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Addendum

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A. General remarks

1. Introduction

1. Certainty of rights in property is a central concern in most legal systems. Historically, actual possession was the basic way for establishing entitlements to movable or immovable property. Over time, as various subsidiary rights in land were developed, States developed other mechanisms for establishing and recording these rights. Some States relied on private record-keeping, for example, through the office of a notary, while other States developed public land-registry systems. These public registries typically recorded and indexed rights according to the geographic description of the immovable property in question.

2. The same concern preoccupied States when regulating rights in movable property. Again, physical possession of assets was deployed as an indicator of ownership, but, as the number of transactions involving a dissociation of ownership and possession of movable property increased (for example, leases, loans and sales with a reservation of title), States were obliged to develop other means for recording entitlement to movable property. Once again, some States relied on notaries to maintain such records. Other States developed public registry offices for rights in movable property.

3. The creation of security rights over movable property posed particular challenges. Because of the difficulty of recording and keeping track of these various security rights, given the mobility of movable property and its transformation over time, many States enacted prohibitions on the creation of non-possessory security rights. This meant that creditors that wished to acquire a security right in movable property belonging to a grantor were obliged to take physical possession of the property. In this way, possession could continue to play its traditional role. However, as the need for credit for businesses in particular expanded, and businesses came to generate and make use of intangible assets, States were obliged to develop other mechanisms for recording security rights. Many States ultimately came to rely on the concept of registration as the primary mechanism for recording security rights in movable property.

4. Hence the centrality of registry systems for modern regimes of secured transactions and the importance of their design for the function of an efficient system of security rights in movable property. Recognizing the importance of a registry system for ensuring predictability and transparency with respect to rights serving security purposes, this Guide offers several recommendations about the optimal design and operation of a registry system meant to achieve these goals. Indeed, the establishment and implementation of a general security rights registry is one of the key objectives of an effective and efficient secured transactions law (see A/CN.9/631, recommendation 1, subpara. (f)).

5. The design and operational features of a registry system will be largely driven by the purposes that States pursue in establishing the registry. Among States, there is no uniformity of purposes meant to be accomplished through a registry system. States may, for example, seek to record actual title to movable property; or they may use the registry to record and make public the details of all transactions relating to

movable property. Some States establish registries of more limited scope and for more limited purposes.

6. The general security rights registry recommended in this Guide is a limited purpose registry that focuses on the recording of security rights in movable property. As such, the registration system has three main purposes. The first is to achieve third-party effectiveness of a security right. As noted in chapter V on the effectiveness of a security right against third parties (see A/CN.9/631/Add.2), registration of a notice in a general security rights registry is the most common method for achieving third-party effectiveness of a security right. Second, registration contributes to efficient and fair priority ordering by establishing an objectively verifiable temporal reference for applying priority rules based on the time of registration. Third, registration provides third parties with an objective source of information about whether assets in the grantor's possession or control may be subject to a security right.

7. Given the other purposes that are often pursued through registration systems, it is important to note two fundamental features of the type of general security rights registry recommended in this Guide. To begin with, registration does not by itself result in third-party effectiveness. Third-party effectiveness is acquired only when there is a coincidence of registration and satisfaction of the requirements for creation set out in chapter IV (see A/CN.9/631, recommendations 12-14). This is significant, since registration of a notice may take place before a security agreement is concluded or a security right comes into existence (see A/CN.9/631, recommendation 65). In addition, registration does not give constructive notice of the existence of a security right. The doctrine of constructive notice is relevant only in a priority regime that allows a third party that does not have notice of a security right to take free of that security right. However, under the Guide, knowledge on the part of a competing claimant is irrelevant for determining priority (see A/CN.9/631, recommendation 75). Priority is based simply on the act of registration (or other third-party effectiveness act) regardless of whether the competing claimant knows or should know that the registration (or another act) has occurred. Conversely, a security right that has not been registered (or otherwise made effective against third parties) is ineffective against competing claimants regardless of their actual or presumed knowledge of the creation of the security right.

8. There are, as noted, many different models for implementing a registry system. The specific features of these different models are reviewed in the various sections of this chapter. Accordingly, in section A.2, this chapter addresses a number of considerations about the structure and operation of a general security rights registry. In sections A.3 and A.4, issues relating to the security, integrity and reliability of records in the registry are reviewed. Sections A.5 through A.8 discuss the required content of notices that may be filed in the registry. A number of details touching on the duration, time of effectiveness, amendment and cancellation of registration are considered in sections A.9 through A.13. The question of where registration should be made in transactions having a cross-border element is dealt with in chapter XIII on private international law (see A/CN.9/631/Add.10). Section B of this chapter contains a series of specific recommendations about the design and operation of the registry system meant to ensure that registration and searching processes are simple, efficient and accessible.

2. Operational framework

(a) General

9. The establishment of a registry system for security rights in movable property such as the one recommended in this Guide may constitute a significant change for many legal systems. Some States do not now have registries for security rights in movable property. Some States have movable property registries that record title, such as ship, aircraft or motor vehicle registries. Other States have multiple movable property registries depending on the type of asset, the type of grantor or the type of creditor. Some States may have a single registry, but require that the specific documents creating the security right be registered. Hence the importance of reviewing the various operational issues that must be considered in establishing an efficient registry for security rights in movable property.

(b) Public education and training

10. The critical importance of implementing an efficient and effective registry system for security rights in movable property suggests an important preliminary consideration. States must take steps to ensure that the business and legal communities are educated about the existence and substantive role of registration well in advance of the entry into force of the law. It is equally essential to ensure that clear advice on the practical logistics of the registration and searching processes is provided to potential registry clients. Guidelines and practice tutorials should be prepared and widely disseminated (ideally, in both printed and electronic form) well in advance of the activation of the registry system and in-person information and training sessions should be conducted periodically. Although the relevant governmental authority will usually take the lead in ensuring that adequate public education and guidance takes place, the expertise of the legal and business communities can be enlisted in aid. These initiatives need not be overly burdensome in view of the availability of implementation models and published materials in States that already have enacted similar reforms.

(c) Types of registry system

11. Over the years, States have developed different types of registry system. One of the most common can be described as a title registration system. This type of registry system contemplates the registering of title, and encumbrances on title, to immovable property or to specific movable property, such as ships. A title registry functions as a source of positive information about the current state of title to specific assets. In order to protect the integrity of the title record, the registrant is generally required to register the actual title transfer or security documents or a certified summary of those documents after having tendered them for scrutiny by the registrar.

12. A number of States have established what may be called a document registration system that, while not recording title to movable property, serves to evidence the existence of particular security devices. Sometimes, States have multiple registries of this type, depending on the asset, the grantor, the creditor or the type of security device deployed. Sometimes, States have consolidated security rights registers. Whether the registries are multiple or single, in these systems as well, the actual security documentation is submitted to and checked by a registrar

who then issues a registration certificate that constitutes at least presumptive (if not conclusive) evidence of the existence of the security right.

