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Draft Technical Legislative Guide on the Implementation of a Security Rights Registry

Note by the Secretariat

Addendum

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(a) General

1. Information entered in the registry record may need to be changed to reflect a change in the relationship between the secured creditor and the grantor. This is typically done by way of an amendment that indicates the changes to the information contained in the registered notice (with the exception of errors made by the registry in entering the information in the registry record, once a notice is registered there is no means to edit a notice and all changes must be in the form of a subsequent amendment notice; see *Secured Transactions Guide*, rec. 72). An amendment may be necessary, for example, in order to add, change or delete information in a registered notice or to renew the period of the effectiveness of a registered notice.

2. Normally, an amendment is not effected by deleting the currently registered information and replacing it with the new information. Instead, an amendment is added to the information in the initial registered notice so that the searcher is able to find and examine both the originally registered information as well as the information subsequently registered. Neither registrants nor registrars are able to replace any information from the registry record, and registry systems should be designed accordingly.

3. A secured creditor should be in a position to amend a notice, to the extent appropriate, at any time. While some amendments would require an authorization by the grantor, other amendments such as an amendment to reflect an assignment of the secured obligation, subordination or change of address of the secured creditor or its representative should not require authorization by the grantor. Typically, the grantor would authorize registration of an initial notice as well as any amendment in a single authorization document. This single authorization would not require the secured creditor to request additional authorization for individual amendments (such as, for example, to extend the period of effectiveness of the registration). This is the approach recommended in the *Secured Transactions Guide* (see *Secured Transactions Guide*, recs. 71 and 73).

4. To effect an amendment, a registrant must provide in the designated field in the amendment notice certain information, that is, the registration number of the notice to which the amendment relates, and the additional or changed information as the case may be (see draft Registry Guide, rec. 28, subpara. (a)). Each amendment notice should be assigned by the registry a date and time of registration (see draft Registry Guide, rec. 10). The enacting State may wish to consider whether the registry system should be designed to allow the registrant to amend only a single item in a single amendment notice (e.g., change the grantor's identifier) or multiple items with one amendment notice (e.g., add a new grantor and delete some encumbered assets; see draft Registry Guide, rec. 28, subpara. (e)). The former approach may be simpler, while the latter may be more cost-efficient. In any case, it should be clear that, if there is first an assignment of the secured obligation and a notice with the new secured creditor identified is registered, and then there is a

change to the encumbered assets, only the assignee will have the power to change the encumbered assets. Furthermore, as with the information provided in the initial notice, the information in an amendment notice submitted by the registrant is not subject to verification or substantive change by those administering the registry, as the registry merely serves as a repository of information received by it. Similarly, the legal consequences of an amendment are determined by the substantive rules of the secured transactions law.

(b) Change in grantor identifier

5. A change in the identifier of the grantor indicated in the registered notice (for example, as a result of a subsequent name change) may undermine the publicity function of registration from the perspective of third parties that deal with the grantor after the identifier has changed. As already mentioned the grantor's identifier is the principal indexing and search criterion, with the result that a search using the grantor's new name will not disclose a security right registered against the old name. In a registry system that uses a State-issued identity card number as the grantor identifier in lieu of the name, it is less likely that this problem will arise since the identity card number is typically permanent and not subject to change.

6. To address this problem, the regulation should provide that the secured creditor is entitled to register an amendment notice to add the new grantor identifier. While failure to submit an amendment should not make the security right generally or retroactively ineffective against third parties, third parties that deal with the grantor after the change in its identifier and before the amendment notice is registered should be protected. Accordingly, the applicable rules should provide that, if the secured creditor is entitled to register an amendment notice to add the new grantor identifier but does not register the amendment notice within a specified short "grace period" (for example, 15 days) after the identifier has changed, its security right would be ineffective against buyers, lessees, licensees and other secured creditors that acquire rights in the encumbered asset after the change in the grantor identifier and before the amendment is registered. This is the approach recommended in the *Secured Transactions Guide* (see *Secured Transactions Guide*, rec. 61). Normally, this rule would be stated in the secured transactions law. The law should specify when the grace period begins to run, whether it is the date of change or when the secured creditor acquired actual knowledge of the change. Although the *Secured Transactions Guide* recommends the first approach, some States adopt the latter with the result that the security right remains effective against intervening third parties that acquire rights in the encumbered assets before the secured creditor finds out about the change. Guidance should also be provided on what constitutes a change of identifier in the context, in particular, of corporate amalgamations and the effect of not making an amendment in the wake of the amalgamation.

