



**United Nations Commission
on International Trade Law**
Working Group VI (Security Interests)
Twenty-fourth session
Vienna, 2-6 December 2013

Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
Chapter V. Priority of a security right	3
Section I. General priority rules	3
Article 46. Priority among security rights granted by the same grantor in the same encumbered asset	3
Article 47. Priority of rights of transferees, lessees or licensees of an encumbered asset. .	4
Article 48. Priority of rights of the grantor's insolvency representative [and creditors in the grantor's insolvency]	5
Article 49. Priority of preferential claims	5
Article 50. Priority of rights of judgement creditors	5
Article 51. Irrelevance of knowledge of the existence of a security right	6
Article 52. Subordination	6
Article 53. Extent of priority	6



Section II.	Special priority rules	6
Article 54.	Priority of a security right registered in a specialized registry or noted on a title certificate	6
Article 55.	Special priority claims	7
Chapter VI.	Enforcement of a security right	7
Article 56.	General standard of conduct in the context of enforcement	7
Article 57.	Limitations on party autonomy	7
Article 58.	Liability	8
Article 59.	Judicial or other relief for non-compliance	8
Article 60.	Expeditious judicial proceedings	8
Article 61.	Post-default rights of the grantor and the secured creditor	9
Article 62.	Judicial and extrajudicial methods of exercising post-default rights	9
Article 63.	Right to take over enforcement	9
Article 64.	Right of redemption	9
Article 65.	Extinction of the security right after full satisfaction of the secured obligation	10
Article 66.	Secured creditor's right to possession of an encumbered asset	10
Article 67.	Extrajudicial obtaining of possession of an encumbered asset	10
Article 68.	Extrajudicial disposition of an encumbered asset	10
Article 69.	Advance notice of extrajudicial disposition of an encumbered asset	11
Article 70.	Distribution of proceeds of disposition of an encumbered asset	12
Article 71.	Acquisition of an encumbered asset in satisfaction of the secured obligation	12
Article 72.	Rights acquired through judicial disposition	13
Article 73.	Rights acquired through extrajudicial disposition	13

Chapter V. Priority of a security right

Section I. General priority rules

Article 46. Priority among security rights granted by the same grantor in the same encumbered asset

1. Subject to articles 47-50, 54 and [[2-5 of Annex I (unitary approach)] [4 (non-unitary approach)]], priority among competing security rights granted by the same grantor in the same encumbered asset is determined according to the order of registration in the general security rights registry or third-party effectiveness, whichever occurs first.
2. The priority of a security right is not affected by a change in the method by which it is made effective against third parties, provided that there is no time during which the security right is not effective against third parties.
- [3. The priority of a security right extends to all encumbered assets described in the registered notice, irrespective of whether they are acquired by the grantor or come into existence before, at or after the time of registration.
4. The time of third-party effectiveness or the time of registration of a notice with respect to a security right in an encumbered asset is also the time of third-party effectiveness or registration with respect to a security right in its proceeds.]

[Note to the Working Group: The Working Group may wish to note that paragraph 1 of this article reflects in general terms recommendation 76 of the Secured Transactions Guide. If the Working Group agrees with this formulation, it may wish to note that the commentary could explain that paragraph 1 applies to conflicts of priority among security rights that were made effective against third parties by registration, among security rights that were made effective against third parties otherwise than by registration and among security rights that were made effective against third parties by registration and security rights that were made effective against third parties otherwise than by registration (always in the general security rights registry). The Working Group may also wish to note that the commentary will explain that specific reference is made to registration (although it is a method of third-party effectiveness) because advance registration (before creation) does not amount to third-party effectiveness and yet it is sufficient as a basis for priority once a security right is created and thus made effective against third parties as of the date of the advance registration.

The Working Group may wish to consider whether paragraph 2 of this article (which is based on recommendation 95 of the Secured Transactions Guide is relevant only to article 46 (and should be retained as paragraph 2) or has relevance for other articles as well (and should be reflected in a separate article on the impact of the continuity in third-party effectiveness on priority).

The Working Group may also wish to note that no article has been prepared to reflect recommendation 96 of the Secured Transactions Guide as that recommendation repeats essentially the point made in paragraph 2 of this article and could be discussed in the commentary).