13. In contrast to these systems, some States have adopted the concept of notice registration. In a notice registration system, the registry is not a source of specific information about the security agreement between the parties. Rather, the registry serves as a basis for achieving third-party effectiveness and priority. For this reason, there is no requirement to register the underlying security documentation or even to tender it for scrutiny by the registrar (and thus registration of a notice is not a requirement for the creation of a security right; see A/CN.9/631/Add.1, paras. 144 and 145). Registration is simply effectuated by registering a notice that provides only the identities of the parties, a sufficient description of the encumbered assets and, depending on the policy of each State, the maximum sum for which the security is granted.

14. Such a notice registration system greatly simplifies the registration process and minimizes the administrative and archival burden on the registry system. For example, because it is not necessary to register specific documents, it is much easier to establish an electronic registry system, which is more time- and cost-efficient than a paper system. In addition, for the same reason, a notice registration system enhances flexibility with respect to the scope of the assets that may be encumbered (including after-acquired assets) and the obligations that may be secured (including future and fluctuating obligations). Moreover, registration is not meant to provide positive assurances about the existence of security rights. The objective is to alert third parties about the possible existence of such rights and to provide them with the information necessary to determine whether, in fact, such security rights exist. So, for example, prospective buyers and secured creditors can protect themselves by refusing to go ahead with the transaction unless the registration is cancelled or unless the secured creditor identified in the registered notice undertakes to subordinate its right to that of the prospective buyer or secured creditor. From the grantor's perspective, protection from unauthorized registrations can be achieved by requiring the grantor to be informed of any registration and by establishing a summary administrative procedure to facilitate the removal of unauthorized registrations (see A/CN.9/631, recommendations 56, subpara. (c), and 70). In any case, the benefit of any safeguards should be weighed against their cost.

15. Registries based on a notice-registration concept exist in many jurisdictions. Such registries have also attracted considerable international support (see the European Bank for Reconstruction and Development Model Law on Secured Transactions, the Organization of American States Model Inter-American Law on Secured Transactions, the *Guide to Movables Registries* of the Asian Development Bank, the Convention on International Interests in Mobile Equipment and its related protocols and the annex to the United Nations Convention on the Assignment of Receivables in International Trade).[1] Given the efficiency, accessibility and transparency of notice registration systems and the relative low cost of their operation, this Guide recommends that States adopt this model of a general security rights registry (see A/CN.9/631, recommendation 55).

[1] United Nations publication, Sales No. E.04.V.14.

(d) Prerequisites to registration

16. The formalities for and the prerequisites to registration vary from State to State. Most often these requirements depend on the type of registry system that is in place. For example, in some States the registered notice provides conclusive or presumptive evidence of a security right. Where this is the case, the registrar or some other public official has to scrutinize the contents of the document creating the security right, compare it with the notice and confirm the accuracy and effect of the notice. This adds to the cost and the time required for an effective registration. In addition, it is likely to increase the risk of error and liability of the registry.

17. In other States, as registration does not provide conclusive or even presumptive evidence of a security right, there is no need for official verification or scrutiny of the content of the notice or of its conformity with the document creating the security right. Adding a requirement for official verification or scrutiny in such cases would be inimical to the kind of efficient, speedy and inexpensive registration process needed to encourage access to secured credit. The basic idea is to permit registration without further formalities (e.g. affidavits and notarization of documents) as long as the required registration fees are paid and the required information fields are completed regardless of their content (see A/CN.9/631, recommendation 55, subpara. (c)).

18. In addition, in States that adopt a notice registration system, there are typically no restrictions on who is permitted to make a registration. As registration serves to protect certain rights of the secured creditor, the registrant will normally be the secured creditor (the registrar may require the identity of the registrant but may not require verification; see A/CN.9/631, recommendations 55, subpara. (d), and 56, subpara. (b)). By contrast with States that require documents or a verified summary of documents to be registered in notice registration systems, consent by the grantor need not be established at the time of registration or be part of the information registered, since registration by itself does not create a security right. In order for the registration to be effective, the grantor has to consent to it but, once again, in notice registration systems the mere existence of the security agreement constitutes sufficient evidence of the grantor's consent to immediate registration unless, for example, the agreement specifically requires that the grantor give its consent in a separate document or at a later time (see A/CN.9/631, recommendation 55, subpara. (d)).

19. Because the prerequisites to registration in these systems are minimal, there is a risk of registrations relating to a non-existing or no longer existing security right. Should this occur, a summary administrative procedure is typically made available to the grantor to compel cancellation of an unauthorized or expired registration. Some States are concerned by potential fraud and abuse in these types of notice registration systems where registrations may be made with a minimum of formalities. In order to palliate this concern, States impose administrative penalties for unauthorized registrations or cancellations. However, the introduction of any safeguards depends on the judgement States make, following a cost-benefit analysis, about the additional complexity and expense that proscriptions of this nature are likely to impose (see A/CN.9/631, recommendations 70-73).

(e) Centralized and consolidated registry record

20. In many States, registry systems are both decentralized and multiple. For example, it is often the case that land registry offices are organized on a region-by-region, department-by-department or county-by-county basis. Some motor vehicle licensing registries are also decentralized in this way. In addition, in many States, there are multiple registries for security rights in movable property, depending on the type of asset (e.g. equipment, receivables or inventory), the grantor (e.g. a natural person, a corporation or an unincorporated business) or the nature of the security right (e.g. a floating charge, an enterprise mortgage, a retention-of-title transaction or a non-possessory pledge of stock). These types of registry tended to develop where the basis of the registration was title, or where States developed on a piecemeal basis different particular types of security rights in movable property.

21. Where States have come to adopt a functional concept of a security right in movable property there is a strong incentive to both centralize and consolidate the registry system. That is, once the substantive rules governing security rights are brought together under a uniform regulatory regime, it is most efficient to consolidate all registrations in a single registry record, regardless of the type of the security device, the nature of the grantor as a legal or a natural person, or the nature of the encumbered assets. In addition, even among States that maintain a formal diversity of acquisition financing rights (what this Guide calls a non-unitary approach to acquisition financing rights, see chapter XII; A/CN.9/631/Add.9) many require the registration of these multiple acquisition financing rights in the general security rights registry. The development of consolidated registries also facilitates the establishment of a single centralized registry covering the entire State. Ideally, the record should be maintained in electronic form in a single centralized database for each country. In States in which separate regional or district records are maintained, complex rules are needed to determine the appropriate registration venue and to deal with the consequences of a relocation of the assets or the grantor. While it is possible to imagine the integration of decentralized, plural registries, the goals of efficiency, accessibility and transparency in the registration system are more fully achieved through consolidation and centralization of an electronic-form registry of the type recommended in this Guide (see A/CN.9/631, recommendation 55, subpara. (e)).

