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Draft Technical Legislative Guide on the Implementation of a Security Rights Registry Guide: Annex I. Terminology and recommendations (*continued*)

Note by the Secretariat

Addendum

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Annex I. Terminology and recommendations (*continued*)

IV. Registration information

Recommendation 19: Responsibility with respect to the information in a notice

The regulations should provide that it is not the responsibility of the registry to ensure that the information in a notice is accurate, complete or legally sufficient.

Recommendation 20: Language of a notice

The regulations should provide that the information in a notice should be expressed in [enacting State to specify] language and in a publicly available set of characters.

[Note to the Working Group: The Working Group may wish to consider the impact of this recommendation. For example, under recommendation 22, alternative B, subparagraph (d) (v) below, a grantor that is not a citizen of the enacting State would need an identification document in the language of the enacting State. Also, if the language used to describe the encumbered asset is the language in the State of the manufacturer, a searcher may be misled because he or she will not be able to determine what the encumbered asset is. In any case, the commentary may refer to other systems where a set of foreign characters may be used in the notice as long as the registry is able to rely on a set of rules for the transliteration of names with foreign characters in the alphabet of the official language(s) of the enacting State.]

Recommendation 21: Information required in an initial notice

The regulations should provide that:

(a) Only the following information is required to be provided in the appropriate field of the initial notice:

(i) The identifier and address of the grantor according to recommendations 22-24;

(ii) The identifier and address of the secured creditor or its representative according to recommendation 25;

(iii) A description of the encumbered assets according to recommendations 26 and 27;

[(iv) The period of effectiveness of the registration according to recommendation 11;¹ and

(v) The maximum monetary amount for which the security right may be enforced];² and

¹ If the enacting State has chosen option B or C in recommendation 11 (see recommendation 69).

² If the Law allows it (see recommendation 57(d)).

(b) If there is more than one grantor or secured creditor, the required information should be provided separately for each grantor or secured creditor in the appropriate field of the same notice or of different notices.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that: (a) if the information is entered in the inappropriate field (for example, the grantor identifier is entered in the secured creditor field), a notice that contains otherwise correct and sufficient information may be ineffective; (b) naming conventions of the enacting State would apply; (c) the registry system should be designed so that a search against the identifier of one of the grantors identified in the registered notice would reveal the registered notice in which all of the other grantors would be identified; and (d) for the purposes of the recommendations 21-25 and the regulations that would implement them, the grantor and the secured creditor identifier should be the identifier at the time of the registration. The Working Group may wish to consider the order of the recommendations and in particular whether right after recommendation 21, dealing with the information required for the initial notice, recommendations 28-30 should follow, dealing with the information required in an amendment or cancellation notice. If that order were followed, recommendations 22-27, dealing with grantor and secured creditor information, and encumbered asset description would follow and apply, to the extent relevant, to an initial, amendment or cancellation notice.]

Recommendation 22: Grantor identifier (natural person)

The regulations should provide that:

(a) If the grantor is a natural person, the grantor identifier is:

Alternative A

the name of the grantor [where necessary, additional information, such as the birth date or the personal identification number issued to the grantor by the enacting State, should be required to uniquely identify the grantor];

Alternative B

the name of the grantor [and] [or] the personal identification number issued to the grantor by the enacting State. Where the grantor has not been issued a personal identification number by the enacting State, the grantor identifier is the grantor's name;

(b) Where the grantor is a natural person whose name includes a family name and one or more given names, the name of the grantor consists of the grantor's family name and the grantor's first and second given names;

(c) Where the grantor is a natural person whose name consists of only one word, the name of the grantor consists of that word and should be entered in the family name field;

(d) The name of the grantor is determined as follows:

(i) If the grantor was born and the grantor's birth is registered in [the enacting State] with a government agency responsible for the registration of

births, the name of the grantor is the name as stated in the grantor's birth certificate or equivalent document issued by the government agency;

(ii) If the grantor was born but the grantor's birth is not registered in [the enacting State], the name of the grantor is the name as stated in a valid passport issued to the grantor [by the enacting State];