7. The regulation should make it clear that the registrant should enter the grantor's new identifier in the field designated in the amendment notice for adding an additional grantor, without deleting the old grantor information. As a result, a search under either the old or the new grantor identifier would reveal the registered notice. As the amendment notice would be assigned a date and time, and linked in the registry record with the initial notice, this approach would be simple to implement and cause no confusion.

(c) Transfer of an encumbered asset

8. When the grantor transfers, leases or licences an encumbered asset, the security right will generally follow the asset into the hands of the transferee (see *Secured Transactions Guide*, rec. 79). This creates a problem analogous to a post-registration change in the identifier of the grantor, since a search of the registry according to the transferee's, lessee's or licensee's identifier will not disclose the security right registered against the identifier of the grantor (the transferor, lessor or licensor). Accordingly, to protect third parties that deal with the encumbered asset in the hands of the transferee, the registry system should enable the secured creditor to submit an amendment notice (or a new notice) to record the identifier and address of the transferee, lessee or licensee as a new additional grantor.

9. The *Secured Transactions Guide* discusses but makes no recommendation with respect to the impact of a transfer on the effectiveness of a security right against third parties that acquire rights in the assets from the transferee other than that a State should address it in its law (see *Secured Transactions Guide* chap. IV, paras. 78-80, and rec. 62).

10. Some States provide that a registration remains effective without any amendment to indicate the identifier of the transferee as a new grantor. Other States, however, adopt a rule equivalent to that applicable to a change in the identifier of the grantor (see *Secured Transactions Guide*, rec. 61, and paras. 5-7 above). Under this approach, failure to amend the registration to add the identifier of the transferee as a new additional grantor does not make the security right ineffective against third parties generally. However, if the secured creditor does not register the amendment within a short "grace period" (for example, 15 days) after the transfer, its security right is ineffective against buyers, lessees, licensees and other secured creditors that deal with the encumbered asset after the transfer and before the amendment is registered. Other States adopt a similar approach subject to the important caveat that the grace period given to the secured creditor to register the amendment begins to run only after the secured creditor acquires actual knowledge of the transfer. In still other States, such an amendment is purely optional and failure to amend does not affect the third-party effectiveness or priority of the security right (see *Secured Transactions Guide*, chap. IV, paras. 78-80).

11. If the enacting State selects the first or the second approach, it would need to include in its regulation a provision enabling a secured creditor to register an amendment notice to add a new grantor (see draft Registry Guide, rec. 28, subpara. (a)). Secured creditors should understand that the original grantor information should not be deleted since deletion would terminate the effectiveness of the security right against the original grantor with the result that the security right would then also be ineffective against the transferee.

(d) Subordination of priority

12. Under the *Secured Transactions Guide*, a secured creditor with priority may at any time subordinate its priority unilaterally or by agreement in favour of any other existing or future competing claimant (see *Secured Transactions Guide*, rec. 94). Since third parties are not prejudiced by the subordination, there is no requirement that the subordinating secured creditor or the beneficiary of the subordination (assuming one or both have registered a notice with respect to their rights in the

registry) amend the registered notice to reflect the change in their respective priority positions. However, in some cases, they may wish to do so. Accordingly, the registry should be designed so as to accommodate the registration of an amendment notice to reflect a subordination.

(e) Assignment of the secured obligation and transfer of the security right

13. A secured creditor may assign the secured obligation. As in most legal systems, the *Secured Transactions Guide* recommends that, as an accessory right, the security right follows the secured obligation, with the result that the assignee of the obligation in effect will be the new secured creditor (see *Secured Transactions Guide*, recs. 25 and 48). Under the approach recommended in the *Secured Transactions Guide*, an amendment to the initial notice to add the assignee as a new secured creditor is not required in the sense of it being necessary to preserve the effectiveness of the registration (see *Secured Transactions Guide*, rec. 75). As the identifier of the secured creditor is not an indexing and search criterion, searchers will not be materially misled by the change in the identity of the secured creditor. However, the original secured creditor (assignor) will usually not wish to have to continue to deal with requests for information from searchers and the new secured creditor (assignee) will wish to ensure that it receives any notifications or other communications relating to its security right.

