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Note by the Secretariat

Addendum

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Chapter VIII. Conflict of laws

Introduction

1. Chapter VIII of the Model Law states the rules for determining the substantive law applicable to the issues dealt with in the other chapters. These rules are generally referred to as the conflict-of-laws rules. In a State that has enacted the Model Law, a court or other authority will use the conflict-of-laws rules of chapter VIII to determine which State's substantive law will govern issues such as the creation, effectiveness against third parties, priority and enforcement of a security right, as well as the mutual rights and obligations of the grantor and the secured creditor and the rights and obligations between third-party obligors and secured creditors. The substantive law indicated by the conflict-of-laws rules may be that of the enacting State or the law of another State.

2. It should be noted that, in the event of judicial proceedings in a State, a court or other authority in that State will typically apply: (a) the substantive law of its own legal system to characterize a transaction (e.g. whether it is a secured transaction in a strict sense or a different kind of transaction such as a retention-of-title sale) or a related issue (e.g. whether it is a priority or enforcement issue) for the purpose of selecting the appropriate conflict-of-laws rule; (b) the conflict-of-laws rules of its own legal system to determine which State's law is applicable to the substance of the dispute; and (c) the substantive law of the State whose law is applicable according to the conflict-of-laws rules of the forum State (for a more elaborate discussion of the role of conflict-of-laws rules, see Secured Transactions Guide, chap. X, paras. 1-13). For example, if a State enacts the Model Law and a court in that State characterizes a transaction as a secured transaction in accordance with the Model Law, it would use the rules in chapter VIII to determine which State's substantive law rules should apply, and then apply those rules.

3. The application of the conflict-of-laws rules in chapter VIII are not conditional on a prior determination that a particular case presents an international element. Thus, whenever a conflict-of-laws rule in this chapter refers to the law of a State, that reference should not be refused on the ground of the absence of true "internationality". Otherwise, courts might disregard a conflict-of-laws rule in this chapter by deciding that the case is not sufficiently international on the basis of discretionary criteria that are not part of the conflict-of-laws rules.

4. With the exception of article 84, the conflict-of-laws rules in this chapter are mandatory (see art. 3, para. 1). Thus, the law applicable to the creation, third-party effectiveness, priority and enforcement of a security right, as well as to the effect of a security right on a third-party obligor, cannot be selected by the parties through a choice-of-law clause. This is because security rights are property (*in rem*) rights and thus affect third parties (see art. 3, para. 2). Allowing the parties to a security agreement to select the applicable conflict-of-laws rule where the selection has third-party effects would also defeat one of the main purposes of the conflict-of-laws rules, which is to identify the State whose substantive law is to apply in the event of a priority dispute among competing claimants. For example, if there is a priority dispute between secured creditor X and secured creditor Y, it would be impossible for third parties to ascertain the law applicable to the resolution of the dispute if each of X and Y were permitted to choose in their security agreement a different governing law for the ranking of their respective security rights. By contrast, article 84 expressly provides for the possibility of the choice of the applicable law by the parties. This is because article 84 addresses only the mutual rights and obligations of the grantor and secured creditor arising from their security agreement and, accordingly, has no effect on the rights of third parties.

A. General rules

Article 84. Mutual rights and obligations of the grantor and the secured creditor

5. Article 84 is based on recommendation 216 of the Secured Transactions Guide (see chap. X, para. 61). Following the approach of international texts such as the Hague Principles on Choice of Law in International Commercial Contracts (the "Hague Principles"), article 84 states that the law chosen by the parties to a security agreement is the law applicable to their mutual rights and obligations arising from their agreement (subject only to the limitations set out in article 93). As already mentioned (see para. 4 above), matters relating to the property aspects of secured transactions are outside the scope of article 84. The parties cannot select the law that is to govern these matters. Other matters, such as the ability of the parties to choose different laws for different aspects of their contractual relationship or to modify their choice of law, are left to other conflict-of-laws rules of the enacting State (see, for example, art. 2 (2) and (3) of the Hague Principles).

6. In the absence of a choice of law by the parties, article 84 refers to the law governing the security agreement as determined by the conflict-of-laws rules generally applicable to contractual obligations. This law may be, for example, the law of the State: (a) which is most closely connected to the security agreement (e.g. the State in which a security agreement is entered into and performed, and in which both parties are located); (b) in which the characteristic performance of the agreement is to be made (e.g. the delivery of the goods in a sales agreement or the extension of credit in a credit agreement); or (c) in which the security agreement is entered into.

Article 85. Security rights in tangible assets

7. Article 85 is based on recommendations 203-207 of the Secured Transactions Guide (see chap. X, paras. 28-38). It deals with the law applicable to the creation, effectiveness against third parties and priority of a security right in a tangible asset (for the law applicable to the enforcement of such a security right, see art. 88, subpara. (a)). The term "tangible asset" is defined to refer generally to all types of tangible movable asset and to include money, negotiable instruments, negotiable documents and certificated non-intermediated securities (see art. 2, subpara. (ll); see also Secured Transactions Guide, chap. X, para. 26).

8. Paragraph 1 states the general rule that the law applicable to these issues is the law of the State in which the encumbered asset is located (the "*lex situs*" or the "*lex rei sitae*"; for the meaning of the term "location", see art. 90; for the relevant time for determining location, see art. 91). The *lex situs* rule for tangible assets is subject to five exceptions that are set out in articles 85, paragraphs 2 to 4, 98 and 100.

9. The first exception provides that, if a tangible asset located in a State is covered by a negotiable document in the possession of a secured creditor in another State, the priority of the security right over the asset covered by that document will be determined by the law of the State in which the document is located, and not by the law of the State in which the asset covered by that document is located (see art. 85, para. 2). Unlike recommendation 206, on which paragraph 2 is based, which referred to priority as against "a competing security right", to cover all priority conflicts (e.g. as against a judgment creditor), paragraph 2 refers to priority "as against the right of a competing claimant".

10. The second exception points to the law of the State in which the grantor is located for an asset of a type which may be ordinarily used in more than one State in the course of its normal use, that is, a "mobile asset" (see art. 85, para. 3). This exception refers to the ordinary use of assets of this type and not to their actual use. For example, where a motor vehicle ordinarily crosses national borders, the rule will apply to a particular motor vehicle even if it is actually operated only in one single State.

