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Report of Working Group VI (Security Interests) on the work of its twenty-ninth session (New York, 8-12 February 2016)

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I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a model law on secured transactions (the "draft Model Law"), pursuant to a decision taken by the Commission at its forty-fifth session (New York, 25 June-6 July 2012).[1] At that session, the Commission agreed that, upon its completion of the draft registry guide, the Working Group should undertake work to prepare a simple, short and concise model law on secured transactions based on the general recommendations of the UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide") and consistent with all texts prepared by UNCITRAL on secured transactions, including the United Nations Convention on the Assignment of Receivables in International Trade (the "Assignment Convention"), the Supplement on Security Rights in Intellectual Property (the "Intellectual Property Supplement") and the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "Registry Guide").[2]

2. At its twenty-third session (New York, 8-12 April 2013), the Working Group had a general exchange of views on the basis of a note prepared by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.55 and Add.1 to 4).

3. At its forty-sixth session (Vienna, 8-26 July 2013), the Commission agreed that the preparation of the draft Model Law was an extremely important project to complement the work of the Commission in the area of security interests and provide urgently needed guidance to States as to how to implement the recommendations of the Secured Transactions Guide. It was also agreed that, in view of the importance of modern secured transactions law for the availability and the cost of credit, and the importance of credit for economic development, such guidance was extremely important and urgent to all States at a time of economic crisis but in particular to States with developing economies and economies in transition. In addition, it was stated that the scope of the draft Model Law should include all economically valuable assets.[3] After discussion, the Commission confirmed the mandate it had given to Working Group VI in 2012 (see para. 1 above).[4] The Commission also agreed that whether that work would include security interests in non-intermediated securities would be assessed at a future time.[5]

4. At its twenty-fourth session (Vienna, 2-6 December 2013), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.57 and Add.1 and 2) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (A/CN.9/796, para. 11). At its twenty-fifth session (New York, 31 March-4 April 2014), the Working Group continued its work based on a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.57/Add.2-4 and A/CN.9/WG.VI/WP.59 and Add.1) and

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[1] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 105.

[2] Ibid.

[3] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 193.

[4] Ibid., para. 194.

[5] Ibid., para. 332.

requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/802, para. 11). The Working Group also decided to recommend to the Commission that the draft Model Law address security rights in non-intermediated securities along the lines agreed upon by the Working Group at that session (see A/CN.9/802, para. 93).

5. At its forty-seventh session (New York, 7-18 July 2014), the Commission expressed its satisfaction for the considerable progress achieved by the Working Group in its work and requested the Working Group to expedite its work so as to complete the draft Model Law, including certain definitions and provisions on non-intermediated securities, and to submit it to the Commission for adoption together with a guide to enactment as soon as possible.[6]

6. At its twenty-sixth session (Vienna, 8-12 December 2014), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.61 and Add.1-4) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/830, para. 12). At its twenty-seventh session (New York, 20-24 April 2015), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.63 and Add.1-4) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/836, para. 13).

7. At its forty-eighth session (New York, 29 June-16 July 2015), the Commission considered and approved in principle article 26 of chapter IV (on the registry system) of the draft Model Law and articles 1 to 29 of the draft Registry Act (see A/CN.9/852). At that session, the Commission also agreed that a draft guide to enactment (the "draft Guide to Enactment") should be prepared and referred that task to the Working Group.[7]

8. At its twenty-eighth session (Vienna, 12-16 October 2015), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.65 and Add.2 and 4) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/865, para. 14).

II. Organization of the session

9. The Working Group, which was composed of all States members of the Commission, held its twenty-ninth session in New York from 8 to 12 February 2016. The session was attended by representatives of the following States members of the Working Group: Armenia, Australia, Belarus, Brazil, Canada, China, Colombia, Czech Republic, Ecuador, El Salvador, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Liberia, Malaysia, Mexico, Namibia, Pakistan, Panama, Republic of Korea, Russian Federation, Sierra Leone, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland and United States of America.

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[6] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 163.

[7] Ibid., para. 216.

10. The session was attended by observers from the following States: Iraq, Libya, Malta, Qatar, Syria and Ukraine. The session was also attended by observers from the Holy See and the European Union.

11. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: World Bank and World Intellectual Property Organization (WIPO);

(b) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Asociación Americana de Derecho International Privado (ASADIP), Commercial Finance Association (CFA), Factors Chain International and International Factors Group (FCI+IFG), Forum for International Conciliation and Arbitration (FICACIC), International Bar Association (IBA), International Insolvency Institute (III), Moot Alumni Association (MAA), National Law Centre for Inter-American Free Trade (NLCIFT) and The European Law Students' Association (ELSA).

12. The Working Group elected the following officers:

Chairperson: Sr. Rodrigo LABARDINI (Mexico)

Rapporteur: Ms. Pavlína RUCKI (Czech Republic)

13. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.67 (Annotated Provisional Agenda) and A/CN.9/WG.VI/WP.65/Add.1 and 3, A/CN.9/WG.VI/WP.68 and Add. 1 and 2 (Draft Model Law on Secured Transactions), as well as A/CN.9/WG.VI/WP.66/Add.1 and 3 and A/CN.9/WG.VI/WP.69 and Add. 1 and 2 (Draft Guide to Enactment).

14. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Draft Model Law on Secured Transactions.
5. Draft Guide to Enactment of the draft Model Law on Secured Transactions.
6. Other business.
7. Adoption of the report.

III. Deliberations and decisions

15. The Working Group considered notes by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.65/Add.1 and 3). The deliberations and decisions of the Working Group are set forth below in chapter IV. The Secretariat was requested to revise the draft Model Law and the draft Guide to Enactment to reflect the deliberations and decisions of the Working Group.

IV. Draft Model Law on Secured Transactions

A. Chapter IV. The registry system (A/CN.9/WG.VI/WP.65/Add.1)

Article 26. Establishment of a public registry

16. In order to deal with the legal purpose of the Registry and its relationship to the draft Model Law, rather than with the operational characteristics of the Registry, it was agreed that article 26 of the draft Model Law should be revised to read along the following lines: "The Registry is established for the purpose of giving effect to the provisions of the Law relating to the registration of notices of security rights". Subject to that change, the Working Group adopted article 26 of the draft Model Law.

B. Registry-related provisions (A/CN.9/WG.VI/WP.65/Add.1)

17. Differing views were expressed with respect to the placement of the registry-related provisions. One view was that those provisions were an integral part of, and should thus be included in, the draft Model Law. Another view was that those provisions dealt with both substantive and technical matters that could be addressed in primary or secondary legislation and should thus be included in an annex to the draft Model Law. It was stated that, if the registry-related provisions were included in an annex to the draft Model Law, to highlight their importance and their nature as legal rules, their title should be "model registry act" or "model registry law". The prevailing view, however, was that, as a compromise between the above-mentioned views, those provisions should be presented right after article 26 of the draft Model Law with a separate numbering. It was widely felt that, while the registry-related provisions were of equal importance to the provisions of the draft Model Law, their enactment in primary or secondary legislation, or a combination of both, should be left to each enacting State. In addition, it was widely felt that, to avoid inadvertently creating the impression that those provisions should in all cases be enacted in a law other than the secured transactions law, they should be called "model registry-related provisions", rather than "model registry act" or "model registry law". After discussion, it was agreed that the registry-related provisions should be presented right after article 26 of the draft Model Law with a separate numbering under the heading "model registry-related provisions".

Article 1. Establishment of a public registry

18. In view of its decision as to the placement of the registry-related provisions (see para. 17 above) and the fact that article 1 of the registry-related provisions merely restated the essence of article 26 of the draft Model Law, the Working Group agreed that article 1 of the registry-related provisions should be deleted.

Article 2. Definitions

19. It was agreed that, like article 2 of the draft Model Law, article 2 of the registry-related provisions should include a chapeau along the following lines: "For the purposes of these registry-related provisions".

“Amendment”

20. It was agreed that the definition of the term “amendment” should be revised to read along the following lines: “‘Amendment notice’ means a notice submitted to the Registry in the prescribed registry notice form to modify information contained in a related registered notice”.

“Cancellation”

21. It was agreed that the definition of the term “cancellation” should be revised to read along the following lines: “‘Cancellation notice’ means a notice submitted to the Registry in the prescribed registry notice form to cancel the effectiveness of the registration of all related registered notices”. In that context, it was noted that a partial cancellation amounted to an amendment.

22. It was also agreed that, to have a complete set of definitions of all kinds of notices referred to in the registry-related provisions, the term “initial notice” should also be defined along the following lines: “‘Initial notice’ means a notice submitted to the Registry in the prescribed registry notice form to make the security right, to which the notice relates, effective against third parties”.

“Law”

23. It was agreed that, in view of the decision of the Working Group with respect to the placement of the registry-related provisions (see para. 17 above), the definition of the term “law” was no longer necessary and should thus be deleted.

“Notice”

24. It was agreed that, as all kinds of notices were already defined, the definition of the term “notice” should be made into a rule of interpretation that should read along the following lines: “‘Notice’ includes an initial notice, an amendment notice and a cancellation notice”.

“Registrant”

25. It was agreed that the definition of the term “registrant” should be revised to read along the following lines: “‘Registrant’ means a person who submits a notice to the Registry”.

“Registrar”

26. As the term “registrar” was only used in article 28 of the registry-related provisions, it was agreed that its substance should be included in that article and the definition should be deleted. In that connection, it was also agreed that article 28 should track the language of recommendation 2 of the Registry Guide and also include a reference to the monitoring of the performance of the registrar’s duties by the authority to be specified by the enacting State. It was further agreed that the draft Guide to Enactment should clarify that, while the Registry could be operated by a private or public entity, it should always be supervised by the public authority specified by the enacting State (e.g. ministry or central bank).

“Registration”

27. It was agreed that the definition of the term “registration” might be reviewed for consistency with the registry-related provisions and in particular with article 14, pursuant to which the registration of a notice was effective when the information in a notice was entered into the registry record so as to be accessible to searchers of the public registry record.

