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Draft Model Law on Secured Transactions

Note by the Secretariat

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Chapter I. Scope of application and general provisions

Article 1. Scope of application

1. This Law applies to any right in movable assets that is created by agreement and secures the payment or other performance of an obligation, regardless of whether the parties have denominated it as a security agreement, the type of asset, the status of the grantor or secured creditor, or the nature of the secured obligation.

2. With the exception of articles 80-93 of this Law, the Law applies to outright transfers of receivables.

[3. Notwithstanding paragraphs 1 and 2 of this article, this Law does not apply to security rights in:

(a) Rights to draw under an independent undertaking or to receive the proceeds of an independent undertaking;

(b) Aircraft, railway rolling stock, space objects and ships, as well as other categories of mobile equipment, in so far as such asset is covered by other law and the matters covered by this Law are addressed in that other law;

(c) Intellectual property in so far as this Law is inconsistent with law relating to intellectual property;¹

(d) Intermediated securities;

(e) Payment rights arising under or from financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(f) Payment rights arising under or from foreign exchange transactions;

(g) Assets that are otherwise within the scope of this Law, if they are proceeds of assets that are outside the scope of this Laws, but only to the extent that other law applies to security rights in those assets; and

(h) [...].²

[4. Notwithstanding paragraphs 1 and 2 of this article, this Law does not apply to a security right created in favour of an individual secured creditor for personal, family or household purposes.]

[5.] Nothing in this Law affects the rights and obligations of an individual grantor or a debtor of an encumbered receivable under laws relating to the protection of parties to transactions made for personal, family or household purposes.

[6. For the purposes of paragraphs 4 and 5 of this article, a transaction entered into by a [small enterprise] [microbusiness] is a transaction entered for personal, family or household purposes.]

¹ This provision may not be necessary if the enacting State has already coordinated, or has otherwise addressed the issue of hierarchy between, its secured transactions law and its intellectual property law.

² If the enacting State decides to introduce any other exception(s), they should be limited and set out in the Law in a clear and specific way.

[7.] Except as provided in articles 10 and 11 of this Law, nothing in this Law overrides contractual or legal limitations on the creation or enforcement of a security right in, or the transferability of, specific types of asset.

[Note to the Working Group: With respect to consumer transactions, the Working Group may wish to note that: (a) paragraph 4, which is based on article 4, subparagraph 1 (a) of the United Nations Convention on the Assignment of Receivables in International Trade (the “Assignment Convention”) and appears within square brackets as it may be inconsistent with recommendation 2, subparagraph (b) of the UNCITRAL Legislative Guide on Secured Transactions (the “Secured Transactions Guide”), is intended to exclude secured transactions in which the secured creditor is a consumer; (b) paragraph 5, which is based on article 4, paragraph 4 of the Assignment Convention, is intended to implement the policy of recommendation 2, subparagraph (b) of the Secured Transactions Guide, resulting in the application of the draft Model Law to secured transactions in which the grantor or the debtor of an encumbered receivable is a consumer, without however, affecting any rights they may have under consumer protection legislation; and (c) both paragraphs 4 and 5 follow the formulation of the Assignment Convention (which followed the formulation of the United Nations Convention on Contracts for the International Sale of Goods (the “CISG”), article 2, subpara. (a)) and refer to the purpose of a transaction rather than to the term “consumer”, as the exact meaning of that term would vary from State to State. The Working Group may wish to consider whether all provisions of the draft Model Law that preserve rights existing under other law should be set out in article 1 or whether paragraph 5 should be included in the section on the rights and obligations of the debtor of the receivable of the chapter on the rights of third-party obligors. The Working Group may also wish to note that paragraph 6 is intended to implement a suggestion made at the 24th session of the Working Group that the protection afforded by the draft Model Law to consumers might be extended to microbusinesses (A/CN.9/796, para. 47; as the Secured Transactions Guide does not take such an approach, this would be a policy change the Working Group may wish to consider). If the Working Group decides to retain paragraph 6, it may wish to consider whether a more neutral term could be used that would fit all States. In addition, the Working Group may wish to consider whether the guide to enactment of the draft Model Law (the “Guide to Enactment”) should explain that the exact meaning of whatever term is used should be left to each enacting State, as what is a small or microbusiness would vary from State to State.]

Article 2. Definitions

For the purposes of this Law:

(a) “Acquisition secured creditor” means a secured creditor that has an acquisition security right;

(b) “Acquisition security right” means a security right in a tangible asset or intellectual property that secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit otherwise provided to enable the grantor to acquire the asset;

[Note to the Working Group: The Working Group may also wish to consider replacing the words “to enable” with the words “that enables” in that definition to

ensure that a security right qualifies as an acquisition security right only if credit provided for the acquisition of an asset is in fact used for that purpose. The Guide to Enactment may have to explain that an acquisition secured creditor that also holds a non-acquisition security right is an acquisition secured creditor only with respect to the acquisition security right.]

