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 on International Trade Law**
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**Report of Working Group VI (Security Interests) on the
 work of its twenty-second session**
(Vienna, 10-14 December 2012)
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I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a text on the registration of security rights in movable assets, pursuant to a decision taken by the Commission at its forty-third session (New York, 21 June-9 July 2010).¹ The Commission's decision was based on its understanding that such a text would usefully supplement the Commission's work on secured transactions and provide urgently needed guidance to States with respect to the establishment and operation of security rights registries.²

2. At that session, the Commission considered a note by the Secretariat (A/CN.9/702 and Add.1) and agreed that all issues mentioned in that note (including registration of security rights in movable assets, a model law on secured transactions and security rights in non-intermediated securities) were interesting and should be retained on its future work agenda for consideration. However, in view of the limited resources available to it, the Commission agreed that priority should be given to registration of security rights in movable assets.³

3. At its eighteenth session (Vienna, 8-12 November 2010), the Working Group began its work on the preparation of a text on the registration of notices with respect to security rights in movable assets by considering a note by the Secretariat entitled "Registration of security rights in movable assets" (A/CN.9/WG.VI/WP.44 and Add.1 and 2). At that session, the Working Group adopted the working assumption that the text would take the form of a guide on the implementation of a security rights registry and that the text should be consistent with the UNCITRAL *Legislative Guide on Secured Transactions* (the "*Secured Transactions Guide*"), while, at the same time, it would take into account the approaches followed in modern security rights registration systems, national and international (A/CN.9/714, para. 13). Having agreed that the *Secured Transactions Guide* was consistent with the guiding principles of UNCITRAL texts on e-commerce, the Working Group also considered certain issues arising from the use of electronic communications in security rights registries to ensure that, like the *Secured Transactions Guide*, the text on registration would also be consistent with those principles (A/CN.9/714, paras. 34-47).

4. At its nineteenth session (New York, 11-15 April 2011), the Working Group considered a note by the Secretariat entitled "Draft Security Rights Registry Guide" (A/CN.9/WG.VI/WP.46 and Add.1 to 3). At that session, differing views were expressed as to the form and content of the text to be prepared (A/CN.9/719, paras. 13-14), as well as with respect to the question of whether the text should include model regulations or recommendations (A/CN.9/719, para. 46).

5. At its forty-fourth session (Vienna, 27 June-8 July 2011), the Commission emphasized the significance of the Working Group's work in particular in view of efforts undertaken by States towards establishing a registry, as well as the potential beneficial impact of such a registry on the availability and the cost of credit. With respect to the form and content of the text to be prepared, the Commission agreed

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 268.

² *Ibid.*, para. 265.

³ *Ibid.*, paras. 264 and 273.

that the mandate of the Working Group, leaving the specific form and content of the text to the Working Group, did not need to be modified. It was further agreed that, in any case, the Commission would make a final decision once the Working Group had completed its work and submitted the text to the Commission.⁴

6. At its twentieth session (Vienna, 12-16 December 2011), the Working Group continued its work based on a note by the Secretariat entitled “Draft Security Rights Registry Guide” (A/CN.9/WG.VI/WP.48/Add.3). The Working Group agreed that the text should take the form of a guide (the “draft Registry Guide”) with commentary and recommendations along the lines of the *Secured Transactions Guide* (A/CN.9/740, para. 18). In addition, the Working Group agreed that, where the draft Registry Guide offered options, examples of model regulations could be included in an annex to the draft Registry Guide. As to the presentation of the text, the Working Group agreed that the draft Registry Guide should be presented as a separate, stand-alone, comprehensive text that would be consistent with the *Secured Transactions Guide*, and be tentatively entitled “Technical Legislative Guide on the Implementation of a Security Rights Registry” (A/CN.9/740, para. 30).