“Registry”

28. It was agreed that the definition of the term “Registry” should be revised to read along the following lines: “‘Registry’ means the registry established pursuant to article 26 of this Law”.

“Regulation”

29. It was agreed that, in view of the decision of the Working Group with respect to the placement of the registry-related provisions (see para. 17 above) and the fact that the term “regulation” was not universally understood in the same way, its definition was no longer necessary and should thus be deleted.

30. At the close of its consideration of article 2 of the registry-related provisions, the Working Group considered whether the term “registered notice” should be defined along the following lines: “‘Registered notice’ means a notice after the information in the notice has been entered into the public registry record”. One view was that that term did not need to be defined. It was stated that the definitions of the term “notice”, the various types of notice and the term “registration”, as well as article 14 of the registry-related provisions, were sufficient. It was also stated that the proposed wording was inconsistent with article 14 of the registry-related provisions that required information to be made accessible to searchers of the public registry record for a registered notice to be effective. Another view was that the term “registered notice” should be defined as it was used in several articles of the registry-related provisions. It was stated that the proposed wording could form a starting point for a definition that would be consistent with article 14 of the registry-related provisions. After discussion, the Working Group agreed that the matter could be reviewed at a later stage on the basis of an appropriately revised definition.

31. Subject to the above-mentioned changes, the Working Group adopted article 2 of the registry-related provisions.

Article 3. Grantor’s authorization for registration

32. With respect to paragraph 1, it was widely felt that, in the case of multiple grantors, lack of authorization by one grantor should not result in the registration of an initial notice being generally ineffective. In order to address that point, it was agreed that paragraph 1 should be revised to read along the following lines: “Registration of an initial notice with respect to a security right in an asset of a grantor is ineffective unless authorized by that grantor in writing”.

33. With respect to paragraph 2, it was agreed that: (a) it should be revised to also refer to an amendment notice that extended the period of effectiveness of the registration of a notice within square brackets to reflect option B or C of article 15

of the registry-related provisions; and (b) the words "not included in the security agreement" should be deleted in view of the change to paragraph 5 (see para. 35 below).

34. With respect to paragraph 4, it was agreed that it should refer to an initial or amendment notice. It was also agreed that the draft Guide to Enactment should explain that, like paragraphs 1-3, paragraph 4 also required that the grantor's authorization be in writing.

35. With respect to paragraph 5, it was agreed that it should be revised to read along the following lines: "A written security agreement is sufficient to constitute authorization by the grantor for the registration of an initial or amendment notice covering the encumbered assets described in the security agreement".

36. With respect to paragraph 6, it was agreed that, while paragraph 4 might be sufficient to reflect the fact that the Registry did not have the right to require evidence of the grantor's authorization, paragraph 6 had educational value and should thus be retained. As to the placement of paragraph 6 in the text, while it was stated that it would also fit in article 8, it was agreed that, for the sake of having a complete set of rules dealing with the grantor's authorization for registration in one and the same article, it should be retained in article 3.

37. In the discussion, the question was raised whether, in the case of a security right created by transfer of possession to the secured creditor and conclusion of an oral agreement, possession should be sufficient to reflect the grantor's authorization for registration. After discussion, it was agreed that, in such a case, possession would not be sufficient, as: (a) the creation of a security right was a different issue from the issue of the grantor's authorization for registration; (b) the relinquishment of possession could result in the extinction of the security right; and (c) the possession of an asset might be transferred to the secured creditor for reasons of confidentiality that would preclude the registration of a notice with respect to the security right.

38. Subject to the above-mentioned changes, the Working Group adopted article 3 of the registry-related provisions.

Article 4. One notice sufficient for security rights under multiple security agreements

39. The Working Group agreed that article 4 of the registry-related provisions should be revised to read along the following lines: "The registration of a single notice may relate to security rights granted by the grantor to the secured creditor under one or more than one security agreement". Subject to that change, the Working Group adopted article 4 of the registry-related provisions.

Article 5. Advance registration

40. The Working Group agreed that article 5 of the registry-related provisions should be revised to read along the following lines: "A notice may be registered before the creation of a security right or the conclusion of a security agreement to which the notice relates". Subject to that change, the Working Group adopted article 5 of the registry-related provisions.

Article 6. Public access

41. With respect to article 6 of the registry-related provisions, it was agreed that: (a) to better reflect its contents, its title should be revised to read along the following lines "conditions for access to registry services"; (b) for reasons of consistency in the terminology used, subparagraph 1(a) should be revised to refer to the "prescribed registry notice form"; and (c) paragraph 2 should be revised to follow the formulation of paragraph 1. It was also agreed that the draft Guide to Enactment should explain the words "secure access requirements" and their relationship to the need to protect secured creditors against the risk of registration of unauthorized amendment and cancellation notices that was addressed in article 22 of the registry-related provisions. Subject to those changes, the Working Group adopted article 6 of the registry-related provisions.

