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Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Chapter IV. The registry system

Article 33. Operational framework of the registration and searching processes

1. The registry must make available to the public clear and concise guides to registration and searching procedures and disseminate widely information about the existence and role of the registry.
2. Registration is effected by registering a notice that provides the information specified in article 36, as opposed to requiring the submission of the original or a copy of the security agreement or other document.
3. The registry must accept a notice presented by an authorized medium of communication, except if:
 - (a) It is not accompanied by the required fee;
 - (b) It fails to provide a grantor identifier sufficient to allow indexing; or
 - (c) It fails to provide some information with respect to any of the other items required under article 36.
4. The registry does not require verification of the identity of the registrant or the existence of authorization for registration of the notice or conduct further scrutiny of the content of the notice.
5. The record of the registry is centralized and contains all notices with respect to security rights registered under this Law.
6. The information provided on the public record of the registry is accessible to searchers.
7. A search may be made without the need for the searcher to justify the reasons for the search.
8. Notices are indexed and can be retrieved by searchers according to the identifier of the grantor.
9. Fees for registration and for searching, if any, are set at a level no higher than necessary to permit cost recovery.
10. If possible, the registration system is electronic. In particular:
 - (a) Notices are stored in electronic form in a computer database;
 - (b) Registrants and searchers have immediate access to the registry record by electronic or similar means, including the Internet and electronic data interchange;
 - (c) The system is programmed to minimize the risk of entry of incomplete or irrelevant information; and
 - (d) The system is programmed to facilitate speedy and complete retrieval of information and to minimize the practical consequences of human error.
11. Registrants may choose among multiple modes and points of access to the registry.
12. The registry, to the extent it is electronic, operates continuously except for scheduled maintenance, and, to the extent it is not electronic, operates during

reliable and consistent service hours compatible with the needs of potential registry users.

[Note to the Working Group: The Working Group may wish to note that articles 33-47 are based on recommendations 54-75 of the Secured Transactions Guide and the recommendations of the draft Registry Guide. With respect to article 33, the Working Group may wish to consider whether it should be aligned closely with recommendations 4-10 of the draft Registry Guide and whether some of the matters addressed in article 33 (and other articles) could be left to be dealt with in the recommendations of the draft Registry Guide and in the commentary of the draft Model Law. In addition, the Working Group may wish to consider whether some of the matters that are addressed in the recommendations of the draft Registry Guide such as, for example, the difference between access to the registry services and rejection of a notice, the period of effectiveness of a registration, the information required in an initial notice as opposed to an amendment or cancellation notice, search criteria and search results should be addressed in the draft Model Law, although they were not addressed in any detail in the recommendations of the Secured Transactions Guide.]

Article 34. Security and integrity of the registry

In order to ensure the security and integrity of the registry, the operational and legal framework of the registry should reflect the following characteristics:

(a) Although the day-to-day operation of the registry may be delegated to a private authority, the State retains the responsibility to ensure that it is operated in accordance with the governing legal framework;

(b) [Information about] the identity of a registrant is requested and maintained by the registry;

(c) The registrant is obligated to forward a copy of a notice to the grantor named in the notice, but failure to meet this obligation may result only in nominal penalties and any damages resulting from the failure that may be proven;

(d) The registry is obligated to send promptly a copy of any changes to a registered notice to the person identified as the secured creditor in the notice;

(e) A registrant can obtain a record of the registration as soon as the registration information is entered into the registry record; and

(f) Multiple copies of all the information in the records of a registry are maintained and the entirety of the registry records can be reconstructed in the event of loss or damage.

[Note to the Working Group: The Working Group may wish to consider whether the matter addressed in subparagraph (a) of this article should be dealt with in the commentary rather than in the draft Model Law, and whether the matters addressed in the remaining subparagraphs should be addressed either in a general way or in a detailed way but more in line with the recommendations of the draft Registry Guide.]

Article 35. Responsibility for loss or damage

1. If the registry system permits direct registration and searching by registry users without the intervention of registry personnel, the responsibility of the registry for loss or damage is limited to system malfunction.
2. If the registry system permits the submission of paper notices, the registry is liable for any loss or damage caused by an error in the entry of the information contained in a notice in the registry record.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 56 of the Secured Transactions Guide, which, however, deals only with the matter addressed in paragraph 1 of this article. Paragraph 2 has been added to complete article 35. The Working Group may wish to consider whether article 35 should be retained or the matter should be left to other law of the enacting State. If the Working Group decides to retain article 35, it may wish to consider its substance.]

