Macdonald." If the erroneous notice is retrieved as a "close match" on a search using the correct name, the degree of discrepancy between the correct name and the close match in this example may be considered such as to constitute a seriously misleading error from the perspective of a reasonable searcher. Whether this is the case can only be decided on the particular facts and in the local context including the logic of the registry close match software.

40. Paragraph 4 deals with the impact of errors committed by registrants in entering the other items of information required to be set out in registered notices under article 8, notably errors in the description of the encumbered assets. It provides that an error does not make the registration ineffective unless it "would seriously mislead a reasonable searcher." This language incorporates an objective test in the sense that a person involved in a priority competition with the secured creditor challenging the effectiveness of the registration need not show that it was actually misled by the error. It is sufficient to show that a hypothetical reasonable searcher, including an insolvency representative, would have been misled.

41. Paragraphs 3 and 5 incorporate the general principle of severability. Thus, an error in entering the identifier of a particular grantor or the description of a particular encumbered asset that would render the registration ineffective under paragraph 1, 2 or 4 does not make the registration of the notice ineffective with respect to other grantors correctly identified or other encumbered assets correctly described in the registered notice.

42. Paragraphs 6 and 7, which appear within square brackets, provide special rules for determining the impact of errors on the effectiveness of a registration in two scenarios. Paragraph 6 addresses the scenario where the enacting State allows a registrant to select the period of effectiveness of the registration of a notice pursuant to article 14, option A or B (and art. 8, subpara. (d)). In this scenario, an error in the entry of the relevant information does not render the registration ineffective even if the error would be seriously misleading from the perspective of a hypothetical reasonable searcher. Rather, the registration will be treated as ineffective only as against a competing claimant who can establish that it was in fact misled by the error (see Registry Guide, paras. 215 and 217-220). Paragraph 7 addresses the scenario where an enacting State chooses to require a registrant to indicate the maximum amount for which a security right may be enforced pursuant to article 8,

subparagraph (e). It provides that while an error in the maximum amount stated in an initial or amendment notice does not render the registration ineffective, the priority of the security right is limited to the maximum amount stated in the notice or in the security agreement, whichever is lower. This rule is consistent with the rationale for requiring the maximum amount to be stated in the security agreement and disclosed in any related registered notice (see [A/CN.9/914/Add.2](#), para. 34).

43. As already observed (see [A/CN.9/914/Add.2](#), para. 45, and para. 31 above), some States provide for the entry of a serial number for specified classes of high-value assets that have a significant resale market. In States that adopt this approach, entry of this identifier in its own designated field in a notice is required in the sense of being necessary to achieve the priority of the security right as against specified classes of competing third-party claimants. Enacting States that decide to adopt this approach will need to deal with the impact of errors in the serial number on the effectiveness of a registration for this purpose. In general, the same test should apply as for an error in the grantor's identifier. Accordingly, the registration would be ineffective if the information in the registered notice would not be retrieved by a search of the public registry record using the prescribed serial number. However, enacting States implementing paragraph 2 ("the close match search logic") should not extend its application to searches against serial numbers as there is too great a likelihood that this may result in too lengthy a list of close matches.

Article 25. Post-registration change of grantor identifier

44. Article 25 is based on recommendation 61 of the Secured Transactions Guide (see chap. IV, paras. 75-77; see also Registry Guide, paras. 226-228). It addresses the impact of a post-registration change in the identifier of the grantor (i.e. its name under art. 9) on the effectiveness of the registration of a notice. Since the grantor's identifier is the principal search criterion (see art. 22, subpara. (a)), a search under the new identifier will not retrieve registered notices in which the grantor is identified by its old identifier. This poses a risk for third-party searchers that contemplate acquiring rights in the grantor's encumbered assets after the change of the grantor's identifier.