Article 7. Rejection of the registration of a notice or a search request

42. With respect to subparagraphs 1(a), 1(b), and 2(b), it was agreed that reference should be made to "mandatory", rather than "required", designated fields. It was also agreed that the draft Guide to Enactment should explain that: (a) the registration of a notice could also be rejected, if no information was entered in one of the mandatory designated fields, even if the information entered in the other fields was legible; and (b) a search request could also be rejected if the registration number given by a searcher had expired or was non-existent. Subject to those changes, the Working Group adopted article 7 of the registry-related provisions.

Article 8. No verification by the Registry

43. It was agreed that article 8 of the registry-related provisions should be revised to more clearly address, in line with recommendation 7 of the Registry Guide: (a) the obligation of the Registry to maintain information about the registrant's identity submitted in accordance with article 6, subparagraph 1(b); (b) the prohibition of the Registry requiring verification of that information; and (c) the prohibition of the Registry conducting any scrutiny of the content of a notice or search request other than that permitted under articles 6 and 7. It was also agreed that the title of the article should be revised to better reflect its content. Subject to those changes, the Working Group adopted article 8 of the registry-related provisions.

Article 9. Information required in an initial notice

44. The Working Group adopted article 9 of the registry-related provisions unchanged.

Article 10. Grantor identifier

45. It was agreed that paragraph 4 should be revised to avoid creating the impression that it referred to a law or decree that was no longer in force. It was also agreed that the draft Guide to Enactment should make reference to a number as a grantor identifier. Subject to those changes, the Working Group adopted article 10 of the registry-related provisions.

Article 11. Secured creditor identifier

46. It was agreed that paragraph 2 should be revised to avoid giving the impression that the identifier of the representative of a secured creditor that was a legal person had to appear on the document, law, or decree constituting the legal person. Subject to that change, the Working Group adopted article 11 of the registry-related provisions.

Articles 12-15

47. After discussion, the Working Group adopted articles 12-15 of the registry-related provisions unchanged.

Article 16. Obligation to send a copy of a registered notice

48. With respect to article 16 of the registry-related provisions, it was agreed that: (a) subparagraph 1(a) should refer to the date and time recorded by the Registry under article 14, paragraph 3; (b) subparagraph 1(b) should refer to the registration number without repeating concepts that were already included in the definition of the term "registration number" in article 2, subparagraph (j) of the registry-related provisions; (c) a new paragraph should be added to clarify that the failure of the secured creditor to comply with its obligation pursuant to paragraph 2 would not affect the effectiveness of the registration of the notice; (d) paragraph 3 should be retained to limit the secured creditor's liability to nominal penalties to be specified by the enacting State and actual damages proven to have been caused by the secured creditor's failure, while the standard of liability and other related matters could be left to the relevant law of the enacting State; and (e) paragraph 4 should be placed in article 6 or 8, which addressed issues related to the registrant's identity. It was also agreed that the draft Guide to Enactment should explain that, under paragraph 2, the secured creditor was obliged to send a copy to the grantor at the address set forth in the notice or, if the secured creditor was aware of the fact that the grantor had changed address and knew that new address or could reasonably discover it, at the grantor's new address. Subject to those changes, the Working Group adopted article 16 of the registry-related provisions.

Article 17. Right to register an amendment or cancellation notice

49. It was agreed that paragraph 2 of article 17 of the registry-related provisions should be revised to clarify that, after (rather than "upon") the registration of an amendment notice changing the person identified in a registered initial notice as the secured creditor, only the person identified in the amendment notice as the secured creditor was entitled to register an amendment or cancellation notice. It was also agreed that the draft Guide to Enactment should explain that the secured access data of the secured creditor would need to be modified to minimize the risk of the registration of unauthorized amendment or cancellation notices. Subject to those changes, the Working Group adopted article 17 of the registry-related provisions.

Article 18. Information required in an amendment notice

50. It was agreed that paragraph 1 of article 18 of the registry-related provisions should be revised to clarify that: (a) subparagraph 1(a) referred to the registration number of the initial notice to which the amendment notice related; and

(b) subparagraph 1(b) referred to the information to be added or changed on the understanding that, while no information should be deleted from the registry record, a release of an encumbered asset or grantor amounted to a "partial deletion", a matter that should be clarified in the draft Guide to Enactment. It was also agreed that paragraph 2 should be modified to read along the following lines: "An amendment notice may modify one or more than one item of information in the notice to which it relates". Subject to those changes, the Working Group adopted article 18 of the registry-related provisions.

Article 19. Global amendment of secured creditor information

51. It was agreed that article 19 of the registry-related provisions should be revised so that: (a) option A would permit a person to register a single amendment notice to amend its identifier, address or both, in all registered notices in which that person was identified as the secured creditor; and (b) option B would provide that the Registry could make such a global amendment upon the request of that person. It was also agreed that the reasons for such a global amendment (i.e. a change of the secured creditor's identifier, address, or both, or an assignment of the secured obligation) should be discussed in the draft Guide to Enactment. Subject to those changes, the Working Group adopted article 19 of the registry-related provisions.

Article 20. Information required in a cancellation notice

52. It was agreed that article 20 of the registry-related provisions should be revised to refer to the registration number of the initial notice to which the cancellation notice related, without repeating elements contained in the definition of the term "registration number". Subject to that change, the Working Group adopted article 20 of the registry-related provisions.