7. At its twenty-first session (New York, 14-18 May 2012), the Working Group considered a note by the Secretariat entitled “Draft Technical Legislative Guide on the Implementation of a Security Rights Registry” (A/CN.9/WG.VI/WP.50 and Add.1 and 2; the “draft Registry Guide”). At that session, the Working Group approved the substance of the terminology and the recommendations of the draft Registry Guide (A/CN.9/743, para. 21). In addition, the Working Group agreed that the draft Registry Guide should be finalized and submitted to the Commission for adoption at its forty-sixth session in 2013 (A/CN.9/743, para. 73). Moreover, the Working Group agreed to propose to the Commission that the mandate be given to the Working Group to develop a model law on secured transactions and that the topic of security rights in non-intermediated securities should be retained on its future work agenda and be considered at a future session (A/CN.9/743, para. 76).

8. At its forty-fifth session (New York, 25 June-6 July 2012), the Commission expressed its appreciation to the Working Group and requested the Working Group to proceed with its work expeditiously and to complete it so that the draft Registry Guide would be submitted to the Commission for final approval and adoption at its forty-sixth session, in 2013.⁵ In addition, the Commission agreed that, upon its completion of the draft Registry Guide, the Working Group should undertake work to prepare a simple, short and concise model law on secured transactions based on the general recommendations of the *Secured Transactions Guide* and consistent with all texts prepared by UNCITRAL on secured transactions.⁶ Moreover, the Commission agreed that, consistent with the Commission’s decision at its forty-third session, in 2010, the topic of security rights in non-intermediated securities, in the sense of securities other than those credited in a securities account, should continue to be retained on the future work programme for further consideration, on the basis of a note to be prepared by the Secretariat, which would set out all relevant issues so as to avoid any overlap or inconsistency with texts prepared by other organizations.

⁴ Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 237.

⁵ Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 100.

⁶ Ibid., para. 105.

II. Organization of the session

9. The Working Group, which was composed of all States members of the Commission, held its twenty-second session in Vienna from 10 to 14 December 2012. The session was attended by representatives of the following States members of the Working Group: Brazil, Canada, China, Colombia, Czech Republic, El Salvador, France, Germany, India, Israel, Italy, Japan, Mexico, Nigeria, Norway, Pakistan, Philippines, Republic of Korea, Russian Federation, Spain, Thailand, Turkey, Ukraine, United States of America and Venezuela (Bolivarian Republic of).

10. The session was attended by observers from the following States: Belarus, Belgium, Brunei Darussalam, Cyprus, Dominican Republic, Indonesia, Kuwait, Oman, Poland, Qatar, Saudi Arabia, Switzerland and Viet Nam. The session was also attended by observers from Palestine and the European Union.

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

(a) *United Nations system*: The World Bank;

(b) *Intergovernmental organizations*: Council of the Interparliamentary Assembly of Member Nations of the Commonwealth of Independent States and European Center for Peace and Development (ECDP);

(c) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Commercial Finance Association (CFA), European Law Students' Association (ELSA), Forum for International Conciliation and Arbitration (FICACIC), International Federation of Film Distributors Association (FIAD), International Insolvency Institute (III) and National Law Centre for Inter-American Free Trade (NLCIFT).

12. The Working Group elected the following officers:

Chairman: Ms. Kathryn SABO (Canada)

Rapporteur: Mr. Hiroo SONO (Japan)

13. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.51 (Annotated Provisional Agenda), A/CN.9/WG.VI/WP.52 and Add.1-6 (Draft Technical Legislative Guide on the Implementation of a Security Rights Registry).

14. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Registration of security rights in movable assets.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

15. The Working Group considered a note by the Secretariat entitled “Draft Technical Legislative Guide on the Implementation of a Security Rights Registry” (A/CN.9/WG.VI/WP.52 and Add.1-6). The deliberations and decisions of the Working Group are set forth below in chapters IV and V. The Working Group adopted the substance of the draft Registry Guide and requested the Secretariat to prepare a revised version of the text reflecting the deliberations and decisions of the Working Group.

