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Draft Guide to Enactment of the UNCITRAL Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Chapter IV. The registry system

Article 28. Establishment of the Registry

1. Article 28 is based on recommendations 1(f) of the Secured Transactions Guide and 1 of the Registry Guide. It provides for the establishment by the enacting State of a public registry to give effect to the provisions of the Model Law relating to the registration of notices with respect to security rights (the "Registry"). In particular, under article 18 of the Model Law, a non-possessory security right in an encumbered asset is effective against third parties, as a general rule, only if a notice with respect to the security right is registered in the Registry (see Secured Transactions Guide, chap. III, paras. 29-46 and the Registry Guide, paras. 20-25). Under article 29 of the Model Law, the time of registration, again as a general rule, is also the basis for determining the order of priority between a security right and the right of a competing claimant (see Secured Transactions Guide, chap. V, paras. 42-50, and the Registry Guide, paras. 36-46).

2. Depending on its drafting conventions, an enacting State may decide to incorporate the provisions relating to the registry system in its secured transactions law implementing the Model Law, in a separate law or other legal instrument, or in a combination thereof. To preserve flexibility for enacting States, all the relevant registry-related provisions are collected in a set of rules presented after article 28 of the Model Law and called the "Model Registry Provisions".[1]

3. These Provisions have been drafted to accommodate flexibility in registry design. That said, the Secured Transactions Guide recommends that, if possible, the Registry should be electronic in the sense of permitting information in registered notices to be stored in electronic form in a single database (see Secured Transactions Guide, rec. 54 (j)(i), and chap. IV, paras. 38-41 and 43). An electronic registry database is the most efficient and practical means to implement the recommendation of the Secured Transactions Guide that the registry record should be centralized and consolidated (see rec. 54 (e), and chap. IV, paras. 21-24).

4. Access to registry services should be electronic in the sense of permitting users to directly submit notices and search requests over the Internet or via direct networking systems (see Secured Transactions Guide, rec. 54 (j)(ii), and chap. IV, paras. 23-26 and 43). This approach eliminates the risk of registry staff error in entering the information contained in a paper notice into the registry record, facilitates speedier and more efficient access to registry services by users, and greatly reduces the operational costs of the Registry, translating into lower fees for registry users (for a discussion of these advantages and guidance on implementation, see Registry Guide, paras. 82-89).

5. The scope of application of the Model Law is limited to consensual security rights and outright transfers of receivables (see arts. 1 and 2, subpara. (kk)). While the Model Law does not recommend this approach, some States provide for the registration of notices of rights and/or preferential claims created by operation of law in favour of specified classes of creditors (e.g. the State for tax claims and employees for employment benefits; see Registry Guide, paras. 46 and 51). If the enacting State follows this approach, it will need to specify the priority effect of registration (see art. 37 of the Model Law and A/CN.9/914, para. 31; see also Secured Transactions Guide, chap. V, para. 90, and Registry Guide, para. 51).

6. In addition, some States provide for the registration of notices of judgments obtained by a creditor of a grantor and treat registration as generally giving priority to the judgment creditor over consensual security rights that are subsequently made effective against third parties by registration. If the enacting State adopts this approach, it will need to adjust its general creditor-debtor law and its version of the

[1] A reference to an article in this chapter is a reference to an article of the Model Registry Provisions, unless otherwise indicated.

Model Law (see art. 37 of the Model Law and A/CN.9/914, para. 31; see also Registry Guide, para. 40).

7. Moreover, some States provide for the registration of the ownership rights of consignors and lessors under commercial consignments of inventory and long-term operating leases of tangible assets. Even though these arrangements do not function to secure an obligation, bringing them within the registration regime ensures that the consignor's or lessor's right is publicized to third parties who deal with the consigned or leased goods in the hands of the consignee or lessee (see Secured Transactions Guide, Introduction, para. 26, and Registry Guide, paras. 50 and 78).