(iii) If neither (i) nor (ii) applies, the name of the grantor is the name stated in a valid official document, such as an identification card or driver's licence, issued to the grantor by [the enacting State];

(iv) If neither (i), nor (ii), nor (iii) applies but the grantor is a citizen of [the enacting State], the name of the grantor is the name as stated in the grantor's certificate of citizenship;

(v) If neither (i), nor (ii), nor (iii), nor (iv) applies, the name of the grantor is the name as stated in a valid passport issued by the State of which the grantor is a citizen and, if the grantor does not have a valid passport, the name of the grantor is the name as stated in the birth certificate or equivalent document issued to the grantor by the government agency responsible for the registration of births at the place where the grantor was born;

(vi) In a case not falling within subparagraphs (i) to (v), the name of the grantor is the name as stated in any two valid official documents, such as an identification card or a social security or health insurance card, issued to the grantor by the enacting State.

[Note to the Working Group: The Working Group may wish to consider whether: (a) the text within square brackets in alternative A of subparagraph (a) of this recommendation (which reiterates the wording of the second sentence of rec. 59) should be retained in the recommendations and in the examples of the forms (see A/CN.9/WG.VI/WP.50/Add.2); and (b) if so, whether it should be included in this recommendation or in a separate recommendation. The Working Group may also wish to consider that there are four different possibilities for the identifier under alternative B of subparagraph (a): (a) just the name; (b) just the number; (c) name or number; and (d) the name and the number. The Working Group may wish to consider whether the identifier should be just one. The Working Group may also wish to note that the commentary will explain that: (a) this recommendation deals with the grantor's identifier (indexing and search criteria are dealt with in recommendation 33 below); (b) in line with recommendation 59, alternative A of subparagraph (a) of this recommendation provides that the principal grantor's identifier is the grantor's name and foresees additional grantor identification criteria (however, error with respect to the grantor identifier is treated differently from error in additional criteria, see recs. 58 and 64); (c) if according to alternative B of subparagraph (a) of this recommendation both the name and number constitute the grantor identifier, both should be entered correctly in the appropriate field (otherwise the rule in recommendation 58 would apply); and (d) if the name consists of one word, that word should be entered in the family name field and the registry system should be designed not to reject notices that have blanks in the given name field.]

Recommendation 23: Grantor identifier (legal person)

The regulations should provide that, if the grantor is a legal person, the grantor identifier is

Option A

the name of the legal person that is stated in the document constituting the legal person.

Option B

the name of the legal person that is stated in the document constituting the legal person [and] [or] the identification number assigned to the legal person by [the enacting State] [the State under whose authority the relevant registry is organized] pursuant to the law on [...],

Alternative A

including the abbreviation which is indicative of type of body corporate or entity, such as S.A., “Ltd”, “Inc”, “Incorp”, “Corp”, “Co”, as the case may be, or the words Société Anonyme, “Limited”, “Incorporated”, “Corporation”, “Company”;

Alternative B

with or without the abbreviation which is indicative of type of body corporate or entity, such as S.A., “Ltd”, “Inc”, “Incorp”, “Corp”, “Co”, as the case may be, or the words “Limited”, “Incorporated”, “Corporation”, “Company”.

[Note to the Working Group: The Working Group may wish to note that the discussion of options A and B in the note to recommendation 21 applies to options A and B of this recommendation.]