(c) “Bank account” means an account maintained by a bank, to which funds may be credited. The term includes a checking or other current account, as well as a savings or time deposit account. The term does not include a right against the bank to payment evidenced by a negotiable instrument;

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that the enacting State may wish to include a definition of the term “bank” in its secured transactions law or rely for this purpose on other law.]

(d)

Alternative A

“Certificated non-intermediated securities” means non-intermediated securities represented by a written certificate;

Alternative B

“Certificated non-intermediated securities” means non-intermediated securities represented by a written certificate that:

- (i) by its terms provides that the person entitled to the securities is the person in physical possession of the certificate (“bearer securities”); or
- (ii) expressly identifies the person entitled to the securities [and is transferable by registration of the securities in the name of the transferee in the books maintained for that purpose by or on behalf of the issuer (“securities in registrable form”)];

[Note to the Working Group: The Working Group may wish to consider whether alternative A or B should be retained. If alternative B is retained, the Working Group may wish to consider whether the bracketed text in subparagraph (ii) should be retained. If retained, this text would exclude non-bearer certificated non-intermediated securities that are not transferable by registration in the issuer’s books. A possible reason for that approach might be that a security right in, including a transfer for security purposes of, non-bearer certificated non-intermediated securities that are not transferable by registration in the issuer’s books would be without much value as it cannot be made effective against the issuer. A reason for the deletion of the bracketed text might be that some legal systems recognize non-bearer certificated non-intermediated securities that are not transferable by registration in the issuer’s books. The Working Group may also wish to note that the Guide to Enactment will explain that any reference to a “writing” throughout the draft Model Law is intended to cover electronic equivalents. Thus, a distinction will be drawn between uncertificated securities and securities represented by an electronic certificate.]

(e) “Competing claimant” means a creditor of a grantor or other person with rights in an encumbered asset that may be in conflict with the rights of a secured creditor in the same encumbered asset and includes:

- (i) Another secured creditor of the grantor that has a security right in the same encumbered asset (whether as an original encumbered asset or proceeds);
- (ii) Another creditor of the grantor that has a right in the same encumbered asset;
- (iii) The insolvency representative [and creditors] in the insolvency proceedings in respect of the grantor; or
- (iv) A buyer lessee or licensee of the encumbered asset;

[Note to the Working Group: The Working Group may wish to consider whether the bracketed text in subparagraph (iii) should be retained, as in some jurisdictions the estate is represented by the insolvency representative, while in other jurisdictions the estate is represented by the mass of creditors.]

(f) “Consumer goods” means tangible assets that an individual grantor uses or intends to use for personal, family or household purposes;

(g) “Control agreement” with respect to uncertificated non-intermediated securities means an agreement among the issuer, the grantor and the secured creditor, evidenced by a signed writing, according to which the issuer has agreed to follow instructions from the secured creditor with respect to the securities to which the agreement relates without further consent from the grantor;

[Note to the Working Group: The Working Group may wish to note that the term “signed writing” is used only in subparagraphs (g) and (h) of this article, and the term “writing” is used in several articles (articles 2, subparas. (d), (w), (jj) and (ll), 5, para. 3, 28, paras. 1 and 2, 38, para. 2, 72, paras. 2 and 9, 74, paras. 1 and 2, 89, subpara. 2(b), and 91, paras. 1, 2(b) and 4). In this regard, the Working Group may wish to consider whether the functional equivalence rule reflected in recommendations 11 and 12 of the Secured Transactions Guide should be included in the draft Model Law or the Guide to Enactment to clarify that electronic equivalents of these terms are included in the draft Model Law. For example, rules along the following lines could be considered: “Writing includes an electronic communication if the information contained therein is accessible for subsequent reference; and ‘Signed writing’ includes an electronic communication signed electronically if: (a) a method is used to identify the person that signed and indicate that person’s intention in respect of the information contained in the electronic communication; and (b) the method used is either: (i) as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or (ii) proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.”]