Article 21. Compulsory registration of an amendment or cancellation notice

53. It was agreed that article 21 of the registry-related provisions should be revised so that: (a) for reasons of clarity in the text, paragraph 1 would be separated in two paragraphs (one that would deal with an amendment notice deleting encumbered assets described in a registered notice and another that would deal, within square brackets as it stated an optional rule, with an amendment notice reducing the maximum amount specified in a registered notice); (b) for reasons of consistency with article 3, paragraph 4, that permitted the secured creditor to register a notice even before the grantor had authorized the registration, subparagraph 2(a) would apply only where the secured creditor knew that the grantor's authorization was not forthcoming or where the grantor requested the registration of a cancellation notice; (c) subparagraphs 2(b) and (c) would be set out in a separate paragraph; (d) paragraph 3 would apply where the registration was not authorized at all (subpara. 2(a)) or was authorized but not to the extent addressed in the registered notice (subpara. 1(a)); (e) paragraph 4 would require that, in its request to the secured creditor, the grantor state its identifier and the registration number of the initial notice to which the requested amendment or cancellation notice related; and (f) paragraph 6 would require the registration of an amendment or cancellation notice where a judicial or administrative order had been issued, leaving to each enacting State to determine who should register that notice (e.g. the

Registry or an officer of the authority that issued the order). Subject to those changes, the Working Group adopted article 21 of the registry-related provisions.

Article 22. Amendment or cancellation notices not authorized by the secured creditor

54. With respect to article 22 of the registry-related provisions, it was agreed that: (a) in options A and C, and in paragraph 1 of option B and D, the word "amendment" should be retained outside square brackets (or the matter could be addressed with new wording to be prepared by the Secretariat); (b) in paragraph 2 of option B, the bracketed text should be retained outside square brackets to avoid that the exception in paragraph 2 would render meaningless the rule in paragraph 1, and the text would be clarified to refer to the registration of an unauthorized amendment or cancellation notice; and (c) in paragraph 2 of option D, for reasons of clarity, the word "nonetheless" should be deleted. Subject to those changes, the Working Group adopted article 22 of the registry-related provisions.

Article 23. Search criteria

55. It was agreed that, in subparagraph (b), the words "assigned to the initial notice" should be deleted, as they were part of the definition of the term "registration number". Subject to that change, the Working Group adopted article 23 of the registry-related provisions.

Article 24. Search results

56. It was agreed that paragraph 2 should be revised to read along the following lines: "Upon request by a searcher, the Registry must issue an official search certificate setting out the search result and certifying that the search result was issued by the Registry". Subject to that change, the Working Group adopted article 24 of the registry-related provisions.

Article 25. Registrant errors in required information

57. With respect to article 25, it was agreed that: (a) paragraphs 1 and 2 should refer to "information in" a notice being retrieved by a search of the "public" registry record; (b) a footnote should be added to paragraph 2 stating that it would be necessary only if the enacting State implemented option B of article 24. Subject to those changes, the Working Group adopted article 25 of the registry-related provisions.

Articles 26 and 27

58. The Working Group considered a proposal for revisions to articles 26 and 27 of the registry-related provisions. While there was broad agreement in the Working Group that the proposed revised text constituted a substantial improvement of the text of those articles, it was widely felt that it could be further refined. Subject to those changes, the Working Group adopted articles 26 and 27 as revised.

Article 28. Appointment of the registrar

59. Recalling its decision with respect to the definition of the term "registrar" (see, para. 26), the Working Group agreed that article 28 should be revised to also

make reference to the monitoring of the performance of the registrar's duties by the authority to be specified by the enacting State. Subject to that change, the Working Group adopted article 28 of the registry-related provisions.

Article 29. Organization of information in registered notices

60. With respect to article 29 of the registry-related provisions, it was agreed that: (a) to better reflect its contents, the title should be revised to refer to information in "the registry record" (rather than to information "in registered notices"); (b) in both options of subparagraph 2(b), the words "or the registration number assigned to the initial notice" should be deleted, as a search against that criterion would retrieve only a single registered notice and thus fail to achieve the purpose of a global amendment; and (c) in paragraph 3, the words "and the registration of an amendment or cancellation notice does not result in the amendment or deletion of information in any associated notice" should be deleted as redundant. Subject to those changes, the Working Group adopted article 29 of the registry-related provisions.

Article 30. Integrity of information in the registry record

61. It was agreed that paragraph 2 needed to be revised to clarify the object of reconstruction. Subject to that change, the Working Group adopted article 30 of the registry-related provisions.

Article 31. Removal of information from the public registry record and archival

62. With respect to article 31 of the registry-related provisions, it was agreed that: (a) option A should be revised to clarify that, upon the expiry of the notice or registration of a cancellation notice, the Registry was not only obliged to remove information in a registered notice from the public registry record, but also prohibited from doing so before the expiry of the notice or the registration of a cancellation notice; (b) a footnote should be added to option A stating that option A would be necessary only if the enacting State implemented option A or B of article 22; and (c) a footnote should be added to option B stating that option B would be necessary only if the enacting State implemented option C or D of article 22. Subject to those changes, the Working Group adopted article 31 of the registry-related provisions.

