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Security Interests

Recommendations of the draft Legislative Guide on Secured Transactions

Note by the Secretariat*

Addendum

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* This document is submitted later than the required ten weeks prior to the start of the meeting because of the need to complete consultations and to finalize consequent amendments.



V. Effectiveness of the security right against third parties and registration

Part I. Effectiveness of the security right against third parties

Purpose

The purpose of the provisions of the law on the effectiveness of a security right against third parties is to create a foundation for the predictable, fair and efficient ordering of priorities by:

(a) Requiring registration as a pre-condition to the effectiveness of a security right against third parties, except where exceptions and alternatives to registration are appropriate in the light of countervailing commercial policy considerations; and

(b) Establishing the legal framework to support a simple, cost-efficient and effective public registry system for the registration of notices with respect to security rights.

[Meaning of third-party effectiveness]

34 bis. The law should provide that a security right is effective against third parties if it has been effectively created as provided in recommendation 7 and made effective against third parties as provided in recommendation 35 or 36.]

[Note to the Working Group: The Working Group may wish to note that the meaning of third-party effectiveness is addressed in recommendation 35 (see text in square brackets). However, because of its importance for both the third-party effectiveness and the priority chapter and the fact that these notions will be new to many legal systems, the Working Group may wish to address this matter in a separate recommendation at the beginning of this chapter. If the Working Group decides to retain recommendation 34 bis, which appears within square brackets, the bracketed text in recommendation 35 may be deleted. Recommendation 34 bis is supplemented by recommendations 34 ter to 34 quinquies, which further clarify the meaning of third-party effectiveness.]

Effectiveness of a security right that is not effective against third parties

34 ter. The law should provide that a security right that has been created under recommendation 7 is effective against the grantor even if it is not effective against third parties.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that a security right that is not effective against third parties has no effects as against general creditors or secured creditors whose security rights are not effective against third parties. This approach is consistent with the meaning of third-party effectiveness adopted in the draft Guide. The practical result of this approach is that no issue of priority arises in the case of security rights that are not effective against third parties and, therefore, such rights would be equal between them and with the rights of general creditors (unless they become judgement creditors, see A/CN.9/WG.VI/WP.26/Add.6, rec. 71).]

Effectiveness of a security right that is effective against third parties after a transfer of the encumbered asset

34 quater. The law should provide that, except as provided in recommendations 68 bis, 69 and 69 bis [see A/CN.9/WG.VI/WP.26/Add.6], a security right in an asset continues after transfer of the asset. If the security right was made effective against third parties before the transfer, it does not cease to be effective against third parties solely as a result of the transfer.

[Note to the Working Group: The Working Group may wish to note that the rule stated in rec. 34 quater (droit de suite) is re-stated somewhat differently in rec. 68 (see A/CN.9/WG.VI/WP.26/Add.6). The Working Group may wish to consider whether this rule should be stated in this chapter or in the chapter on priority. The Working Group may also wish to note that the commentary will explain that the second sentence is intended to ensure that the mere transfer does not make a security right ineffective against third parties, unless, for example, the transfer results in a change of location of the asset and the loss of third-party effectiveness due to the application of another law (although, under recommendation 145, third-party effectiveness is preserved for a certain period of time after the change of location) or the secured creditor does not amend its notice to reflect the name of the transferee as a new debtor.]

General method for achieving third-party effectiveness of security rights

35. The law should provide that, except as otherwise provided in the recommendations of this chapter and the chapter on acquisition financing devices, a security right [, created in accordance with the recommendations in the chapter on creation,] is effective against third parties only if a notice with respect to the security right is registered in a general security rights registry, as provided in recommendations 47 ter to 60. Registration of such a notice does not create a security right.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that registration of a notice of a security right is a precondition for it to become effective against third parties but does not create the security right. Creation requires an off-registry agreement between the parties as provided in the recommendations of the chapter on creation.]