14. Consequently, the original secured creditor or the new secured creditor with the consent of the original secured creditor should be permitted to register an amendment notice to add the identifier and address of the new secured creditor. If the new secured creditor fails to register an amendment notice, the original secured creditor will retain the power to alter the record by submitting an amendment notice (see *Secured Transactions Guide*, chap. IV, para. 111). In any case, the registry system should be designed so that a search result will disclose whether an amendment notice was registered by the original or the new secured creditor.

15. Another issue relevant to the assignment of the secured obligation is the duty of the secured creditor to disclose the identity of the assignee upon a request by the grantor. If a notice about the assignment of the secured obligation is registered, under the law recommended in the *Secured Transactions Guide*, the registrant is obligated to forward a copy of that notice to the grantor (see *Secured Transactions Guide*, rec. 55, subpara. (c)). However, whether such a notice is registered or not, the secured creditor has an obligation to disclose the assignment and the identity of the assignee to the grantor upon request. In any case, this disclosure is not a registry function but an obligation imposed by the substantive law and effectuated outside the registry system.

(f) Addition of newly encumbered assets

16. After the conclusion of the original security agreement, the grantor may agree to grant a security right in additional assets not already described in the registered notice. To accommodate this possibility, the secured transactions law and the regulation should enable the secured creditor to amend the initial notice so as to add the description of the newly encumbered assets. While the secured creditor could achieve the same result by registering a new notice with respect to the new assets, the registration of an amendment notice would typically be more efficient and would ensure that the duration of the effectiveness of the registration is the same for

both the original and the additional assets. Regardless of which method is chosen, the security right in the newly encumbered assets becomes effective against third parties only as of the time of registration of the amendment notice or the new notice as the case may be (see *Secured Transactions Guide*, rec. 70). The reason for this approach is that a search of the registry record by third parties prior to registration of the amendment notice or the new notice would not disclose that a security right has been granted in the newly encumbered assets.

17. After the grantor has partially satisfied the secured obligation, it may be entitled to have some of the encumbered assets released from the security right pursuant to the security agreement. The secured creditor may then become obligated to amend the registered notice to delete the relevant encumbered assets. The amendment notice becomes effective as of the time of its registration (see *Secured Transactions Guide*, rec. 70).

(g) Deletion of encumbered assets

18. The secured creditor may wish to delete encumbered assets from the description in the initial notice for a variety of reasons. For example, the grantor may have repaid a portion of the obligation secured by the security right on condition that the security right be extinguished against specified assets; or the description in the initial notice may have been overly broad and the grantor may have issued a demand to the secured creditor to amend the initial notice to reflect the true scope of the encumbered assets subject to the security right to which the notice relates. Accordingly, the registry system should be designed to accommodate the entry of an amendment notice to delete the encumbered assets described in the amendment notice.

(h) Change of description of encumbered assets

19. In addition, during the time the security agreement remains effective, some encumbered assets described in the initially registered notice may have changed some of its characteristics. For instance, the initial registered notice may have described the encumbered assets as "all cherry wood black furniture" but subsequent to the registration the grantor repainted the furniture in brown. The description included in the initially registered notice thus no longer corresponds to the reality and, in order to avoid issues as to whether the description remains reasonable, the secured creditor may want to amend it. This amendment is not in the nature of adding new assets with the consequence of a new priority date as would be the case of amendment notices that add new assets. As a result, the registry system should be designed to allow the registrant to provide the new description of encumbered assets and indicate in the amendment notice that the nature of this amendment is a "change".

(i) Extension of the period of effectiveness of a registration

20. After a notice is registered and before its period of effectiveness expires, a registrant may need to extend this period. The rules applicable to registration should confirm that the period of effectiveness of a registered notice may be extended by the registration of an amendment notice at any time before the expiry of the period of effectiveness of the registered notice (see *Secured Transactions Guide*, rec. 69). If the registration of a new notice were instead required, this would undermine the

secured creditor's original priority status and the continuity of the effectiveness of its security right against third parties, since the new notice would take effect against third parties only from the time of its registration.