11. The third exception deals with a tangible asset (other than a mobile asset) in transit or to be exported (see art. 85, para. 4). A security right in a tangible asset located in a State which is in transit or destined to be moved to another State may be created and made effective against third parties under the law of the State of its ultimate destination, if the asset reaches that destination within the period of time to be specified by the enacting State (e.g. within 45-60 days after the putative creation of the security right to allow sufficient time for the asset to reach its destination). It should be noted that: (a) if the asset does not reach the intended destination within the period specified, the rule in paragraph 4 will not apply; and (b) under the rule in paragraph 1, a secured creditor may also take the necessary steps to create and make the security right effective against third parties under the law of the State in which the asset is actually located at the time such steps are taken. It should also be noted that paragraph 4 is a conflict-of-laws rule of the enacting State only and whether the security right will be treated as validly created and made effective against third parties in the State of the ultimate destination of the asset depends on the law applicable under the conflict-of-laws rules of that State.

12. The fourth exception is contained in article 98 and is only a partial exception. It applies only to the third-party effectiveness of a security right by registration in certain types of tangible and intangible asset. However, it does not alter the law applicable to other matters under the primary rule in article 85; questions of priority as against competing claimants, for example, will continue to be determined by the law of the State in which the asset is located (see paras. 44 and 45 below).

13. The fifth exception is contained in article 100. It refers matters relating to a security right in certificated securities to laws other than the law of the State in which the certificate is located (see paras. 49-58 below).

Article 86. Security rights in intangible assets

14. Article 86 is based on recommendation 208 of the Secured Transactions Guide (see chap. X, paras. 39-47). It states the general conflict-of-laws rule for the creation, effectiveness against third parties and priority of a security right in an intangible asset. The applicable law is that of the State in which the grantor is located (for the meaning of “location”, see art. 90; for the relevant time for determining location, see art. 91). This rule is subject to several exceptions.

15. The first exception relates to the priority of a security right in a receivable arising from a sale or lease of, or secured by, immovable property (see art. 87). The other exceptions relate to a security right in rights to payment of funds credited to a bank account (see art. 97), intellectual property (see art. 99) and uncertificated non-intermediated securities (see art. 100).

Article 87. Security rights in receivables relating to immovable property

16. Article 87 is based on recommendation 209 of the Secured Transactions Guide (see chap. X, para. 54). It deals with the priority of a security right in a receivable arising from a sale or lease of immovable property or secured by immovable property as against the rights of competing claimants. Article 87 is an exception to the general rule of article 86 and refers that matter to the law of the State under whose authority the immovable property registry is maintained. However, article 87 applies only if the right of a competing claimant is registrable (but not necessarily registered) in the relevant immovable property registry. This means that, for a person to determine the law applicable to the priority of its security right in these circumstances, it needs to find out whether the receivable arises from a sale or lease of or is secured by immovable property. Even if a person does not find that out, the law applicable will still be the law provided in article 87.

Article 88. Enforcement of security rights

17. Article 88 is based on recommendation 218 of the Secured Transactions Guide (see chap. X, paras. 64-72). Subparagraph (a) deals with the law applicable to the

enforcement of a security right in a tangible asset, as defined in article 2, subparagraph (ll). It refers to the law of the State in which the asset is located at the time of commencement of enforcement. The rule in subparagraph (a) is subject to one exception. The enforcement of a security right in certificated non-intermediated securities is referred to the law indicated in article 100 (which applies to both certificated and uncertificated securities).

18. It should be noted that enforcement may involve several distinct actions (e.g. notice of the secured creditor's intent to obtain possession of an encumbered asset without applying to a court or other authority, disposition of an encumbered asset, and distribution of the proceeds of disposition) and these actions may take place in different States. For example, a secured creditor may take possession of the encumbered assets in one State, dispose of them in a second State, and distribute the proceeds of disposition in a third State. A similar issue arises in the less frequent case where enforcement takes place in different States because the asset has been moved to another State after commencement of enforcement. In each case, the applicable law will be the law of the State of the location of the relevant asset at the time the first enforcement action is taken.

19. Under subparagraph (b), the law applicable to the enforcement of a security right in an intangible asset (with the exception of a right to payment of funds credited to a bank account, intellectual property and uncertificated non-intermediated securities; see arts. 97, 99 and 100) is the law of the State whose law governs priority of the security right (see art. 86). The main advantage of this approach is that the creation, third-party effectiveness, priority and enforcement of a security right in an intangible asset are referred to one and the same law (see Secured Transactions Guide, chap. X, para. 69).

Article 89. Security rights in proceeds

20. Article 89 is based on recommendation 215 of the Secured Transactions Guide (see chap. X, paras. 55-60). It refers the creation of a security right in proceeds to the law of the State whose law governs the creation of the security right in the original encumbered assets, and the third-party effectiveness and priority of a security right in proceeds to the law of the State whose law governs those matters in the case of a security right in original encumbered assets of the same kind as the proceeds. The following example illustrates how article 89 operates. The original encumbered asset is inventory located in State A. The inventory is subsequently sold, and the purchase price is paid by a funds transfer to a bank account held with a deposit-taking institution in State B. Under paragraph 1, the law applicable to the question of whether the secured creditor automatically acquires a security right in the right to payment of the funds credited to the bank account as proceeds of the original encumbered inventory will be the law of the location of the inventory at the time of the creation of the security right in the inventory (see art. 91, para. 1 (a)). Under paragraph 2, the law applicable to the third-party effectiveness and priority of the security right in the right to payment of the funds credited to the bank account as proceeds will be the law that would be applicable to a security right in the right to payment of the funds credited to the bank account as an original encumbered asset (see art. 97).

21. It should be noted that this type of bifurcated rule may lead to difficulties in cases where the law governing creation recognizes a broad-based right in proceeds (including, for example, civil and natural fruits; see art. 2, subpara. (bb)) whereas the law governing third-party effectiveness and priority recognizes a narrower right in proceeds. It should also be noted that article 89 is dealing only with the law applicable to proceeds derived from the original encumbered assets as a result of a disposition by the grantor or other event prior to enforcement. Article 88 deals with the law applicable to the distribution of proceeds derived from a disposition of the encumbered assets pursuant to post-default enforcement proceedings.