Model Registry Provisions

Section A. General rules

Article 1. Definitions and rules of interpretation

8. Article 1 contains definitions of key terms used in the Model Registry Provisions. These terms are derived from the Registry Guide (see Registry Guide, paras. 8 and 9). If the enacting State decides to incorporate the Model Registry Provisions in its enactment of the Model Law, these definitions should be included in the provision implementing article 2 of the Model Law (with the exception of the definition of the term "registry" which is also included in art. 2, subpara. (ee); see footnote 9 of the Model Law). In general, the definitions are self-explanatory. Where elaboration is needed, it is provided in the commentary on the relevant articles below.

Article 2. Grantor's authorization for registration

9. Article 2 is based on recommendations 71 of the Secured Transactions Guide (see chap. IV, para. 106) and 7(b), of the Registry Guide (see para. 101). Paragraph 1 provides that the registration of an initial notice is ineffective unless authorized by the grantor in writing (the rule is formulated in the negative, as the effectiveness of a registration is also subject to other requirements). If the grantor's authorization covers a narrower range of encumbered assets than that described in the registered notice, the registration would be effective only with respect to the assets to the extent authorized by the grantor. To ensure that this rule does not interfere with the efficiency of the registration process, paragraph 6 confirms that the Registry is not entitled to require evidence of the existence of the grantor's authorization.

10. Paragraphs 4 and 5 confirm that: (a) the grantor's authorization need not be obtained before registration; and (b) the conclusion of a written security agreement automatically constitutes authorization without the need to include an express authorization clause. Thus, the post-registration conclusion of a security agreement will constitute retrospective "ratification" of an initially unauthorized registration only with respect to the assets covered by the security agreement.

11. Paragraph 2 requires the grantor's authorization for the registration of an amendment notice that adds encumbered assets to those described in the prior registered notice. There is no need to register an amendment notice (and thus no need to obtain the authorization of the grantor) with respect to "additional assets" that are proceeds of encumbered assets described in a registered notice if the proceeds are: (a) of a type that fall within the existing description (for example, the description covers "all tangible assets" and the grantor exchanges one type of tangible asset for another; see Secured Transactions Guide, rec. 39); or (b) "cash proceeds", that is, money, receivables, negotiable instruments or funds credited to a bank account (see art. 19, para. 1, of the Model Law).

12. Under the bracketed language in paragraph 2, the grantor's written authorization must also be obtained for the registration of an amendment notice to

increase the maximum amount set out in a registered notice for which the security right to which the registration relates may be enforced. This provision is only needed in systems that require this information to be set out in the security agreement and in the registered notice (see art. 8, subpara. (e), of the Model Registry Provisions and art. 6, para. 3(d) of the Model Law).

13. Where an amendment notice seeks to add a new grantor, paragraph 3 generally requires the additional grantor's authorization to be obtained. The grantor's authorization is not required for the registration of an amendment notice to disclose a post-registration change in the identifier of the grantor for the purposes of article 25; nor is the grantor's authorization needed to register the identifier of a buyer of the encumbered assets as a new grantor for the purposes of article 26, option A or option B.

14. If the grantor did not authorize the registration of the notice, or only authorized the registration of a notice covering a narrower range of encumbered assets, or has withdrawn an initial authorization, article 20 provides a procedure by which the grantor can compel the secured creditor to register a cancellation or amendment notice, as the case may be, to reflect the terms of the actual security or other agreement, if any, between the parties.

15. Registration of an amendment notice that adds encumbered assets, increases the maximum amount or adds a new grantor takes effect only from the time of the registration of the amendment notice regardless of whether authorization was obtained before or after its registration (see art. 13, para. 1).

Article 3. One notice sufficient for multiple security rights

16. Article 3 is based on recommendations 68 of the Secured Transactions Guide (see chap. IV, para. 101) and 14 of the Registry Guide (see paras. 125 and 126). It confirms that a single registered notice is sufficient to achieve the third-party effectiveness of security rights arising under one or more security agreements between the grantor and the secured creditor. This rule applies regardless of whether the agreements are related to one another or are separate and distinct, as where, for example, the initial security agreement covered the grantor's tangible assets and the parties subsequently conclude a new security agreement creating a security right in the grantor's receivables.