21. As already discussed (see A/CN.9/WG.VI/WP.52/Add.3, para. 36), there are several approaches that States can take with respect to the period of effectiveness of a registered notice. In States where the period of effectiveness is established by law, the extension should be for an additional period equal to the statutory period. In States that permit the registrant to self-select the period of effectiveness, the registrant should also be permitted to select the length of the extension period, subject to any applicable maximum limit, if the State imposes a limit on this option. Under this latter approach, a registrant who, for example, selected a five year term for the initial registered notice should be allowed to select three or seven years for the period of the extension. In States that do not set any limit to the period of effectiveness, there would be no need for an extension and a registered notice would continue to be effective until it was cancelled.

(j) Global amendment

22. The identifier or address, or both, of a secured creditor may change as a result of a merger or other change of name or address. While the identifier of the secured creditor should not be a general search criterion (see para. 36 below), the registry should be designed to permit the retrieval of information according to the identifier of the secured creditor (see *Secured Transactions Guide*, chap. IV, para. 29). This feature would enable the secured creditor information in all notices associated with that particular secured creditor to be efficiently amended through a single global amendment. The registry system could be designed to allow a global amendment to be made either by registry staff at the request of the secured creditor or by the secured creditor directly (see draft Registry Guide, rec. 29). In either case, to protect the secured creditor from potentially erroneous or fraudulent amendments, the registry should be able to request and verify the identity of any registrant that seeks to effect a global amendment. A single global amendment would be particularly useful in certain case such as a merger or a change of the name of the secured creditor. In any case, the identifier of the secured creditor should not be a general search criterion (see para. 36 below).

2. Voluntary cancellation

23. As in the case of an amendment, the *Secured Transactions Guide* recommends that a secured creditor should be able to cancel a notice, to the extent appropriate, at any time (*Secured Transactions Guide*, rec. 73). A cancellation should not require authorization by the grantor, as it has no effect or only a beneficial effect on the grantor. Unlike an amendment, a cancellation is effected by adding the cancellation notice to the registry record and removing the registered information from the publicly available record. Information thus removed is archived for a long period of time in a manner that enables the information to be retrieved (see A/CN.9/WG.VI/WP.52/Add.2, paras. 51-53, and draft Registry Guide, rec. 19).

24. The only information that a registrant should be required to enter in the designated field of the cancellation notice is the registration number assigned to the initial notice by the registry and permanently associated with that notice and any related subsequent notice (see draft Registry Guide, rec. 30). The grantor identifier

should not have to be included in a cancellation notice. The reason is that the registrant will have obtained access to the registry (for example, with his/her user identification and password), and have the relevant registration number.

25. The regulation should provide that a cancellation notice submitted by one of the creditors identified in the notice does not affect the rights of the other secured creditor. It has the effect of an amendment that deletes one or more secured creditors. In such a case, only a cancellation by all secured creditors results in the removal of the information in the registered notice from the publicly available registry record and the archival of that information (see A/CN.9/WG.VI/WP.52, section B terminology and interpretation).

[*Note to the Working Group: The Working Group may wish to consider whether the matter discussed in para. 25 should be explicitly addressed in the recommendations*.]

3. Correction of erroneous lapse or cancellation

26. In the event that a secured creditor fails to extend the duration of a registration in a timely fashion or inadvertently registers a cancellation notice, the secured creditor may register a new initial notice of its security right, thereby re-establishing third-party effectiveness. However, under the law recommended in the *Secured Transactions Guide*, the third-party effectiveness and priority status of the security right dates only from the time of the new registration (see *Secured Transactions Guide* rec. 47). The secured creditor will suffer a loss of priority as against all competing claimants, including those against whom it had priority, under the first-to-register rule, prior to the lapse or cancellation (see *Secured Transactions Guide*, rec. 96).