(h) “Control agreement” with respect to rights to payment of funds credited to a bank account means an agreement among the depositary bank, the grantor and the secured creditor, evidenced by a signed writing, according to which the depositary bank has agreed to follow instructions from the secured creditor with

respect to the payment of the funds credited to the bank account to which the agreement relates without further consent from the grantor;

(i) “Debtor” means a person that owes payment or other performance of a secured obligation and includes a secondary obligor such as a guarantor of a secured obligation. The term includes for convenience of reference a transferor in an outright transfer of a receivable. The debtor may or may not necessarily be the grantor;

(j) “Debtor of the receivable” means a person liable for payment of a receivable and includes a guarantor or other person secondarily liable for payment of the receivable;

(k) “Encumbered asset” means a movable, tangible or intangible, asset that is subject to a security right. The term also includes for convenience of reference a receivable that is the subject of an outright transfer;

(l) “Equipment” means a tangible asset used by a person in the operation of its business;

(m) “Future asset” means a movable asset, which does not exist or which the grantor does not own or have the power to encumber, at the time the security agreement is concluded;

(n) “Grantor” means a person that creates a security right to secure either its own obligation or that of another person. The term includes for convenience of reference the transferor in an outright transfer of a receivable;

[Note to the Working Group: The Working Group may wish to consider whether the term “grantor” should also include a transferee of the encumbered assets (before and after enforcement).]

(o) “Insolvency representative” means a person or body, including one appointed on an interim basis, authorized in insolvency proceedings to administer the reorganization or the liquidation of the insolvency estate;

(p) “Intangible asset” means all forms of movable assets other than tangible assets and includes incorporeal rights, receivables and rights to the performance of obligations other than receivables;

(q) “Intermediated securities” means securities credited to a securities account or rights or interests in securities resulting from the credit of securities to a securities account;

[Note to the Working Group: The Working Group may wish to note that the definition of the term “intermediated securities” is exactly the same as the definition of that term in article 1, subparagraph (b) of the Unidroit Securities Convention. It is included here as it is used in article 1, subparagraph 3 (d) of the draft Model Law and in order to define the term “non-intermediated securities” (see subpara. (v) of this article). The Working Group may wish to consider the definitions of these terms to ensure coordination with the Unidroit Securities Convention and other national securities law.]

(r) “Inventory” means tangible assets held for sale or lease in the ordinary course of a grantor’s business, as well as raw and semi-processed materials (work-in-process);

(s) “Knowledge” means actual rather than constructive knowledge;

(t) “Mass or product” means tangible assets other than money that are so physically associated or united with other tangible assets that they have lost their separate identity;

(u) “Money” means currency currently authorized as legal tender by any State. It does not include funds credited to a bank account or negotiable instruments such as cheques;

[Note to the Working Group: The Working Group may wish to note that the term “money”, whose definition is based on a definition contained in the Secured Transactions Guide, is used in articles 1, subparagraph (t), 8, paragraph 2, 16, subparagraph 1 (b) and 57 of the draft Model Law.]

(v) “Non-intermediated securities” means securities other than intermediated securities;

(w) “Notice” means a communication in writing;

[Note to the Working Group: In view of the definitions of the term “notice” in the Secured Transactions Guide and in the UNCITRAL Guide on the Implementation of a Security Rights Registry (the “Registry Guide”) and to avoid any ambiguity between a notice registered in the general security rights registry and a notice of enforcement, the Working Group may wish to consider whether a new term should be introduced and defined in this article to reflect a notice to be registered in the general security rights registry (see definition of the term “security right notice” below), while the current definition of the term “notice” could be retained to refer to other types of notice (e.g., given in the context of enforcement).]

(x) “Notification of the security right” in a receivable means a notice sent by the grantor or the secured creditor to the debtor of the receivable;

[Note to the Working Group: The Working Group may wish to note that the requirement for the identification of the encumbered receivable and the secured creditor that was included in a previous version of this definition (and in this definition in the Secured Transactions Guide), was moved to article 71, paragraph 1, as it states a substantive rule on the effectiveness of a notification of a security right, a matter that is already addressed in article 71, paragraph 1.]

(y) “Original contract” means, in the context of a receivable created by contract, the contract between the creditor and the debtor of the receivable from which the receivable arises;

(z) “Possession” (except as the term is used in articles 13 and 24 with respect to the issuer of a negotiable document) means the actual possession only of a tangible asset by a person or an agent or employee of that person, or by an independent person that acknowledges holding it for that person. It does not include non-actual possession described by terms such as constructive, fictive, deemed or symbolic possession;

(aa) “Priority” means the right of a secured creditor to derive the economic benefit of its security right in an encumbered asset in preference to a competing claimant;

(bb) “Proceeds” means whatever is received in respect of encumbered assets, including what is received as a result of sale or other disposition or collection, lease

or licence of an encumbered asset, proceeds of proceeds, civil and natural fruits, dividends, distributions, insurance proceeds and claims arising from defects in, damage to or loss of an encumbered asset;

(cc) “Receivable” means a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to receive the proceeds under an independent undertaking and a right to payment of funds credited to a bank account;

[Note to the Working Group: The Working Group may wish note that the Guide to Enactment will refer to the body of rules dealing with the establishment and operation of a registry for the purposes of receiving, storing and making accessible to the public information in registered notices with respect to security rights in movable assets that may be found in administrative guidelines (a Regulation), the secured transactions law or another law.]