Article 32. Correction of errors by the Registry

63. With respect to article 32 of the registry-related provisions, it was agreed that: (a) to better reflect its contents, the title should be revised to refer to errors "made" by the Registry; (b) in options A and B of paragraph 2 (and where appropriate throughout the registry-related provisions), reference should be made to the "public" registry record; (c) for reasons of clarity, in options B and D of paragraph 2, the exception should be set forth in a separate sentence; (d) the draft Guide to Enactment should explain that, to reduce the risk of error or ensure timely correction, the secured creditor should monitor the information entered into the public registry record, which, in the case of a fully electronic registry, should be easy for the secured creditor to do; and (e) the entire article should be placed within square brackets with a footnote indicating that it would be appropriate for States

that had registry systems that were not fully electronic. Subject to those changes, the Working Group adopted article 32 of the registry-related provisions.

Article 33. Limitation of liability of the Registry

64. With respect to article 33 of the registry-related provisions, it was agreed that: (a) in the chapeau of option A, to better reflect the limitation of liability, the words "limited for" should be replaced with the words "limited to"; and (b) the draft Guide to Enactment should give examples of approaches to the limitation of the liability of the Registry (such as a fixed monetary amount, an amount up to the value of the encumbered asset and a maximum annual monetary amount). Subject to those changes, the Working Group adopted article 33 of the registry-related provisions.

Article 34. Registry fees

65. With respect to article 34 of the registry-related provisions, it was agreed that: (a) in line with the approach followed in recommendations 54, subparagraph (i), of the Secured Transactions Guide and 36 of the Registry Guide, both options (fees at cost-recovery level and no fees at all) should be preserved to ensure that the Registry would not be used as a source of revenue; (b) paragraph 1 of option A should be revised to provide that fees to be specified by the enacting State could be charged or collected for the registry services, leaving all other details to the enacting State; (c) a new paragraph could be inserted to provide that the authority to be specified by the enacting State might modify the fee schedule from time to time; (d) paragraph 2 of option A should be revised to provide that the Registry should be able to publicize the fee schedule (but not modify it); and (e) the draft Guide to Enactment should explain both options in a balanced and neutral way with cross-references to the Secured Transactions Guide and the Registry Guide. Subject to those changes, the Working Group adopted article 34 of the registry-related provisions.

C. Chapter VI. Rights and obligations of the parties to a security agreement and third-party obligors (A/CN.9/WG.VI/WP.65/Add.3)

Section I. Mutual rights and obligations of the parties to a security agreement

Article 47. Source of mutual rights and obligations of the parties

66. Differing views were expressed as to whether article 47 should be retained. After discussion, the Working Group agreed that: (a) subparagraphs (a) (application of the provisions of chapter VI of the draft Model Law) and (b) (application of contract law) were self-evident and should be deleted; and (b) subparagraphs (c) (security agreement) and (d) (trade usages and practices) should be retained, the latter with any necessary modification to be aligned more closely with article 11, paragraph 2, of the Assignment Convention. Subject to those changes, the Working Group adopted article 47.

67. In the discussion, differing views were expressed as to whether a new provision along the lines of article 11, paragraph 3, of the Assignment Convention (which was based on article 9, paragraph 2, of the United Nations Convention on Contracts for the International Sale of Goods), dealing with the application of

practice-specific international trade usages, should be added in article 47. After discussion, the Working Group agreed that that matter should be left to the contract law of the enacting State.

Article 48. Obligation of a person in possession to exercise reasonable care

68. Differing views were expressed as to whether article 48 should be listed in article 3 as a mandatory law provision. It was ultimately agreed that article 48 could be retained as a mandatory law provision on the understanding that the reference to reasonable care and the standards of conduct contained in article 4 (good faith and commercial reasonable manner) provided sufficient flexibility. After discussion, the Working Group adopted article 48 unchanged.

Article 49. Obligation of a secured creditor to return an encumbered asset [or to register an amendment or cancellation notice]

69. It was agreed that the obligation of a secured creditor to register an amendment or cancellation notice was sufficiently addressed in article 21 of the registry-related provisions and thus the reference to that obligation within square brackets in the title and the text of article 49 should be deleted. It was also agreed that release of control of an encumbered asset by a secured creditor was a different issue and should not be addressed in article 49. Subject to those changes, the Working Group adopted article 49.

Article 50. Right of a secured creditor to use, be reimbursed for expenses and inspect an encumbered asset

70. It was agreed that, in paragraph 2, the reference to inspection by the secured creditor, where the encumbered asset was in the possession of a person other than the grantor, should be deleted. It was widely felt, in view of the definition of the term “possession” in article 2, subparagraph (y), possession by the grantor would include possession by the grantor’s representative or an independent person acting on behalf of the grantor. It was also agreed that the draft Guide to Enactment should explain: (a) the inter-relationship of article 50, subparagraph 1(b) (use of encumbered assets) and article 48 (reasonable care for encumbered assets) and that the two provisions should be read together; and (b) as a result of the standards of conduct contained in article 4 (good faith and reasonable commercial manner), the secured creditor should be able to inspect the encumbered assets in the grantor’s possession only at reasonable times and pursuant to a prior notice. Subject to those changes, the Working Group adopted article 50.