27. Some States adopt a more lenient approach. The secured creditor is given a short grace period after the lapse or cancellation to revive its registration so as to restore the third-party effectiveness and priority status of its security right as of the date of the initial registration. However, to protect intervening third parties, the secured transactions law in States that adopt this approach provides that the security right is ineffective against or subordinate to competing claimants that acquired rights in the encumbered assets or advanced funds to the grantor after the lapse or cancellation and before the new registration.

4. Compulsory amendment or cancellation

28. The ability of a grantor to obtain financing is potentially prejudiced by the existence of a registered notice that does not accurately reflect its financing relationship with the person named as the secured creditor in the notice. Accordingly, the secured transactions law or the regulation should provide that a registrant is obliged to register an amendment or cancellation notice where: (a) 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; (b) authorization has been withdrawn and no security agreement has been concluded; (c) the security agreement has been revised in a way that makes the information contained in the registered notice inaccurate; or (d) the security right to which the registered notice relates has been extinguished by payment or otherwise and there is no commitment to extend further

credit (see draft Registry Guide, rec. 31, subpara. (a), which sets out a substantive law rule that was not included in the *Secured Transactions Guide*).

29. If the registrant does not comply with that obligation on its own, in the circumstances just described, the secured transactions law or the regulation should provide that the secured creditor is obliged to register an amendment or cancellation notice within a short period of time after receiving a written request from the grantor (see *Secured Transactions Guide*, rec. 72, subpara. (a), and draft Registry Guide, rec. 31, subpara. (c)). In the event that cooperation is still not forthcoming, a speedy and inexpensive judicial or administrative procedure should be established to enable the grantor to seek cancellation or amendment of the notice (see *Secured Transactions Guide*, rec. 72, subpara. (b), and draft Registry Guide, rec. 31, subpara. (e)).

30. Depending on the option chosen by an enacting State in its secured transactions law or regulation, a compulsory amendment or cancellation could be registered either by the registry staff or by a specified judicial or administrative officer vested with the authority to do so by the enacting State. In either case, the relevant judicial or administrative order may need to be attached to the amendment or cancellation notice presented by the person seeking the cancellation or amendment (see draft Registry Guide, rec. 31, subpara. (g)). A requirement that the order be attached to the notice would, on the one hand, provide more transparency and certainty, but, on the other hand, require the registry system to build this function which may increase the cost of the registry system.

[*Note to the Working Group: The Working Group may wish to note that, depending on its decision as to the requirement for the attachment of the order to the notice which appears in square brackets in recommendation 31, subpara. (g), the text of paragraph 30 may need to be revised*.]

B. Recommendations 28-31

[*Note to the Working Group: The Working Group may wish to consider recommendations 28-31, as reproduced in document A/CN.9/WG.VI/WP.52/Add.5. The Working Group may also wish to note that, for reasons of economy, the recommendations are not inserted here at this stage but will be inserted in the final text*.]

VI. Searches

A. General remarks

1. Search criteria

31. As already discussed (see A/CN.9/WG.VI/WP.52/Add.1, paras. 56-59), the *Secured Transactions Guide* recommends that the security rights registry must be publicly accessible and a searcher should not be required to give any reasons for the search (see *Secured Transactions Guide*, rec. 54, subparas. (f) and (g), and draft Registry Guide, rec. 4). Under the *Secured Transactions Guide*, privacy concerns are more effectively dealt with by requiring grantor authorization for a registration

and by establishing a summary judicial or administrative procedure to enable grantors to cancel or amend unauthorized or erroneous notices quickly and inexpensively (see paras. 28-30 above).

32. The *Secured Transactions Guide* requires the registry to request and maintain the identity of a registrant as a pre-condition to effecting a registration (see *Secured Transactions Guide*, rec. 55, subpara. (b)), but does not include a similar recommendation with respect to a searcher. The reason for this difference is that an unauthorized registration has the potential to prejudice the ability of the person named as a grantor in a registered notice to obtain access to credit. Requesting and maintaining the identity of the registrant enables that person to determine to whom a demand to amend or cancel an unauthorized registration should be made. Since a search of the registry record cannot alter or change or add to the information in the registry record, no similar concern arises. Accordingly, the registry should not be obligated to request or maintain the identity of the searcher except for the purposes of collecting search fees, if any (protection of the registry database from hackers should be ensured without complicating legitimate searches). Thus, a person should be entitled to search the registry record simply by using the prescribed search form and paying the search fees, if any (see draft Registry Guide, rec. 7).