Article 90. Meaning of "location" of the grantor

22. Article 90 is based on recommendation 219 of the Secured Transactions Guide (see chap. X, paras. 73 and 74). It provides that: (a) if a grantor has a place of business, it is located in that State; (b) if a grantor has a place of business in more than one State, it is located in the State in which the grantor's central administration is exercised; and (c) if a grantor does not have a place of business, the grantor is located in the State in which the grantor has his or her habitual residence. The term "place of business" is understood as the place in which the grantor has an activity (and not necessarily commercial activities). Thus, a legal person without any commercial activities (e.g. a foundation) is located in the State in which it is exercising its activities. It should be noted that, if an individual has a habitual residence in one State and a place of business in another State, that individual is located in the latter State even if the transaction pursuant to which the security right is created is for personal, family, or household purposes unrelated to the individual's commercial activities.

23. It should also be noted that the State in which a grantor that is a legal person has its central administration is not necessarily the State in which that legal person has its statutory seat (or registered office). Thus, if the grantor is a legal person formed under the law of State A with its statutory seat in that State but has in State B a place of business where its senior management is based, then the grantor is located in State B. As a result of this approach, for example, the creation, third-party effectiveness, priority and enforcement of a security right in a receivable is referred to a single law that, as a matter of fact, is relatively easy to determine and is most likely to be the law of the State in which the main insolvency proceeding with respect to the grantor would take place (as insolvency proceedings are typically referred to the law of the State in which the insolvent person has the centre of its main interests and that State is generally interpreted to be the State in which that person has its central administration). This approach minimizes the risks of inconsistencies between the law governing the insolvency proceeding *(lex fori concursus*) and the substantive law applicable to a security right, as the two laws will be the law of one and the same State.

Article 91. Relevant time for determining location

24. Article 91 is based on recommendation 220 of the Secured Transactions Guide (see chap. X, paras. 75-78). It deals with the situation where the applicable law is determined by reference to the location of the asset or the grantor, and that location changes from one State (State A) to another (State B). In such a situation, the applicable law may change.

25. Paragraph 1 (a) establishes that the creation of a security right remains governed by the law of the location of the asset or of the grantor at the time of the creation of the security right even if there is subsequently a change of location. This means that, if the security right was validly created under the law of State A when the asset or the grantor was located there, the law of State A will continue to apply and, as a result, the security right will continue to be held to have been effectively created even after the move of the asset or the grantor to State B whether or not the creation requirements of the law of State B have been satisfied. However, for third-party effectiveness and priority issues, paragraph 1 (b) provides that the applicable law will be that of the location of the asset or the grantor "at the time when the issue arises". This is the time of the occurrence of the event that creates the need to determine the law that would be applicable to third-party effectiveness or priority.

26. For example, if an insolvency proceeding commences in State B in respect of the grantor that is located in State A at the time of the creation of a security right in a receivable, the law applicable to the effectiveness of the security right will be the law of State B if at the time of commencement of the insolvency proceeding the grantor is located in State B (see art. 86). As a result, for the security right to be

treated as being effective against the insolvency representative either in State A or in State B, the third-party effectiveness requirements of the law of State B must have been fulfilled prior to the commencement of the insolvency proceeding. Another example is where a tangible asset is seized by a judgment creditor. The question of the respective priority of the secured creditor and the judgment creditor arises at the time of the seizure (which will be "the time when the issue arises"). This is so in each example even if the security right had been made effective against third parties under the law of State A at the time the asset or the grantor was located in State A.

27. Paragraph 2 constitutes an exception to the general rules of paragraph 1. In the event of a priority dispute between a security right that is created and made effective against third parties and the rights of all competing claimants that have been created and made effective against third parties in the State of the initial location, the priority dispute will be resolved under the law of that State (State A in the example).

Article 92. Exclusion of *renvoi*

28. Article 92 is based on recommendation 221 of the Secured Transactions Guide (see chap. X, para. 14). Its purpose is to exclude the doctrine of *renvoi* and provide greater certainty with respect to the determination of the applicable law by avoiding the complications arising from this doctrine. Under the doctrine of *renvoi*, when the conflict-of-laws rules of a State (State A) refer an issue to the law of another State (State B), that law would include the private international law rules of State B. However, the conflict-of-laws rules of State B may refer that issue to the law of another State (State C). In that case, a court in State A would need to resolve the priority dispute using the law of State C (and not the law of State B). However, this could result in circularity, create uncertainty as to the applicable law and be contrary to the expectations of the parties. For those reasons, article 92 excludes *renvoi* (for an exception, see art. 95).

Article 93. Overriding mandatory rules and public policy (*ordre public*)

29. Article 93, which is based on recommendation 222 of the Secured Transactions Guide (see chap. X, para. 79) and article 11 of the Hague Principles, states generally recognized principles of private international law. Under paragraphs 1 and 3, the forum court is not prevented from applying the overriding mandatory law provisions of the law of the forum State and may exclude the application of a provision of the law applicable under the provisions of this chapter if it is manifestly incompatible with fundamental notions of public policy of the forum State.

30. To illustrate how the rules in paragraphs 1 and 3 will operate, assume that the law of the forum (State A) prohibits dealings in certain types of asset (such as an asset which is the proceeds of criminal activities or is the subject of international sanctions) and that the law of the State whose law is applicable under the provisions of this chapter (State B) does not contain such a mandatory law prohibition. In such a case, a court in State A may refuse to recognize a security right created in such an asset under the law of State B even though the law of State B does not contain the same prohibition. Similarly, even if there is no statutory prohibition in State B at the time when a security right is created in a "cultural object", the forum court (State A) may set aside a provision of the law of State B that allows the creation of a security right in cultural objects as being manifestly incompatible with the public policy of State A.

31. Under paragraphs 2 and 4, the forum court (if it is allowed to do so under its law) may refuse to recognize and enforce a security right that has been effectively created and made effective against third parties under the applicable law (even if the applicable law is the law of the forum itself), if the creation of the security right would be manifestly incompatible with the public policy of another State (e.g. a State that has a close connection with the situation). For example, a law firm located in the forum State (State A) may wish to assign receivables arising from its legal services and the law of State A allows this assignment. However, the client is

located in another State (State B) and, for reasons of public policy (confidentiality of lawyer-client relationship), the law of State B prohibits the transfers by a law firm of its receivables arising from legal services. In this case, the law of State A may allow a court in State A to take the public policy of State B into account in determining whether the assignment is valid.