Recommendation 24: Grantor identifier (other)

The regulations should provide that:

(a) If the grantor is the estate of a deceased person or an administrator acting on behalf of the estate, the grantor identifier is the name of the deceased person in accordance with recommendation 22, with the specification in a separate field that the grantor is an estate or an administrator acting on behalf of the estate;

(b) If the grantor is a trade union that is not a legal person, the grantor identifier is the name of the trade union stated in the document constituting the trade union; [where necessary, additional information, such as the name of each person representing the trade union in the transaction giving rise to the registration, should be required to uniquely identify the grantor in accordance with recommendation 22];

(c) If the grantor is a trust or a trustee acting on behalf of the trust, and the document creating the trust designates the name of the trust, the grantor identifier is the name of the trust in accordance with recommendation 22, with the specification in a separate field that the grantor is a “trust” or a “trustee”;

(d) If the grantor is a trust or a trustee acting on behalf of the trust, and the document creating the trust does not designate the name of the trust, the grantor identifier is the identifier of the trustee in accordance with recommendation 22, with the specification in a separate field that the grantor is a “trust” or a “trustee”;

(e) If the grantor is an insolvency representative acting for a natural person, the grantor identifier is the name of the insolvent person in accordance with recommendation 22, with the specification in a separate field that the grantor is insolvent;

(f) If the grantor is an insolvency representative acting for a legal person, the grantor identifier is the name of the insolvent legal person in accordance with recommendation 23, with the specification in a separate field that the grantor is insolvent;

(g) If the grantor is a participant in a syndicate or joint venture, the grantor identifier is the name of the syndicate or joint venture as stated in the document creating it; [where necessary, additional information, such as the name of each participant should be required to uniquely identify the grantor in accordance with recommendation 22 or 23 ,]; and

(h) If the grantor is a participant in an entity other than one already referred to in the preceding rules, the grantor identifier is the name of the entity as stated in the document creating it[; necessary, additional information, such as the names of each natural person representing the entity in the transaction to which the registration relates, should be required to uniquely identify the grantor in accordance with recommendation 22].

Recommendation 25: Secured creditor identifier

The regulations should provide that:

(a) If the secured creditor is a natural person, the identifier is the name of the secured creditor in accordance with recommendation 22;

(b) If the secured creditor is a legal person, the identifier is the name of the secured creditor in accordance with recommendation 23; and

(c) If the secured creditor is a kind of person described in recommendation 24, the identifier is the name of the person in accordance with recommendation 24.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that there will be a single field in the notice in paper or electronic form to identify the “secured creditor”, whether that is the actual secured creditor or its representative (that is, a natural person, or a member or representative of a syndicate of banks).]

Recommendation 26: Description of encumbered assets

The regulations should provide that:

(a) The encumbered assets should be described in the initial or amendment notice in a manner that reasonably allows their identification; and

(b) Unless otherwise provided in the law, a generic description that refers to all assets within a generic category of movable assets or to all of the grantor’s

movable assets includes assets within the specified category to which the grantor acquires rights at any time during the period of effectiveness of the registration.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that: (a) recommendation 26 deals with the description of the encumbered assets in the notice (including attachments to immovable property); (b) if the regime governing registration in an immovable property registry does not permit registration of notices, it may need to be revised to permit registration of notices relating to potential security rights in attachments to immovable property (see the Guide, chap. III, para. 104); and (c) additional information may be provided in the form of an attachment to a notice to identify the assets in more detail or if additional space is needed. This is particularly useful or necessary in registry systems that are designed to permit that a limited number of characters be entered in the relevant fields of a notice.]

Recommendation 27: Incorrect or insufficient information

The regulations should provide that:

(a) A registration of an initial or amendment notice is effective only if it provides the grantor's correct identifier as set forth in recommendations 22-24 or, in the case of an incorrect statement of the identifier, if the notice would be retrieved by a search of the registry record using the grantor's correct identifier.

(b) Except as provided in subparagraph (a) of this recommendation, an incorrect or insufficient statement of the information required to be entered in the registry record under the law and the regulations does not render the registration ineffective, unless it seriously misleads a reasonable searcher.

(c) A description of encumbered assets in a notice that does not meet the requirements of the law and the regulations does not render a notice ineffective with respect to other encumbered assets sufficiently described in the notice.