33. As already explained (A/CN.9/WG.VI/WP.52/Add.1, paras. 38-40), under the approach recommended in the *Secured Transactions Guide*, information in the registry record must be indexed or otherwise be organized so as to be searchable by reference to the identifier of the grantor and as such, the identifier of the grantor is the principal criterion by which such information may be searched and retrieved by searchers. However, a searcher may rely on the accuracy of a search result only if the searcher used the correct grantor identifier in searching. The regulation should follow the same approach (see draft Registry Guide, rec. 32, subpara. (a)).

34. The registry should also be designed to allow notices to be searched and retrieved by reference to the unique registration number assigned by the registry to the initial notice and permanently associated with that notice and any related subsequent notice (see draft Registry Guide, rec. 32, subpara. (b)). While not generally useful to third parties as a search criterion (as third parties will not have the information), registration numbers give secured creditors an alternative search criterion to quickly and efficiently retrieve a registration for the purposes of entering an amendment or cancellation.

35. As already discussed (see A/CN.9/WG.VI/WP.52/Add.1, para. 43), the *Secured Transactions Guide* discusses but makes no recommendation on the use of the serial number of an asset as a supplementary search criterion with respect to assets that have a high resale value and a unique serial number or other alphanumerical identifier (see *Secured Transactions Guide*, chap. IV, paras. 34-36).

36. As already mentioned (see para. 22 above), a secured creditor should be able, either directly or through the registry staff to efficiently amend its identifier or address information in all registrations associated with that secured creditor through a single global amendment. However, the identifier of the secured creditor should not be a search criterion for searching by the public generally. The identifier of the secured creditor has limited relevance to the legal objectives of the registry system. Moreover, to allow public searching may violate the reasonable expectations of secured creditors; for example, because of the risk that a credit provider may

undertake a search based on the secured creditor identifier to obtain the client lists of its competitors (see *Secured Transactions Guide*, chap. IV, para. 81).

2. Search results

37. A search result should either indicate that no registered notice was retrieved against the specified search criterion or otherwise list all registered notices that match the search criterion entered along with the full details of the information as it appears in the registry record (see draft Registry Guide, rec. 33, subpara. (a)). Whether the result will reflect information that matches the search criterion exactly or also include close matches is a matter of the design of the registry (see draft Registry Guide, rec. 33, subpara. (b)).

38. Where a State decides to implement a search functionality that also discloses close matches and the information provided in notices is stored in an electronic database, the search logic will need to be programmed so as to return close matches to the grantor identifier entered by the searcher. In such a system, a registration may be considered effective even though the registrant had made a minor error in entering the correct grantor identifier (see A/CN.9/WG.VI/WP.52/Add.3, paras. 42-45). This is because a searcher entering the correct grantor identifier would still be able to retrieve the registration (with the error) and consider it likely that the grantor whose identifier appears on the search result as an inexact but close match is nonetheless the relevant grantor. Whether this is the case depends on such factors as whether: (a) a reasonable searcher would be able to readily identify the grantor by referring to additional information, such as address, birth date or identification number; (b) the list of inexact matches is not so lengthy as to prevent the searcher from efficiently determining whether the grantor which it is interested in is included in the list; and (c) the rules for determining "close" matches are objective and transparent so that a searcher will be able to rely on the search result.

39. The indexing and search logic for grantor identifiers may also be programmed so as to ignore all punctuation, special characters and case differences and to ignore selected words or abbreviations that do not make an identifier unique (such as articles of speech and indicia of the type of enterprise such as "company", "partnership" "LLC" and "SA"). Where this is the case, an error in the entry of this type of information will not render the registration ineffective since the registration will still be retrieved despite the error.

40. The exact match logic also reduces the need for the courts to determine whether the error in the grantor's identifier is insignificant and whether the notice that contains the incorrect identifier is a "close enough" match. In other words, the court will have to determine whether the searcher should have reviewed some or all matches on page 1 of the search result, whether the matches on page 2 should have been consulted.