The Working Group may also wish to consider whether paragraphs 3 and 4 are necessary and should be retained or whether they should be deleted and the matters addressed therein discussed in the commentary.

The Working Group may also wish to note that acquisition finance priority rules are set out in annex I for each enacting State to determine where they fit in its secured transactions law. The Working Group may wish to consider whether the acquisition finance priority rules (unitary approach) should be listed in a section II of the priority chapter and the acquisition finance third-party effectiveness rules (non-unitary approach) in the third-party effectiveness chapter (and other acquisition finance rules should be included in the relevant chapter, e.g. on enforcement, etc.), all within square brackets.]

Article 47. Priority of rights of transferees, lessees and licensees of an encumbered asset

1. If an encumbered asset is transferred, leased or licensed and a security right in that asset is effective against third parties at the time of the transfer, lease or licence, a transferee, lessee or licensee takes its rights subject to the security right except as provided in this article.
2. A security right does not continue in an encumbered asset that the grantor sells or otherwise disposes of, if the secured creditor authorizes the sale or other disposition free of the security right.
3. The rights of a lessee or licensee of an encumbered asset are not affected by a security right if the secured creditor authorizes the grantor to lease or license the asset unaffected by the security right.
4. A buyer of a tangible asset (other than a negotiable instrument or negotiable document) sold in the ordinary course of the seller's business takes free of a security right in the asset, provided that, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement.
5. The rights of a lessee of a tangible asset (other than a negotiable instrument or negotiable document) leased in the ordinary course of the lessor's business are not affected by a security right in the asset, provided that, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement.
6. The rights of a non-exclusive licensee of an intangible asset licensed in the ordinary course of the licensor's business are not affected by a security right in the asset, provided that, at the time of the conclusion of the licence agreement, the licensee does not have knowledge that the licence violates the rights of the secured creditor under the security agreement.
7. If a buyer or other transferee acquires an encumbered asset free of a security right, any person that subsequently acquires a right in the asset from the buyer also takes free of the security right.
8. If the rights of a lessee or licensee are not affected by a security right, the rights of a sub-lessee or sub-licensee are also unaffected by the security right.

**Article 48. Priority of rights of the grantor's insolvency representative
[and creditors in the grantor's insolvency]**

If the grantor is subject to insolvency proceedings, a security right that is effective against third parties has priority over the rights of the grantor's insolvency representative [and the creditors in the grantor's insolvency].

Article 49. Priority of preferential claims

Only the following claims have priority over a security right that is effective against third parties and only up to the amount specified for each category of claimant:

- (a) [...];
- (b) [...].¹

Article 50. Priority of rights of judgement creditors

1. Subject to the provision of this Law dealing with the priority of an acquisition security right over the rights of a judgement creditor, a security right has priority as against the rights of an judgement creditor, unless the judgement creditor, under other law, took the steps necessary to acquire rights in the encumbered asset by reason of the judgement or provisional court order before the security right was made effective against third parties.

2. The priority of the security right extends to credit disbursed by the secured creditor:

(a) Before the expiry of [a short period of time, such as thirty days, to be specified by the enacting State] days after the unsecured creditor notified the secured creditor that it had taken the steps necessary to acquire rights in the encumbered asset; or

(b) Pursuant to an irrevocable commitment in a fixed amount or an amount to be fixed pursuant to a specified formula of the secured creditor to extend credit, if the commitment was made before the judgement creditor notified the secured creditor that it had taken the steps necessary to acquire rights in the encumbered asset by reason of the judgement or provisional court order.

[Note to the Working Group: The Working Group may wish to consider including in article 2 a definition of the term "judgement creditor" along the following lines "'Judgement creditor' means an unsecured creditor that has obtained a judgement or provisional court order against the grantor". The Working Group may also wish to consider whether the secured creditor should lose its priority only if it received the notification and, if so, whether this matter should be clarified in subparagraph 2 (b) of this article or in the commentary.]