Article 36. Required content of a notice

The following information only is required to be provided in the notice:

- (a) The identifier of the grantor, satisfying the standard provided in article 37 [and any other information to be specified by the enacting State to assist in uniquely identifying the grantor];
- (b) The identifier of the secured creditor or its representative, their addresses;
- (c) A description of the asset covered by the notice, satisfying the standard provided in article 40;
- (d) [If the enacting State implements option B or C in article 44, the period of effectiveness of the registration as provided in article 44;] and
- (e) [If the enacting State determines that an indication in the notice of the maximum monetary amount for which the security right may be enforced would be helpful in order to facilitate subordinate lending, a statement of that maximum amount].

[Note to the Working Group: The Working Group may wish to note that the reference to additional information in the notice to assist in uniquely identifying the grantor has been added in subparagraph (a) and deleted from article 37, paragraph 2. These changes are intended to reflect decisions of the Working Group with respect to recommendation 23, subparagraph (a) (i), of the draft Registry Guide so as to avoid making the additional information part of the grantor's identifier and thus a search criterion.]

Article 37. Grantor identifier

1. The registration of an initial notice, or an amendment notice that amends the grantor's identifier or adds a grantor, is effective if the notice provides the grantor's correct identifier in accordance with paragraphs 2 and 3 of this article, or, in the case of an incorrect statement, if it meets the requirements of article 41, paragraphs 1 and 2.

2. Where the grantor is a natural person, the identifier of the grantor for the purposes of effective registration is the grantor's name, as it appears in a specified official document.

3. Where the grantor is a legal person, the grantor's identifier for the purposes of effective registration is the name that appears in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person.

[Note to the Working Group: The Working Group may wish to note that the changes to paragraphs 1, 2 and 3 of this article (compared with recommendations 58-60 of the Secured Transactions Guide on which they are based) are intended to align them respectively with recommendations 29, 23, subparagraph (a) (i), and 25 of the draft Registry Guide. The Working Group may wish to consider whether an article along the lines of paragraphs 2 and 3 of this article should be added to deal with the identifier of the secured creditor, while the impact of an incorrect statement may still be dealt with in article 41.]

Article 38. Impact of a change of the grantor's identifier on the effectiveness of the registration

1. If, after a notice is registered, the identifier of the grantor changes and as a result the grantor's identifier set forth in the notice does not meet the standard provided in article 37, the secured creditor [may] [must] amend the notice to provide the new identifier in compliance with that standard.

2. If the secured creditor does not register the amendment within [a short period of time, such as thirty days, to be specified by the enacting State] days after the change, the security right is ineffective against:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the change in the grantor's identifier but before registration of the amendment notice; and

(b) A person that buys, leases or licenses the encumbered asset after the change in the grantor's identifier but before registration of the amendment notice.

[Note to the Working Group: The Working Group may wish to consider that, while recommendation 61 of the Secured Transactions Guide leaves an amendment to the discretion of the secured creditor, an amendment must be made for the consequences described in paragraph 2 to be avoided.]

Article 39. Impact of a transfer of an encumbered asset on the effectiveness of the registration

Option A

1. If, after a notice is registered, the encumbered asset is transferred and a search against the transferee's name by a third party does not disclose the security right created by the transferor, the secured creditor must amend the notice to provide the transferee's identifier as a new grantor.

2. If the secured creditor does not register the amendment notice within [a short period of time to be specified by the enacting State] days after the transfer of the encumbered asset, the security right is ineffective against:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before registration of the amendment notice; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before registration of the amendment notice.

Option B

1. If, after a notice is registered, the encumbered asset is transferred and a search against the transferee's name by a third party does not disclose the security right created by the transferor, the secured creditor must amend the notice to provide the transferee's identifier as a new grantor.

2. If the secured creditor does not register the amendment notice within [a short period of time, such as fifteen days, to be specified by the enacting State] days after *the secured creditor acquires actual knowledge about* the transfer of the encumbered asset, the security right is ineffective against:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before registration of the amendment notice; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before registration of the amendment notice.

Option C

Registration of a notice in the security rights registry remains effective notwithstanding a transfer of the encumbered asset.