[Note to the Working Group: The Working Group may wish to consider whether this recommendation should be retained here or discussed only in the commentary. Subparagraph (a) addresses a matter that is dealt with in recommendation 58; subparagraph (b) follows recommendation 64; and subparagraph (c) follows recommendation 65. A reason for retaining this recommendation may be that it addresses a very important matter that is worth drawing attention to in the registry recommendations. The Working Group may also wish to consider whether this recommendation or the relevant commentary should make it clear that, in the case of more than one grantor, an error in the identifier of one grantor does not render the notice ineffective with respect to the other grantor(s) identified correctly.]

Recommendation 28: Information required in an amendment notice

The regulations should provide that:

(a) The following information is required to be provided in the appropriate field of an amendment notice:

(i) The registration number of the notice to which the amendment relates;

(ii) If information is to be added, the additional information in the manner provided by the regulations for entering information of that kind; and

(iii) If information is to be changed, the new information as provided by these regulations for entering information of that kind;

[(b) An amendment notice that discloses a transfer of the encumbered assets should indicate the identifier and address of the transferee as a grantor in accordance with recommendations 22-24. An amendment that discloses a transfer that relates to only part of the encumbered assets, should indicate the identifier and address of the transferee as a grantor in accordance with recommendations 22-24 and describe the part of the encumbered assets transferred in accordance with recommendation 26;]

(c) An amendment notice that discloses a subordination of priority of the security right should describe the nature and extent of the subordination and identify the beneficiary of the subordination in the appropriate field;

(d) An amendment notice that discloses an assignment of the secured obligation should indicate the identifier and address of the assignee as a secured creditor in accordance with recommendation 25 and, in the case of a partial assignment, describe the encumbered assets to which the partial assignment relates in the appropriate field; and

(e) An amendment notice may be registered at any time [and refer at one or more of the above-mentioned functions].

[Note to the Working Group: The Working Group may wish to note that the commentary will explain the purpose of an amendment (for example, to add, change or delete information in the registry record, or renew the period of effectiveness of the registration) and that an amendment changing the identifier of a grantor will be indexed by adding the new identifier as if it were a new grantor. A search under either the grantor's old identifier or the grantor's new identifier will reveal the registration. The Working Group may also wish to consider whether there should be a mechanism to identify different versions of a registration. For example, an initial registration may be given the number 12345-01, the first amendment 12345-02, the second amendment 12345-03 and so on. The Working Group may also wish to consider whether, if a State chooses this option in the law (see Guide, chap. IV, paras. 78-80), in the case of a transfer of the encumbered asset (see para. 3), the transferee should be identified as the new grantor in addition to the existing grantor or whether the identifiers of both the transferor and the transferee should be retained in the publicly available registry record. The Working Group may also wish to consider whether a user should be able to select multiple amendment functions in a single notice, such as, for example, to add a grantor and to also add new encumbered assets (see bracketed text in subparagraph (e) of this recommendation).]

[Recommendation 29: Global amendment of secured creditor information in multiple notices

The regulations should provide that the registrant in multiple registered notices may request the registry to amend the secured creditor information in all such notices with a single global amendment.]

[Note to the Working Group: The Working Group may wish to note that this recommendation appears within square brackets pending determination by the Working Group of whether there should be a secured creditor index for internal searches by the registry staff (see note to recommendation 14, subpara. (b) above).]

Recommendation 30: Information required in a cancellation notice

The regulations should provide that a cancellation notice should include the registration number of the initial notice in the appropriate field. A cancellation notice may be registered at any time.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that the grantor identifier does not have to be included in a cancellation notice as long as the registrant has obtained access to the registry (for example, with his/her user identification and password), and has the relevant registration number.]

Recommendation 31: Copy of notice

The regulations should provide that:

(a) When a notice is registered electronically, the registry should transmit a copy of the notice to each registrant at the address(es) set forth in the notice as soon as the information in the notice is entered into the registry record;

(b) When a notice is registered otherwise than electronically, the registry is obligated to send promptly a copy of the notice to each registrant at the address(es) set forth in the notice; and

(c) The registrant should send a copy of the notice to each grantor at the address(es) set forth in the notice within [thirty] days after the information in the notice is entered in the registry record[, except where that grantor has waived in writing the right to receive it].