This article is intended to reflect recommendation 84 of the Secured Transactions Guide. The Working Group may wish to consider whether another

¹ The enacting State should list in a clear and specific way preferential claims, if any, and the amount up to which they will have priority over security rights. The enacting State will also need to consider whether these preferential claims should be set out in its insolvency law (and therefore would be applicable only if the grantor is involved in insolvency proceedings) or if they are also capable of being applied outside of insolvency.

approach, which is followed in many States with modern secured transactions regimes, might also be reflected at least in the commentary of the draft Model Law. Under such an approach, creditors can register a notice of judgement and thereby acquire the same priority rights as a secured creditor (in other words, the general first-to-register priority rule applies).]

**Article 51. Irrelevance of
knowledge of the existence of a security right**

Knowledge of the existence of a security right on the part of a competing claimant does not affect priority.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that, unlike knowledge of the existence of a security right that does not affect priority, knowledge that a transaction violates the rights of a secured creditor does affect priority (see articles 47, paragraphs 4-6, 114, paragraph 4, and 115, paragraph 1).]

Article 52. Subordination

A competing claimant entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any other existing or future competing claimant.

[Note to the Working Group: The Working Group may wish to consider whether the subordination agreement has to be in writing or may also be oral. The Working Group may also wish to consider whether the commentary should explain whether, if third-party effectiveness of the security right has been established by registration of a notice, an amendment notice may be registered to reflect the new order of priority.]

Article 53. Extent of priority

[1.] Subject to article 50, the priority of a security right extends to all secured obligations, regardless of the time when they are incurred.

[2. The priority of the security right is limited to the maximum amount set out in the registered notice.]²

Section II. Special priority rules

**Article 54. Priority of a security right registered
in a specialized registry or noted on a title certificate**

1. A security right in an asset that is made effective against third parties by registration in a specialized registry or notation on a title certificate has priority as against:

(a) A security right in the same asset with respect to which a notice is registered in the general security rights registry or which is made effective against

² If the enacting State implements article 27, subparagraph (d) (A/CN.9/WG.VI/WP.57/Add.1), it may wish to include in this article paragraph 2.

third parties by a method other than registration in a specialized registry or notation on a title certificate, regardless of the order of registration; and

(b) A security right that is subsequently registered in the specialized registry or noted on a title certificate.

2. If an encumbered asset is transferred or leased and, at the time of transfer or lease, a security right in that asset is effective against third parties by registration in a specialized registry or notation on a title certificate, the transferee or lessee takes its rights subject to the security right, except as provided in paragraphs 2-8 of article 47.

3. If the security right has not been made effective against third parties by registration in a specialized registry or notation on a title certificate, a buyer acquires the asset free of the security right and a lessee's or licensee's rights are unaffected by the security right.

[Note to the Working Group: The Working Group may wish to consider whether there is a need to refer to notation of title or it is enough to refer to specialized registration systems.]

Article 55. Special priority claims

1. If other law gives rights equivalent to security rights to a creditor that has provided services with respect to an encumbered asset, such rights are limited to the asset in the possession of that creditor up to the reasonable value of the services rendered and have priority as against security rights in the asset that were made effective against third parties by one of the methods referred to in chapter III of this Law.

2. If other law provides that a supplier of tangible assets has the right to reclaim them, the right to reclaim is subordinate to a security right that was made effective against third parties before the supplier exercised its right.

3. [...].³

Chapter VI. Enforcement of a security right

Article 56. General standard of conduct in the context of enforcement

A person must enforce its rights and perform its obligations under the provisions of this chapter in good faith and in a commercially reasonable manner.

Article 57. Limitations on party autonomy

1. The general standard of conduct cannot be waived unilaterally or varied by agreement at any time.

³ If a State decides to list any additional claims that have priority over a security right, they should be limited both in type and amount, and described in a clear and specific way in this article.

2. Subject to paragraph 1 of this article:

(a) The grantor and any other person that owes payment or other performance of the secured obligation may waive unilaterally or vary by agreement any of its rights under the provisions of this chapter, but only after default; and

(b) The secured creditor may waive unilaterally or vary by agreement any of its rights under the provisions of this chapter.