[Note to the Working Group: The Working Group may wish to note that: (a) article 39 reflects the three approaches to the issue discussed in the commentary of the Secured Transactions Guide (see chap. IV, paras. 78-80), as recommendation 62 of that Guide had left the matter to the discretion of each State; (b) the difference between options A and B lies in the text that appears in option B in italics; and (c) recommendation 244 of the Supplement on Security Rights in Intellectual Property reflects option C.]

Article 40. Description of an encumbered asset covered by a notice

The registration of an initial notice, or an amendment notice that affects the description of the encumbered assets, is effective if the notice describes the encumbered assets in a way that reasonably allows their identification, and if it does not, it meets the requirements of article 41, paragraph 3.

[Note to the Working Group: The Working Group may wish to note that this article, which is based on recommendation 63 of the Secured Transactions Guide, has been revised to be aligned with the formulation of article 37 and to deal with the description of the encumbered assets, leaving the consequences of an insufficient description to article 41, paragraph 3.]

**Article 41. Consequences of an incorrect statement
or insufficient description**

1. An incorrect statement of the grantor identifier in a notice does not render the registration ineffective if the notice would be retrieved by a search of the registry record under the correct identifier.
2. An incorrect identifier of a grantor in a notice does not render the registration ineffective with respect to other grantors correctly identified in the notice.
3. An incorrect statement of the identifier or address of the secured creditor or its representative or a description of the encumbered asset that does not meet the requirements of article 40 in a notice does not render the registration ineffective unless the incorrect or insufficient statement would seriously mislead a reasonable searcher.
4. A description of certain encumbered assets that does not meet the requirements of article 40 does not render a registration ineffective with respect to other assets sufficiently described.
5. An incorrect statement in a notice with respect to the period of effectiveness of registration and the maximum amount for which the security right may be enforced, if applicable, does not render a registered notice ineffective except to the extent that it seriously misled third parties that relied on the registered notice.

[Note to the Working Group: The Working Group may wish to note that the changes made in this article (as compared to recommendations 64-66, on which it is based) are intended to align it with recommendation 29 of the draft Registry Guide. The Working Group may wish to note that the “seriously misleading test” in the context of paragraph 5 is objective, while the “seriously misleading test” of paragraph 3 is subjective (see Secured Transactions Guide, chap. IV, paras. 84 and 96) and consider whether this matter should be more explicitly reflected in this article and explained in the relevant commentary to be prepared.]

Article 42. Time when notice may be registered

A notice with respect to a security right may be registered before or after the creation of the security right or the conclusion of the security agreement.

**Article 43. One notice sufficient for multiple security rights arising
from multiple agreements between the same parties**

The registration of a single notice is sufficient to achieve third-party effectiveness of one or more than one security right in the encumbered asset described in the notice, whether they exist at the time of registration or are created thereafter, and whether they arise from one or more than one security agreement between the same parties.

Article 44. Period of effectiveness of the registration of a notice

Option A

1. The registration of an initial notice is effective for [enacting State to insert the period of time specified in its law].

2. The period of effectiveness may be extended for [an additional period of time specified in the law of the enacting State] at any time before it expires. The new period starts when the current period expires.

[3. An amendment notice other than an amendment notice referred to in paragraph 2 of this article does not extend the period of effectiveness.]

Option B

1. The registration of an initial notice is effective for the period of time indicated therein.

2. The period of effectiveness may be extended or reduced for the period of time indicated in an amendment notice at any time before it expires. In the case of an extension, the new period starts when the current period expires.

[3. An amendment notice other than an amendment notice referred to in paragraph 2 of this article does not extend the period of effectiveness.]

Option C

1. The registration of an initial notice is effective for the period of time indicated therein, not exceeding [a long period of time, such as, for example, twenty years, to be specified by the enacting State].

2. The period of effectiveness may be extended or reduced for the period of time indicated in an amendment notice not exceeding [a long period of time, such as, for example, twenty years, to be specified by the enacting State] at any time before the period of effectiveness of the registration expires. In the case of an extension, the new period starts when the current period expires.

[3. An amendment notice other than an amendment notice referred to in paragraph 2 of this article does not extend the period of effectiveness.]

[Note to the Working Group: The Working Group may wish to note that article 44 is based on recommendation 13 of the draft Registry Guide, which in turn is based on recommendation 69 of the Secured Transactions Guide.]