45. To address this risk, paragraphs 2 and 3 give the secured creditor a grace period to be specified by the enacting State after the change of identifier occurs to either register an amendment notice adding the new identifier of the grantor or make its security right effective against third parties by a method other than registration (on other methods, see arts. 18 and 25-27 of the Model Law). A grace period of 60 to 90 days is suggested to give the secured creditor a reasonable period of time to monitor and find out the change. If neither step is taken before the expiry of the grace period, the security right is subordinated to a competing security right that was made effective against third parties after the change (see para. 2 (a)), and a buyer who acquired its rights in the encumbered asset after the change will acquire them free of the security right (see para. 3 (a)).

46. Under paragraphs 2 and 3, the secured creditor may still register an amendment notice or otherwise make its security right effective against third parties even after the expiry of the grace period. However, it loses the benefit of the grace period with the result that its security right will be subordinated to a competing security right that was made effective against third parties after the change but before the relevant step was taken, even if the competing security right was made effective against third parties before the expiry of the grace period (see para. 2 (b)). A buyer to whom the encumbered assets is sold after the change but before the relevant step was taken likewise acquires its rights free of the security right even if the sale took place before the expiry of the grace period (see para. 3 (b)). Under paragraph 4, paragraphs 2 and 3 do not apply if the information in the notice referred to in paragraph 1 would be retrieved by a search using the new identifier of the grantor as the search criterion. As indicated in the footnote to paragraph 4, this provision is necessary only if the enacting State adopts article 23, option B, paragraph 1, under which the registry system is designed to disclose on search

results information in notices in which the identifier of the grantor closely matches the identifier of the grantor entered by the searcher. In a “close match” system, the search result might still retrieve the relevant notice if the subsequent change in the grantor identifier is relatively minor (for example, if Acme Co. changes its name to Acme & Co).

47. As against competing claimants other than a competing secured creditor and a buyer whose rights are specifically protected by paragraphs 2 and 3, paragraph 1 confirms that the third-party effectiveness and priority of a security right that was made effective against third parties by registration is not affected by a post-registration change in the identifier of a grantor. Thus, even if the secured creditor does not register an amendment notice or make its security right effective against third parties by a method other than registration, it will still retain whatever priority it has under the Model Law against competing secured creditors and buyers whose rights arose before the change in the identifier of the grantor and as against other classes of competing claimants whether their rights arose before or after the change of the grantor’s identifier (for example, the grantor’s judgment creditors and insolvency representative).

Article 26. Post-registration transfer of an encumbered asset

48. Article 26 is based on recommendation 62 of the Secured Transactions Guide (see chap. IV, paras. 78-80; see also Registry Guide, paras. 229-232). It addresses the impact of a post-registration sale of an encumbered asset on the effectiveness of the registration of a notice in relation to a security right in that asset where the buyer acquires the asset subject to the security right under article 34, paragraph 1, of the Model Law. This creates a risk for third parties that acquire rights in the encumbered asset from the buyer since a search of the public registry record under the identifier of the buyer will not retrieve registered notices in which the grantor identifier is the name of the seller/grantor. This risk is analogous to that addressed in article 25 in relation to post-registration changes in the grantor identifier. Unlike article 25, article 26 does not provide a uniform rule. Rather, it gives enacting States the option to enact any one of three approaches.

49. The approach in option A is identical to that set out in article 25 for post-registration changes in the grantor identifier. Paragraphs 2 and 3 give the secured creditor a grace period to be specified by the enacting State after the sale by the grantor to either register an amendment notice adding the buyer as a new grantor or otherwise make its security right effective against third parties in order to preserve its priority against secured creditors and subsequent buyers who acquire their rights in the encumbered assets from the grantor’s buyer (see paras. 2 (a) and 3 (a)). As under article 25, a grace period of 60 to 90 days is suggested in order to give the secured creditor a reasonable period of time to monitor and find out about the sale by the grantor. As under paragraph 1 of article 25, paragraph 1 of article 26 provides that the secured creditor’s failure to take either of these steps before the expiry of the grace period, or at all, does not generally prejudice the third-party effectiveness and priority status of its security right. However, its security right will be subordinated to competing security rights created by the buyer from the grantor and made effective against third parties after the sale, and before the relevant step is taken (see para. 2 (b)). A subsequent buyer to whom the buyer from the grantor sells the encumbered asset during this same period also acquires its rights free of the security right (see para. 3 (b)).