IV. Registration of security rights in movable assets

A. Preface (A/CN.9/WG.VI/WP.52)

16. The Working Group adopted the substance of the preface of the draft Registry Guide on the understanding that the preface would be updated following the sessions of the Working Group and the Commission to reflect the respective deliberations.

B. Introduction (A/CN.9/WG.VI/WP.52 and A/CN.9/WG.VI/WP.52/Add.1, paras. 1-39)

17. The Working Group adopted the substance of section A (purpose of the draft Registry Guide and its relationship with the *Secured Transactions Guide*) unchanged.

18. With respect to section B (terminology and interpretation), it was agreed that: (a) the bracketed text in the terms “amendment” and “cancellation” should be deleted and the matter of multiple secured creditors should be discussed in the commentary; (b) the term “amendment” should refer to the act of adding or modifying information or deleting some information in a registered notice, as deletion of all information would result in a cancellation, while the legal effect of an amendment should be discussed in the commentary (see para. 49 below); (c) the commentary should clarify that, while an amendment might result in certain information being removed from the registry record accessible to the public, such information should be retained in the registry archives; (d) the term “cancellation” should be clarified by reference to recommendation 74 of the *Secured Transactions Guide*, according to which, while information contained in a notice could be removed from the registry record accessible to the public upon the expiry or the cancellation of a notice, such information should be archived so as to be capable of retrieval, and the legal effect of a cancellation should be discussed in the commentary (see para. 49 below); (e) the term “notice” should be used consistently throughout the draft Registry Guide (see para. 30 below) and the term “registered notice” should be distinguished from the term “registry record”; (f) the use of both the terms “registry record” and “registry database”, which could have the same meaning, should be avoided; (g) the term “regulation” should be explained by reference to the draft Registry Guide, without prejudice to the right of an enacting State to decide which issues should be addressed in the regulation and which issues

should be addressed in the secured transactions law; and (h) the term “designated field” should be included in the terminology to mean a specific place on the notice designated by the registry for entering specific information. Subject to those changes, the Working Group adopted the substance of section B.

19. With respect to section C (key objectives and fundamental policies), it was agreed that it should be shortened to avoid dealing with matters dealt with elsewhere in the draft Registry Guide (e.g., the key objectives of enhancing certainty and transparency through a notice-registration system) or not relevant to registration (e.g., the functional approach). Subject to that change, the Working Group adopted the substance of section C.

20. With respect to section D (transitional considerations), it was agreed that: (a) it should avoid the use of terms such as “harmonization” that might inadvertently imply that the new law might have to be similar to prior law; and (b) it should be logically placed after current section E (overview of secured transactions law and the role of registration). Subject to those changes, the Working Group adopted the substance of section D.

21. With respect to section E, differing views were expressed. One view was that it should be shortened but retained in the Introduction of the draft Registry Guide to provide guidance as to concepts and approaches that might be new in many legal systems. Another view was that it should be significantly shortened, focusing more on the concepts of third-party effectiveness and priority, while any other discussion should be moved to an annex. After discussion, the Working Group agreed to first consider the substance of the section and then come back to the question of its placement in the draft Registry Guide (see para. 27 below).

22. With respect to subsection E.2 (notion and function of a security right), it was agreed that, if examples of any exceptions to the “substance-over-form” approach of the *Secured Transactions Guide* were to be provided, they should be carefully considered. With respect to subsection E.3 (creation of a security right), it was agreed that the discussion of proceeds should be reduced to address only relevant points that were not made elsewhere in the text. With respect to subsection E.4 (third-party effectiveness of a security right), it was agreed that the discussion of notice registration in immovable property registries should be aligned more closely with recommendation 43 and relevant commentary of the *Secured Transactions Guide*.

23. With respect to subsection E.5 (priority of a security right), it was agreed that: (a) subsection E.5.(a) should be carefully reviewed to ensure accuracy; (b) in subsection E.5.(b) and elsewhere in the draft Registry Guide, the term “knowledge” should be used to refer to “actual knowledge” in line with the *Secured Transactions Guide*; and (c) subsection E.5.(d) should be reviewed to ensure accuracy and consistency with the *Secured Transactions Guide* and the *Insolvency Guide*.