32. Paragraph 5 is intended to make clear that the rules in paragraphs 1-4 may also be relied upon by an arbitral tribunal, although, unlike a court, it does not operate as part of the judicial infrastructure of a specific legal system. Under paragraph 5, an arbitral tribunal may be required to take into account the public policy and the overriding mandatory provisions of a State other than the State whose law is applicable (e.g. the State in which the arbitration takes place or the State in which enforcement of any award is likely to take place). Paragraph 5 also requires an arbitral tribunal to determine whether it is required or entitled to take into account the public policy or the overriding mandatory provisions of another law, having regard (in particular) to the agreement of the parties, the designated or deemed seat of the arbitration, any institutional rules applicable to the arbitration, and the potentially controlling influence of State courts applying local arbitration legislation (see commentary to article 11 (5) of the Hague Principles).

33. Under paragraph 6, the forum State may not displace the provisions of the law applicable to third-party effectiveness and priority of a security right and apply its own third-party effectiveness and priority provisions or those provisions of another State. This approach is justified by the need to achieve certainty with respect to the law applicable to third-party effectiveness and priority. The same approach is followed in article 23, paragraph 2, article 30, paragraph 2, and article 31 of the Assignment Convention, as well as in article 11, paragraph 3, of the Hague Securities Convention.

Article 94. Impact of commencement of insolvency proceedings on the law applicable to a security right

34. Article 94 is based on recommendation 223 of the Secured Transactions Guide (see chap. X, paras. 80-82). It provides that an insolvency court in the enacting State must in principle respect the law applicable to security rights under its conflict-of-laws rules. However, nothing in article 94 restricts the application of the law of the State in which insolvency proceedings are commenced (*lex fori concursus*) to matters such as the avoidance of fraudulent or preferential transactions, the treatment of secured creditors, the ranking of claims and the distribution of proceeds (see rec. 31 of the Insolvency Guide).

Article 95. Multi-unit States

35. Article 95 is based on recommendations 224-227 of the Secured Transactions Guide (see chap. X, paras. 83-87) and partly on article 37, first sentence, of the Assignment Convention. Its purpose is to deal with the law applicable where the State whose law is applicable to an issue under the provisions of this chapter has two or more territorial units, each of which has its own substantive law, and possibly its own conflict-of-laws rules. In such a case, subparagraph (a) provides that a reference to the law of a multi-unit State is in principle a reference to the law applicable in the relevant unit (as determined under the other provisions of this chapter). For example, in the case of a security right in a receivable created by a grantor located (in the sense of having its central administration) in territorial unit A, the law applicable to that security right is in principle the law of territorial unit A (see arts. 86 and 90).

36. However, under subparagraph (b), if the internal conflict-of-laws rules of the multi-unit State or, in the absence of such rules, of the territorial unit to which subparagraph (a) points, refer security rights to the law in force in another territorial unit of that State, the substantive law of that other unit will apply. In the above mentioned example, if territorial unit A has a conflict-of-laws rule under which the

law applicable is the law of the grantor's location defined as the place of the grantor's statutory seat and that place is in territorial unit B, the substantive law of territorial unit B will apply. It should be noted that subparagraphs (a) and (b) also apply where the forum State is the State whose law is applicable under the provisions of this chapter.

37. Thus, subparagraph (b) is a deviation from the general rule on the exclusion of *renvoi* (see art. 92). The purpose of the exception is to ensure that, where the applicable law is that of a unit of a multi-unit State, a forum court outside that multi-unit State will apply the substantive law of the same unit as a forum court in that multi-unit State would do under its internal conflict-of-laws rules. As a result, the deviation from the rule excluding *renvoi* is limited to internal *renvoi*, which should not materially affect certainty as to the applicable law (see Secured Transactions Guide, chap. X, para. 85).

38. As a result, for example, where the conflict-of-laws rules of this chapter refer to the law of the location of the asset or the grantor, the forum court is required under the provisions of this chapter to examine the internal conflict-of-laws rules in effect in the territorial unit of the location of the grantor or the encumbered asset. In this regard, the Assignment Convention allows a declaration by States as to the determination of the applicable priority rule as between various territorial units (see art. 37 of the Assignment Convention), but in this article there would be no declaration and the forum court would have to determine the applicable law under the conflict-of-laws rules in effect in the multi-unit State or, in the absence of such rules, in the territorial unit to which subparagraph (a) will point.

B. Asset-specific rules

Article 96. Rights and obligations between third-party obligors and secured creditors

39. Article 96 is based on recommendation 217 of the Secured Transactions Guide (see chap. X, paras. 62 and 63) and article 29 of the Assignment Convention. Its purpose is twofold. First, the conflict-of-laws rules dealing with the law applicable to the third-party effectiveness or enforcement of a security right do not apply to the effectiveness or enforcement of a security right against a debtor of a receivable, an obligor under a negotiable instrument or an issuer of a negotiable document; they are not considered "third parties" for the purposes of the rules on third-party effectiveness and priority of a security right, as they are not competing claimants. Second, the law applicable to these issues is the law governing the legal relationship between the grantor and the relevant debtor of the receivable, or the relevant obligor under the instrument or the issuer of the document; the same law also applies to the question of whether any of the latter may assert that their agreement with the grantor prohibits or limits the grantor's right to create a security right in the relevant receivable, instrument or document. For example, in the case of a receivable arising from a sales contract, the law chosen by the seller/grantor and the buyer/debtor of the receivable to govern the sales contract will apply to the matters covered by article 96.

Article 97. Security rights in rights to payment of funds credited to a bank account

40. Article 97 is based on recommendation 210 of the Secured Transactions Guide (see chap. X, paras. 49-51). While a right to payment of funds credited to a bank account is in the generic sense a receivable of the customer against the deposit-taking institution, article 97 departs from the general conflict-of-laws rule on the law applicable to intangible assets (see art. 86). Two options are offered to the enacting State for the law applicable to the creation, third-party effectiveness, priority and enforcement of a security right in a right to payment of funds credited

to a bank account, as well as to the rights and obligations between the deposit-taking institution and the secured creditor.

41. Under option A, the applicable law is that of the State of the location of the branch (or office) of the deposit-taking institution with which the account is maintained. It should be noted that a branch (or office) of a deposit-taking institution may be considered as being located in a particular jurisdiction irrespective of whether the institution offers its services through physical offices or only through an online connection accessible electronically by customers. In this regard, it should be noted that a deposit-taking institution must generally have a physical presence or legal address in a jurisdiction in order to be allowed by the relevant regulatory authorities to maintain bank accounts in that jurisdiction. Under this approach, certainty and transparency with regard to the applicable law would be enhanced, as the location of the relevant branch could easily be determined in a bilateral relationship between a deposit-taking institution and its client. In addition, such an approach would reflect the normal expectations of parties to current banking transactions. Moreover, this approach would result in the law governing a security right in a right to payment of funds credited to a bank account being the same as that applicable to regulatory matters (see Secured Transactions Guide, chap. X, para. 49).