50. The approach in paragraphs 1-3 of option B is similar to the approach in paragraphs 1-3 of option A, with the important qualification that the grace period under paragraphs 2 and 3 to register the amendment notice or otherwise make the security right effective against third parties begins only when the secured creditor acquires knowledge: (a) that the grantor has sold the encumbered asset; and (b) of the identity of the buyer, and not simply when the sale takes place, as under paragraphs 2 and 3 of option A. In view of this difference, a grace period of 15 to 30 days is suggested.

51. If there are successive sales of an encumbered asset before the secured creditor acquires knowledge of the sale and the identity of the buyer, paragraph 4 of option B provides that it is sufficient, to protect its rights under paragraphs 2 and 3 against intervening secured creditors and buyers, if the secured creditor registers an amendment notice adding the identifier of the most recent buyer of whose identity it has knowledge.

52. Paragraph 4 of option A and paragraph 5 of option B provide that a security right in intellectual property made effective against third parties by registration of a notice generally retains its third-party effectiveness and priority status including as against secured creditors and buyers who acquire their rights from a buyer to whom the grantor sold the intellectual property after the notice was registered. This approach reflects recommendation 244 of the Intellectual Property Supplement. The reason for this different approach in the intellectual property context is that, the risks posed for third-party searchers by the grantor's sale of intellectual property were outweighed by the burden that would be imposed secured creditors if they were required to register an amendment notice each time intellectual property was sold or made the subject of an exclusive licence assuming that an exclusive licence is treated as a sale under intellectual property law (see Intellectual Property Supplement, rec. 244 and paras. 158-166).

53. Under option C, the third-party effectiveness and priority of a security right that is made effective against third parties by registration of a notice is not affected by a post-registration sale of an encumbered asset covered by the registered notice. The secured creditor retains whatever priority it otherwise has under the Model Law against all competing claimants, whether their rights arise before or after the sale. This option extends the approach to the impact of post-registration sales of encumbered intellectual property in paragraph 4 of option A and paragraph 5 of option B to all types of encumbered asset. Under this approach, potential secured creditors and buyers are expected to inquire into the chain of ownership of the asset they are interested in and then conduct searches against the identifier of both the immediate owner and any predecessors in the chain of title.

Section G. Organization of the Registry and the registry record

Article 27. The registrar

54. Article 27 is based on recommendation 2 of the Registry Guide (see para. 74; the Secured Transactions Guide does not contain an equivalent recommendation). Recognizing that these matters may be dealt with differently in each State, article 27 leaves it to the enacting State to specify in the law, regulation or other act by which it implements the Model Registry Provisions the authority responsible for the appointment and dismissal of the registrar, and for determining the registrar's duties and monitoring their performance.

55. While an enacting State may decide to have the day-to-day operations of the Registry carried out by either a private or public entity, the Registry and the registrar should always be subject to the ultimate direction of and accountable to the authority designated by the enacting State. Depending on local considerations, the public authority specified by the enacting State may be a governmental ministry responsible for the preparation of the secured transactions law, another public agency, or a department of a central bank (see Registry Guide, para. 77).

Article 28. Organization of information in the registry record

56. Article 28 is based on recommendations 15 and 16 of the Registry Guide (see paras. 127-130; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 requires the Registry to assign a unique registration number to an initial notice and associate all registered amendment and cancellation notices that contain that number with the initial notice in the registry record. The reason for these requirements is to ensure that amendment and cancellation notices

are linked to the related initial notice in the registry record so that the information in all related notices is disclosed on a search result (see the definition of the term “registration number” in art. 1, subpara. (j), as well as arts. 17, 19 and 22, subpara. (b)).