22. In many existing registry systems, the recording of notices is undertaken manually and the registry is itself paper based. Hence, States may have a legitimate concern about equality of access for users in remote locations. However, modern communication technology supports the rapid onward transmission of notices submitted to a branch office to the central registry. That is, by establishing records in electronic form, it is possible to use local registry offices as points of access to a centrally maintained registry. This is why many States have adopted electronic registries. In addition, electronic registries make it possible to establish mechanisms for online access to the record. As long as appropriate protocols for registration and searching are in place, this means that access to the registry will be possible from any location where Internet connections are available. Finally, even if the registry is maintained in electronic form, it is still possible to permit registration in paper form. In such cases, it is only necessary that information submitted in a paper form be transcribed into a computerized record with a name-based index. This manual transcription of data though, may increase the risk of error and liability of the

registry. To the extent feasible, therefore, the registry should be designed so that those that wish to register notices have the responsibility for directly entering them electronically following an approved registration template.

(f) Public access

23. One of the central objectives of any registry system is to enhance certainty about entitlements to property. Ultimately, this is the underlying rationale for a security rights registry. A well-functioning registry enables actual and potential competing claimants (for the definition of "competing claimant", see A/CN.9/631, Introduction, sect. B, Terminology and rules of interpretation, para. 19) to find out whether a security right has been or may be created in the grantor's assets. With this information, they can take steps to protect themselves against the priority risk this poses to their potential rights or the impact that any given security right may have on their existing rights.

24. In order to achieve this objective, a registry record must normally be accessible by the public. States take different views about the balance to be achieved between protecting the confidentiality of parties to a security agreement (both grantors and secured creditors) and providing information to third parties about rights and encumbrances that may be claimed in the grantor's property. The policy choices relate to three issues: (a) who is entitled to search the registry; (b) what criteria may be used to search the registry; and (c) how the registry is organized. These issues are considered in turn below.

(g) Prerequisites to searching

25. The many approaches to deciding who is entitled to search the registry can be reduced to two main types. Some States explicitly regulate who is entitled to search the registry in order to preserve the confidentiality or privacy of the parties' financial affairs. Access to the registry record for searching is restricted to persons that can demonstrate a "legitimate" reason. What constitutes a legitimate reason varies widely from State to State and sometimes the criteria are so narrowly drawn that open competition for credit can be compromised. In addition, the imposition of criteria for access implies that some person has to exercise judgement as to the "legitimacy" of the search, a step that slows down and increases the administrative cost of conducting a search.

26. In other States, most often those that have adopted a notice-based registry system, a person seeking to search the registry need not demonstrate a legitimate interest or offer any reason for conducting the search. The overriding objective in these States is to ensure that actual and prospective competing claimants are able to access the relevant information easily and efficiently. In these States, there is no necessity to limit access to the registry in order to protect the confidentiality of the grantor's and secured creditor's relationship. Confidentiality is ensured by limiting the level of detail about their affairs that appears on the public record. That is, the notice typically indicates only the names of the parties and a description of the encumbered assets and does not identify either the terms of the security agreement or the amount of the credit that has been extended or is still owed. In order to avoid encumbering the registry system with unnecessary cost and delay where only minimal information is provided in the registry record, this Guide recommends that searchers should not be required to establish a "legitimate reason", or indeed any

reason, for the use of the registry (see A/CN.9/631, recommendation 55, subpara. (g)).

(h) Searching by reference to the grantor or to the secured creditor

27. Concerns about confidentiality also raise the issue of whether the registry system should be organized to facilitate public searching against the name of the secured creditor as well as the grantor. In some States, searching in the registry record may be possible by the name of the secured creditor. In those States, it is considered that, while the function of the registry does not require the record to be organized to permit searching by the name of the secured creditor, such searching is not an illegitimate use of the record. It is also considered that, for internal administrative purposes, it is useful to build in this kind of technical search functionality as it facilitates the processing of volume amendments to registered notices in cases where the secured creditor changes its business name or merges with another financial institution.

28. In other States, searching by the name of the secured creditor is not possible. The concern is to avoid systematic searches to profile secured creditors and their business relationships. The quantity and content of notices filed by a particular financial institution or other creditor may have market value as a source of a competitor's customer lists or for companies seeking to market related financial or other products. The retrieval and sale of this kind of information is not relevant to the purpose of the registry, would violate reasonable commercial expectations and may even damage public trust in the system. For these reasons, the Guide recommends that notices be indexed and retrieved only by the name or other identifier of the grantor (see A/CN.9/631, recommendation 55, subpara. (h)).

29. In order to further address this concern, in some of those States, it is possible to mention in the registered notice the name of a trustee, agent or other representative of the secured creditor (as is commonly done in syndicated loan arrangements where only the lead bank or its nominee is identified as the secured creditor). This does not prejudice the rights of third parties so long as the person identified as the secured creditor on the notice is in fact authorized to act on behalf of the actual secured creditor in any communications or disputes connected to the security right to which the registration relates. This is the approach recommended in the Guide (see A/CN.9/631, recommendation 58, subpara. (a)).

(i) Grantor as compared to asset indexing

30. The primary interest of a competing claimant is to determine whether any particular asset of a grantor is encumbered. For this reason, modern registries are organized so that it is possible for searchers to access this information either by reference to the grantor, or to the asset itself. Historically, land registries were organized and indexed by reference to the asset, rather than by reference to the grantor. In some States, there are also specialized movable property registries organized on the basis of an asset-indexing system. Nonetheless, the majority of States that have created registries for security rights in movable property (whether these are multiple registries or consolidated registries, and even when they are document-filing registries) organize and index these registries by reference to the grantor of the security right.

31. In a notice-based regime, indexing is generally done by reference to the identity of the grantor. Grantor-based indexing greatly simplifies the registration process. Secured creditors can achieve third-party effectiveness of a security right even in all of a grantor's existing and future movable property through a single registration. They need not worry about updating the record every time the grantor acquires a new asset as long as the asset fits into the description in the notice. Given the recommendation in this Guide that States establish notice-based registries, it follows that the primary indexing mechanism for the general security rights registry should be tied to the identity of the grantor (see A/CN.9/631, recommendation 55, subpara. (h)).

32. Grantor-based indexing does, however, have one important drawback. If the encumbered assets become the object of unauthorized successive transfers, prospective secured creditors and buyers cannot protect themselves by conducting a search according to the name of the immediate apparent owner. Because the system is grantor-indexed, the search will not disclose a security right granted by any predecessor in title. For example, the grantor sells the encumbered assets to a third party that, in turn, proposes to sell or grant a security right in them to a fourth party. Assuming the fourth party is unaware that the third party acquired the asset from the original grantor, the fourth party will search the registry using only the third party's name. Because the search will not disclose the registered security right, in order to discover the full picture of security rights that may affect the grantor's assets, the secured creditor will have to determine the chain of title to these assets. In order to do so, it will be necessary for the secured creditor to undertake this inquiry without the aid of the registry, since in almost all cases, there will be neither a record of the chain of title nor an indexing system that permits searching by reference to the asset.

33. Many States do, however, also have specialized title registries for certain categories of movable property (e.g. ships, aircraft and motor vehicles) in addition to general security rights registries. In some of these registries, it is possible to register security rights as well as title. Where such registries are in operation the problem of hidden security rights granted by a predecessor in title does not exist, since a specific description or even a serial number is registered in the appropriate field where possible.