24. With respect to subsection E.6 (broad transactional scope of the registry), it was agreed that: (a) the heading should refer to the “extended transactional scope” of the registry, as the broad scope of the registry as a result of the functional, integrated and comprehensive approach of the *Secured Transactions Guide* was discussed elsewhere in the draft Registry Guide; (b) with respect to outright assignments, it should be clarified that the enforcement recommendations of the *Secured Transactions Guide* did not necessarily apply; and (c) with respect to

additional non-security transactions, the discussion should be aligned more closely with the *Secured Transactions Guide* (in particular as to registration of enforcement actions and preferential claims).

25. With respect to subsection E.7 (conflict-of-laws considerations), it was agreed that it should be clarified that the mandatory nature of conflict-of-laws rules applicable to the property aspects of a security right did not affect party autonomy with respect to the law applicable to the rights and obligations of the parties. With respect to subsection E.8 (notice registration), it was agreed that the last paragraph should be deleted as it addressed matters already covered elsewhere.

26. With respect to subsection E.9 (the role of registration and its legal consequences), it was agreed that the discussion of creation, third-party effectiveness and priority should be deleted as repetitive and the discussion of registration and enforcement should be deleted or placed elsewhere in the text, as it addressed a different issue. With respect to subsections E.10 and E.11, it was agreed that it should be shortened and aligned more closely with the relevant discussion in the *Secured Transactions Guide*.

27. Subject to those changes, the Working Group adopted the substance of section E of the Introduction. As to the placement of section E in the text, the Working Group agreed that a shorter and more reader-friendly version of it should be retained in the Introduction of the draft Registry Guide.

C. Establishment and functions of the security rights registry (A/CN.9/WG.VI/WP.52/Add.1, paras. 40-55)

28. With respect to subsection A.1 (establishment of the security rights registry), it was agreed that it should deal only with the establishment of the registry. With respect to subsection A.4 (additional implementation consideration), it was agreed that: (a) the discussion on common gateways and perhaps even coordination of registries should be included here; and (b) in the context of the discussion of storage capacity of the registry record, reference should also be made to any requirements for the migration of data from existing registries to the security rights registry.

29. With respect to subsection A.5 (registry terms and conditions of use), it was agreed that the discussion of additional registry services could be retained with examples of services provided to registry users as well as to the public, but those examples should be consistent with the recommendations of the *Secured Transactions Guide*.

30. With respect to subsection A.6 (electronic or paper-based registry), it was agreed that the text should be reviewed to ensure clarity, completeness and accuracy. In that connection, the Working Group reconsidered the term “notice” and agreed that its meaning in the draft Registry Guide should be qualified by reference to a communication in writing (paper or electronic) with respect to a security right that was submitted to a registry. It was further agreed that the two paragraphs on direct electronic registration and searching should be streamlined (see para. 18 above).

31. With respect to recommendation 3, it was agreed that: (a) cross-references to the relevant recommendations provided useful guidance to the reader and should

thus be kept; and (b) a new recommendation should be included in the draft Registry Guide and briefly referred to in recommendation 3, to provide, in line with recommendation 54, subparagraph (f), of the *Secured Transactions Guide* for an obligation of the registry to protect the information in the registry record through secure back-up mechanisms.

32. Subject to the above-mentioned changes (see paras. 28-31 above), the Working Group adopted the substance of chapter I (establishment and functions of the security rights registry).

D. Access to registry services (A/CN.9/WG.VI/WP.52/Add.1, paras. 56-61 and A/CN.9/WG.VI/WP.52/Add.2, paras. 1-10)

33. With respect to subsection A.1 (public access), it was agreed that: (a) the discussion of the benefits of electronic access to registry services did not need to be repeated here; and (b) privacy concerns of the grantor and the secured creditor should be dealt with elsewhere in the draft Registry Guide.