17. It should be emphasized that a single registration is sufficient under article 3 only to the extent that the information in the registered notice corresponds to the content of all the security or other agreement between the parties (see Registry Guide, para. 126). If, in the above-mentioned example, the registered notice described the encumbered assets as "all the grantor's tangible assets", a new initial notice (or an amendment to the existing notice) would have to be registered for the security right in grantor's receivables under the subsequent agreement to be effective against third parties, and that notice would take effect against third parties only from the time of its registration (see arts. 13, para. 1, and 29 of the Model Law). On the other hand, if the description in the registered notice covered "all of the grantor's movable assets", it would be sufficient to achieve the third-party effectiveness of its security right under both the initial and subsequent agreements, and its priority would date from the time of the initial registration (see art. 29 of the Model Law).

Article 4. Advance registration

18. Article 4 is based on recommendations 67 of the Secured Transactions Guide (see chap. IV, paras. 98-101) and 13 of the Registry Guide (see paras. 122-124). It confirms that a registration may be made before the creation of a security right to which the notice relates. This enables a security right under a security agreement covering after-acquired assets of the grantor to be made effective against third parties by a single registration before the assets are actually acquired by the grantor and the security right comes into existence.

19. Article 4 also confirms that a registration may be made before the conclusion of any security agreement between the parties to which the notice relates. As already noted in relation to article 2 (see para. 9 above), the underlying security agreement does not have to be submitted to the Registry. Advance registration is useful because it enables a secured creditor to establish its priority ranking against competing secured creditors under the general first-to-register priority rule in article 29 of the Model Law even before the security agreement with the grantor is formally concluded. However, advance registration does not give the secured creditor priority over other categories of competing claimants, if they acquire rights in the encumbered assets before the security agreement is actually entered into and the other requirements for creation of the security right to which the notice relates are satisfied (see, notably, arts. 34, 36 and 37 of the Model Law).

20. Advance registration may be prejudicial to the grantor identified in a registered notice if a security agreement is never concluded or covers a narrower range of assets than those described in the registered notice. To protect the grantor in this scenario, article 20 provides a procedure to enable the grantor to obtain the compulsory amendment or cancellation of the registered notice, as the case may be.

Section B. Access to registry services

Article 5. Conditions for access to registry services

21. Article 5 is based on recommendations 54, subparagraph (c), (f) and (g), and 55(b), of the Secured Transactions Guide (see chap. IV, paras. 25-228) and 4, 6 and 9 of the Registry Guide (see paras. 95-97 and 103-105).

22. Paragraphs 1 and 3 confirm that the Registry must be public in the sense that any person is entitled to register a notice or search the registry record subject only to meeting the conditions governing access. For both types of service, access requires that the registrant must submit the prescribed form of notice or search request and pay or make any arrangements to pay the prescribed fees, if any (as to the latter, see art. 33).

23. Under paragraph 1(b), a registrant, as opposed to a searcher, additionally must identify itself to the Registry in the prescribed manner. This additional requirement is aimed at assisting the person identified in a registered notice as the grantor to determine the identity of the registrant in the event that the grantor did not authorize the registration (see Registry Guide, para. 96). This consideration must be balanced against the need to ensure efficiency and speed in the registration process. Accordingly, the evidence of identity required of a registrant should be that which is generally accepted as sufficient in day-to-day commercial transactions in the enacting State (for example, an identity card, driver's licence or other state-issued official document) provided it includes the registrant's contact details.

24. If access to registry services is refused, paragraph 4 requires the Registry to communicate the specific reason (for example, the registrant failed to use the prescribed form or to pay the prescribed fee) "without delay". What this means depends on the mode by which the notice or search request is submitted to the Registry. If the system is designed to enable users to submit notices and search requests through electronic means of communication directly to the Registry, the system should be programmed to automatically communicate the reason during the registration process and display the reason on the registrant's screen. If the system also permits notices and search requests to be submitted in paper form, the registry staff will need a reasonable period of time to verify compliance with the conditions of access and prepare and communicate a response.

25. To facilitate efficient and secure access to registry services, the Registry should be organized to accept payments made electronically in a manner that ensures the confidentiality of financial information submitted by users (see Registry Guide, para. 138). To facilitate efficient access by frequent users in particular (such

as financial institutions, automobile dealers or other suppliers of goods on credit, lawyers and other intermediaries), they should be given the option of setting up an account that enables them to deposit funds to pay for their ongoing requests for services.