42. Under option B, the applicable law is the law designated in the account agreement as governing the issues that are the subject of article 97 or, in the absence of a designation of a law for these issues, the law designated by the parties to the account agreement as the law governing that agreement. Under this approach, the applicable law would meet the expectations of the parties to the account agreement. A potential lender would be able to ascertain the law provided in the account agreement, as the grantor (the account holder) would normally supply information on the account agreement to obtain credit from the lender relying on the funds credited to the account (see Secured Transactions Guide, chap. X, para. 50). To be effective for conflict-of-laws purposes, a designation must refer to the law of a State in which the deposit-taking institution is regularly engaged in the business of maintaining bank accounts. It should be noted that the State whose law is so designated may be different than the State in which the grantor's bank account is maintained.

43. If the applicable law cannot be determined as described in the preceding paragraph, option B provides for a series of rules along the lines of the default rules contained in article 5 of the Hague Securities Convention, which the enacting State may wish to insert in this article, if it decides to adopt option B of article 97. For example, the enacting State may wish to consider inserting the following text as paragraph 3 of option B: "If the applicable law is not determined pursuant to paragraph 1 or 2, the applicable law is to be determined pursuant to the following rules: (a) If it is expressly and unambiguously stated in a written bank account agreement that the relevant deposit-taking institution entered into through a particular office, the law applicable is the law of the State in which that office is located; (b) If the applicable law is not determined under subparagraph (a), the applicable law is the law of the State under whose law the relevant deposit-taking institution is incorporated or otherwise organized at the time the written bank account agreement is entered into or, if there is no such agreement, at the time the bank account was opened; (c) If the applicable law is not determined under either subparagraph (a) or subparagraph (b), the applicable law is the law of the State in which the relevant deposit-taking institution has its place of business, or, if the relevant deposit-taking institution has more than one place of business, its principal place of business, at the time the written bank account agreement is entered into or, if there is no such agreement, at the time the bank account was opened".

Article 98. Third-party effectiveness of a security right in certain types of asset by registration

44. Article 98 is based on recommendation 211 of the Secured Transactions Guide (see chap. X, para. 34). This article is an exception to the conflict-of-laws rules on the third-party effectiveness of a security right in a negotiable instrument, negotiable document, right to payment of funds credited to a bank account or certificated non-intermediated security (but article 98 does not apply to uncertificated non-intermediated securities). Under articles 85, 97 and 100, the effectiveness against third parties of a security right in any of these assets is governed by the law of a State which may be different from the State of the location of the grantor. However, under article 98, if the State of the location of the grantor recognizes registration of a notice as a method of third-party effectiveness for a security right in the types of asset covered in article 98, then the law applicable to third-party effectiveness by registration is the law of the State in which the grantor is located.

45. Therefore, with respect to these types of asset, a secured creditor may rely on the law of the location of the grantor to make its security right effective against third parties by registration, even if for these types of asset the applicable law might be different under the other conflict-of-laws rules of this chapter. However, if the priority rules of the applicable law are based on the priority rules of the Model Law, achieving third-party effectiveness by registration would only yield a lower-ranking priority in the case of a priority conflict with a competing secured creditor who achieved third-party effectiveness, for example, by possession in the case of a negotiable instrument (see art. 46, para. 1), by the secured creditor becoming the account holder in the case of a right to payment of funds credited to a bank account (see art. 47, para. 1) or by possession in the case of a negotiable document or a certificated non-intermediated security (see arts. 49, para. 1, and 51, para. 1, respectively). However, the security right would have priority over the right of: (a) the grantor's insolvency representative or the general body of creditors (subject to the applicable insolvency law; see arts. 35 and 36); and (b) judgment creditors, if registration took place before a judgment creditor took the steps required to acquire a right in the encumbered assets (see art. 37, para. 1).

Article 99. Security rights in intellectual property

46. Article 99 is based on recommendation 248 of the Intellectual Property Supplement (see paras. 284-337). The effect of paragraph 1 is the following. If intellectual property is protected in a particular State, the law of that State will apply to the requirements to be met for the security right in that intellectual property to be considered as having been created and made effective against third parties, and as having priority over the rights of competing claimants. It should be noted that even with respect to intellectual property protected under an international convention the *lex protectionis* is the law of the State party to the Convention under which the intellectual property is protected. For example, with respect to types of intellectual property that are subject to registration in a national, regional or international intellectual property registry (for example, patents and trademarks), the *lex protectionis* is the law of the State (including the rules promulgated by regional or international organizations) under whose authority the registry is maintained (see Intellectual Property Supplement, para. 297). It should also be noted that a security right may be created in intellectual property or rights under a licence agreement (e.g. the licensor's right to royalties or the licensee's right to use the licensed product; see Intellectual Property Supplement, paras. 89-112).

47. Paragraph 2 provides for an alternative way to create and make effective against certain third parties a security right in intellectual property. Under paragraph 2, the secured creditor may also rely for these purposes on the law of the State in which the grantor is located. The principal benefit of paragraph 2 is that a security right in a portfolio of intellectual property rights protected under the laws of different States may be created and made effective against third parties under a

single law. An equally important benefit of paragraph 2 is that, if the security right has been made effective against the grantor's insolvency representative under the law of the State in which the grantor is located, an insolvency court in the enacting State will recognize the security right even if the third-party effectiveness requirements of all States in which the intellectual property is protected have not been fulfilled.

48. Paragraph 3 refers enforcement issues to the law of the State in which the grantor is located. This rule allows for the same law to be applied to all enforcement steps, even if they take place in different States, because it is unlikely that the grantor's location (in particular the place of its central administration) would change between any of those steps. In the rare case where there would be such a change, it is assumed that a court would refer to the law of the State in which the grantor is located at the time of commencement of the enforcement (see art. 88). It should be noted that the enforcement of the security right against persons other than the grantor (e.g. the licensor of the intellectual property, if the grantor is a licensee) is outside the scope of this article.