34. With respect to subsection A.2 (operating days and hours of the registry), it was agreed that an additional example for entering information contained in paper notices into the registry record would be to have the registry staff enter the information within a short period of time (e.g., a few hours) after its submission.

35. With respect to subsections A.3 (access to registration and search services) and A.5 (rejection of a registration or search request), it was agreed that: (a) access to registration services should be discussed separately from access to search services; (b) the discussion of access to registration services should be followed by a discussion of the grounds for rejection of a registration and access to searching services should be followed by a discussion of the grounds for rejection of a search request; (c) the discussion of the rejection of a registration or search request should be recast as an obligation of the registry in cases where the necessary conditions were not met; and (d) it should be explained that, in the case of an electronic registry, the grounds for rejection should be provided by the registry immediately, while, in the case of a not fully electronic registry, the grounds for rejection should be provided as soon as practicable.

36. With respect to subsection A.4 (verification of identity, evidence of authorization or scrutiny of the content of the notice not required), it was agreed that: (a) it should be clarified that there was no need for the registry to verify the identity of the registrant and, in any case, the identification of the registrant should be discussed in subsection A.3, dealing with access to registration services; (b) measures to protect grantors from unauthorized registrations should also be discussed in that context with cross-references to other sections of the draft Registry Guide (e.g., the section on compulsory amendment and cancellation of a notice); and (c) the issue of amendments or cancellations that were not authorized by the secured creditor should be discussed in the section dealing with copies of registered notices.

37. With respect to recommendations 4 to 9, it was agreed that: (a) for reasons of consistency with the formulation of the recommendations of the *Secured Transactions Guide*, in recommendation 5, the words “must be” should be replaced

by the word “is”; (b) in recommendation 5, subparagraph (c) (i), the suspension of the access to the registry services should be qualified by reference to a reasonably short period of time and to the reason of the suspension (e.g., maintenance); (c) in recommendations 6 and 7, the words “is entitled to register” and “is entitled to search” should be replaced by words along the lines “is entitled to submit a notice for registration” and “is entitled to submit a search request”, as the registry could reject a registration or search request according to recommendation 9; (d) recommendation 6 should be followed by a recommendation dealing with the rejection of a registration request along the lines of recommendation 9, subparagraphs (a) and (c), with the change that rejection should be mandatory if the conditions set out therein were not met; (e) recommendation 7 should be placed right after recommendation 8; (f) recommendation 8 should be retained with some drafting improvements of subparagraph (c); and (g) the rest of recommendation 9, dealing with the rejection of a search request, should be retained along the lines of subparagraphs (b) and (c), with the change that the rejection should be mandatory if the conditions set out therein were not met.

38. In the context of the discussion of recommendations 4 to 9, it was also agreed that the commentary should: (a) clearly separate access issues from the grounds for rejection of a registration or a search request; (b) revise the title of chapter II to reflect that distinction; (c) explain the relationship of recommendations 6 and 9 with recommendation 54, subparagraph (c), of the *Secured Transactions Guide*; and (d) explain that the registry could require and maintain the identity of the registrant but not require verification of the registrant’s identity (other than the minimal verification referred to in the *Secured Transactions Guide*, chapter IV, para. 48).

39. Subject to the above-mentioned changes (see paras. 33-38 above), the Working Group adopted the substance of chapter II (access to the registry services) of the draft Registry Guide.

E. Registration (A/CN.9/WG.VI/WP.52/Add.2, paras. 11-58)

40. With respect to subsection A.1 (time of effectiveness of registered notice), it was agreed that: (a) the discussion of the obligation of the registry to assign a registration number to an initial notice should be dealt with as a separate matter, since it did not fit under the heading “time of effectiveness of registered notice”; (b) the discussion of the priority of security rights covered in notices that were registered simultaneously could be deleted as it was not relevant in that context, the issue was rather unlikely to occur and, in any case, was sufficiently addressed in recommendations 70 and 76, subparagraph (a) of the *Secured Transactions Guide*; (c) the importance of certainty as to the exact time the registered notice became effective should be emphasized by reference to the commencement of insolvency proceedings with respect to the grantor, as the commencement of insolvency proceeding was more likely to coincide with the time of registration; (d) the discussion of the time lag between the time of receipt of a notice by the registry and the time the notice became available to searchers should be streamlined and corrected; (e) the obligation of the registry to enter in the record each notice in the order it was received (which was important for the order of priority of each security right and was not intended to address the time lag problem) should be clearly explained as a separate issue from the obligation of the registry to do so without