26. To limit the risk of registration of an amendment or cancellation notice that is not authorized by the person identified in the initial notice as the secured creditor, paragraph 2 requires persons who submit an amendment or cancellation notice for registration to satisfy the prescribed secure access requirements. For example, registrants may be required to set up a password-protected account when submitting an initial notice and submit all amendment and cancellation notices through that account. Alternatively, the system might be designed to automatically assign a unique user code to registrants upon registration of an initial notice, with that code then required to be entered on all amendment and cancellation notices submitted for registration (with respect to the effectiveness of the registration of unauthorized amendment or cancellation notices, see art. 21).

Article 6. Rejection of the registration of a notice or a search request

27. Article 6 is based on recommendations 8 and 10 of the Registry Guide (see paras. 97-99 and 106). Paragraph 1 obligates the Registry to reject the registration of a notice if no information or illegible information has been entered in any one of the mandatory designated fields in the notice. As all mandatory fields must be completed for a registered notice to be effective, this provision ensures that submitted notices that are self-evidently ineffective are never entered into the registry record. For example, art. 8, paragraph (c), requires an initial notice to include a description of the encumbered assets. If no information or only illegible information is entered in the field reserved for setting out the description, the registration will be rejected. On the other hand, the registration will be accepted if legible information is set out in the field designated for entering a description, even if the information that is entered is incorrect or incomplete, for example, the registrant mistakenly entered the address of the grantor in the designated description field.

28. Paragraph 2 obligates the Registry to reject a search request if no information or illegible information is entered in one of the designated fields for entering a search criterion. Since searchers are entitled to search by either the identifier of the grantor or the registration number assigned to the initial notice (see art. 22), it is sufficient if legible information is entered into at least one of the search criterion fields.

29. To avoid any arbitrary decisions on the part of the Registry, paragraph 3 confirms that the Registry may not reject the registration of a notice or search request where the registrant or searcher satisfies the access conditions set out in paragraphs 1 and 2 respectively.

30. Paragraph 4 requires the Registry to provide the reason for rejecting the registration of a notice or a search request without delay. As already noted (see para. 24 above), the mode of communication of the reasons depends on whether the notice or search request was submitted in paper form or through electronic means directly to the Registry.

Article 7. Information about the registrant's identity and scrutiny of the form or contents of a notice by the Registry

31. Article 7 is based on recommendations 54(d), and 55(b), of the Secured Transactions Guide (see chap. IV, paras. 15-17 and 48) and 7 of the Registry Guide (see paras. 100 and 102). Paragraph 1 obligates the Registry to maintain the identity information submitted by registrants in compliance with article 5, paragraph 1(b), and to provide that information upon request to the person identified in the registered notice as the grantor. While this information does not form part of the public or archived registry record, it nonetheless must be preserved by the Registry

in a manner that enables this information to be retrieved in association with the registered notice to which it relates. This is consistent with the rationale for obtaining and preserving this information which is to assist the grantor in identifying the registrant in cases where the registration of the notice was not authorized by the grantor (see para. 22 above). In order to ensure that this objective is balanced against the need to facilitate efficiency of the registration process, paragraph 2 provides that the Registry may not require further verification of the identity information provided by a registrant under article 5, paragraph 1(b). With the same objective in mind, paragraph 3 generally prohibits the Registry from scrutinizing the form or content of notices and search requests submitted to it except to the extent needed to give effect to articles 5 and 6.

Section C. Registration of a notice

Article 8. Information required in an initial notice

32. Article 8 is based on recommendations 57 of the Secured Transactions Guide (see chap. IV, para. 65) and 23 of the Registry Guide (see paras. 157-160). It sets out the items of information required to be entered in the appropriate designated fields in an initial notice. The items of information specified in subparagraphs (a), (b) and (c) are the subject of articles 9, 10 and 11, and the reader is generally referred to the commentary on those articles. It should be noted that where a notice relates to more than one grantor or secured creditor, the required information should be entered in separate designated fields for each grantor or secured creditor.