34. Serial number identification is, nonetheless, not without its drawbacks, especially where serially numbered property is held as inventory. Where serially numbered property constitutes either capital equipment or consumer goods (for the definition of "consumer goods", see A/CN.9/631/Add.1, Introduction, sect. B, Terminology and rules of interpretation, para. 19) in the hands of the grantor it is usually treated as discrete by both the grantor and the secured creditor. However, if the encumbered assets are instead held by the grantor as inventory intended for resale, requiring a serial number description would impose an unworkable registration burden on secured creditors, since they would have to register each time a new item is acquired by the grantor. In any event, serial number identification of inventory is normally unnecessary to protect buyers and lessees. Most often they will acquire the encumbered assets in the ordinary course of the grantor's business, in which case they will take free of any security rights granted by the inventory seller (see A/CN.9/631, recommendations 86-88). In addition, requiring serial number registration for items held as inventory limits the ability of a secured

creditor to achieve third-party effectiveness of a security right in after-acquired serially numbered property through a single registration. In such a case, because the registered notice would have to include the serial number, the secured creditor would be required to file an amendment to the notice adding the new serial number as the grantor acquires each additional item. For these reasons, States that either deploy a title registry as a mechanism for recording security rights in that type of property, or provide for a serial-number field in the record of a notice-filing system, should limit the mandatory requirement for serial number identification to cases where the serially numbered property is not held as inventory.

[*Note to the Commission: The Commission may wish to reflect in a recommendation the rule reflected in the last sentence of paragraph 34*.]

(j) Registration and searching fees

35. The fundamental logic of a general security rights registry system is to enhance transparency and certainty regarding security rights ("security right" is defined by reference to movable property; see A/CN.9/631/Add.1, Introduction, sect. B, Terminology and rules of interpretation, para. 19). For this reason, modern registry systems are designed so as to encourage parties to use the registry to record security rights and to search for any pre-existing security rights. It is critical to the success of the registry system in enhancing access to secured credit at a reasonable cost, for fees to be set at a level that facilitates access, while still enabling the system to recover its capital and operational costs within a reasonable time period. Excessive registration and searching fees, designed to raise revenue rather than support the cost of the system, are tantamount to a tax on borrowers that simply reduces the availability and increases the cost of credit. Consequently, this Guide recommends that fees for using the registry should be no greater than what is required for the registry to be self-financing (see A/CN.9/631, recommendation 55, subpara. (i)).

(k) Modes of access to the registry

36. Until the end of the twentieth century, registration records had to be kept in paper form. Increasingly, however, even in States that require transactional documents to be filed, these records are being archived in electronic form. Similarly, while some States with notice-based registries still permit or require registration requests to be made in paper form, most of them provide for archiving these records in electronic form. In other words, the advent of digital storage has facilitated conversion of the registry record to a computerized record, greatly reducing the administrative burden on the registry.

37. A computerized record has many advantages over a paper-based system. Archives take less space and are easier to search. Most modern systems authorize electronic submission of registrations and the electronic submission and retrieval of search requests and search results, thereby facilitating direct client access. In addition, most modern systems permit direct electronic access to amend or cancel a registration. This significantly reduces the costs of operation and maintenance of the system. It also enhances the efficiency of the registration process by putting direct control over the timing of registration into the hands of the secured creditor. In particular, direct electronic access eliminates any time lags between submission of a

notice to the registrar and the actual entry of the information contained in the notice into the database.

38. In some States with notice-based registries, electronic access (either from a client's premises or from a branch office of the registry) is the only available mode of access for both registration and searching. Because the data to be registered are submitted in electronic form, no paper record is ever generated. A fully electronic system of this kind places the responsibility for accurate data entry directly on registrants. As a result, staffing and operational costs of the registry are minimized and the risk of registry personnel making an error in transcribing documents is eliminated. Other States with notice-based registries give clients the option of submitting a paper registration or search request in person or by fax or verbally by telephone. However, even in these States, electronic submission is by far the most prevalent mode of data submission, used in practice for more than 90 per cent of registrations, The Guide recommends that multiple modes of access be made available to registry clientele at least in the early stages of implementation to reassure users unfamiliar with the system (see A/CN.9/631, recommendation 55, subpara. (j)).

(l) Service hours

39. Recognizing the importance of public access, most States operate their registries according to a reliable and consistent schedule, coordinating opening hours with the needs of their clients. If the system supports direct electronic access, the days and hours of operation are not a practical concern. It can be accessible on a continuous basis. For this reason, this Guide recommends that the registry should be designed so as to be accessible continuously except for scheduled maintenance (see A/CN.9/631, recommendation 55, subpara. (k)).

(m) Optimal use of electronic technology

40. The benefits of a general security rights registry that supports a computerized registry record and direct electronic access have already been outlined. However, the extent of computerization that is possible may vary in different States depending on the extent of start-up capital available, access to the right expertise, the level of computer literacy of potential users, the reliability of the local communications infrastructure and the probability that expected revenues will be sufficient to recover the capital costs of construction within a reasonable period. Perhaps not all States will be able to move immediately to a fully computerized registry. Nonetheless, even where States continue to use paper-based registries, the overall objective is the same: to make the registration and searching process as simple, transparent, efficient, inexpensive and accessible as possible. Accepting that the practical considerations just noted will affect how quickly States may proceed to implementation, this Guide recommends that, to the extent possible, a general security rights registry that is computerized and that permits direct electronic access should be preferred (see A/CN.9/631, recommendation 55, subpara. (l)).

3. Security and integrity of the registry record

(a) State responsibility for the system

41. Over the years, States have adopted different approaches to the management and operation of systems meant to provide information about entitlements to movable property. In some, the system is an entirely public system run either as a part of normal Government operations or as a publicly owned corporation. In other States, by contrast, a particular profession (e.g. notaries) is delegated responsibility for managing certain types of public record. With the sole exception of States where no public recording mechanism exists and informal, privately run record offices fill the gap, the pattern is to consider the registries as a public service.

42. This does not mean that the day-to-day operation of the registry will have to be provided by public officials. For example, in many States, these day-to-day operations may be delegated to a private entity. This normally ensures the efficient operation of the registry and avoids burdening the State with costs and liabilities. In order to give a public assurance of the reliability of the registry, a public authority retains the responsibility to ensure that the registry is operated in accordance with the appropriate legal framework (see A/CN.9/631, recommendation 56, subpara. (a)).

(b) Record of the identity of the registrant

43. In some States, the registry may require both the identity and verification of the identity of the registrant. The main reason for this approach is to ensure the legitimate use of the record. The disadvantage is that it is likely to increase the time and cost of registration, as well as the risk of error and liability. In other States, while the registry may require the registrant to state its identity, it may not require verification of the identity of the registrant for the purpose of registering a notice. This means that the registrant does not have to be the secured creditor. However, in order to deter unauthorized or malicious registrations, the registry will need to maintain an internal record of the identity of registrants and require adequate proof of identity for this purpose (as to the relevant rights of the grantor, see A/CN.9/631, recommendations 70-73). This need not pose an excessive administrative burden since the verification procedure can be built into the payment process. Moreover, since most registrants will be repeat users, a permanent secure access code can be assigned when the account with the registry is opened, eliminating the need to repeat the identification procedures for subsequent registrations. This is the approach recommended in the Guide (see A/CN.9/631, recommendations 55, subpara. (d), and 56, subpara. (b)).