[Note to the Working Group: The Working Group may wish to consider whether this article (and article 58) should be revised and moved to chapter I to apply more generally to all the rights and obligations under the draft Model Law (“All rights and obligations arising under this Law must be exercised and performed in good faith and in a commercially reasonable manner”). The Working Group may also wish to note that recommendation 135 has not been included in the draft Model Law. The principle that a variation of rights by agreement may not adversely affect the rights of any person not a party to the agreement is a matter of contract law and is, in any case, reflected in article 3; and the principle that a person challenging the effectiveness of the agreement on the ground that is inconsistent with the provisions of this article has the burden of proof is a matter of civil procedure law. If the Working Group agrees with this approach, it may wish to consider whether these matters should be explained in the commentary.]

Article 58 Liability

A person that fails to comply with its obligations under the provisions of this chapter is liable for damages caused by its failure.

Article 59. Judicial or other relief for non-compliance

The debtor, the grantor or any other interested person is entitled at any time to apply to a court or other authority for relief from the secured creditor’s failure to comply with its obligations under the provisions of this chapter.

[Note to the Working Group: The Working Group may wish to reconsider the policy and the formulation of this article, which seems to be stating that a debtor may go to court only if there is a violation of the provisions of this chapter. If this article is intended to deal with extra-judicial enforcement, it needs to be revised to refer to extra-judicial enforcement. The Working Group may also wish to consider whether the commentary to this article should discuss procedural rights in the case of a violation of obligations under the draft Model Law in general. The Working Group may also wish to note that, for the purposes of this and other articles, the commentary will give examples of interested persons, such as a secured creditor with a lower priority ranking than that of the enforcing secured creditor, a guarantor or a co-owner of the encumbered assets.]

Article 60. Expeditious judicial proceedings

Where the secured creditor, the grantor or any other person that owes performance of the secured obligation, or claims to have a right in an encumbered asset, applies to a court or other judicial authority with respect to the exercise of post-default rights, the proceedings should be conducted in a reasonably expeditious manner.

[Note to the Working Group: The Working Group may wish to consider whether this article should be retained or deleted and the matter discussed in the commentary. If the Working Group decides to retain this article, it may wish to revise it to provide for expeditious judicial proceedings.]

Article 61. Post-default rights of the grantor and the secured creditor

1. After default, the grantor and the secured creditor are entitled to exercise one or more of the rights provided in this chapter, in the security agreement or any law, except to the extent the exercise of a right violates a provision of this Law.
2. The exercise of one post-default right does not prevent the exercise of another post-default right, except to the extent that the exercise of one right has made the exercise of another right impossible.
3. The exercise of a post-default right with respect to an encumbered asset does not prevent the exercise of a post-default right with respect to the secured obligation, and vice versa.

Article 62. Judicial and extrajudicial methods of exercising post-default rights

1. After default, the secured creditor may exercise its rights provided in this chapter either by applying to a court or other authority, or without application to a court or other authority.
2. Extrajudicial exercise of the secured creditor's rights is subject to the general standard of conduct provided in article 56 and the requirements provided in this chapter with respect to extrajudicial obtaining of possession and disposition of an encumbered asset.

Article 63. Right to take over enforcement

1. If a secured creditor or judgement creditor has commenced enforcement, a secured creditor whose security right has priority as against that of the enforcing secured creditor or the enforcing judgement creditor is entitled to take control of the enforcement process at any time before the earlier of the final disposition or acquisition or collection of the encumbered asset by the enforcing secured creditor or judgement creditor or the conclusion of an agreement by the enforcing secured creditor to dispose of the encumbered asset.
2. The right to take control includes the right to enforce by any method available under the provisions of this chapter.

Article 64. Right of redemption

1. The debtor, the grantor or any other interested person is entitled to redeem the encumbered asset by paying or otherwise performing the secured obligation in full, including payment of interest and the cost of enforcement.
2. This right may be exercised until the earlier of the disposition, acquisition or collection of an encumbered asset by the secured creditor or the conclusion of an agreement by the secured creditor to dispose of the encumbered asset.

**Article 65. Extinction of the security right
after full satisfaction of the secured obligation**

If all commitments to extend credit have terminated, full satisfaction of the secured obligation extinguishes the security right in all encumbered assets, subject to any rights of subrogation in favour of the person satisfying the secured obligation.