Alternatives to registration

36. As an alternative to registration, the law should provide that a security right in the following types of asset may be made effective against third parties as follows:

(a) In tangibles, by dispossessing the grantor of the encumbered asset, as provided in recommendations 39 and 44;

(b) [In consumer goods of a value less than [specify value] at the time of creation of the security right, automatically upon creation of a non-acquisition security right (for acquisition security rights in consumer goods, see A/CN.9/WG.VI/WP.24/Add.5, rec. 128) that is not subject to a specialized registration or to a title certificate system, as provided in recommendation 39 bis];

(c) In movable property with respect to which a security right may, by other law, be made effective against third parties by registration in a specialized registry

or by notation on a title certificate, by such registration or notation, as provided in recommendation 40;

(d) In proceeds, (i) automatically when the proceeds arise by achieving third-party effectiveness with respect to the original encumbered assets by registration before the proceeds arise[, but only if the proceeds are money, receivables negotiable instruments or rights to the payment of funds credited to a bank account], or (ii) by achieving third-party effectiveness with respect to the proceeds within a specified period after the proceeds arise, as provided in recommendations 41 and 41 bis;

(e) In a personal or property right securing payment or other performance of a receivable, negotiable instrument or other obligation, by achieving third-party effectiveness with respect to the receivable, negotiable instrument or other obligation, as provided in recommendation 41 ter;

(f) In a right to payment of funds credited to a bank account, by control, as provided in recommendation 43;

(g) In tangibles that are attachments at the time third-party effectiveness is achieved or that become attachments only subsequently, by registration with respect to the tangible as provided in recommendations 45, 46 and 46 bis; and

(h) In a mass or product by achieving third-party effectiveness [in a tangible before it becomes part of a mass or product] [in the mass or product within a certain time period after the asset becomes part of the mass or product], as provided in recommendation 47.

Concurrent methods

37. The law should confirm that different methods for achieving third-party effectiveness may be used for different items or kinds of encumbered assets, whether they are encumbered by the same security agreement or not.

Exclusive method

38. The law should provide that, except as provided in recommendation 36 (e), a security right in a right to drawing proceeds from an independent undertaking is made effective against third parties only by control, as provided in recommendation 42.

Continuity in third-party effectiveness

38 bis The law should provide that third-party effectiveness of a security right is continuous notwithstanding a change in the method by which it is made effective against third parties, provided that there is no time when the security right is not effective against third parties.

[Note to the Working Group: The Working Group may wish to note that recommendation 38 bis makes no separate reference to registration (i.e. advance registration before creation), as, if there is a change in the method of third-party effectiveness before registration lapses, the security will have been created and thus made effective against third parties.]

Lapse in registration or third-party effectiveness

38 ter. The law should provide that, if a security right has been registered as provided in recommendations 35 and 54 or made effective against third parties as provided in recommendations 35 and 36 and subsequently there is a period at which the security right is neither registered nor effective against third parties, registration or third-party effectiveness may be re-established. In such a case, registration or third-party effectiveness dates from the earliest time thereafter at which the security right is either registered or made effective against third parties.

[Note to the Working Group: The Working Group may wish to note that recommendations 38 bis and 38 ter track the language of recommendations 66 and 66 bis (see A/CN.9/WG.VI/WP.26/Add.6), under which priority dates from the time when third-party effectiveness is re-established or a notice with respect to the security right is registered. The Working Group may wish to consider whether the first sentence of recommendation 38 ter should be retained in this chapter as it deals with the lapse of registration or third-party effectiveness and the second sentence should be reflected only in the chapter on priority as it essentially deals with priority.]

The Working Group may also wish to note that the commentary will explain that third-party effectiveness may lapse where, for example, the secured creditor does not renew its registration before expiry of its initial term or where third-party effectiveness was obtained by delivery of possession of the encumbered assets to the secured creditor but the secured creditor later returns possession to the grantor. The commentary will also explain that third-party effectiveness does not lapse in such cases if the security right is registered or made effective against third parties before the lapse of the particular method of third-party effectiveness.

The commentary will include the following examples of situations where continuity in third-party effectiveness is preserved notwithstanding lapse in a particular method of third-party effectiveness.

On day 1, the grantor creates a security right in favour of the secured creditor who on the same day takes possession of the encumbered assets. On day 2, the secured creditor registers a notice about its security right and then relinquishes possession. Third-party effectiveness is continuous from day 1.