(c) Grantor's entitlement to a copy of the registered notice

44. Because a registration serves as a notice that the grantor may have created a security right in its assets in favour of a creditor, and therefore may affect the grantor's ability to receive further secured credit, most States provide that a grantor named in a registered notice is entitled to receive a copy of the registration, or of any amendments to the notice made by the secured creditor. This enables the grantor to verify the accuracy of the data on the notice and, in the case of inaccurate, unauthorized or malicious registrations, to exercise its rights to compel the

amendment or cancellation of the registration (see A/CN.9/631, recommendations 70-73).

45. States differ as to who should bear the obligation to forward a copy of the registered notice to the grantor. In order to provide optimal protection against the risk of unauthorized registrations, some States place this burden on the registry system itself. In this way, when the registration is fraudulent the purported grantor will discover the fraud, a discovery unlikely to occur if the obligation to forward a copy of the notice were placed on the purported secured creditor. However, this advantage must be weighed against the additional costs and risks such a burden would impose on the registry system. In the absence of evidence that unauthorized registrations are posing a serious and substantial threat to the integrity of the system in a particular State, a cost-benefit analysis supports placing the obligation on the secured creditor. In cases where the registration is made in good faith and is accurate, requiring the secured creditor to forward a copy of the registered notice to the grantor need not be a condition of the effectiveness of the registration and could even complicate or delay such effectiveness. This is because such a failure in no way affects the rights of third parties that will consult the registry. For this reason, most States provide that the failure of the secured creditor to meet this obligation may result only in nominal administrative penalties and the award of damages for any harm to the grantor resulting from such failure. Given the general approach of this Guide to keep the administrative costs of the registry as low as possible, it recommends that responsibility for furnishing a copy of the notice to the grantor be placed upon the secured creditor (see A/CN.9/631, recommendation 56, subpara. (c)).

(d) Secured creditor's entitlement to a copy of changes to registration

46. In most States, a registered notice may be cancelled by the secured creditor or the grantor and amended by the secured creditor or sought to be amended by the grantor through summary judicial or administrative proceedings (see A/CN.9/631, recommendations 70 and 71). In order to enable the secured creditor to check the legitimacy of the cancellation or amendment, the registry is normally obligated promptly to forward a copy of any changes to a registered notice to the person identified as the secured creditor in the notice. This should not involve excessive cost or risk for the registry system, since an efficient mode of electronic communication (e.g. electronic mail) can be agreed to when the account of the registry with the secured creditor is initially opened. Moreover, if the system is electronic, it can be programmed to forward automatically a copy of any amendments to a specified electronic mail account without the need for any human intervention (see A/CN.9/631, recommendation 56, subpara. (d)).

(e) Prompt confirmation of registration

47. Before advancing funds under a security agreement, a secured creditor will typically expect to receive some assurance that its notice has been entered into the registry record and that the information has been accurately recorded. Modern electronic registries are designed to enable the registrant to obtain a printed or electronic record of the registration as soon as the data is entered. In a paper-based registry, there will inevitably be some time lag between the submission of the notice and confirmation that it has been entered into the record, but every effort should be

made to reduce the delay to a minimum (see A/CN.9/631, recommendation 56, subpara. (e)).

(f) Data integrity and preservation

48. Any registry system, whether paper-based or electronic, is at risk of destruction through unforeseen events. Usually, it is very difficult to reconstruct a paper-based registry if the physical records are damaged or destroyed (e.g. by flood or fire). Not many States have the resources to be able to keep duplicate papers archived at a separate location. Moreover, because these copies must be filed and indexed manually, there is an ever-present risk of error. Where a paper registry is archived electronically, however, or where the entire registry is itself kept electronically, it is much easier to ensure the preservation of data in the registry. States with electronic registries typically maintain a backup copy of the records of the registry on a separate server in a different location. This backup copy is normally updated by a separate procedure on a nightly basis so that it can be reconstructed in the event of system malfunction or physical destruction. In order to ensure that the integrity of the registry can be preserved in a cost-effective manner, this Guide recommends that electronic registries be systematically backed up (see A/CN.9/631, recommendation 56, subpara. (f)).

4. Responsibility for loss or damage

49. As noted above, a general security rights registry system is publicly administered in the sense that, while the maintenance of the system may be contracted out to the private sector, the ultimate supervisory responsibility is vested in a publicly appointed registrar and public servants under the registrar's supervision. For this reason, most States have detailed rules setting out the conditions under which they assume legal responsibility for loss or damage caused by staff or system errors and the extent of responsibility they are prepared to assume. In theory, staff or system error could cause loss in three situations.

50. The first situation, which may arise in the context of all types of registry (e.g. document registries, title registries, notice registries, paper-based registries or electronic registries), is where an employee or representative of the registry is alleged to have given incorrect or misleading verbal advice or information. Some States exclude liability altogether in this situation. In States where recourse against the registry is permitted in such cases, strict qualifications and limitations often apply. For example, in some States, the alleged victim must establish bad faith. In other States, the employee's conduct has to satisfy the standard of liability imposed by the general law governing fault-based obligations.

51. The second potential area of liability is for loss caused by an error or omission in the information entered into the record of the registry. Here, a first distinction must be drawn between notice registries and document registries. In the former case, any substantive errors will be the responsibility of the person submitting the document for registration. The only error that can occur on the part of the registrar is if the identifying data on the document is incorrectly transcribed into the index. A further distinction must be drawn between paper and electronic registrations. If the notice is submitted electronically, the registrant is responsible for entering the data on the notice directly into the registry database and thus bears the risk of any errors or omissions. Even if the problem could conceivably have been caused by a

malfunction in the system, States typically exclude liability for the failure of the system to effect an electronic registration or failure to effect it correctly. The absence of a paper version of the registered notice makes an allegation of systemic malfunction impossible to prove.

52. If a paper notice is used, the registrant is likewise responsible for the correctness of the information entered on the notice. However, regimes usually give a remedy for loss or damage caused by a failure on the part of registry staff to enter the information contained on the paper notice into the registry database or by a failure to enter it accurately. The risk of human error in transposing and retrieving data can be significantly alleviated by establishing electronic editorial checks and ensuring the timely return to the client of a copy of the registered notice or search result.

53. If the error on the part of the registry staff consists in entering inaccurate information, the person normally entitled to compensation will be a third-party searcher that suffers loss as a result of reliance on the misleading information in the registered notice. The position is different if the error consists in the failure of the registry staff to enter the information on the paper notice into the system altogether. The Guide recommends that registration be treated as effective only upon entry of the registration data into the database so as to be searchable by third parties (see A/CN.9/631, recommendation 68). It follows that where a paper notice is never entered into the system, it never becomes legally effective and the person potentially suffering the loss will be the secured creditor whose security right was never legally made effective against third parties.