Article X. Grantor’s right to obtain information

71. With respect to article X (see note after art. 50), it was agreed that: (a) it was useful, as the notice registration system foreseen in the draft Model Law did not disclose sufficient information about a security right, and should thus be retained; (b) the right to obtain information from the secured creditor should be given to the grantor (other than an outright transferor of a receivable), but not to the grantor’s third-party creditors (information to whom could be given at the request of the grantor); (c) the grantor’s right to obtain information should be limited to information about the grantor’s current indebtedness and the encumbered assets currently encumbered; and (d) the draft Guide to Enactment should discuss the

possibility of extending the right to obtain information to the grantor's third-party creditors (in particular judgement creditors), and explain that other matters (such as the legal consequences of the secured creditor's failure to comply or to give accurate information) would be left to other law. Subject to those changes, the Working Group adopted article X.

Articles 51, 52, 54, 56, 62, 64 and 65

72. The Working Group adopted articles 51, 52, 54, 56, 62, 64 and 65 unchanged.

Article 53. Right of the secured creditor to payment of a receivable

73. With respect to article 53, it was agreed that: (a) the chapeau of paragraph 1 would be revised to refer to a grantor of a security right in a receivable; (b) subparagraph 1(c) should be aligned more closely with article 14, subparagraph 1(c) of the Assignment Convention; and (c) paragraph 2 should be aligned more closely with article 14, paragraph 2, of the Assignment Convention. Subject to those changes, the Working Group adopted article 53.

Section II. Rights and obligations of third party-obligors

74. It was agreed that, to more closely reflect its contents and the overall structure of the provisions of the draft Model Law, the title of section II of chapter VI on the rights and obligations of third-party obligors should clarify that the section contained asset-specific rules.

Article 55. Protection of the debtor of the receivable

75. It was agreed that the draft Guide to Enactment should explain that paragraph 1 was sufficiently broad to cover all payment terms, including those relating to the currency and the time of payment. After discussion, the Working Group adopted article 55 unchanged.

Article 57. Discharge of the debtor of the receivable by payment

76. With respect to article 57, it was agreed that: (a) in paragraph 5, the term "subsequent security rights" should be clarified to reflect the meaning of the term "subsequent assignments"; and (b) in paragraph 8, the second set of bracketed words should be retained outside square brackets, while the first set of bracketed words should be deleted. Subject to those changes, the Working Group adopted article 57.

Article 58. Defences and rights of set-off of the debtor of the receivable

77. With respect to article 58, it was agreed that: (a) in subparagraph 1(a), reference should be made to a "receivable arising from a contract" rather than to a "contractual receivable", while the words "giving rise to the receivable" should be deleted; and (b) in paragraph 2, the words "limiting in any way the initial or subsequent grantor's right to create the security right" should be deleted as redundant. Subject to those changes, the Working Group adopted article 58.

Article 59. Agreement not to raise defences or rights of set-off

78. While some doubt was expressed as to whether the reference in paragraph 2 to the effectiveness of a waiver of the debtor's defences was necessary, it was ultimately agreed that it could be retained for reasons of consistency with article 19, paragraph 2, of the Assignment Convention, on which article 59, paragraph 2, was based. After discussion, the Working Group adopted article 59 unchanged.

Article 60. Modification of the original contract

79. It was agreed that the words "created by a security agreement" in paragraphs 1 and 2 were redundant and should be deleted. Subject to that change, the Working Group adopted article 60.

Article 61. Recovery of payments made by the debtor of the receivable

80. It was agreed that the reference to a transferor in an outright transfer of receivables in the definition of the term "grantor" contained in article 2, subparagraph (n), should be retained outside square brackets, so that the term "grantor" would include a transferor in an outright transfer of a receivable. As a result, it was agreed that the term "grantor" in article 61 was sufficient and the reference to a transferor in an outright transfer of receivables was redundant and should be deleted. Subject to that change, the Working Group adopted article 61.

Article 63. Rights as against the depositary bank

81. Subject to the substitution of the term "depositary institution" for the term "depositary bank" (see definition of the term "bank account" in art. 2, subpara. (c)), the Working Group adopted article 63.

D. Chapter VII. Enforcement of a security right (A/CN.9/WG.VI/WP.65/Add.3)

Article 66. Post-default rights

82. With respect to article 66, it was agreed that: (a) the definition of the term "default" contained in paragraph 1 should be moved to article 2 with the clarification that it would be subject to party autonomy and the explanation in the draft Guide to Enactment that it did not infringe on other laws; and (b) paragraph 3 should be deleted as its essence was covered in paragraph 2. It was also agreed that the draft Guide to Enactment should discuss the matter addressed in paragraph 3 as an example of the application of the rule in paragraph 2. Subject to those changes, the Working Group adopted article 66.