(dd) “Right to receive the proceeds under an independent undertaking” means the right to receive a payment due, a draft accepted or deferred payment incurred or another item of value, in each case to be paid or delivered by the guarantor/issuer, confirmer or nominated person giving value for a draw under an independent undertaking. The term also includes the right to receive payment in connection with the purchase by a negotiating bank of a negotiable instrument or a document under a complying presentation. The term does not include:

- (i) The right to draw under an independent undertaking; or
- (ii) What is received upon honour of an independent undertaking;

[Note to the Working Group: The Working Group may wish to note that the definition of this term is included here only for the purposes of the articles in which this term is used, that is, article 1, subparagraph 3 (a), under which the right to receive the proceeds is excluded from the scope of the draft Model Law, and article 1, subparagraph 3 (g), under which the proceeds of an excluded type of asset are also excluded.]

(ee) “Secured creditor” means a creditor that has a security right. For convenience of reference, the term also includes a transferee in an outright transfer of a receivable;

(ff) “Secured obligation” means an obligation secured by a security right. [For convenience of reference, the term also includes the amount owing by the transferor in the case of an outright transfer of a receivable;]

[Note to the Working Group: The Working Group may wish to note that the bracketed text is intended to facilitate the application of the articles of the draft Model Law that include a reference to the term “secured obligation” to an outright transfer of receivables. Alternatively, text should be included in all relevant articles to address their proper application to outright transfers of receivables (see, for example, article 5, subpara. 2 (c) below). The Working Group may wish to note that the Guide to Enactment will explain that, as in other UNCITRAL texts, in the draft Model Law the singular includes the plural and vice versa (so, for example, a reference to the secured obligation would be sufficient to cover all present and future secured obligations.)]

(gg) “Security agreement” means an agreement, regardless of whether the parties have denominated it as a security agreement, between a grantor and a secured creditor that creates a security right. For convenience of reference, the term also includes an agreement for the outright transfer of a receivable;

(hh) “Securities” means:

[(i)] any share or similar right of participation in an issuer, an obligation of an issuer or the enterprise of an issuer that:

a. is one of a class or series, or by its terms is divisible into a class or series, of shares, participations or obligations; and

b. is, or is of a type, dealt in or traded on securities exchanges or financial markets, or is a medium for investment in the area in which it is issued or dealt in or traded; [or]

[(ii)] the enacting State to specify any additional rights that should qualify as securities even if they do not satisfy the requirements expressed in subparagraphs (i) a. and (i) b. of this general definition, such as mutual funds.]

[Note to the Working Group: The Working Group may wish to note that the definition of the term “securities” above is narrower than the definition of that term in article 1, subparagraph (a) of the Unidroit Securities Convention. The reason is that, while a broad definition is appropriate for the purposes of the Convention, it is overly broad for the purposes of the draft Model Law and could result in subjecting security rights in receivables, negotiable instruments, money and other generic intangible obligations to the special rules applicable to security rights in non-intermediated securities (see A/CN.9/802, para. 74). In any case, each enacting State would need to coordinate the definition of the term “securities” in its secured transactions law with the definition of this term in its securities law.]

(ii) “Security right” means a property right in a movable asset that is created by agreement and secures payment or other performance of an obligation, regardless of whether the parties have denominated it as a security right. For convenience of reference, the term also includes the right of the transferee in an outright transfer of a receivable;

(jj) “Security right notice” means a communication in writing [(paper or electronic)] to the registry of information with respect to a security right; a notice may be an initial notice, an amendment notice or a cancellation notice;

[Note to the Working Group: The Working Group may wish to note that the bracketed text will not be necessary if the draft Model Law included the functional equivalence rules referred to above (see note to the term “control agreement”). Otherwise, it will have to be included in all articles that refer to a writing.]

(kk) “Tangible asset” means all forms of corporeal movable asset, such as consumer goods, inventory and equipment; and

(ll) “Uncertificated non-intermediated securities” means non-intermediated securities that are not represented by a written certificate.

Article 3. Party autonomy

1. Except as otherwise provided in articles [4, ...] of this Law, the parties may derogate from or vary by agreement the provisions of this Law relating to their respective rights and obligations.
2. The agreement referred to in paragraph 1 of this article does not affect the rights of any person that is not a party to the agreement.