54. The third situation where loss might be caused is where the registry issues a search result that contains erroneous or incomplete information. In this situation, some States recognize liability for loss caused by an error or omission in a printed search result produced by the registry system. However, issues of proof preclude liability where the claimant alleges an error in a search result viewed electronically or printed at the client's own premises (see, for example, the Convention on International Interests in Mobile Equipment).

55. In the limited circumstances where liability is recognized, States typically also elaborate rules to govern the procedure for making and proving a claim, the prescription period for launching a claim, and whether the quantum of recovery is subject to an upper limit. In order to ensure that claims against the registry do not bankrupt the system, States usually also establish insurance regimes to cover any loss. Where insurance is privately provided, a small amount is added to the registration fee in order to cover the insurance premium. Where the registry is self-insured, this additional amount is paid into a separate fund meant to cover payment of any successful liability claims (see A/CN.9/631, recommendation 57).

5. Required content of the notice

56. As noted, there are two approaches to registration. In some States, parties are obliged to file a copy of the security agreement. The result is that any person authorized to search the registry may obtain detailed information about the business relationship between the grantor and secured creditor. In other States, the registry simply records a notice about the potential security agreement and contains no other information. In most modern, notice-based registration systems, only the following

basic information is required to be set out in the registered notice: the name or other identifier of the grantor and the secured creditor and their addresses, a description of the encumbered assets, and a statement of the duration of the registration. Each of these items of information is discussed in greater detail in the following sections of this chapter.

57. One point on which the approach among even those States which adopt a notice-registry system diverges is the question as to whether the notice must disclose the maximum monetary amount for which the security right covered by the notice may be enforced. In some States, it is not considered desirable to require either the actual amount of the initial secured obligation or a sum representing the maximum amount for which the security right may be exercised against the encumbered assets be set out. The concern is that this approach would (a) limit the amount of credit available from the initial secured creditor; (b) result in secured creditors inflating the amount of the secured obligation to cover future credit, which would inadvertently limit the ability of grantors to obtain credit from other sources; and (c) generally interfere with the ability of parties to secure future or fluctuating obligations (as in the case of revolving credit facilities).

58. However, many States require that the registered notice include a statement of the maximum amount to be secured by the security right. This approach is intended to facilitate the grantor's access to secured financing from later creditors in situations where the value of the assets encumbered by the prior registered security right exceeds the maximum amount indicated in the notice. It is based on the assumption that the grantor may obtain credit from other sources, even though that credit will be secured with a security right with a lower priority status than the security right securing the initially provided credit. It is also based on the assumption that the grantor will have sufficient bargaining power to ensure that the first-registered secured creditor does not register an inflated maximum amount. In some of the States that follow this approach, the result is that the priority of the security right to which the notice relates over subsequent security rights is limited to the maximum amount set out in the notice. In other States, the maximum amount of the secured obligation has to be stated, since a security right cannot be created in future obligations. This Guide acknowledges that both approaches have merit and recommends that particular States adopt the approach that is most consistent with efficient practices then in use in the State in question (see A/CN.9/631, recommendation 58).

6. Grantor's identifier

(a) Effect of error in the grantor's identifier on the effectiveness of registration

59. As mentioned above, in a modern general security rights registry, notices are indexed and searched by reference to the grantor's identifier (see A/CN.9/631, recommendation 55, subpara. (h)). Consequently, a reference to the grantor's identifier in the notice is an essential component of a valid registration. The impact of an error in the grantor's identifier on the legal effectiveness of a registered notice depends on the organizational logic of the particular registry system. Some electronic records are programmed to retrieve only exact matches between the identifier entered by the searcher and the identifiers in the database. In such systems, any error will render the notice irretrievable by searchers using the

grantor's correct identifier. For this reason, the consequence of error is that the purported registration is null and produces no third-party effects.

60. However, in some States, a more sophisticated search algorithm is put in place. In these States, registry records are organized and indexed so as to enable a searcher that enters the correct identifier to retrieve notices in which the grantor's identifier is a close but not identical match to the correct identifier. Similarly, if the searcher were to enter an incorrect identifier, a correct identifier that is a close but not identical match would also be retrieved. Where States have adopted these more sophisticated search algorithms, the validity of many otherwise defective registrations would be preserved. The usual result is that the registration is deemed to be legally effective notwithstanding the error if a search using the correct identifier would still disclose the registered notice albeit as an inexact match (see A/CN.9/631, recommendation 59). This type of system works only if the search logic of the system is carefully designed to limit the number of "close matches" that the search turns up. If searchers entering the correct identifier are confronted with a search result that yields an excessive number of notices containing "close matches", the burden of the initial registrant's error would be unfairly shifted onto the searcher, who might then have to undertake a large number of additional inquiries to determine which if any of these "close matches" might refer to the grantor in question.

(b) Correct identifier for natural persons

61. As an error in the grantor's identifier may invalidate a registration, States usually take great care to establish clear legal rules on what constitutes a correct identifier. The grantor's name is the most common criterion. However, a State may not have a universal rule on what constitutes a natural person's correct legal name and the name used in everyday business or social life may differ from that which appears on the grantor's official documents. Moreover, name changes may have occurred since birth as a consequence of a change in marital status or other deliberate choice. Consequently, the regulations or administrative rules governing the operation of the registry usually need to provide explicit guidance on what official documentary sources of the grantor's name can be relied on by registrants and searchers.

62. What documents will be considered authoritative for this purpose depends on the availability and reliability of the official documents issued by each State. In order to accommodate grantors that do not possess the relevant first-order official document and grantors that are not residents or nationals of a particular State, it is necessary to provide a hierarchy of alternative references (see A/CN.9/631, recommendation 60). There is no universal formula for setting this hierarchy, since so much depends on the resources available in each State for providing reliable identifiers for natural persons. That said, the following paragraph illustrates how the approach recommended in this Guide might be implemented.

63. States would provide that the name of a grantor that is a natural person will be determined according to a hierarchy of references:

(a) If the grantor was born in the enacting State and the grantor's birth was registered with a Government agency, the name of the grantor is the name stated in the grantor's birth certificate;

(b) If the grantor was born in the enacting State but the grantor's birth was not registered, the name of the grantor is:

(i) The name stated in a passport issued to the grantor by the Government of the enacting State;

(ii) If the grantor does not have a passport, the name stated in a current social insurance or other national identity card issued to the grantor by the Government of the enacting State;

(iii) If the grantor does not have a current passport or national identity card, the name stated in a passport issued to the grantor by the Government of the State where the grantor habitually resides;

(c) If the grantor was not born in the enacting State but is a citizen of the enacting State, the name of the grantor is the name that appears in the grantor's certificate of citizenship;

(d) If the grantor was not born in the enacting State and is not a citizen, the name of the grantor is:

(i) The name stated in a current visa issued to the grantor by the Government of the enacting State;

(ii) If the grantor does not have a current visa, the name stated in a current passport issued to the grantor by the Government of the State where the grantor habitually resides;

(iii) If the grantor does not have a current visa or a current passport, the name stated in the birth certificate or equivalent document issued to the grantor by the Government agency responsible for the registration of births in the State where the grantor was born;

(e) In a case not falling within the preceding rules, the name of the grantor is the name stated in a current motor vehicle operator's licence or vehicle registration certificate or other official document issued to the grantor by the enacting State.