Article 67. Methods of exercising post-default rights

83. Recalling its earlier discussion (see A/CN.9/836, paras. 48-50), the Working Group considered the question whether article 67 should refer to the possibility of the parties exercising their post-default rights through alternative dispute resolution (ADR), including online dispute resolution (ODR), mechanisms (conciliation and arbitration).

84. With respect to ODR, the Working Group noted the restrictive mandate given by the Commission to Working Group III (Online Dispute Resolution) "to continue its work towards elaborating a non-binding descriptive document reflecting elements of an ODR process, on which elements the Working Group had previously reached consensus, excluding the question of the nature of the final stage of the ODR process (arbitration/non-arbitration)",[8] and the one year given by the Commission to Working Group III to bring its work "to an end, whether or not a result had been achieved".[9]

85. There was general agreement in the Working Group as to the value of ADR. However, differing views were expressed as to whether a short reference to ADR in article 67 would be useful. After discussion, it was agreed that, in view of the complexity of the matter and the need to coordinate with Working Group II (Arbitration and Conciliation) and to discuss the matter on the basis of a detailed proposal, no such reference should be made in article 67 or other part of the draft Model Law (such as chapter VI on the mutual rights and obligations of the parties, as, in view of the consensual nature of ADR, it was said that a reference to it would fit better in chapter VI). It was also agreed that the draft Guide to Enactment should explain that there was nothing in the draft Model Law that would preclude the grantor and the secured creditor from agreeing to resolve any dispute that may arise between them by ADR, and explain the advantages of ADR, but also the difficulties associated with the use of ADR in the context of secured transactions (e.g. arbitrability, third-party rights and confidentiality of arbitral proceedings).

86. After discussion, the Working Group adopted article 67 unchanged.

Article 68. Relief for non-compliance

87. After discussion, the Working Group was not able to reach agreement on article 68 and referred it to the Commission for further consideration on the basis of a revised version to be prepared by the Secretariat.

Article 69. Right of affected persons to terminate enforcement

88. With respect to article 69. it was agreed that: (a) paragraph 1 would refer to the grantor, the debtor and any other person with a right in the encumbered asset; (b) paragraph 2 would clarify that the words "the conclusion of an agreement by the secured creditor for that purpose" referred to an agreement "for the purpose of a sale or other disposition"; and (c) paragraph 3 should be retained outside square brackets with a clarification that it did not provide the lessee or licensee with more rights than it had under the other provisions of the draft Model Law. Subject to those changes, the Working Group adopted article 69.

Article 70. Right of the higher-ranking secured creditor to take over enforcement

89. With respect to article 70, it was agreed that: (a) paragraphs 1 and 3 should be aligned more closely with recommendation 145 of the Secured Transactions Guide; (b) paragraph 1 should be revised to clarify that, where the secured creditor was a

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[8] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 352.

[9] Ibid.

transferee of a receivable in an outright transfer, it did not need to continue enforcement; and (c) paragraph 2 should include similar clarifications as article 69, paragraph 2 (see para. 88 above). Subject to those changes, the Working Group adopted article 70.

Article 71. Right of the secured creditor to possession of an encumbered asset

90. With respect to article 71, it was agreed that: (a) its title should be revised to better reflect its content; (b) in paragraph 1, reference should be made to those parties in connection to any person with a superior right, including lessees and licensees; (c) in subparagraph 2(a), reference should be made to the grantor's consent, which could be given before or after default; (d) in subparagraph 2(c), it should be clarified that it referred to the person in possession of an encumbered asset; (e) paragraph 3 would be deleted on the understanding that the notice referred to in subparagraph 2(b) would be subject to the general standards of conduct contained in article 4 (good faith and commercially reasonable manner); (f) paragraph 4 would be retained outside square brackets and also include a reference to assets of a kind sold on a recognized market along the lines of recommendation 149 of the Secured Transactions Guide; and (g) in paragraph 5, option B would be retained on the understanding that the junior secured creditor could enforce its security right without obtaining possession and the buyer of the encumbered asset would acquire the asset subject to the right of the senior secured creditor. It was also agreed that, to ensure consistency with paragraph 1 of article 71 and other articles that dealt with enforcement by application to a court or other authority, article 67, paragraph 2, should also refer to the provisions of the enforcement chapter of the draft Model Law. It was further agreed that the draft Guide to Enactment would explain that: (a) the notice referred to in subparagraph 2(b) was subject to the general standards of conduct contained in article 4; and (b) the term "recognized market" referred to in paragraph 4 meant a market in which prices were set by the market and not by individual sellers. Subject to those changes, the Working Group adopted article 71.

E. Future work

91. At the close of its session, the Working Group decided to submit the draft Model Law to the Commission for consideration and adoption at its forty-ninth session, which was scheduled to take place in New York from 27 June to 15 July 2016. The Working Group also decided to request the Commission for an additional 1 or 2 sessions in order to complete the draft Guide to Enactment.

92. The Working Group noted that the thirtieth and thirty-first sessions of the Working Group were scheduled to take place in Vienna from 5 to 9 December 2016 and in New York from 13 to 17 February 2017, those dates being subject to approval by the Commission at its forty-ninth session.