On day 1, the grantor creates a security right in favour of the secured creditor on day 1 who, on the same day, registers a notice of its security right. On day 2, the secured creditor, takes possession of the encumbered assets while registration lapses on day 3. Third-party effectiveness is continuous from day 1. The result is the same if the secured creditor registers again on day 4 and surrenders possession of the encumbered assets to the grantor on day 5.]

Third-party effectiveness of a security right in tangibles

39. The law should provide that a security right in tangibles may also be made effective against third parties through dispossession of the grantor.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that, as the term “tangibles” covers negotiable instruments and negotiable documents (see A/CN.9/WG.VI/WP.22/Add.1, para. 21 (i)), recommendation 39 applies to third-party effectiveness of security rights in

negotiable instruments and negotiable documents. As a result, a security right in a negotiable instrument or in a negotiable document is made effective against third parties by registration or dispossession of the grantor. Recommendation 44 adds special rules with respect to third-party effectiveness of security rights in negotiable documents and goods covered by negotiable documents. The Working Group may also wish to note that “dispossession” will be defined to mean real objective dispossession.

[Third-party effectiveness of a non-acquisition security right in low-value consumer goods]

39 bis. A non-acquisition security right in consumer goods of a value less than [specify value] at the time of creation of the security right [for acquisition security rights in consumer goods, see A/CN.9/WG.VI/WP.24/Add.5, rec. 128] that is not subject to a specialized registration or title certificate system is effective against third parties automatically upon creation of the security right.]

[Note to the Working Group: The Working Group may wish to note that there is no significant financing that involves non-acquisition security rights in consumer goods. Accordingly, the Working Group may wish to delete recommendation 39 bis (and recommendation 36 (b)). If this recommendation is retained, the Working Group may wish to consider that, as low value in one country may be high value in another country, the determination of low value should be based on a cost-benefit analysis that compares the potential realization value of an asset to the cost of registration. For the same reasons, the Working Group may also wish to exclude non-acquisition security rights in assets necessary for the livelihood, basic subsistence or health of an individual or a member of his or her household from the security rights covered in the Guide. The commentary could explain that, as a result, the same exceptions that apply typically to execution by judgement creditors would apply to secured creditors. Alternatively, the Working Group could include security rights in such assets in the scope of the Guide but apply to enforcement by secured creditors the same exemptions that apply to enforcement by judgements creditors.]

Third-party effectiveness of a security right in movables with respect to which there is a specialized registration or a title certificate system

40. The law should provide that a security right in movable property with respect to which a security right, by other law, may be made effective against third parties by registration in is a specialized registry or by notation on a title certificate is effective against third parties:

- (a) If it is registered in the specialized registry; or
- (b) A notation of it is made on the title certificate.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that registration in the general security rights registry as provided in recommendation 35 or registration in the specialized registry or notation on a title certificate as provided in recommendation 40 are the only available methods for achieving third-party effectiveness (i.e. third-party effectiveness may not be achieved by possession), if so provided in the relevant special legislation. The Working Group may also wish to note that recommendation 40 is supplemented by recommendation 65 in

A/CN.9/WG.VI/WP.26/Add.6, under which a security right registered in the specialized registry or with respect to which a notation was made in a title certificate has priority over a security right registered in the general security rights registry. Consequently, to ensure maximum priority over all classes of competing creditors, the security right should be made effective by registration in accordance to recommendation 40 rather than recommendation 35. This approach is justified by the need to preserve the reliability of the specialized registry or title certificate system for buyer of encumbered assets or other secured creditors who rely on these systems to ensure protection of their own rights.]

Third-party effectiveness of security rights in proceeds

41. [See A/CN.9/WG.VI/WP.26/Add.4, rec. 41.]

41 bis [See A/CN.9/WG.VI/WP.26/Add.4, rec. 41 bis.]

Third-party effectiveness of rights securing a receivable, negotiable instrument or any other obligation

41 ter. A personal or property right securing payment or other performance of a receivable, negotiable instrument or other obligation, is effective against third parties if the security right in the receivable, negotiable instrument or other obligation is effective against third parties.

[Note to the Working Group: The Working Group may wish to consider this recommendation together with recommendation 37 dealing with third-party effectiveness of a security right in a receivable (see A/CN.9/WG.VI/WP.26).]