64. If a search reveals that more than one grantor shares the same name, the provision of the grantor's address will often resolve the identity issue for searchers. In States where many individuals share the same name, it may be useful to require supplementary information, such as the grantor's birth date. If a State has adopted a numerical identifier for its citizens, this can also be used, subject to the enacting State's privacy and security policies and subject to prescribing an alternative identifier for grantors that are non-nationals. However, if additional or supplementary identifiers are required, the law should explain the consequences to the validity of the registration of providing only one of them correctly.

(c) Correct identifier for legal persons

65. For corporate grantors and other legal persons, the grantor's identifier for the purposes of effective registration and searching is normally the name that appears in the documents constituting the entity. This name can usually be verified by consulting the public record of corporate and commercial entities maintained by each State (see A/CN.9/631, recommendation 61). Problems with common identifiers are unlikely to occur, since business names generally have to be unique

to be accepted by a company or commercial registry. If the information in this record and in the security rights registry is stored in electronic form, it may be possible to provide a common gateway to both databases to simplify the verification process. States with modern registries seek to facilitate speedy and efficient public access to these records by registrants and searchers.

(d) Distinction between natural and legal persons

66. A registrant will usually be required to indicate whether the grantor is an "individual" or a "natural person" on the one hand, or a "legal person" on the other hand. Although the terminology may vary, the basic dividing line is the same. Accurate designation is essential because the two categories of grantors are usually stored in separate searchable fields or books within the registry record. A search in the legal persons record will not disclose a security right registered against an individual grantor, and the converse is also true.

(e) Impact of a change of the grantor's identifier on the effectiveness of registration

67. A subsequent change in the grantor's name or other applicable identifier (for example, as a result of a merger, consolidation or other similar act in which the new company continues in business under a different name) raises problems for the discovery of previously registered notices. The grantor's identifier is the principal search criterion and a search using the grantor's new identifier will not disclose a security right registered against the old name.

68. In many legal systems, a secured creditor that fails to amend the registered notice to disclose the grantor's new identifier before the expiry of a specified time period is subordinated to secured creditors and buyers that acquire rights in the encumbered assets before the amendment notice is registered. The secured creditor retains whatever priority it enjoyed against secured creditors and buyers whose rights arose prior to the change of name. This approach reflects the purpose of requiring disclosure: to protect third parties that might otherwise rely to their detriment on a "clean" search result made against the grantor's new name. The secured creditor retains priority against secured creditors and buyers that acquire rights in the encumbered assets during the specified time period only if the registration is amended before the expiry of that period. In other words, the specified period gives only conditional protection against a loss of priority (see A/CN.9/631, recommendation 62).

(f) Impact of a transfer of an encumbered asset on the effectiveness of registration

69. As with a change in the original grantor's identifier, after a transfer by the grantor of the encumbered assets, a search against the transferee's name by third parties dealing with the encumbered assets in the hands of the transferee will not disclose a security right created by the transferor. Many States follow the approach taken to a change of name by the grantor. The secured creditor must register an amendment disclosing the transferee as a grantor within a specified time period after the transfer to preserve priority over secured creditors and buyers who acquire rights in the encumbered assets after the transfer. If the amendment is not made within the specified time period, the secured creditor is subordinated to intervening secured creditors and buyers whose rights arise after the transfer and before the amendment is registered (see A/CN.9/631, recommendation 63).

7. Secured creditor's identifier

70. The name of the secured creditor is not an indexing criterion. Consequently, registration errors in relation to a secured creditor do not pose the same risk of misleading third-party searchers and would not lead to nullification of the notice. However, the notice typically includes the name and address of the secured creditor so that any third-party financier may contact a secured creditor on record and, with the grantor's consent, obtain information, for example, as to whether there is a security right in the grantor's assets, which assets are encumbered and any value left unencumbered. Reference to the name of the secured creditor in the notice also provides presumptive evidence that the secured creditor that later claims a priority based on the notice is in fact the person entitled to do so. In order to ensure confidentiality as to the identity of the grantor, many systems permit that the notice refer to a representative of the secured creditor (see A/CN.9/631, recommendation 58, subpara. (b)). The rules used for determining the correct name of a grantor can also be applied to secured creditors.

8. Description of assets covered by the notice

71. In theory, in a notice-registration system, there is no absolute necessity for the registration to identify the encumbered assets, as the mere notice indexed under the grantor's name is sufficient to warn third-party financiers about the possible existence of a security right. However, the absence of any description in the notice might limit the grantor's ability to sell or create a security right in assets that remain unencumbered. Prospective buyers and secured creditors would require some form of protection (for example, a release from the secured creditor) before entering into transactions involving any of the grantor's assets. The absence of a description would also diminish the information value of the registry for insolvency administrators and judgement creditors. For these reasons, the Guide recommends that a description of the encumbered assets be included in the registered notice (see A/CN.9/631, recommendation 58, subpara. (b)).

72. Although a description of the encumbered assets is required, there is no need for a specific item-by-item description. The information needs of searchers are sufficiently served by a generic description (e.g. all tangible assets or all receivables) or even an all encompassing description (e.g. all present and after-acquired movable property). Indeed, a generic description is necessary to ensure the efficient registration of a security right granted in after-acquired assets and in revolving categories of assets, such as inventory or receivables (see A/CN.9/631, recommendation 64).

9. Advance registration and one registration for multiple security rights

73. In a notice-registration system, the registered notice is independent from the security agreement. Notice registration thus removes any practical obstacle to advance registration and thus a notice of a security right may be made before or after the security agreement is made or the security right is created.

74. "Advance registration" serves several important purposes. As a security right is created in a particular asset only when the grantor owns or has rights in the asset, any other rule would require registration of a new notice each time the grantor acquired a new asset. Thus, this rule is necessary to facilitate financing involving

after-acquired assets. Advance registration also enables a secured creditor to establish its priority ranking against other secured creditors under the general first-to-register priority rule. Furthermore, advance registration avoids the risk of nullification of the registration in cases where the underlying security agreement was technically deficient at the point of registration but is later rectified, or where there are factual uncertainties as to the precise time when the security agreement was concluded.

75. A notice-registration system also removes any practical necessity for a one-to-one relationship between the registration and the security agreement. Consequently, the registration of a single notice is normally sufficient to achieve the third-party effectiveness of security rights in the assets described in the notice whether created under a single agreement or multiple unrelated agreements between the same parties (even if concluded at different times).

10. Duration and extension of the registration of a notice

76. The duration of secured financing relationships can vary considerably. The necessary flexibility can usually be accommodated in one of two ways. The first is to allow registrants to self-select the desired term of the registration with the right to register further extensions as appropriate. The second is for the system to set a universal fixed term (for example five years), also accompanied by a right to register extensions that will then take effect automatically for additional equivalent terms. In either case, extension of the registration is effected through a notice of amendment submitted to the registry before expiry of the effectiveness of the notice (see A/CN.9/631, recommendation 67).