33. Subject to its privacy laws, the enacting State may decide to require "additional information" (such as the birth date of the grantor or an identification number issued by the enacting State) to be entered to assist in uniquely identifying a grantor where there is a risk that many persons may have the same name (see bracketed text in art. 8, subpara. (a)). If this approach is adopted, the form of notice prescribed by the enacting State should provide a separate designated field for entering the "additional information". The enacting State should also specify the type of additional information to be provided and make its inclusion mandatory in the sense that it must be entered in the relevant field for a notice to be registered. If the required additional information is an identification number issued by the enacting State, it will also be necessary to address cases in which the grantor is not a citizen or resident of the enacting State, or for any other reason has not been issued an identification number. Subject to privacy considerations, the enacting State might, for example, provide that the number of the grantor's foreign passport or some other foreign official document is a sufficient substitute (on all these points, see Registry Guide, rec. 23 (a)(i), and paras. 167-169, 171, 181-183, 226, as well as Annex II, Examples of registry forms).

34. Subparagraph (d) appears within square brackets, as an indication of the duration of registration on an initial notice is required only if the enacting State adopts options B or C of article 14 (see paras. 53-55 below; see also Registry Guide, paras. 199-204). Subparagraph (e) also appears within square brackets, as an indication of the maximum amount for which the security right may be enforced is required only if the enacting State implements the approach set out in article 6, paragraph 3 (d), of the Model Law, which also appears within square brackets (see A/CN.9/914, para. 5).

Article 9. Grantor identifier

35. Article 9 is based on recommendations 59 and 60 of the Secured Transactions Guide (see chap. IV, paras. 68-74), as well as recommendations 24 and 25 of the Registry Guide (see paras. 161-183). It provides that the identifier of the grantor is the name of the grantor. It then sets out separate rules for determining the name of the grantor depending on whether the grantor is a natural person or a legal person or other entity.

36. If the grantor is a natural person, paragraph 1 provides that the grantor's name is the name that appears in the official document specified by the enacting State as the authoritative source. If not all grantors possess a common official document (e.g., an identity card or driver's licence), the enacting State will need to specify alternative official documents as authoritative sources and specify the hierarchy of authoritativeness among them (for examples of possible approaches, see Registry Guide, paras. 163-168).

37. As already noted (see para. 33 above), the enacting State may require the entry of a State-issued identity or other official number as additional information to assist in uniquely identifying a grantor. Instead of the name, the enacting State may decide to make this number a grantor identifier. Since the grantor identifier is the criterion used to search the registry record, this approach is only feasible if there is a reliable record or other objective source that searchers can consult to determine a person's official number, If this approach is adopted, it will also be necessary for the enacting State to address cases in which the grantor is not a citizen or resident of the enacting State, or for any other reason has not been issued an identification number. The enacting State might, for example, provide that the number in some other foreign official document is a sufficient substitute provided again that the relevant number is accessible to searchers. Otherwise, the name of the foreign grantor will have to be used as the grantor identifier (see Registry Guide, paras. 168 and 169).

38. Paragraph 2 requires the enacting State to indicate which components of the name of a grantor who is a natural person must be entered in the notice. The enacting State will need to specify, for example, whether only the given and family name of the grantor is required or whether a middle name or initial, if any, must also be included. It will also need to address the scenario where the grantor's name consists of a single word, for example, by providing that that word should be entered in the family name field and by ensuring that the registry system is designed so as not to reject notices that have no information entered in the other name fields (see Registry Guide, para. 165).

39. Paragraph 3 requires the enacting State to address how the grantor's name is to be determined where the grantor's name has legally changed under applicable law after the issuance of the official document designated in paragraph 1 as the authoritative source of the grantor's name (for example, as a result of an application for a name change under change of name legislation; see Registry Guide, para. 164(f)).

40. Paragraph 4 provides that where the grantor is a legal person the name of the grantor is the name that appears in the relevant document, law or decree to be specified by the enacting State constituting the legal person (see Registry Guide, paras. 170-173).