Article 100. Security rights in non-intermediated securities

49. Article 100 introduces one general conflict-of-laws rule for security rights in equity securities and another for security rights in debt securities, without distinguishing between certificated and uncertificated or between traded and non-traded securities. Both of these rules refer all issues (i.e. the creation, third-party effectiveness, priority, enforcement and effectiveness against the issuer of a security right) to a single law. This approach provides greater certainty in the determination of the applicable law.

50. For non-intermediated equity securities, paragraph 1 designates the law of the constitution of the issuer as the law applicable to all issues. The term "equity" is not defined in the Model Law but it should be understood as referring to participation rights in the capital of the issuer. For a corporation or a similar legal person, equity securities consist of the shares in its capital. Similarly, for an entity which is not a legal person under its constitutive law (such as a general partnership in many States), equity securities consist of the rights of the persons (e.g. the partners) who are entitled to receive upon the liquidation of the entity the residual value of its assets after payment of its liabilities.

51. The law of the constitution of the issuer is the law under which it has been formed. For a corporation, this is relatively easy to ascertain; it is the law under which it has been incorporated. For a partnership, it is the law under which the partnership has been created. In federal States where the issuer may be constituted either under a federal law or a law of one of its territorial units, the Model Law does not provide specific criteria on the determination of the territorial unit which will be considered as the issuer's law where the issuer's law is a federal law and the law on secured transactions is that of a territorial unit. However, applying by analogy article 95, the internal conflict-of-laws rules of the federal State (or of the territorial unit which is the forum) should determine the territorial unit's law to be applicable to the issues falling under article 100 where all or some of these issues are not dealt with by the federal law of the constitution of the issuer.

52. For non-intermediated debt securities, paragraph 2 refers all issues to the law governing the securities. The law governing debt securities is the law selected by the parties as the law governing their contractual rights and obligations arising from these securities. In the absence of such a choice of law (which would be extremely rare for debt securities), the forum will determine the applicable law under its own conflict-of-laws rules. The Model Law does not deal with the question of whether the parties may select a governing law which has no connection with the issuance of the securities. This matter is left to the conflict-of-laws rules on contractual obligations of the forum State.

53. The term “debt securities” is not defined in the Model Law. The notion of debt is however well understood in most legal systems and denotes a payment obligation. In the context of debt securities, the obligation is generally to make payment of a sum of money. Bonds and debentures are debt securities, to the extent they come under the definition of securities in article 2, subparagraph (hh).

54. The distinction between equity and debt securities should be based on their characterization under corporate or enterprise law, and not under accounting or other law. Thus, preferred shares (i.e. shares that entitle the holder to a fixed dividend, whose payment takes priority over that of common share dividends) are treated as equity securities if they are so considered under the corporate or enterprise law of the issuer’s State even if under accounting or other rules of that State they are classified as liabilities. Likewise, subordinated debt securities (e.g. debt payable only after satisfaction of obligations owing to certain creditors) are treated as debt securities if they are so considered under the corporate or enterprise law of the issuer’s State even if they are viewed as equity securities under accounting, regulatory or other law.

55. The concept of “debt securities” raises the following two questions: (a) the characterization of convertible debt securities; and (b) the effect of that characterization on the law applicable to a security right in that type of security. Convertible debt securities are debt securities that are convertible into equity securities at the option of their holder or issuer or upon the occurrence of a specified event.

56. Convertible debt securities should be characterized as debt securities because they constitute payment obligations as long as they are not converted into equity. This means that upon their issuance and until conversion, the law governing these securities will be the law applicable to the creation, third-party effectiveness, priority, enforcement and effectiveness against the issuer of a security right in such securities. The characterization of convertible debt securities for the purposes of article 100 may, however, change if and once they are converted into equity. The connecting factor then becomes the law of the constitution of the issuer. Therefore, upon being converted into equity, the law applicable to a security right in convertible debt securities will be the law of the State under which the issuer has been constituted.

57. A consequence of the change from the law governing the securities to the issuer’s law is that a security right in debt securities made effective against third parties under the law governing the securities might become ineffective against third parties after the change. Article 23 addresses the impact of a change in the applicable law and article 91 addresses a change in the connecting factor. However, strictly speaking, article 23 is not applicable to a change in the nature of non-intermediated securities; and article 91 only deals with the situation where the connecting factor is the location of the asset or the grantor. The enacting State may thus wish to draw from articles 23 and 91 and adopt rules dealing with the change on the basis of principles similar to those underlying articles 23 and 91.

58. With respect to certificated equity or debt non-intermediated securities, article 98 introduces an exception to the general conflict-of-laws rules of article 100. If the law of the State in which the grantor is located recognizes registration of a notice as a method for achieving effectiveness against third parties of a security right in certificated non-intermediated securities, the law of that State is also the law applicable to the third-party effectiveness of the security right in this type of asset by registration (see paras. 44 and 45 above).

Chapter IX. Transition

Introduction

59. The introduction of any new law requires fair and efficient transition rules (see Secured Transactions Guide, chap. XI, paras. 1-3). This is the purpose of this chapter. First, it provides that the law formerly governing rights that fall within the scope of the new law (the "prior law"; see art. 102, para. 1 (a)) is repealed (see art. 101). Second, it provides for the general application of the new law to all security rights (see art. 102, para. 2), including extant security rights that were created by a security agreement concluded while the prior law was still in force ("prior security rights"; see art. 102, para. 1 (b)), but continue to exist, perhaps for extensive periods of time, after the new secured transactions law (the "new law") enters into force. Third, it preserves the exceptional application of prior law in circumstances where no new third-party rights are implicated (see arts. 103-105). Fourth, it provides a transition period for the holders of prior security rights to comply with the third-party effectiveness requirements of the new law (see art. 106). Finally, it sets a date on which the new law goes into effect (see art. 107).

Article 101. Amendment and repeal of other laws

60. The Model Law provides a comprehensive legal framework to govern security rights in the types of asset within its scope under article 1, replacing rather than merely supplementing the prior law. Accordingly, paragraph 1 requires the enacting State to list the laws to be repealed upon entry into force of the new law under article 107. The way in which the repeal is effectuated will depend on the form of the prior law. Where the prior law is set out in a free-standing statute or combination of statutes, it can be repealed in its entirety. Where the prior law is contained in statutes that also address other topics, the enacting State must specify which provisions are to be retained or amended. Where all or part of the prior law is based on judicial opinions (as may be the case, for example, in common law systems), the effect of the new secured transactions law typically will be to override the prior case law without the need for the enacting State to take any explicit repealing measures.