Article 45. Time of effectiveness of the registration of a notice

The registration of a notice becomes effective when the information contained in the notice is entered into the registry record so as to be [available] [accessible] to searchers of the public registry record.

[Note to the Working Group: The Working Group may wish to consider whether article 45 should include language along the lines of recommendations 11, subparagraphs (b) and (c) (the registry to record date and time of effectiveness and enter notices in the order they were received), and 12 (the registry to assign a registration number to the initial notice) of the draft Registry Guide. The Working Group may also wish to consider the bracketed text in this article in view of the formulation of recommendations 11, subparagraph (a), and 16 and of the draft Registry Guide.]

Article 46. Authority for registration of a notice

1. Registration of an initial notice is ineffective unless authorized by the grantor in writing.
2. Registration of an amendment notice that [describe the amendments] is ineffective unless authorized by the grantor.
3. Registration of a cancellation notice is ineffective unless authorized by the secured creditor or ordered by a judicial or administrative authority in accordance with article 47, paragraph 3.
4. The authorization may be given before or after registration.
5. A written security agreement is sufficient to constitute authorization for the registration.

[Note to the Working Group: The Working Group may wish to note that article 46 is based on recommendation 71 and consider addressing: (a) the issue of authorization of an amendment notice by the grantor and/or secured creditor; (b) the impact of lack of such authorization by the secured creditor (or fraud) on the effectiveness of an amendment notice (see note to the Working Group after recommendation 19 in document A/CN.9/WG.VI/WP.54/Add.5; see also note to article 60 A/CN.9/WG.VI/WP.55/Add.3); and (c) the issue of authorization of a cancellation notice by the secured creditor.]

Article 47. Amendment and cancellation of a notice

1. The secured creditor is obliged to register an amendment or cancellation notice, as the case may be, if:
 - (a) The registration of an initial or amendment notice has not been authorized by the grantor at all or to the extent described in the notice;
 - (b) The registration of an initial or amendment notice has been authorized by the grantor but the authorization has been withdrawn or no security agreement has been concluded;
 - (c) The security agreement has been revised in a way that makes the information contained in the notice incorrect or insufficient; or
 - (d) The security right to which the notice relates has been extinguished by payment, other performance of the secured obligation or otherwise and there is no further commitment to extend credit.
2. The secured creditor is obliged to register an amendment or cancellation notice, to the extent appropriate, not later than [a short period of time, such as fifteen days, to be specified by the enacting State] after the secured creditor's receipt of a written request of the grantor if any of the circumstances described in paragraph 1 of this article have occurred and the secured creditor has not complied.
3. If the secured creditor does not comply within the time period provide in paragraph 2 of this article, the grantor is entitled to seek cancellation or appropriate amendment of the notice through a summary judicial or administrative procedure.
4. The grantor is entitled to seek an appropriate amendment or cancellation of the notice, as the case may be, even before the expiry of the time period stated in

paragraph 2 of this article, provided that [there are appropriate mechanisms to protect the secured creditor].

5. The secured creditor is entitled to register an amendment or cancellation notice, to the extent appropriate, with respect to the relevant notice at any time.

6. Promptly after a notice has expired as provided in article 44 or has been cancelled as provided in paragraph 1-4 of this article the information contained in the notice should be removed from the public registry record.

7. The information provided in the expired or cancelled or amended notice and the fact of expiration or cancellation or amendment should be archived for [a long period of time such as, for example, twenty years, to be specified by the enacting State] years in a manner that enables the information to be retrieved in accordance with article [...].

8. In the case of an assignment of the secured obligation, the notice may be amended to indicate the name of the new secured creditor, but a notice not so amended remains effective.

[Note to the Working Group: The Working Group may wish to note that article 47 is based on recommendations 72-75 of the Secured Transactions Guide and recommendations 33, 20, 21 of the draft Registry Guide. The Working Group may wish to consider the bracketed text in paragraph 4, which is based on recommendation 72, subparagraph (c), of the Secured Transactions Guide and, without some explanation, does not fit in a model law. In addition, the Working Group may wish to consider whether paragraphs 5-7 should be presented as separate articles. Moreover, the Working Group may wish to consider whether the draft Model Law should include additional articles to reflect other recommendations of the draft Registry Guide, such as for example the recommendations on amendment and cancellation notices, indexing of information, search criteria and search results.]