delay; and (f) the discussion of “currency dates” should be deleted as it was not relevant in the context of a secured transactions system in which the time of effectiveness was the time a notice became available to searchers (rather than the time a notice was received).

41. With respect to subsection A.2 (period of effectiveness of registered notice), it was agreed that: (a) the discussion of the mandatory requirement of indicating in the notice its period of effectiveness should be placed in the part of the draft Registry Guide dealing with the required content of a notice; and (b) the discussion of a default period of effectiveness in options B and C should be deleted as it was inconsistent with the *Secured Transactions Guide*.

42. With respect to subsection A.3 (time when a notice may be registered), it was agreed that the discussion of the issue of grantor protection against unauthorized registrations should be shortened and a cross-reference should be included in the discussion in the draft Registry Guide of compulsory amendment and cancellation of a notice.

43. With respect to subsection A.4 (sufficiency of a single notice), it was agreed that the commentary should clarify that a registration of a single notice was sufficient to achieve third-party effectiveness of one or more than one security right in the encumbered asset described in the notice and in favour of the secured creditor identified in the notice.

44. With respect to subsection A.5 (indexing or other organization of information in the registry record), it was agreed that: (a) the discussion of grantor-based indexing should be separated from the discussion of asset-based indexing; (b) the latter should be shortened, as it was discussed in the commentary of the *Secured Transactions Guide*, but not recommended; and (c) it should be clarified that information in an amendment notice should be indexed or otherwise organized so that, when a search was made, it would retrieve the information in the initial notice as well as the information in all amendment notices that related to that initial notice.

45. With respect to subsection A.6 (integrity of the registry record), it was agreed that: (a) the commentary should discuss the obligation of the registry to protect the information in the registry record through secure back-up mechanisms (see para. 31 above); (b) the role of the registry staff should be discussed in a more flexible manner, as it could vary from one State to another and, in any case, the registry staff should be allowed to give practical advice with respect to the registration process to registrants and in particular to small lenders; and (c) the discussion about the registry staff not being allowed to give legal advice should be moved to subsection A.7 dealing with liability of the registry.

46. With respect to subsection A.7 (liability of the registry), it was agreed that the heading of that subsection should be re-drafted so as not to imply the existence of liability of the registry.

47. With respect to subsection A.8 (copy of registered notice), it was agreed that: (a) the subsection should be divided into two parts, one dealing with the registry’s duty to send a copy of the registered notice to the registrant and the other dealing with the registrant’s duty to send a copy to the grantor; (b) the commentary should explain that the purpose of sending a copy of the registered notice to the grantor was to ensure the existence of the grantor’s authorization and the conformity of the

scope of the notice with that authorization; and (c) in the case of the initial notice, the copy should be sent to the address of the grantor set forth in the notice, while, in the case of an amendment notice, the copy could be sent to that address or to the grantor's current address known to the registrant.

48. With respect to subsection A.9 (amendment of information in a registered notice), it was agreed that: (a) the subsection could be shortened and the discussion on compulsory amendment could be dealt with in the relevant part of the draft Registry Guide; and (b) the heading should be revised along the following lines "amendment of a registered notice", as the term "amendment" already included a reference to information in a registered notice.