61. Secured transactions law interacts with many other laws such as, for example, civil procedure, judgment enforcement, insolvency, property and taxation laws. These other laws may contain provisions that refer to or are premised on the enacting State's prior law. Accordingly, paragraph 2 requires the enacting State to amend these provisions to the extent needed to align them with the terminology and the provisions of its new law.

62. It should be noted that, like the other articles of the Model Law, article 101 takes effect only when the new law enacting the Model Law enters into force according to article 107. Accordingly, until that date, the provisions listed for repeal or amendment in this article remain in effect.

Article 102. General applicability of this Law

63. Paragraph 1 of this article defines two terms used in this chapter. Paragraph 1 (a) defines the term "prior law" to mean the law that applied to "prior security rights" (see para. 64) before the entry into force of the new law. This definition makes it clear that the applicable prior law is the law designated by the conflict-of-laws rules of the enacting State as those rules existed before the entry into force of the new law. It follows that the applicable law may be: (a) the law of the enacting State or of another State; and (b) a different law than that which would apply under the conflict-of-laws rules of the Model Law if the enacting State's prior conflict-of-laws regime used a different connecting factor. It should be noted that, even though it is expressed in the singular, the term "prior law" refers to all relevant sources of the applicable prior substantive law wherever they may be reflected (e.g. in a civil or

commercial code, a special statute, case law or a combination of any of these sources of law).

64. Paragraph 1 (b) defines "prior security right" (a term referred to in the definition of the term "prior law"; see para. 63 above) as a right created by an agreement entered into before the entry into force of the new law that the new law treats as a security right. For example, a seller's or lessor's retention-of-title right would be a prior security right because it is characterized as such under the functional concept of security right adopted by the Model Law (see art. 2, subpara. (kk)) even if prior law treated it as an ownership right. It should be noted that a security right in future assets acquired by the grantor after the new law enters into force would be a prior security right if it was provided for in an agreement entered into before the entry into force of the new law even though the creation requirements of the new law are not satisfied (see art. 104, para. 2). This presupposes that prior law permitted the creation of a security right in future assets; if it did not, then no prior security right could exist.

65. Paragraph 2 is based on recommendation 228 (second sentence) of the Secured Transactions Guide (see chap. XI, paras. 7-12). It states that, upon its entry into force under article 107, the new law applies, as a general rule, to all security rights within its scope, including prior security rights. This general rule ensures that the enacting State enjoys the economic benefits of the new law with immediate effect and avoids the complexity and conflict that would result from attempting to apply discrete laws to prior and new security rights.

66. The transition to any new legal regime requires that attention be paid to ensuring that extant rights are appropriately accommodated. To this end, paragraph 2 also provides that the general applicability of the new law to prior security rights is subject to the other provisions of this chapter. These other provisions preserve the exceptional application of prior law to prior security rights where no third-party rights are affected (see art. 104), or where the rights of a holder of a prior security right and competing claimants have already vested (see arts. 103 and 106); they also provide a transition period for the holders of prior security rights to conform to the third-party effectiveness requirements of the new law (see art. 105).

Article 103. Applicability of prior law to matters that are the subject of proceedings commenced before the entry into force of this Law

67. Article 103 is based on recommendation 229 of the Secured Transactions Guide (see chap. XI, paras. 13-16). It introduces two exceptions to the general rule in article 102, paragraph 2, that the new law applies to all security rights within its scope, including prior security rights. Paragraph 1 provides for the continued application of prior law to a matter with respect to a prior security right that is the subject of judicial or arbitral proceedings commenced before the new law entered into force (except enforcement proceedings separately addressed in para. 2).

68. Paragraph 2 provides that, if enforcement of a prior security right is commenced before the entry into force of the new law, the secured creditor may continue enforcement in accordance with prior law (what constitutes "enforcement" under prior law would need to be assessed by reference to prior law), or may choose to enforce its security right in accordance with the new law (what constitutes "enforcement" under the new law is addressed in chapter VII of the Model Law). Paragraph 2 applies if "any step" has been taken to enforce a prior security right before the entry into force of the new law. Thus, for example, if the secured creditor has already obtained possession of an encumbered asset in accordance with prior law when the new law enters into force, it may choose to dispose of the encumbered asset and distribute its proceeds under the prior law or proceed as to those matters under the new law notwithstanding paragraph 1.

69. Paragraph 2 applies to all disputes arising with respect to a prior security right, whether between the secured creditor and the grantor, the secured creditor and a

competing claimant, or the secured creditor and a person liable, for example, on a receivable or negotiable instrument. It should be noted that prior law applies only to the matter that is the subject of judicial or arbitral proceedings commenced before the new law enters into force; under the general rule in article 102, paragraph 2, the new law applies to a separate matter that is the subject of proceedings commenced after the new law enters into force even if it relates to the same security agreement.

Article 104. Applicability of prior law to the creation of a prior security right

70. Article 104 is based on recommendation 230 of the Secured Transactions Guide (see chap. XI, paras. 17-19). It sets out an exception to general applicability of the new law to prior security rights under article 102, paragraph 2. Paragraph 1 provides that prior law determines whether a right that was created under an agreement entered into before the new law enters into force that would be a security right under the new law was indeed created effectively. Paragraph 2 confirms that a prior security right that was effectively created under prior law remains effective between the parties after the new law enters into force even if the requirements for creation under the new law are not satisfied. This approach avoids the retroactive invalidation of prior security rights that were created in conformity with the law applicable to them when they were created. It also dispenses with the need for the secured creditor to obtain the cooperation of the grantor to take whatever additional steps may be necessary to conform to the creation requirements of the new law. Such cooperation may not be forthcoming from a grantor that has already received all the credit intended to be secured by the prior security right.

71. The creation requirements of the new law are relatively minimal (see art. 6). Consequently, it will rarely be the case that a security right created in conformity with prior law would not in any event also conform with the creation requirements of the new law. An example of a possible exception would be a prior security right created in accordance with a rule of prior law that allowed the creation of a security right by means of an oral agreement even in the absence of possession of the encumbered asset by the secured creditor. In this example, paragraph 2 would preserve the effectiveness of the prior security right between the parties even though the new law requires a written security agreement signed by the grantor (see art. 6, para. 3).