[Note to the Working Group: The Working Group may wish to note that this article: (a) is based on article 6 of the Assignment Convention (the first part of which is based on article 6 of the CISG) and recommendation 10 of the Secured Transactions Guide (which refers to specific mandatory law recommendations); and (b) is intended to refer not only to the secured creditor and the grantor but also to other parties whose rights may be affected by the draft Model Law, such as the debtor of an encumbered receivable and a competing claimant, while ensuring that any person not party to such an agreement will not be affected.]

Article 4. General standard of conduct

1. A person must exercise its rights and perform its obligations under this Law in good faith and in a commercially reasonable manner.
2. The general standard of conduct set forth in paragraph 1 of this article cannot be waived unilaterally or varied by agreement.

Chapter II. Creation of a security right

A. General rules

Article 5. Security agreement

1. Subject to article 7, paragraph 2, of this Law, a security right is created and is effective [between the grantor and the secured creditor] if [they] [the grantor and the secured creditor] enter into a security agreement that satisfies the requirements of paragraphs 2 to 4 of this article.
2. A security agreement must:
 - (a) Provide for the creation of a security right, regardless of whether the parties have denominated it as a security right;
 - (b) Identify the secured creditor and the grantor;
 - (c) Describe the secured obligation [except in the case of an outright transfer of receivables];
 - (d) Describe the encumbered assets in a manner that reasonably allows their identification[]; and

(e) Indicate the maximum monetary amount for which the security right may be enforced].³

3. Subject to paragraph 4 of this article, a security agreement must be [contained in] [concluded in] [evidenced by] [contained or concluded in, or evidenced by] a writing that satisfies the minimum content requirements of paragraph 2 of this article and is signed by the grantor.

4. A security agreement may be oral if accompanied by possession of the encumbered asset by the secured creditor.

[Note to the Working Group: The Working Group may wish to consider whether the first bracketed text in paragraph 1 should be retained. While the relative effectiveness of a security right that this bracketed text introduces is consistent with the approach taken in the Secured Transactions Guide, it will be very difficult to implement in States in which the concept of relative effectiveness of a security right is unknown and in which a security right is by definition effective against all (erga omnes) upon its creation. If this bracketed text is retained, the Guide to Enactment may refer to an alternative approach referred to in the commentary of the Secured Transactions Guide, according to which a security right is effective against all upon its creation but, if there are competing rights, priority is to be resolved on the basis of the relevant priority rules. The Working Group may also wish to consider whether the bracketed text in subparagraph 2 (c) should be retained or the matter addressed in the definition of the term “secured obligation” (see article 2, subpara. (ff) above) and in the Guide to Enactment.]

Article 6. Obligations that may be secured

A security agreement may provide for the creation of a security right that may secure any type of obligation, whether present or future, determined or determinable, conditional or unconditional, or fixed or fluctuating.

Article 7. Assets that may be encumbered

1. A security agreement may provide for the creation of a security right in any type of movable asset, parts of assets and undivided rights in assets.

2. A security agreement may provide for the creation of a security right in future assets but the security right is not created until the grantor acquires rights in the assets or the power to encumber them.

3. A security agreement may provide for the creation of a security right in all assets or categories of assets of a grantor, without identifying them individually.

Article 8. Proceeds

1. A security right in an encumbered asset extends to its identifiable proceeds.

³ This subparagraph should be included in the draft Model Law if the enacting State determines that an indication of the maximum monetary amount for which the security right may be enforced would be helpful to facilitate lending from another creditor.

2. Where proceeds in the form of money or funds credited to a bank account have been commingled with other assets of the same kind so that the proceeds are no longer identifiable:

(a) The amount of the proceeds immediately before they were commingled is to be treated as identifiable proceeds after commingling; and

(b) If, at any time after commingling, the balance credited to the bank account is less than the amount of the proceeds immediately before they were commingled, the sum of the balance credited to the bank account at the time that the balance is lowest plus the amount of any proceeds commingled thereafter is to be treated as identifiable proceeds.

Article 9. Assets commingled in a mass or product

1. A security right created in tangible assets before they were commingled in a mass or product continues in the mass or product.

2. A security right in tangible assets that continues in a mass or product pursuant to paragraph 1 of this article is limited to the value of the encumbered assets immediately before they became part of the mass or product.

B. Asset-specific rules

Article 10. Anti-assignment clauses

1. A security right in a receivable is effective as between the grantor and the secured creditor and as against the debtor of the receivable notwithstanding an agreement between the initial or any subsequent creditor and the debtor of the receivable limiting in any way the grantor's right to create a security right in its receivable.