41. Paragraph 5, which appears in square brackets, provides for the possibility that an enacting State may wish to require additional information pertaining to the grantor's status to be entered in a notice in special cases, such as where the grantor is subject to insolvency proceedings (see Registry Guide, paras. 174-179). If the enacting State adopts this approach, it must ensure that the prescribed form of notice contains a field to enter the relevant status information.

Article 10. Secured creditor identifier

42. Article 10 is based on recommendations 57(a) of the Secured Transactions Guide (see chap. IV, para. 81) and 27 of the Registry Guide (see paras. 184-189). It largely replicates the rules in article 9 for determining the identifier of the grantor. Unlike under article 9 (read together with art. 8, subpara. (a)), however, under article 10 (read together with art. 8, subpara. (b)), the registrant may enter the name of a representative of the secured creditor (e.g. a law firm or other service provider or an agent of a syndicate of lenders). This approach is intended to protect the privacy of the actual secured creditor and facilitate the efficiency of arrangements such as syndicated loans where there are multiple secured creditors who may change

over time. This approach does not have a negative impact on the grantor, who would typically know the identity of the actual secured creditor from their dealings, or third parties, as long as the representative is authorized to act on behalf of the actual secured creditor (see Registry Guide, paras. 186 and 187). It should also be noted that, as the security right is created by an off-record security agreement, the entry of the name of a representative as the secured creditor on a registered notice does not make the representative the actual secured creditor.

Article 11. Description of encumbered assets

43. Article 11 is based on recommendations 63 of the Secured Transactions Guide (see chap. IV, paras. 82-86) and 28 of the Registry Guide (see paras. 190-192). The test for the adequacy of a description of the encumbered assets in a registered notice in paragraph 1 parallels the test for the adequacy of a description of the encumbered assets in a security agreement (see art. 9 of the Model Law). That said, the description in a registered notice need not be identical to the description in any related security agreement so long as it reasonably allows identification of the relevant encumbered assets in accordance with the test in paragraph 1.

44. Paragraph 2 confirms that a description in a registered notice that refers to all of the grantor's movable assets or to all of the grantor's assets within a specified generic category (for example, all receivables owing to the grantor) satisfies the test in paragraph 1 that the description reasonably allow identification of the encumbered assets. It follows that a generic description will be sufficient even if any related security agreement only covers a specific asset within that broad generic category (for example, the description in the registered notice refers to all "tangible assets of the grantor", whereas the security agreement only covers a specific tangible asset). However, the effectiveness of the registration in this scenario is dependent on the authorization of the grantor pursuant to article 2; if the grantor only authorized a registration covering a specific asset, the registration will only be effective with respect to that asset. Moreover, the grantor is entitled, pursuant to article 20, paragraph 1, to compel the secured creditor to register an amendment notice that narrows the description of the assets in the registered notice to correspond to the encumbered assets actually covered by the security agreement unless the grantor separately authorized the secured creditor to register a broader description (see para. 8 above) and has not withdrawn that authorization.

45. The secured transactions laws of some States adopt special rules for describing specified classes of high-value assets that have a significant resale market alphanumerically (by a "serial number"). In States that adopt this approach, entry of the serial number in its own designated field is required in the sense of being necessary to preserve the priority of the security right as against specified classes of third parties that acquire rights in the asset. Enacting States that are interested in adopting this approach will need to revise the priority rules of the Model Law to specify the priority consequences of a failure to enter the relevant serial number and to revise the registry design and the registry-related provisions to accommodate serial-number-based registration and searching (for the rationale for, and the advantages and disadvantages of this, approach, see Registry Guide, paras. 131-134; for the consequences of a failure of entering the serial number or an error in entering the serial number, see Registry Guide, paras. 193 and 213; and for the registry design and registry provisions needed to implement this approach, see Registry Guide, para. 266). It should be noted that even in legal systems that do not adopt this approach, a registrant may choose to include the serial number in the description it enters in the notice as a convenient method of describing the encumbered asset in a manner that reasonably allows its identification (see Registry Guide, paras. 194 and 212). On the other hand, using the specific serial number as the description may be risky since any error would render the description insufficient whereas a more generic description (e.g. a description of the grantor's automobile by make and model) may reduce the risk of error.