[Note to the Working Group: The Working Group may wish to consider whether this article states a general point that goes beyond chapter VI on enforcement and should be included rather in chapter II on creation and rights and obligations of the parties. If the Working Group decides that the thrust of this article should be moved to chapter III, it may wish to consider whether a revised version of this article with a narrower scope or a cross reference to the relevant article in chapter III could be retained, perhaps in article 64.]

**Article 66. Secured creditor's right
to possession of an encumbered asset**

After default the secured creditor is entitled to possession of a tangible encumbered asset.

**Article 67. Extrajudicial obtaining
of possession of an encumbered asset**

The secured creditor may elect to obtain possession of a tangible encumbered asset without applying to a court or other authority only if:

- (a) The grantor has consented in the security agreement to the secured creditor obtaining possession without applying to a court or other authority;
- (b) The secured creditor has given the grantor and any person in possession of the encumbered asset notice of default and of the secured creditor's intent to obtain possession without applying to a court or other authority; and
- (c) At the time the secured creditor seeks to obtain possession of the encumbered asset the grantor and any person in possession of the encumbered asset does not object.

Article 68. Extrajudicial disposition of an encumbered asset

1. After default, a secured creditor is entitled, without applying to a court or other authority, to sell or otherwise dispose of, lease or license an encumbered asset to the extent of the grantor's rights in the encumbered asset.
2. Subject to the standard of conduct provided in article 56, a secured creditor that elects to exercise this right may select the method, manner, time, place and other aspects of the sale or other disposition, lease or licence referred to in paragraph 1 of this article.

**Article 69. Advance notice of
extrajudicial disposition of an encumbered asset**

1. After default, the secured creditor must give notice of its intention to sell or otherwise dispose of, lease or licence an encumbered asset in accordance with article 68.
2. The notice must be given to:
 - (a) The grantor, the debtor and any other person that owes performance of the secured obligation;
 - (b) Any person with rights in the encumbered asset that notifies in writing the secured creditor of those rights, at least [a short period of time to be specified by the enacting State] days before the sending of the notice by the secured creditor to the grantor;
 - (c) Any other secured creditor that registered a notice with respect to a security right in the encumbered asset, at least [a short period of time to be specified by the enacting State] days before the notice is sent to the grantor; and
 - (d) Any other secured creditor that was in possession of the encumbered asset at the time when the enforcing secured creditor took possession of the asset.
3. The notice must be given in writing at least [a short period of time, such as fifteen days, to be specified by the enacting State] days before extrajudicial disposition takes place and must contain a description of the encumbered assets, a statement of the amount required to satisfy the secured obligation including interest and the cost of enforcement, a reference to the right of the debtor or the grantor to redeem the encumbered asset as provided in article 64 and a statement of the date after which the encumbered asset will be disposed of and the manner of the intended disposition.
4. The notice must be in a language that is reasonably expected to inform its recipients about its contents.
5. It is sufficient if the notice to the grantor is in the language of the security agreement being enforced.
6. The notice need not be given if the encumbered asset is perishable, may decline in value speedily or is of a kind sold on a recognized market.

[Note to the Working Group: The Working Group may wish to recall the question raised in the note to the definition of the term “notice” in article 2 (A/CN.9/WG.VI/WP.57). If the Working Group decides not to introduce a new term for a notice to be registered in the registry, to avoid confusion, it may wish to refer in this article to “notification” or similar term (in view of the use of the term “notification of the assignment” in the draft Model Law). The Working Group may wish to note that no text has been included in this article to reflect recommendation 150 of the Secured Transactions Guide, as that recommendation is aspirational and does not fit in model law but could be discussed in the commentary.]