41. The regulation should also provide that the registry should issue a search certificate upon request by a searcher and payment of the relevant fee, if any. A search certificate should in principle be admissible as evidence in court that a notice as registered, or not, at a certain date and time. All these issues should be addressed in the registration rules (see draft Registry Guide, rec. 33, subpara. (c)). Whether a search result or certificate is admissible in a court of the enacting State and, if so, what its evidentiary value is are matters for the procedural law of the enacting State.

B. Recommendations 32 and 33

[*Note to the Working Group: The Working Group may wish to consider recommendations 32 and 33, as reproduced in document A/CN.9/WG.VI/WP.52/Add.5. The Working Group may also wish to note that, for reasons of economy, the recommendations are not inserted here at this stage but will be inserted in the final text*.]

VII. Registration and search fees

A. General remarks

42. The *Secured Transactions Guide* recommends that registration and search fees should not be set to raise revenue but rather to recover the cost of establishing and operating the registry (see *Secured Transactions Guide*, chap. IV, para, 37, and rec. 54, subpara. (i)). When the *Secured Transactions Guide* refers to the registration fee, it means the entire fee that the registrant is charged, no matter what it is called (e.g. transaction tax or a registration fee) or whether it is imposed by the regulation or a separate decree. The reason for this approach is that excessive fees and transaction taxes will significantly deter utilization of the registry, thereby undermining the overall success of the enacting State's secured transactions law. Nonetheless, in assessing the level of revenue needed to achieve cost-recovery, account should be taken of the need to fund the operation of the registry, including: (a) salaries of registry staff; (b) replacement of hardware; (c) upgrading of software; (d) ongoing staff training; and (e) promotional activities and training on the registry operations for the users.

43. The registry regulation should follow the same approach (see draft Registry Guide, rec. 34). The relatively low start-up cost of an electronic security rights registry should be recoverable out of service fees within a relatively short period of time. In addition, the operation costs can be kept low, especially if the registry record is computerized and direct electronic registration and searching is available. Moreover, if the registry is developed in partnership with a private entity, it may be possible for the private entity to make the initial capital investment in the registry infrastructure and recoup its investment by taking a percentage of the service fees charged to registry users once the registry is up and running.

44. The enacting State may wish to consider a list of options ranging from charging a different fee for paper-based registrations, searches and search certificates to charging no fee at all. In some States, where the registry is established and managed by the State, in the interest of encouraging registration of financing transactions, the State charges no fee for registration or searching. Such an approach encourages registration and searching even for low-value and other transactions that might have otherwise been entered into on an unsecured basis. This means, however, that registration is subsidized with taxpayer money.

45. As already discussed, (see A/CN.9/WG.VI/WP.52/Add.2. para. 18), the enacting State may wish to consider whether registration fees should be set on a per transaction basis or based on a sliding tariff related to the period of effectiveness of registered notices (in systems that permit registrants to self-select that period). The

latter approach has the advantage of discouraging registrants from selecting an inflated term out of an excess of caution. Whatever approach is adopted, fees should not be related to the maximum amount specified for which the security right can be enforced (in systems that require this information to be included) since this would discourage registration.

46. In addition, the enacting State may wish to consider whether any fees to be charged should be set out in the regulation or in another administrative act that may be easier to revise. Listing the registration fees in an administrative act has the advantage that it provides the flexibility to the registry to adjust the fees to correspond to the cost of operating the system, such as when it is no longer necessary to charge the fee to recoup the cost of the initial investment. However, this approach has the disadvantage that this relatively low burden may be abused by the registry to unjustifiably adjust the fees upwards.

47. Moreover, the enacting State may wish to consider that, in a hybrid system, it may be reasonable to charge higher fees to process paper-based notices and search requests because they must be processed by the registry staff. Charging of higher fees will also encourage the user community to eventually transition to using the electronic registration and search functionalities.

48. The enacting State may also wish to provide for user account agreements to facilitate efficient user access to the registry services and payment of registry fees by frequent users.

B. Recommendation 34

[*Note to the Working Group: The Working Group may wish to consider recommendation 34, as reproduced in document A/CN.9/WG.VI/WP.52/Add.5. The Working Group may also wish to note that, for reasons of economy, this recommendation is not inserted here at this stage but will be inserted in the final text*.]