[Note to the Working Group: The Working Group may wish to consider whether the matter addressed in this recommendation is a matter for the law and thus should be discussed in the commentary rather than addressed in the recommendations. The Working Group may wish to note that the commentary will explain that whether the registry would send a printed or electronic copy would depend on what type of address the grantor has given in the notice. The Working Group may also wish to note that, with respect to the waiver of rights addressed in the bracketed text of subparagraph (c) of this recommendation (which may fit more under chapter V on the obligations of the secured creditor), under recommendation 10 of the Guide, party autonomy applies except where otherwise provided. The relevant recommendation 55, subparagraph (c), is not among those recommendations that are not subject to party autonomy, but provides that failure of the secured creditor to meet this obligation may result in penalties and damages. The Working Group may wish to consider that a waiver of this right of the grantor should not be permitted as sending copies of registered notices to grantors is a fundamental feature of the notice-registration system and an important protection for the grantor.]

V. Obligations of the secured creditor

Recommendation 32: Compulsory amendment or cancellation

The regulations should provide that:

(a) Each registrant is obliged to submit to the registry an amendment or cancellation notice to the extent appropriate, not later than [15] days after the secured creditor's receipt of a written request by the grantor if:

(i) No security agreement has been concluded between the registrant and the grantor[, or the security agreement has been revised];

(ii) The security right to which the registration relates has been extinguished by payment or otherwise; or

(iii) The registration of an initial or amendment notice has not been authorized by the grantor [at all or to the extent described in the notice] according to recommendation 8;

(b) No fee or expense will be charged or accepted by the secured creditor for compliance;

(c) If the registrant does not comply within the time period provided in subparagraph (a), the grantor is entitled to seek a cancellation or amendment through a summary judicial or administrative procedure;

(d) The grantor is entitled to seek a cancellation or amendment through a summary judicial or administrative procedure even before expiry of the period provided in subparagraph (a), provided that there are appropriate mechanisms to protect the registrant; and

(e) The amendment or cancellation is effected by

Alternative A

the registry promptly upon delivery of the relevant a judicial or administrative order.

Alternative B

a judicial or administrative officer [attaching a copy of the relevant judicial or administrative order].

Alternative C

the grantor attaching a copy of the relevant judicial or administrative order.

[Note to the Working Group: The Working Group may wish to note that subparagraph (a) of this recommendation (which is based on recommendation 74), does not refer to the situation where there is no commitment on the part of the secured creditor to provide further credit, but this situation is covered because if there is such a commitment the security right cannot be extinguished. The Working Group may also wish to note that subparagraph (a) does not refer to the situation where the notice refers to assets that are not mentioned in the security agreement but this situation is also covered because in such a case there would be a partly unauthorized and thus partly ineffective registration. In this context, the

Working Group may wish to consider the language within square brackets in subparagraph (a)(i) to clarify these matters and set out more explicitly that the absence of any authorization is a ground for a cancellation notice, while partial authorization is a ground for an amendment notice. The Working Group may also wish to consider whether the commentary of the draft Registry Guide should refer to a different approach taken in some legal systems. Under this approach, the registered notice is cancelled automatically (without having to conduct any search or scrutiny) if the registry receives a notice by the grantor that the secured creditor has failed to respond to the grantor's request within the time period provided in subparagraph (a) of this recommendation. This approach reduces the workload of the registry staff and encourages the secured creditor to respond to amendment and cancellation requests in a timely manner. In view of the fact that secured creditors are sophisticated parties, it is considered that the risk that they will miss and fail to act on an amendment or cancellation request by the grantor and thus see their registrations being inadvertently cancelled is insignificant. As to the potential for abuse of this approach by grantors, as with the potential for abuse of the registry system by secured creditors, it is left to be dealt with outside the registry system by law, including law other than secured transactions law. The Working Group may also wish to consider whether: (a) all the alternatives in subparagraph (c) could be retained; and (b) the recommendations should include a request form for the grantor's request addressed in this recommendation. Finally, as a separate but related matter, the commentary may also deal in this context with the question whether the grantor may demand additional information with respect to the debt and whether: (a) the grantor should be entitled to a limited number of responses free of charge within a specified period of time; and (b) the grantor should be entitled to damages or other remedy through a summary judicial or administrative procedure if the secured creditor fails to provide that information.]