2. Nothing in this article affects any obligation or liability of the grantor for breach of the agreement referred to in paragraph 1 of this article, but the other party to the agreement may not avoid the original contract or the security agreement on the sole ground of the breach of that agreement, or raise against the secured creditor any claim it may have as a result of such a breach against the grantor, as provided in article 73, paragraph 2.

3. A person that is not a party to the agreement referred to in paragraph 1 of this article is not liable for the grantor's breach of the agreement on the sole ground that it had knowledge of the agreement.

4. This article applies only to receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the grantor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 24 of the Secured Transactions Guide, which in turn is based on article 9 of the United Nations Convention on the Assignment of Receivables in International Trade (the “United Nations Assignment Convention”).]

Article 11. Personal or property rights securing payment or other performance of receivables, negotiable instruments or any other intangible asset

1. A secured creditor with a security right in a receivable, negotiable instrument or any other intangible asset has the benefit of any personal or property right that secures payment or other performance of the receivable, negotiable instrument or other intangible asset automatically without any further action by either the grantor or the secured creditor.
2. If the right referred to in paragraph 1 of this article is an independent undertaking, the security right automatically extends to the right to receive the proceeds under the independent undertaking.
- [3. This article does not affect a right in immovable property that under other law is transferable separately from a receivable that it may secure.]⁴
4. A secured creditor with a security right in a receivable, negotiable instrument or any other intangible asset has the benefit of any personal or property right that secures payment or other performance of the receivable, negotiable instrument or other intangible asset notwithstanding any agreement between the grantor and the debtor of the receivable or the obligor of the negotiable instrument or any other intangible asset limiting in any way the grantor’s right to create a security right in the receivable, negotiable instrument or other intangible asset or in any personal or property right securing payment or other performance of the receivable, negotiable instrument or other intangible asset.
5. Nothing in this article affects any obligation or liability of the grantor for breach of the agreement referred to in paragraph 4 of this article, but the other party to the agreement may not avoid the contract from which the receivable, negotiable instrument or other intangible asset arises, or the agreement creating the personal or property security right on the sole ground of the breach of that agreement, or raise against the secured creditor any claim it may have as a result of such a breach against the grantor, as provided in article 74, paragraph 2.
6. A person that is not a party to the agreement referred to in paragraph 4 of this article is not liable for the grantor’s breach of the agreement on the sole ground that it had knowledge of the agreement.
7. Paragraphs 4 to 6 of this article apply only to security rights in receivables:
 - (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property;

⁴ An enacting State may wish to consider implementing this paragraph only if it has a law such as the one described therein.

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the grantor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

8. Paragraph 1 of this article does not affect any duties of the grantor to the debtor of the receivable, or the obligor of the negotiable instrument or any other intangible asset.

9. To the extent that the automatic effects of paragraph 1 of this article and article 24 are not impaired, this article does not affect any requirement under other law relating to the form or registration of the creation of a security right in any asset, securing payment or other performance of a receivable, negotiable instrument or any other intangible asset that is not covered in this Law.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 25 of the Secured Transactions Guide, which in turn is based on article 10 of the United Nations Assignment Convention. The Working Group may wish to consider whether the partial anti-assignment override stated in article 10 needs to be restated in paragraphs 4-6 of this article.]

Article 12. Rights to payment of funds credited to a bank account

Subject to article 78 of this Law, a security right in a right to payment of funds credited to a bank account is effective notwithstanding an agreement between the grantor and the depositary bank limiting in any way the grantor's right to create the security right.

[Note to the Working Group: The Working Group may wish to note that this article includes the part of recommendation 26 of the Secured Transactions Guide that relates to the creation of a security right, while the part that relates to the effects on the depositary bank are included in article 78.]

Article 13. Negotiable documents and tangible assets covered

A security right in a negotiable document extends to the tangible asset covered by the document, provided that the issuer of the negotiable document or its representative is in possession of the asset at the time the security right in the document is created.

Article 14. Tangible assets with respect to which intellectual property is used

A security right in a tangible asset with respect to which intellectual property is used extends to the intellectual property only if the intellectual property is described in the security agreement in accordance with article 5, subparagraph 2 (d) of this Law.

Chapter III. Effectiveness of a security right against third parties

A. General rules

Article 15. General methods for achieving third-party effectiveness

A security right is effective against third parties if it has been created in accordance with article 5 of this Law and:

(a) A notice with respect to the security right is registered in accordance with the provisions of chapter IV of this Law [or in a specialized registry or title certificate, if any, in accordance with other law]; or

(b) The possession of a tangible encumbered asset is transferred to or retained by the secured creditor.