46. There is no need to register an amendment notice to describe proceeds of an encumbered asset in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account (see art. 19, para. 1, of the Model Law). If the proceeds take any other form and are not already covered by the description of the encumbered assets in a registered notice, the secured creditor must register an amendment notice to add a description of the proceeds within a short period of time (e.g. 20-25 days) after they arise in order to preserve the third-party effectiveness and priority of its security right in the proceeds (see arts. 19, para. 2, and 32 of the Model Law). An amendment is necessary because otherwise a search result would not disclose the potential existence of a security right in the assets constituting the proceeds (see Registry Guide, para. 197).

Article 12. Language of information in a notice

47. Article 12 is based on recommendation 22 of the Registry Guide (see paras. 153-156; the Secured Transactions Guide includes a discussion of this matter in chapter IV, paras. 44-46, but does not include a recommendation). Paragraph 1 requires the information contained in a notice to be expressed in the language or languages to be specified by the enacting State with the exception of the names and addresses of the grantor and the secured creditor or its representative. Typically, the enacting State will require registrants to use its officially recognized language or languages. As the names and addresses of the parties generally need not be translated (see para. 48 below) and the and other items of information, such as the period of effectiveness of the registration, required to be entered in a notice can be expressed by numbers, registrants will only need to translate the description of the encumbered assets. Where the description of the encumbered assets is not expressed in the required language, the registration of the notice would be ineffective as seriously misleading (see art. 24, para. 4).

48. Paragraph 2 requires all information in a notice to be in the character set prescribed and publicized by the Registry. Otherwise, the notice will be rejected as illegible under article 6, paragraph 1 (a) (for the same rule with respect to search requests, see art. 6, para. 2). Accordingly, where the names and addresses of the grantor and secured creditor or its representative are expressed in a language that uses a different character set than that prescribed by the Registry, they will need to be adjusted or transliterated to conform to the prescribed character set (see Registry Guide, para. 155).

Article 13. Time of effectiveness of the registration of a notice

49. Article 13 is based on recommendations 70 of the Secured Transactions Guide (see paras. 102-105) and 11 of the Registry Guide (see paras. 107-112). Paragraph 1 provides that the registration of an initial or amendment notice submitted to the Registry is effective only once the information in the notice is entered into the public registry record so that it is accessible to searchers (see the definition of the term “registry record” in art. 1, subpara. (l)); and paragraph 3 requires the Registry to record that date and time and to make this information available to searchers.

50. In view of the importance of the timing and order of registration to the third-party effectiveness and priority of a security right, paragraph 2 requires the Registry to enter the information into the registry record “without delay” and in the order in which it was submitted. The meaning of the words “without delay” depends in practice on the design of the registry system. However, if the system enables users to submit information in a notice directly to the Registry through electronic means of communication without the intervention of registry staff, those words will typically mean “with little or no delay” between the time when the information in a notice is submitted to the Registry and the time when it becomes available to searchers. But in systems that permit or require the use of paper notice forms, there will inevitably be some time lag since the registry staff must enter the information

on the paper notice form into the registry record. Thus, in this case, the words "without delay" will mean "as soon as practically feasible".

51. Paragraph 4 deals with the time of effectiveness of the registration of a cancellation notice. Option A provides that the registration of a cancellation notice is effective once the information in the registered notices to which the cancellation notice relates is no longer publicly searchable. Option A should be adopted by enacting States that adopt option A or B of article 21, since these options require the Registry to remove information in a registered notice from the public registry record and archive it upon registration of a cancellation notice pursuant to option A of article 30. Option B provides that the registration of a cancellation notice becomes effective once the information in the registered notices to which the cancellation notice relates is entered into the registry record so as to be accessible to searchers. Option B should be adopted by enacting States that adopt option C or D of article 21 since these options require the Registry to retain the information in all registered notices, including cancellation notices, on the public registry record until the effectiveness of the registration lapses pursuant to option B of article 30.

52. Option A and option B of paragraph 5 require the Registry to record the date and time of effectiveness of the registration of a cancellation notice as determined by option A and option B of paragraph 4 respectively. Accordingly, enacting States that adopt option A of paragraph 4 should adopt option A of paragraph 5, while enacting States that adopt option B of paragraph 4 should adopt option B of paragraph 5.