Third-party effectiveness of security rights in rights to drawing proceeds from independent undertakings

42. [See A/CN.9/WG.VI/WP.24/Add.2, rec. 49.]

Third-party effectiveness of security rights in rights to payment of funds credited to bank accounts

43. [See A/CN.9/WG.VI/WP.26/Add.1, rec. 43.]

Third-party effectiveness of security rights in negotiable documents

44. [See A/CN.9/WG.VI/WP.26/Add.3, rec. 40.]

Third-party effectiveness of security rights in attachments

45. [See A/CN.9/WG.VI/WP.26/Add.4, rec. 45.]

46. [See A/CN.9/WG.VI/WP.26/Add.4, rec. 46.]

Third-party effectiveness of security rights in masses or products

47. [See A/CN.9/WG.VI/WP.26/Add.4, rec. 47.]

Part II. The registry system

Purpose

The purpose of the provisions of the law on the registry system is to clarify the functions, requirements and consequences of registration in the general security rights registry.

Functions of registration in the general security rights registry

47 bis. The law should provide that the functions of registration in the general security rights registry are to provide:

- (a) A method by which a security right may be made effective against third parties whether the security exists at that time or is created in the future;
- (b) A basis for applying priority rules based on the time at which a security right was made effective against third parties; and
- (c) An additional source for third parties, such as prospective secured creditors, judgement creditors, the grantor's insolvency representative and buyers of encumbered assets, to obtain information as to whether assets of the grantor may be encumbered then or subsequently by a competing a security right.

47 ter. The law should provide that a notice may be registered in the general security rights registry and may perform the functions mentioned in recommendation 47 bis whether the security right exists at the time of registration or is created subsequently and whether the grantor has a right in the assets covered in the notice at the time of registration or obtains a right in them subsequently.

[Note to the Working Group: The Working Group may wish to note that the commentary will relate recommendations 47 bis and 47 ter to the relevant recommendation on creation, recommendation 34 bis (distinguishing creation from third-party effectiveness), recommendation 35 (making the point that registration does not create a security right), recommendation 54 (pre-registration) and recommendation 40 (registration in a specialized registry).]

The commentary will also explain that that registry systems that require document filing (rather than notice filing as provided in rec. 48 (a) and 49, without any scrutiny or verification by anybody other than the registrant as provided in rec. 48 (b)), have constitutive effects (rather than the effects described in recommendation 47 bis) and require high (e.g. ad valorem) registration fees (rather than nominal fees based on cost recovery as provided in rec. 48 (g)) are not suitable for a speedy, efficient, inexpensive and user-friendly registry (see recs. 47 quater and 48 below), which is crucial for a secured transactions law in movable property that promotes increased access to lower-cost credit.]

Design principles

47 quater. The law should provide that the registry is designed to accomplish the functions set out in recommendation 47 ter, but only in a manner that ensures that registration and searching are speedy, efficient, inexpensive, user-friendly and publicly accessible. In particular, requirements as to content (specified items of information, not original documents) of the information submitted (“notice”) and the method of submission should be no more burdensome than is necessary to ensure that the registry system functions in the manner indicated in this chapter and produce the least possible risk of invalidation of the registration.

Speedy, cost-efficient and effective registration and searching

48. In order to ensure speedy, flexible, cost-efficient and effective registration and searching, the operational and legal framework of the registry should reflect the following characteristics:

(a) Registration is effected by registering a notice, containing the information specified in recommendation 49, as opposed to a copy of the underlying security documentation;

(b) A notice may be registered without verification or scrutiny by anybody other than the registrant;

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that false or misleading notices could be discharged under recommendation 57, while the question whether any penalties for knowingly registering a false or misleading notice should be imposed is left to tort, penal or other law. The commentary will also provide guidance as to the type of possible penalties.]