77. In medium- and long-term financing arrangements, the first approach lessens the risk for secured creditors of a loss of priority for an inadvertent failure to register an extension in time. In short-term financing arrangements, the second approach reduces the risk for grantors that secured creditors will register for an inflated term out of an excess of caution. In order to encourage timely cancellation in systems that adopt the second approach, a State may choose to not charge any fee for registration of a cancellation. Furthermore, in order to discourage the selection of excessive registration terms, fees can be based on an incremental tariff related to the length of the registration life selected.

11. Time of effectiveness of registration of a notice or amendment

78. As a general rule, priority between competing security rights that have been made effective against third parties only by registration depends on the order of registration (see A/CN.9/631, recommendation 78, subpara. (a)). It follows that the time at which a registration became legally effective is vital in determining priority among competing security rights. If the security right is already in existence, the time at which a registration takes legal effect may also be critical to the resolution of competing rights between a secured creditor and a buyer or lessee of the encumbered asset, or the grantor's unsecured creditors and insolvency representative.

79. In a registry system that permits the submission of paper notices to the registry (as opposed to requiring direct electronic entry by registrants), there will inevitably be some delay between the time the notice is received in the office of the registry

and the time the information on the notice is entered into the registry record by the registry staff so as to be searchable by third parties. This time lag raises the question of when registration should be considered legally effective: the time when the paper notice is received in the registry office or the time when the information on the notice becomes publicly searchable.

80. In resolving this issue, many legal systems place the priority risk created by a time lag on the secured creditor and not on third-party searchers. Consequently, the effective time of registration is concomitant with the ability of searchers to find the notice (see A/CN.9/631, recommendation 68). It would affect the reliability of the registry if searchers were to find themselves bound by a notice that was not publicly searchable. In any event, the secured creditor is in a better position to take steps to protect itself than third parties (for example, by withholding credit until the notice becomes searchable) and the design and operation of the registry should ensure speedy and efficient registration procedures that minimize delay.

81. 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 essentially eliminated.

12. Authority for registration

82. Normally, registration of a notice is not effective unless the grantor authorizes it in writing. However, in order to avoid delays, costs and errors, authorization is not required to be proven at the time of registration (see A/CN.9/631, recommendation 55, subpara. (d)). In any case, if there is no authorization, registration is not effective and the grantor may request its cancellation through summary judicial or administrative proceedings (while other law may provide for penalties for fraudulent registrations). Usually, authorization is given in the security agreement, expressly or implicitly (see A/CN.9/631, recommendation 69).

13. Cancellation or amendment of a registered notice

(a) Compulsory cancellation or amendment

83. For reasons of security, many legal systems provide that only the secured creditor has the authority to cancel or amend a registration. However, an unauthorized registration can have a prejudicial impact on the ability of the person named as grantor in the notice to sell or create a security right in the assets described in the notice. It is, therefore, essential to ensure that registered notices are cancelled or amended promptly if no security agreement exists or is contemplated, or if the security right has been extinguished by full and final satisfaction of the secured obligation or if a registered notice contains information not authorized by the grantor (for example, the asset description contained in the notice may be overly broad, including items or kinds of assets that are not intended to be the object of any actual or contemplated security agreement between the parties).

84. To address this need, many legal systems provide that the grantor has the right to send a written demand to the secured creditor to discharge or amend the registration to reflect the actual status of their relationship. The secured creditor is obliged to register a notice of cancellation or amendment, as the case may be, within a specified time period (for example, 20 or 30 days) after receipt of the demand. If the secured creditor fails to comply, the grantor is then entitled to compel

cancellation or amendment of the notice through a summary judicial or administrative procedure (see A/CN.9/631, recommendations 70 and 71). In some States, unless the secured creditor obtains a contrary court order, non-compliance entitles the grantor to require the registrar to register the discharge or amendment on proof to the registrar that the demand was made and not satisfied and after notice to the secured creditor.

(b) Expunging and archiving of cancelled notices

85. Once a registered notice has expired or been cancelled, it is normally promptly removed from the publicly searchable records of the registry (the secured creditor is obliged to take this action; see A/CN.9/631, recommendation 109, subpara. (b)). However, the information provided in the expired or cancelled notice and the fact of expiration or cancellation is archived so as to be capable of retrieval in the future if necessary (see A/CN.9/631, recommendation 72).

(c) Amendments

86. As mentioned above, an amendment to disclose a subsequent change in the identifier of the grantor (whether as a result of a change of name or a transfer of the encumbered assets) is necessary to preserve priority against subsequent secured creditors and buyers. In contrast, legal systems provide that a secured creditor is entitled, but not obliged, to amend a registered notice where the identity of the secured creditor changes as a result of an assignment of the secured obligation. Registration of an amendment notice is in this case optional, since a change in the identity of the secured creditor, unlike a change in the identity of the grantor, does not affect the ability of third-party searchers to retrieve the notice. Consequently, the registered notice retains its legal effectiveness whether or not the amendment is made.

87. Although it is optional, registration of a notice about an assignment is prudent. Failure to register leaves the assignor as the secured creditor of record, exposing the assignee to the risk that it will not receive notices sent by third parties and leaves the assignor with the legal power to alter the state of the record, for example by registering a notice of cancellation or other inappropriate amendment (see A/CN.9/631, recommendation 73).

88. The situation is different where the security right is not registered or otherwise made effective against third parties at the time of the assignment. Here, the assignee will need to register a notice in order to make the security right effective against third parties. There is no reason why the notice may not name the transferee as the secured creditor. There should be no need, in other words, to first register in the name of the original secured creditor.

89. If the grantor's financing needs change after the conclusion of the original security agreement, the grantor may agree to create a security right in additional assets. In the interest of flexibility, the registry system may allow the description in the registered notice to be amended to add the newly encumbered assets rather than requiring a new notice to be registered. However, the amendment is effective with respect to the newly encumbered assets only from the date it is registered, with the result that it cannot prejudice third-party rights acquired in the additional assets prior to registration of the amendment.

90. The situation is different when the amendment reflects new assets in the form of proceeds of the original encumbered assets. If the amendment is made before the expiry of the applicable period of temporary automatic third-party effectiveness, the security right in the proceeds takes effect against third parties as of the date of registration of the original notice.

91. If the description in the original registration covers after-acquired assets, there is normally no need to amend the registration. However, if the system adopts supplementary asset registration for after-acquired serially numbered goods, it will be necessary to amend the registration to include the new serial numbers in order for the security right to take effect against third parties.

92. Where a secured creditor agrees to subordinate or postpone a registered security right to the right of another creditor, registration of an amendment to disclose the subordination in principle should not be required or should be optional, since the subordination only affects the priority position of the relevant parties as against each other.

B. Recommendations

[*Note to the Commission: The Commission may wish to note that, as document A/CN.9/631 includes a consolidated set of the recommendations of the draft legislative guide on secured transactions, the recommendations are not reproduced here. Once the recommendations are finalized, they will be reproduced at the end of each chapter*.]