[Note to the Working Group: The Working Group may wish to note that control as a method for achieving third-party effectiveness is referred to in the asset-specific section of this chapter.]

Article 16. Proceeds

1. If a security right in an encumbered asset is effective against third parties, a security right in any proceeds of the encumbered asset is effective against third parties automatically without any further action by the grantor or the secured creditor when the proceeds arise or are acquired if:

(a) The proceeds are described in the notice registered in accordance with article 34, subparagraph (c) of this Law; or

(b) The proceeds are in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account.

2. If a security right in an encumbered asset is effective against third parties, a security right in any proceeds of the encumbered asset other than those referred to in paragraph 1 of this article is effective against third parties:

(a) For [a short period of time to be specified by the enacting State] days after the proceeds arise; and

(b) Thereafter, if it is made effective against third parties by one of the methods referred to in in this chapter before the expiry of the time period provided in subparagraph (a).

[Article 17. Changes in the method of third-party effectiveness]

1. A security right made effective against third parties by one of the methods referred to in this chapter may [subsequently] be made effective against third parties by any other method.

2. A security right that is effective against third parties continues to be effective against third parties despite a change in the method for achieving third-party effectiveness, provided that there is no time when the security right is not effective against third parties.]

[Article 18. Lapse in third-party effectiveness]

If third-party effectiveness of a security right lapses, it may be re-established by any of the methods referred to in this chapter and the security right is effective against third parties only as of the time of re-establishment.]

[Note to the Working Group: The Working Group may wish to consider that articles 17 and 18 appear within square brackets for further consideration in view of the doubts expressed with respect to those articles at the 24th session of the Working Group, and in particular whether they address a third-party effectiveness or a priority issue (see A/CN.9/796, paras. 58-61). The Working Group may wish to consider whether articles 17 and 18 could be merged in one article, or deleted and addressed in the chapter on priority.]

Article 19. Impact of a transfer of an encumbered asset

Except as provided in article 37 of this Law, a security right does not become ineffective against third parties solely because the encumbered asset is sold or otherwise transferred, leased or licensed.

[Note to the Working Group: The Working Group may wish to consider whether the rule that a security right follows an encumbered asset in the hands of a transferee fits more in the chapter on creation, while the exceptions to this rule in the chapter on third-party effectiveness (impact on registration; see article 37) and in the chapter on priority (authorization of the transfer by the secured creditor or transfer in the ordinary course of business of the transferor; see article 42, paras. 2 to 8).]

Article 20. Change of the applicable law to this Law

If a security right is effective against third parties under the law of another State whose law was applicable, and this Law becomes applicable, the following rules apply:

(a) The security right continues to be effective against third parties under this Law for [a short period of time to be specified by the enacting State] days after the change;

(b) The security right continues to be effective against third parties after the end of the time period referred to in subparagraph (a) if the third-party effectiveness requirements of this Law are satisfied before the expiry of that time period; and

(c) If the security right continues to be effective against third parties under subparagraph (a) and (b), the time when a notice with respect to the security right was registered in accordance with article 30 of this Law or third-party effectiveness was achieved is the time when it was achieved under the law of the other State.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that this article, which is based on recommendation 45 of the Secured Transactions Guide, is intended to apply to cases in which the draft Model Law becomes the applicable law by virtue of the conflict-of-laws rules of the forum (e.g., through a move of the location of the asset or the grantor to the enacting State) and is intended to give a secured creditor a grace period to ensure that the third-party effectiveness of its security right

achieved under the previously applicable law continues under the draft Model Law (for a similar “transition” rule in the case of a change of the law of one and the same State, see rec. 231 of the Secured Transactions Guide).]

Article 21. Acquisition security rights in consumer goods

An acquisition security right in consumer goods is automatically effective against third parties upon its creation without any further action by the grantor or the secured creditor.

[Note to the Working Group: The Working Group May wish to note that the Guide to Enactment will clarify that an acquisition security right in consumer goods does not have the special priority of an acquisition security right over a security right registered in a specialized registry (see article 43).]