(c) A search may be made without the need for the searcher to justify the reasons for the search;

(d) The record of the registry is centralized and contains all notices of security rights registered under this law;

(e) Notices are indexed and can be retrieved by searchers according to the name of the grantor or according to some other reliable identifier of the grantor, such as State-issued identification or commercial registration number;

(f) The registry is open to the public;

(g) Fees for registration and searching are set at a level no higher than necessary to permit cost-recovery;

(h) Registrants may choose among multiple modes and points of access to the registry;

(i) Clear and concise guides to registration and searching procedures and are widely available and information about the existence and role of the registry is widely disseminated; and

(j) The registry operates reliable and consistent service hours compatible with the needs of potential registry users;

(k) To the extent the infrastructural capacity of the State permits, the registration system is computer-based. In particular,

- (i) Notices are stored in electronic form in a computer database;
- (ii) Registrants and searchers have immediate access to the registry record by electronic or similar means, including internet and electronic data interchange;
- (iii) The system is programmed to minimize the risk of entry of incomplete or irrelevant information (e.g. by requiring essential data fields to be completed);
- (iv) The system is programmed to facilitate speedy and complete retrieval of information and to minimize the practical consequences of human error.

Security and integrity of the registry

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

- (a) A registrant can obtain a record of the registration as soon as the registration information is entered so as to verify that the entry is accurate and complete;
- (b) The identity of registrants is verified in advance and evidence of identity is preserved;
- (c) [The registry] [The secured creditor] is obligated to forward a copy of a notice to the grantor named in the notice;
- (d) The registry is obligated to send a copy of any changes to a notice to the secured creditor named in the notice;
- (e) 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.
- (f) A back-up copy of the registry record is maintained so as to ensure that it can be reconstructed.

Liability for loss or damage

48 ter. The law should provide for the allocation of liability for loss or damage caused by an error in the administration or operation of the registration and searching system. If the system is designed to permit direct registration and searching by registry users without the intervention of registry personnel, the responsibility of the registry with respect to an inaccurate or incomplete printed registration or search result is limited to a system malfunction.

Required content of notice

49. The law should require the notice to contain only:

- (a) The names or other reliable identifiers of the grantor and the secured creditor, or its representative, as provided in recommendations 50 and 51, and an address for each one of them;

(b) A description of the asset covered by the notice as provided in recommendation 53;

(c) The duration of the registration as provided in recommendation 56; and

[(d) A statement of the maximum monetary amount for which the security right may be enforced [if the State determines that such information is helpful to facilitate subordinate lending.]]

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that, while the meaning of the term representative may be subject to other law, it included agent, trustee, or other person acting on behalf or in favour of the secured creditor.]

Sufficiency of grantor name in a notice

50. The law should provide that the name or other identifier of the grantor entered on a registered notice is sufficient only if the notice can be retrieved by searching the registry record according to the correct name or other identifier of the grantor.

51. Where the grantor is an individual, the law should provide that the grantor's name for the purposes of effective registration of a notice is the name that appears in specified official documents, such as a birth certificate, identity card, driver's licence or passport. Where the grantor is a legal entity, the law should provide that the grantor's name for the purposes of effective registration is the name that appears in the documents constituting the entity.

[Note to the Working Group: The Working Group may wish to note that the commentary will clarify that where the name of the grantor is listed in separate record maintained by the State, for example, a commercial or company register, the State may wish to set up links between the two registers to facilitate accurate data entry.]

Change in name or other identifier of the grantor

52. The law should provide that if the name of the grantor changes after a notice with respect to a security right is registered:

(a) A security right in an encumbered asset, in which the grantor had rights at the time of the name change remains effective against third parties;

(b) A security right in an asset acquired by the grantor or created within [...] days after the time of the name change, is effective against third parties; and

(c) A security right in an asset acquired by the grantor or created more than [...] days after the time of the name change, is not effective against third parties unless the notice is amended to provide the new name of the grantor.

[Note to the Working Group: The Working Group may wish to note that the commentary will provide guidance as to the length of the time period referred to in recommendation 52 (e.g. 60, 90 or 120 days). The commentary will also discuss various circumstances in which an entity may change its name (e.g. merger or acquisition).]

Sufficiency of description of assets covered by a notice

53. The law should provide that a description of the assets covered by a notice is sufficient if it enables a third person to identify the assets covered by the notice separate from other assets of the grantor. If the assets covered by the notice consist of a generic category or categories of movable property or of all present and after-acquired movable property, a generic description is sufficient.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that descriptions, such as “all inventory” or “all present and future assets”, would be sufficient.]