**Article 70. Distribution of proceeds
of disposition of an encumbered asset**

1. In the case of extrajudicial disposition of an encumbered asset:
 - (a) The enforcing secured creditor must apply the net proceeds of its enforcement after deducting costs of enforcement to the secured obligation;
 - (b) Except as provided in subparagraph 1 (c) of this article, the enforcing secured creditor must pay any surplus remaining to any subordinate competing claimant that, prior to any distribution of the surplus, notified the enforcing secured creditor of its claim, to the extent of the amount of that claim, and any balance remaining must be remitted to the grantor; and
 - (c) Whether or not there is any dispute as to the entitlement or priority of any competing claimant under this Law, the enforcing secured creditor may, in accordance with generally applicable procedural rules, pay the surplus to a competent judicial or other authority or to a public deposit fund for distribution.
2. Distribution of the proceeds realized by a judicial disposition or other officially administered enforcement process is to be made pursuant to [the general rules of the enacting State governing execution proceedings], but in accordance with the provisions of this Law on priority.
3. The debtor and any other person that owes payment or other performance of the secured obligation remain liable for any shortfall owing after application of the net proceeds of enforcement to the secured obligation.

**Article 71. Acquisition of an encumbered
asset in satisfaction of the secured obligation**

1. After default, the secured creditor may propose in writing to acquire one or more of the encumbered assets in total or partial satisfaction of the secured obligation.
2. The proposal must be sent to:
 - (a) The grantor, the debtor and any other person that owes payment or other performance of the secured obligation, including a guarantor;
 - (b) Any person with rights in the encumbered asset that has notified in writing the secured creditor of those rights, at least [a short period of time such as fifteen days to be specified by the enacting State] days before the proposal is sent by the secured creditor to the grantor;
 - (c) Any other secured creditor that registered a notice with respect to a security right in the encumbered asset, at least [a short period of time such as fifteen days to be specified by the enacting State] days before the proposal is sent by the secured creditor to the grantor; and
 - (d) Any other secured creditor that was in possession of the encumbered asset at the time the secured creditor took possession.
3. The proposal must contain a description of the encumbered asset, a statement of the amount required to satisfy the secured obligation, including interest and the cost of enforcement, a reference to the right of the debtor or the grantor to redeem

the encumbered asset as provided in article 64, and a statement of the date after which the encumbered asset will be acquired by the secured creditor.

4. The secured creditor may acquire the encumbered asset as provided in paragraph 1 of this article, unless the secured creditor receives an objection in writing from any person entitled to receive such a proposal within [a short period of time such as fifteen days to be specified by the enacting State] days, after the proposal is sent.

5. In the case of a proposal for the acquisition of the encumbered asset in partial satisfaction, affirmative consent by each addressee of the proposal is necessary.

6. The grantor may make such a proposal and if the secured creditor accepts it, the secured creditor must proceed as provided in paragraphs 2-5 of this article.

[Note to the Working Group: The Working Group may wish to note that a contrario paragraph 5 of this article means that, in the case of full satisfaction of the secured obligation, affirmative consent by each address of the proposal is not needed; it is sufficient if each addressee does not object in a timely fashion (see chapter VIII, para. 70 of the Secured Transactions Guide). The Working Group may wish to consider this policy and, if this policy is confirmed, whether it should be reflected in this article explicitly.]

Article 72. Rights acquired through judicial disposition

If a secured creditor disposes of an encumbered asset through a judicial or other officially administered process, the rights acquired by the transferee are determined by [the general rules of the enacting State governing execution proceedings].

Article 73. Rights acquired through extrajudicial disposition

1. If a secured creditor sells or otherwise disposes of an encumbered asset in accordance with article 68, paragraph 1, a person that acquires the grantor's right in the asset takes the asset subject to rights that have priority as against the security right of the enforcing secured creditor, but free of rights of the enforcing secured creditor and any competing claimant whose right has a lower priority than that of the enforcing secured creditor.

2. The rule provided in paragraph 1 of this article applies to rights in an encumbered asset acquired by a secured creditor in accordance with article 71.

3. If a secured creditor leases or licenses an encumbered asset in accordance with article 68, paragraph 2, a lessee or licensee is entitled to the benefit of the lease during its term, except as against rights that have priority over the right of the enforcing secured creditor.

4. If the secured creditor sells or otherwise disposes of, leases or licenses the encumbered asset not in accordance with the provisions of this chapter, a good faith acquirer or lessee of the encumbered asset acquires the rights or benefits described in paragraphs 1 and 3 of this article.

[Note to the Working Group: The Working Group may wish to consider specifying what is meant by good faith acquirer in the context of paragraph 4 of this article.]