VI. Searches

Recommendation 33: Search criteria

The regulations should provide that any person may conduct a search of the registry record in accordance with recommendation 7 by using one of the following search criteria:

- (a) The grantor identifier; or
- (b) The registration number.

[Note to the Working Group: The Working Group may wish to note that the commentary will refer to the approach taken in some States where serial number may be a search criterion for serial number assets in order to provide protection to transferees of encumbered serial number assets and their secured creditors (see A/CN.9/WG.VI/WP.48, para. 67, and A/CN.9/WG.VI/WP.48/Add.2, paras. 38-40).]

Recommendation 34: Search results

The regulations should provide that:

- (a) A search result either indicates that no information was retrieved against the specified search criterion or sets forth all information that exists in the registry

record with respect to the specified search criterion at the date and time when the search was performed;

(b) A search result reflects information in the registry record that matches [exactly the search criterion except ...] [closely the search criterion];

(c) Upon request made by searcher according to recommendation 33, the registry issues a [paper] [electronic] search certificate reflecting indicating the search result;

(d) A search certificate is admissible as evidence in a court or tribunal; and

(e) In the absence of evidence to the contrary, a search certificate is proof of the registration of a notice, or the lack thereof, to which the search certificate relates, including the date and time of registration.

[Note to the Working Group: The Working Group may wish to note that subparagraph (b) deals with the search logic (exact matches and exceptions or close matches). While it may be important for a registry to be designed to return close matches, this approach may be too broad. In any case, it is important for searchers to know the search logic that the registry system uses. The Working Group may wish to retain both possibilities within square brackets for States to choose from. The commentary will explain that a search result referred to in paragraphs (d) and (e) is intended to provide evidence of the fact of registration and not necessarily of the accuracy of the information contained in the registry record.]

VII. Fees

Recommendation 35: Fees for registry services

The regulations should provide that:

Option A

(a) [Subject to subparagraph (b) of this recommendation,] the following fees are payable for registry services:

(i) Registrations:

a. Paper-based [...];

b. Electronic [...];

(ii) Searches:

a. Paper-based [...];

b. Electronic [...];

(iii) Certificates:

a. Paper-based [...];

b. Electronic.

(b) The registry may enter into an agreement with a person that satisfies all registry terms and conditions and establish a registry user account to facilitate the payment of fees.

Option B

The [enacting State to specify an administrative authority] may determine the fees and methods of payment for the purposes of the regulations by decree.

Option C

The [registry] [search] [electronic search] services are free of charge.

[Note to the Working Group: The Working Group may wish to note that, under recommendation 54, subparagraph (i), all or some of the registry services may or may not be subject to a fee and that, if there is a fee, it should be aimed at cost recovery rather than profit level (in any case, recommendation 54, subparagraph (c), which provides for rejection of the notice if fees are not paid, would not apply to option C). The Working Group may wish to consider whether one or more of the options set forth above should be retained. In that regard, the Working Group may wish to take into account that registry services are commercial services that should not be paid by the State (that is, the taxpayers). The Working Group may also wish to note that, while regulations are normally easy to revise, in some States, a decree may be a more practical way to set registry fees. If the Working Group adopts or retains option A as a possibility, it may also wish to consider whether fees should depend on the period of effectiveness of a registration to more readily reflect the cost of storing the relevant information. The commentary of the draft Registry Guide may explain that recommendation 35 is intended to set forth some possible examples and that States may wish to enact different regulations for the payment of registry fees. The commentary to option A may clarify that, if the registry is operated by the State, electronic registry services or just searches may be available without a fee or with lower fees.]