Advance registration

54. The law should provide that a notice with respect to a security right may be registered before or after creation of the security right.

[Note to the Working Group: The Working Group may wish to note that the purpose of this recommendation is to confirm that registration may take place before creation of the security right. The commentary will explain that the purpose of allowing advance registration is to enable secured creditors to ensure their priority position by registering – especially as against potential competing secured creditors – at the earliest time possible in order to facilitate the extension of credit upon conclusion of the formal security agreement (see also A/CN.9/WG.VI/WP.26/Add.6, rec. 66, according to which priority dates back from the time of registration (i.e. before creation of a security right, assuming that a security right comes into existence subsequently) or at the time of third-party effectiveness (i.e. creation plus registration or possession).]

One notice for multiple security agreements between the same parties

55. The law should provide that registration of a single notice is sufficient to ensure the third-party effectiveness of security rights created or to be created by all security agreements entered into between the same parties to the extent they cover items or kinds of movable property that fall within the description contained in the notice.

Duration and extension of notice

56. The law should specify the duration of a notice or permit the registrant to select the duration of a notice at the time of registration and extend it at any time before its expiry.

Time of effectiveness of notice or amendment

56 bis. The law should provide that a notice or its amendment takes effect when the information contained in the notice or its amendment is entered into the registry record so as to be disclosed on a search of the registry record.

[Note to the Working Group: The Working Group may wish to note that, if the registration system permits the submission of paper notices to the registry (as opposed to direct data entry by registrants), there will be some delay between receipt of the notice by the registrar and the time the information on the notice is entered into the record by registry staff so as to become available to searchers. In

such circumstances, the question arises as to the time when the registration should be effective, the time of receipt of the notice at the registry or the time the notice is entered into the record and becomes available to searchers. If the registration is effective when received by the registrar, a search will not disclose all legally effective registrations. To protect the information needs of third parties, recommendation 56 bis, therefore, makes the time of registration concomitant with searchability. Although this puts the risk associated with any delay on the secured creditor, the secured creditor is in a better position to take steps to protect itself than third parties. Moreover, the recommendations earlier outlined on the design and operation of the registry should ensure speedy and efficient registration procedures. In a fully electronic system that requires no intervention by registry staff entry of the notice and its availability to searchers is virtually simultaneous and this problem is significantly reduced.

The Working Group may also wish to note that the commentary will explain that an amendment may involve various changes, such as: (i) adding or deleting items or kinds of encumbered assets; (ii) adding or deleting the name of a grantor; (iii) recording a change in the name of a grantor or secured creditor; (iv) disclosing an assignment of the security right by the secured creditor named in the original registration to a new secured creditor; or (v) disclosing a subordination agreement or undertaking that affects a registered security right.]

Cancellation or amendment of notice

57. The law should provide that, if no security agreement has been completed between the parties or if the security right has been terminated by full payment or performance of all of the secured obligations and termination of any commitment to extend credit or if any information contained in the notice is not authorized by the grantor:

(a) The secured creditor must cancel or amend the notice within [...] days after the request of the grantor;

(b) The grantor is entitled to compel cancellation or amendment of a notice through a summary procedure;

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that the grantor may seek to cancel the notice under paragraph (b) even before expiry of the period under paragraph (a). In such a case, however, the grantor may have to bear any costs involved (see A/CN.9/593, para. 54). The Working Group may also wish to note that the commentary will provide guidance to States as to the length of the time period referred to in recommendation 58 (e.g. 20-30 days).]

(c) The grantor and the secured creditor may agree to cancel or amend the notice.

58. The law should provide that the secured creditor is entitled to cancel or amend a notice at any time.

59. The law should provide that the registrar should remove a notice from the searchable records of the registry within a short period of time after its cancellation, but the information in the cancelled notice and the fact of the cancellation should be archived so as to be capable of retrieval if necessary.

60. [The law should provide that, 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 the unamended notice remains effective] [to remain effective, the notice must be amended to indicate the name of the new secured creditor].]

[Note to the Working Group: The Working Group may wish to consider which of the alternatives reflected in recommendation 60 within square brackets is preferable (see A/CN.9/593, para. 56.)]