B. Asset-specific rules

Article 22. Personal or property rights securing payment or other performance of receivables, negotiable instruments or any other intangible asset

1. A secured creditor with a security right in a receivable, negotiable instrument or any other intangible asset that is effective against third parties has the benefit of any personal or property right securing payment or other performance of the receivable, negotiable instrument or other intangible asset automatically without any further action by either the grantor or the secured creditor.
2. If the personal or property right referred to in paragraph 1 of this article is an independent undertaking, the third-party effectiveness of the security right automatically extends to the right to receive the proceeds under the independent undertaking.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 48 of the Secured Transactions Guide. The Working Group may wish to consider whether this article (or at least para. 1, which is identical to article 11, para. 1) should be subsumed in article 11 as it reaches the same result and thus can be deleted. The Working Group may also wish to note that the Guide to Enactment will explain that States parties to the Convention Providing a Uniform Law For Bills of Exchange and Promissory Notes (Geneva, 1930; the “Geneva Uniform Law”) may wish to include in the asset-specific section of the creation or third-party effectiveness chapter a provision that a security right may be created and made effective against third parties by delivery and endorsement containing the statement “value in security” (“valeur en garantie”), “value in pledge” (“valeur en gage”), or any other statement implying a security right (see article 19; article 22 of the United Nations Convention on International Bills of Exchange and International Promissory Notes — the “Bills and Notes Convention” contains a similar rule).]

Article 23. Rights to payment of funds credited to a bank account

A security right in a right to payment of funds credited to a bank account is effective against third parties, if it has been created in accordance with article 5 of this Law and:

- (a) A notice with respect to the security right is registered in accordance with the provisions of chapter IV of this Law;
- (b) The security right is in favour of the depositary bank;
- (c) A control agreement has been entered into by the grantor, the secured creditor and the depositary bank; or
- (d) The secured creditor has become the account holder.

Article 24. Negotiable documents and tangible assets covered

1. A security right in a negotiable document is effective against third parties, if it has been created in accordance with article 5 of this Law and:

- (a) A notice with respect to the security right has been registered in accordance with the provisions of chapter IV of this Law; or
- (b) Possession of the document has been transferred to or retained by the secured creditor.

2. If a security right in a negotiable document is effective against third parties, the corresponding security right in the asset covered by the document is also effective against third parties.

3. During the period when a negotiable document covers an asset, a security right in the asset may be made effective against third parties by the secured creditor's possession of the document.

4. A security right in a negotiable document that was made effective against third parties by the secured creditor's possession of the document continues to be effective against third parties for [a short period of time to be specified by the enacting State] after the negotiable document has been relinquished to the grantor or other person for the purpose of ultimate sale or exchange, loading or unloading, or otherwise dealing with the assets covered by the negotiable document.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, depending on their law relating to negotiable documents, States may wish to include in the asset-specific section of the creation or third-party effectiveness chapter a provision that a security right in a negotiable document may be created and made effective against third parties by delivery and endorsement containing the statement "value in security" ("valeur en garantie"), "value in pledge" ("valeur en gage"), or any other statement implying a security right.]

Article 25. Non-intermediated securities

1. A security right in certificated non-intermediated securities is effective against third parties, if it has been created in accordance with article 5 of this Law and:

- (a) The certificate is delivered to the secured creditor; [or]
- (b) A notice with respect to the security right has been registered in accordance with the provisions of chapter IV of this Law; [or]
- (c) [The certificate has been endorsed in a manner indicating the intention to create and make effective against third parties a security right.]

2. A security right in uncertificated non-intermediated securities is effective against third parties, if it has been created in accordance with article 5 of this Law and:

(a) A notice with respect to the security right has been registered in accordance with the provisions of chapter IV of this Law;

(b) The security right has been noted or the name of the secured creditor as the holder of the securities has been entered into the books maintained for that purpose by or on behalf of the issuer; or

(c) A control agreement has been entered into by the grantor, the secured creditor and the issuer of the securities.

[Note to the Working Group: The Working Group may wish to note that subparagraph 1 (c) of this article and paragraph 1 of article 61, both of which appear within square brackets for further consideration, may be necessary to avoid a conflict with article 19 of the Geneva Uniform Law, according to which a pledge of certificated securities may be created erga omnes by endorsement on the certificate, with the statement “value in security” (“valeur en garantie”), “value in pledge” (“valeur en gage”), or any other statement implying a pledge (article 22 of the Bills and Notes Convention contains a similar rule). Alternatively, the matter may be addressed in the Guide to Enactment (see notes to articles 22 and 24 above). The Working Group may also wish to consider whether the creation erga omnes of a security right in shares by a notarial document or a document with certain date should also be addressed. The Working Group may also wish to note that the Guide to Enactment will clarify that: (a) a security right in non-intermediated securities (as in any other asset) that is made effective against third parties is also effective against the grantor’s insolvency representative and the grantor’s judgement creditors; and (b) the rights of transferees and competing secured creditors are not necessarily ordered temporally according to the time of third-party effectiveness but are rather subject to the special priority rules in article 61.]