57. If paragraph 2 of option A is adopted, the enacting State must ensure that the registry system is designed so that search results will only retrieve information in registered notices that exactly match the grantor identifier entered by the searcher (see option A of art. 23, para. 1). If paragraph 2 of option B is adopted, the enacting State must ensure that the registry system is designed to also retrieve information in registered notices in which the grantor’s identifier closely matches the identifier entered by the searcher (see art. 23, option B, para. 1).

58. Paragraph 3 of option A is intended for enacting States that permit a person to register a global amendment notice changing its identifier or address or both in all registered notices in which it is identified as the secured creditor (see option A of art. 18). Option B of paragraph 3 is intended for enacting States in which the global amendment must be effected by the Registry at the request of the secured creditor (see art. 18, option B).

59. Paragraph 4 is intended to ensure that the entire registration record relating to an initial notice remains intact. It provides that the registry record must be organized in a manner that preserves the information in all registered notices, notwithstanding the registration of an amendment or cancellation notice that purports to change the information contained in previously registered notices.

60. As already noted (see [A/CN.9/914/Add.2](#), para. 26, and para. 2 above), article 5, paragraph 2 requires a person who submits an amendment or cancellation notice to satisfy the secure access requirements prescribed by the enacting State. It follows that the Registry must organize the registry record in a manner that facilitates the application of this requirement. The enacting State will also need to impose additional organizational obligations on the Registry should it decide to provide for: (a) registration and searching according to serial number (see [A/CN.9/914/Add.2](#), para. 45, and para. 31 above); or (b) registration and searching according to a grantor identifier other than the name of the grantor (see [A/CN.9/914/Add.2](#), para. 33).

Article 29. Integrity of information in the registry record

61. Article 29, paragraph 1, is based on recommendation 17 (a), of the Registry Guide (see para. 136; the Secured Transactions Guide does not contain an equivalent recommendation). It prohibits the Registry from amending or removing information in the registry record except as authorized in articles 30 and 31.

62. Article 29, paragraph 2, is based on recommendations 55 (f) of the Secured Transactions Guide (see chap. IV, para. 54), and 17 (b) of the Registry Guide (see para. 137). It obligates the Registry to ensure that the information in the registry record is preserved and may be reconstructed in the event of loss or damage. In practice, this obligation requires the Registry to create and maintain a backup copy of the registry record.

Article 30. Removal of information from the public registry record and archival

63. Article 30, option A, is based on recommendations 74 of the Secured Transactions Guide (see chap. IV, para. 109), as well as recommendations 20 and 21 of the Registry Guide (see paras. 151-152). It requires the Registry to remove information in registered notices from the public registry record once the period of effectiveness of the notice expires or a cancellation notice is registered. If the information in cancelled or expired notices were to remain publicly searchable, this might create legal uncertainty for third-party searchers, potentially impeding the ability of the grantor to grant a new security right in or deal with the assets

described in the notice (see Registry Guide, para. 151). Option A should be enacted by States that adopt option A or B of article 21.

64. Article 30, option B, should be enacted by States that adopt option C or D of article 21. Paragraph 1 of option B requires the Registry to remove information in registered notices from the public registry record once the period of effectiveness of the registration of a notice expires. Unlike option A, paragraph 2 of option B requires the Registry to preserve all information in registered notices on the public registry record notwithstanding the registration of a cancellation notice. This is necessary since the registration of an amendment or cancellation notice is wholly or partially ineffective under article 21, option C or D, if it is not authorized by the secured creditor of record. Since the factual question of whether the secured creditor of record authorized the registration of a cancellation notice can only be answered by conducting off-record inquiries, it is necessary to preserve the information in the cancellation notices and all related registered notices on the public registry record so that searchers have the information needed to conduct those inquiries.