Article 105. Transitional rules for determining the third-party effectiveness of a prior security right

72. Article 105 is based on recommendation 231 of the Secured Transactions Guide (see chap. XI, paras. 20-22). It introduces a qualified exception to the general applicability of the third-party effectiveness requirements of the new law to prior security rights under article 102, paragraph 2. Under paragraph 1, a prior security right that was made effective against third parties under prior law remains effective against third parties for a transitional period specified by the enacting State after entry into force of the new law even if the conditions for third-party effectiveness under the new law have not been satisfied The transitional period expires at the earlier of the time when the third-party effectiveness of the security right would have ceased under prior law (see para. 1 (a)) or the time when the transitional period would expire (see para. 1 (b). It should be noted that the transitional period could, for example, be one to two years to allow secured creditors to familiarize themselves with the new law and take the steps required by the new law to make their security rights effective against third parties (for the time required for the new law to enter into force and the relevant considerations to be taken into account in determining that time, see para. 83 below).

73. The following example illustrates the operation of paragraph 1. A prior security right took effect against third parties under prior law on the conclusion of the security agreement without the need for the creditor to register or take any other additional step such as possession. The effect of paragraph 1 is to preserve the third-party effectiveness of the prior security right for the purposes of the new law after it

comes into force until the expiration of the period specified in paragraph 1 (b) (e.g. one to two years). If instead the applicable prior law required public registration for third-party effectiveness, and the holder of the prior security right duly registered, but the registration period under prior law would have expired six months after the new law comes into force, paragraph 1 (a) would apply with the result that the third-party effectiveness of the prior security right would be preserved only for a period of six months after the new law enters into force.

74. A security right that would cease to be effective against third-parties under the rule in paragraph 1 may continue to be effective against third parties if the secured creditor takes the appropriate steps under the new law to achieve third-party effectiveness. Most often, this result will be accomplished by registering a notice with the Registry. The secured creditor's ability to do so is aided by paragraph 4, which provides that a prior written agreement creating the prior security right constitutes sufficient authorization for registration of the notice.

75. Under paragraph 2, the third-party effectiveness of a prior security right that would otherwise cease to be effective against third-parties under paragraph 1 is preserved if the secured creditor takes the appropriate steps under the new law to achieve third-party effectiveness before the expiration of the relevant transition period in paragraph 1. In that event, the prior security right is treated as continuously effective against third parties from the time when it was first made effective against third parties under prior law. It follows that the time of third-party effectiveness under prior law will be treated as the relevant time for determining the priority of the security right against competing claimants for the purposes of the priority rules of the new law that turn on the time of third-party effectiveness.

76. Paragraph 3 addresses the situation where the requirements of the new law for third-party effectiveness are not satisfied until after the expiration of the transition period in paragraph 1, leaving a gap between the expiration of third-party effectiveness under paragraph 1 and the achievement of third-party effectiveness under the new law. In that case, paragraph 3 provides that the security right is effective against third parties only from the time it is made effective against third parties under the new law. It follows that the priority of the prior security right, for the purposes of the rules of the new law that determine priority by reference to the time of third-party effectiveness, will date only from that time.

77. A prior security right typically will be made effective against third parties under the new law by registration of a notice in the Registry (see art. 18). The Model Law requires the grantor's authorization for registration but provides that the conclusion of a written security agreement constitutes sufficient authorization without the need for an express authorization clause (see art. 2 of the Model Registry Provisions). In line with this rule, paragraph 4 confirms that a written agreement between a grantor and a secured creditor creating the prior security right constitutes sufficient authorization even if the agreement was concluded before the entry into force of the new law.

78. Paragraph 5 makes explicit a point that is implicit in paragraph 2. It provides that, if a prior security right that was made effective against third parties under prior law by registration remains continuously effective against third parties under paragraph 2, the priority rules of the new law that depend on the time of registration are to be applied using the time of registration under prior law. This clarification was thought to be helpful to cover cases where the registration venue specified by the prior law is different than the Registry established under the new law (see art. 28 of the Model Law).

Article 106. Application of prior law to the priority of a prior security right as against the rights of competing claimants arising under prior law

79. Article 106 provides an exception to the general rule in article 102, paragraph 2, that the new law applies to all security rights, including prior security rights. Under the circumstance described in article 106, the priority of a prior

security right as against competing claimants is determined by application of prior law.

80. Application of the priority rules of prior law appropriately respects the settled expectations of secured creditors and competing claimants when no change has occurred other than the new law entering into force and when the priority competition does not involve rights of new competing claimants that arose after the new law became effective. Accordingly, paragraph 1 makes the application of prior law subject to the caveat that the priority status of the prior security right and the rights of competing claimants must not have changed since the entry into force of the new law.

81. Paragraph 2 provides guidance on when the priority status of a prior security right has changed within the meaning of paragraph 1 so as to instead require application of the priority rules of the new law in accordance with the general rule in article 102, paragraph 2. The effect of paragraph 2 is to make the priority rules of the new law applicable if the prior security right: (a) was created under prior law but was not made effective against third parties under prior law but only under the new law (see para. 2 (b)); or (b) it was made effective against third parties under prior law but continuity of third-party effectiveness was not preserved before the expiration of the transition period set out in article 105, paragraph 1 (see para. 2 (a)).

Article 107. Entry into force of this Law

82. Article 107 is based on recommendation 228 of the Secured Transactions Guide (see chap. XI, paras. 4-6). It requires the enacting State to specify the date when, or the mechanism according to which, the new law will enter into force. The Model Law does not recommend a particular date or mechanism, leaving this matter to the enacting State. The location of this article and its precise formulation will also depend on whether the new law is contained in a new stand-alone statute or incorporated into a general civil or commercial code.

83. In determining when the new law will enter into force, careful consideration should be given both to obtaining the economic benefits of the new law as soon as possible and to minimizing disruptions that may be caused by significant changes in secured transactions practice resulting from the new law. Inasmuch as the new law will have been chosen because it is an improvement over the prior law, the new law should come into force as soon as is practical. However, some lead time is necessary in order to, inter alia: (a) publicize the existence of the new law; (b) enable the establishment of the Registry (or adaptation of an existing registry to the registry system required by the new law) and ensure that it is fully operational; (c) educate participants in the secured transactions system about the effect of the new law and the transition from the prior to the new law and enable them to prepare, for example, for compliance with new rules and the use of new registration and security agreement forms; and (d) educate other affected constituents, for example, buyers, lessees, judgment creditors, and insolvency representatives, on the impact of the new law on their rights. For example, the new law may enter into force on a specific date or a few months (e.g. 6 to 12 months) after a specific date, or on the date to be specified by a decree once the Registry becomes operational.