Article 14. Period of effectiveness of the registration of a notice

53. Article 14 is based on recommendations 69 of the Secured Transactions Guide (see chap. IV, paras. 87-91) and 12 of the Registry Guide (see paras. 113-121, 240 and 241). It offers enacting States a choice of three different approaches to the determination of the initial period of effectiveness (or duration) of the registration of a notice. If option A is adopted, an initial notice (and any associated amendment notice) is effective for the period specified by the enacting State. If option B is adopted, registrants are permitted to choose the desired period of effectiveness. If option C is adopted, registrants are likewise permitted to choose the period of effectiveness but only up to the maximum number of years specified by the enacting State.

54. Paragraphs 2 and 3 permit the period of effectiveness of a notice to be extended and re-extended before its expiry by the registration of an amendment notice. Paragraph 2 of option B permits the period of effectiveness to be extended at any time before its expiry, whereas paragraph 2 of options A and C permit an extension to be made only during the period specified by the enacting State (e.g. four to six months) before expiry of the current period of effectiveness. The reason for this difference is to prevent a registrant from undermining the maximum period of effectiveness specified by the enacting State under options B and C by extending the period of effectiveness of a registration at an earlier point. Under paragraph 4 of option A, the duration of the registration would be extended for the period specified by the enacting State as the period of effectiveness of an initial notice. Under paragraph 4 of option B or option C the registrant is permitted to choose the duration of the further period of effectiveness, but only up to the maximum number of years prescribed by the enacting State in the case of option C.

55. If option B or option C is adopted, the period of effectiveness of the registration must be included in a notice (see art. 8, subpara. (d)). States that adopt either of these options will also need to prescribe how registrants must enter the desired period of effectiveness in the notice. The notice form might be designed to enable registrants to simply enter the desired number of whole years or to permit registrants to enter or select the specific day, month and year on which the registration is to expire.

Article 15. Obligation to send a copy of a registered notice

56. Article 15 is based on recommendations 55 subparagraphs (c), (d) and (e) of the Secured Transactions Guide (see chap. IV, paras. 49-53) and 18 of the Registry Guide (see paras. 145-149). Paragraph 1 obligates the Registry to send a copy of the information in a registered notice to the person identified in the notice as the secured creditor without delay after the registration becomes effective. To avoid delay, the registry system should be designed to automatically generate and transmit the copy electronically to the secured creditor (see Registry Guide, para. 146). This enables the secured creditor to verify the correctness of the information in the registered notice and to alert it to the erroneous or unauthorized registration of an amendment or cancelation notice (for the effectiveness of the registration of amendment or cancellation notices not authorized by the secured creditor, see art. 21; see also Registry Guide, paras. 249-259; for the liability of the Registry for failure to send a copy of the information in a registered notice, see art. 32).

57. Paragraph 2 obligates the secured creditor to forward a copy of the information it receives from the Registry pursuant to paragraph 1 to the person identified in the notice as the grantor. The purpose of this requirement is to enable the grantor to take the steps necessary to correct the registry record if the registration was wholly or partially unauthorized by that person (see art. 20). The secured creditor must comply with this obligation before the expiry of the period specified by the enacting State after it receives a copy of the registered notice (e.g. 14 days). The copy must be sent to the grantor at its address set forth in the registered notice or at the grantor's new address if the secured creditor knows that the grantor has changed its address and knows or could reasonably discover that address. Placing the burden of forwarding a copy of the registered notice to the grantor on the secured creditor rather than on the Registry is the result of a cost-benefit analysis and is intended to avoid creating an additional burden for the Registry which could negatively affect its efficiency (see Registry Guide, para. 149).

58. Paragraph 3 provides that non-compliance by the secured creditor with its obligation under paragraph 2 does not by itself affect the effectiveness of the registration. Paragraph 4 limits the secured creditor's liability for non-compliance to a nominal amount (to be specified by the enacting State) and any actual loss or damage caused by its non-compliance. Paragraph 4 leaves to the relevant law of the enacting State related matters, such as the standard of liability and the way in which the actual loss or damage is to be measured.