65. Paragraph 3 requires the Registry to archive the information in registered notices removed from the public registry record in a manner that enables the information to be retrieved in accordance with the search criteria set out in article 22. This is necessary since the information in notices removed from the public registry record may need to be retrieved in the future, for example, in order to determine the time of registration or the scope of the encumbered assets described in the notice for the purposes of a subsequent priority dispute between the secured creditor and a competing claimant (see Registry Guide, para. 151).

66. As to the duration of the Registry's archival obligation, paragraph 3 leaves this decision to the enacting State (while cautioning that it should minimally be coextensive with the prescription period under local law for disputes arising in relation to a security agreement).

Article 31. Correction of errors made by the Registry

67. Article 31 addresses the effect of errors and omissions made by the Registry in two scenarios. The first is where the Registry makes an error or omission in entering into the public registry record information contained in a notice submitted for registration. The need to address this scenario arises in particular if the registry system implemented by a State allows the submission of notices in paper form as opposed to requiring all registrants to transmit the information in notices directly to the registry via electronic means. The second scenario addressed by article 31 is where the Registry erroneously removes from the registry record information contained in a registered notice. The need to address this second scenario arises even in systems in which notices may only be submitted directly to the Registry via electronic means.

68. Paragraph 1 of article 31 requires the Registry to take steps to correct the error or restore the erroneously removed information without delay after discovering the error. Under option A, the Registry is required to take the necessary corrective action and must then send to the secured creditor of record a copy of the notice it registered to correct the record. Under option B, the Registry is instead required to inform the secured creditor of record of the error so as to enable it to register the notice needed to correct the record. Nothing in this article precludes the secured creditor from registering an amendment notice to correct the error if it discovers it before the Registry does so or before it receives notification from the Registry.

69. Paragraph 2 addresses the impact of the Registry's error on the third-party effectiveness and priority status of the security right in the event of a competition with the right of a competing claimant which arose prior to the registration of the notice correcting the record referred to in paragraph 1. It offers four options which parallel the four options in article 21 with respect to the effectiveness of the unauthorized registration of an amendment or cancellation notice. The enacting State should adopt the option in article 31 that corresponds to the option it selects in

article 21. Accordingly, a State that adopts article 21, option A, should adopt article 31, option A and so on.

Article 32. Limitation of liability of the Registry

70. Article 32 is based on recommendation 56 of the Secured Transactions Guide (see chap. IV, paras. 55-64; see also Registry Guide, paras. 141-144). It offers three options to an enacting State in dealing with the potential liability of the Registry for loss or damage caused by its errors or omissions. It should be noted that especially in a fully electronic system in which registration and search information is submitted directly by users via electronic means, the risk of loss or error being caused by the Registry is extremely low. Nonetheless the objective of all options is to limit the liability of the Registry and to thus avoid an increase in the cost of the registry services in the rare event where loss or damage can be attributed to acts or omissions of the Registry. The enacting State should coordinate article 32 with its relevant law on the liability of public authorities.

71. Option A leaves the issue of the liability of the Registry to other law of the enacting State. If liability is foreseen by that other law, option A restricts any right of recovery to the types of errors or omissions listed in paragraph 1. Thus, liability is limited to: (a) errors or omissions in a search result issued to a searcher (para. 1 (a)); (b) errors or omissions in a copy of information in a registered notice sent to a secured creditor under article 15 or the failure of the Registry to send a copy of a registered notice as required by that article or article 31 (para. 1(a) and (c)); and (c) the provision of false or misleading information to a registrant or searcher (para. 1 (d)). Paragraph 2 of option A limits the liability of the Registry for loss or damage caused by the acts or omissions specified in paragraph 1 to the maximum monetary amount specified by the enacting State (regardless of the maximum value of the encumbered assets or the obligation secured by those assets). To minimize the risk of Registry liability for providing misleading advice, the enacting State should ensure that registry staff are trained to restrict their advice to the technical aspects of using the registry system, and not the legal implications or effects of registration (see Registry Guide, para. 139).