49. In that connection, the Working Group reconsidered the terms "amendment" and "cancellation" in the draft Registry Guide and agreed that: (a) the meaning of the term "amendment" should not refer to the act of deleting information contained in a registered notice, as, in the case of an amendment, information would be added to the record without the deletion of the existing information; and (b) the meaning of the term "cancellation" should refer to the act of removing all information contained in a registered notice but only from the publicly accessible record, as that information would be retained in the registry archives for a long period of time (see also para. 18 above). However, noting that those terms were used in different contexts throughout the draft Registry Guide to reflect a noun, process or legal effect, it was agreed that the commentary should be carefully revised to explain their meaning depending on the context.

50. With respect to subsection A.10 (removal of information from the publicly available registry record and archival of such information), it was agreed that: (a) examples of situations where the need to retrieve information arose could be further developed; (b) the possibility of retaining information in expired or cancelled notices in the publicly accessible registry record should not be mentioned, as it was inconsistent with the recommendations of the *Secured Transactions Guide*; and (c) the discussion of the correction of errors by the registry staff should be moved to the subsection dealing with the integrity of the registry record.

51. With respect to subsection A.11 (language of a notice), it was agreed that: (a) reference should be made to the possibility of a search result being displayed in an official language other than the language of the initial notice (namely, to the possibility of multiple official languages); and (b) the use of personal identification numbers as grantor identifier should not be discussed as a way to mitigate the language problem as, in any case, the name of the grantor would need to be provided.

52. With respect to recommendations 10 to 20, it was agreed that: (a) the obligation of the registry to assign a registration number to the initial notice should form a separate recommendation, as it did not fit under the heading of recommendation 10 (time of effectiveness of registered notice); (b) in recommendation 10, the reference to the "initial notice" should be retained (rather than to the "initial registered notice"), as an initial notice would be assigned a registration number at the same time it would be registered; (c) the use of the terms "registered notice" and "registration" in recommendation 11 and other recommendations should be carefully examined and streamlined; (d) the last part of recommendation 14, subparagraph (b), should be revised along the following lines

“so as to make it retrievable together with the initial notice as amended”, as the term “retrievable” conveyed more closely the correct meaning of finding information; (e) recommendation 16 should be revised to refer to the address set forth in the notice in the case of initial notices, and to that address or the grantor’s current address known to the registrant in the case of an amendment notice; and (f) recommendation 19 should include a cross-reference to recommendation 14 to ensure that archived information would be retrieved with the initial notice as amended.

53. Subject to the above-mentioned changes (see paras. 40-52 above), the Working Group adopted the substance of chapter III (registration) of the draft Registry Guide.

F. Registration information (A/CN.9/WG.VI/WP.52/Add.3, paras. 1-56)

54. With respect to subsection A.1 (information required in an initial notice), it was agreed that: (a) the inclusion of all required information in the notice should be discussed as a condition of the notice being accepted (or not rejected) by the registry, rather than as a condition of effectiveness; (b) the commentary dealing with the grantor identifier should be moved to the part of the draft Registry Guide dealing with that matter; (c) the commentary should be revised to state that a search disclosed the notices registered against the grantor (rather than security rights that might have been granted); (d) the commentary should elaborate on the hierarchy among documents used for the identification of grantors that were natural persons, in line with the relevant table and recommendation; (e) the matching of names entered in registered notices against names in other databases, which took place during the registration process, was relevant to, and should thus be discussed with respect to, both natural and legal persons; (f) the address of the grantor should be discussed as additional information that was neither part of the grantor identifier nor a search criterion, with appropriate cross-references to the part of the draft Registry Guide in which that matter was discussed; (g) the issue of identity theft should be discussed in more detail; (h) the discussion of identifiers of grantors that were domestic or foreign corporations should be streamlined; (i) the discussion of the special cases should be aligned more closely with the relevant table; (j) the grantor’s address should be discussed without encouraging unsolicited communications of third parties with grantors; (k) in the discussion of the required contents of a notice, cross-references should be included to the discussion of incorrect or insufficient information; (l) the commentary should explain that, without authority by the grantor, the secured creditor could not provide third parties with information about the grantor.

55. With respect to subsection A.2 (secured creditor information), it was agreed that a trustee or agent in a syndicated lending transaction should be referred to as a secured creditor (rather than as a representative of the secured creditor).