72. The first part of paragraph 1 (b) of option A appears within square brackets as it limits any liability that the Registry may have under other law for errors or omissions in registered notices to the scenario where the Registry is responsible for entering into the registry record information submitted by a registrant in a paper notice. Accordingly, paragraph 1 (b) should only be adopted by an enacting State if its registry system permits the submission of notices to the Registry using paper forms.

73. Like option A, option B leaves to other law any liability that the Registry may have for loss or damage caused by an error or omission in the administration or operation of the Registry. Unlike option A, option B does not restrict any right of recovery that a person may have under other law to particular types of errors or omissions. But like paragraph 2 of option A, it limits the Registry's liability to the maximum amount specified by the enacting State.

74. Option C simply excludes any liability of the Registry for an error or omission in the administration or operation of the Registry.

Article 33. Registry fees

75. Article 33 is based on recommendations 54 (i) of the Secured Transactions Guide (see chap. IV, para. 37) and 36 of the Registry Guide (see paras. 274-280). The Secured Transactions Guide recommends, in particular, that registry fees, if any, should be set at a level necessary to recover the cost of establishing, operating and upgrading the registry system. The requirement to set any fees to be charged at a cost-recovery level applies to all services provided by the registry, and thus include, for example: (a) not only the registration of an initial notice but also the registration of amendment and cancellation notices; and (b) not only registration services but

also search services. If the registry system were instead used as an opportunity for the enacting State to generate profit, registrants and searchers might be discouraged from using the registry services.

76. Thus, article 33 presents two options. Under paragraphs 1 and 3 of option A, fees may be charged for the provision of registry services in the amounts specified by the enacting State and the fee schedule must be publicized by the Registry. To ensure that these fees are based on cost recovery, paragraph 2 of option A entitles the authority responsible for the appointment of the registrar under article 27 to periodically modify the fee schedule.

77. If the registry system allows access by electronic means and through the submission of written notices and search requests, the enacting State might decide to charge a lower fee for the registration of notices and the processing of search requests transmitted directly to the registry via electronic means given that electronic registration or searching does not require the intercession of registry staff and therefore is less costly. This approach might also encourage users to shift to this more efficient method in preference to continuing to use paper forms.

78. To enhance the efficiency of the payment process for frequent users of registry services, paragraph 4 of option A authorizes the Registry to enter into an agreement with any person to establish a Registry user account for any purpose, including the payment of registry fees. This approach has the additional advantage of facilitating the identification of the registrant for the purposes of article 5 (see [A/CN.9/914/Add.2](#), para. 25).

79. A variant of option A would be to limit the charging of fees to registrations and allow searches to be made free of charge. This variant would encourage and facilitate due diligence by potential secured creditors and buyers and thereby reduce risk and future disputes.

80. Another variant of option A would be for the enacting State to decide not to charge any fee for the registration of the types of amendment and cancellation notices contemplated by article 20. This variant would encourage the secured creditor to promptly register amendment and cancellation notices in the circumstances contemplated by article 20 and relieve grantors from the time and expense of having to initiate formal proceedings to force cancellations or amendments under that article.

81. For enacting States that enact option B or C of article 14 (allowing a registrant to select the duration of a notice), yet another variant of option A would be to charge fees on a sliding scale depending on the period selected by the registrant. This approach would have the advantage of discouraging registrants from selecting an inflated period out of an excess of caution (see Registry Guide, para. 277).

82. Option B provides that the Registry may not charge any fees for its services. Under this approach, the cost of establishing and operating the Registry will be covered by general State revenues. Option B may be attractive for enacting States that seek to encourage secured financing in general and the use of the Registry in particular. Like option A, option B could have several variants. For example, the enacting State may wish to offer free registration services for a limited start-up period in order to facilitate acclimatization to and use of the registry system.