56. With respect to subsection A.3 (description of encumbered assets), it was agreed that: (a) the commentary should explain that the description of an encumbered asset could be specific or generic, depending on the nature of the asset and the grantor’s estate; and (b) the description of serial number assets should be

discussed as an option (not a requirement), permitting also serial number indexing and searching, and clarifying that a negative search result after a serial number search should not be relied upon.

57. With respect to subsection A.5 (maximum amount for which the security right may be enforced), it was agreed that: (a) the commentary should clarify that the maximum amount mentioned in a notice should not be used as an opportunity to impose registry fees at a level higher than necessary for cost recovery (recommendation 54, subpara. (i), of the *Secured Transactions Guide*); and (b) the commentary should clarify that, even if there was no competing claimant, the secured creditor could enforce its security right up to the maximum amount stated in the security agreement and the notice, and claim payment of any remaining balance of the secured obligation only as an unsecured creditor.

58. With respect to subsection A.6.(a) (grantor information), it was agreed that the commentary should clarify that an error with respect to additional grantor information (such as the grantor's address, birth date or identity card number) should not render a notice ineffective unless it would seriously mislead a reasonable searcher.

59. With respect to subsection A.6.(b) (secured creditor information), it was agreed that: (a) a change in the secured creditor identifier after registration of a notice should not render the notice ineffective; and (b) the discussion of an amendment should be placed in the discussion of amendments in the draft Registry Guide.

60. With respect to subsection A.6.(c) (asset description), it was agreed that: (a) the discussion of the description of serial number assets should be separated from the discussion of a serial number as a search criterion; (b) where the indication of a serial number in a notice was optional, an error should not render the registered notice ineffective, unless it would seriously mislead a reasonable searcher; (c) where such indication was mandatory, an error should not render a registered notice ineffective, unless the notice would not be retrieved by a search with the correct serial number; (d) the impact of an incorrect statement in the registered notice of the period of effectiveness of registration should be discussed to clarify, inter alia, that: (i) if a shorter period than intended was indicated in the registered notice, upon its expiry, its effectiveness would lapse and could be re-established with the registration of a new notice but only as of the time of the new registration; and (ii) if a longer period than intended was mentioned in the registered notice, third parties would not be prejudiced as they would have been alerted to the fact that security right might exist; and (e) the discussion of the maximum monetary amount and the impact of error should clarify that: (i) if the maximum amount indicated in the notice was, as a result of a mistake, lower than the maximum amount indicated in the security agreement, the secured creditor could enforce its security right up to the maximum amount and claim any balance as an unsecured creditor (in accordance with law other than secured transactions law), if there were other competing claimants; and (ii) if there were no other competing claimants, the secured creditor could enforce its security right up to the amount indicated in the security agreement as, based on that agreement, the security right would be effective between the parties.

61. With respect to recommendations 21 to 27 (see also para. 77 below), it was agreed that: (a) in recommendation 22, subparagraph (b), it should be clarified that each component of the name should be entered in the field designated for the respective component; (b) in recommendations 26 and 27, the reference to the initial or the amendment notice should be reviewed, as recommendation 21, subparagraph (a), sufficiently clarified that recommendations 21 to 27 applied to the initial notice and recommendation 28, subparagraph (a) (ii) and (iii), properly adjusted, could clarify that the recommendations that applied to entering information in an initial notice would also apply to entering information in an amendment notice; and (c) recommendation 27, subparagraph (e), should be retained within square brackets and with appropriate adjustments to provide guidance on how third parties that relied on an incorrect statement in the registered notice of the period of effectiveness or the maximum amount for which the security rights could be enforced would be protected.

62. Subject to the above-mentioned changes (see paras. 54-61 above), the Working Group adopted the substance of chapter IV (registration information) of the draft Registry Guide.

G. Amendment and cancellation information (A/CN.9/WG.VI/WP.52/Add.4, paras. 1-30)

63. With respect to subsection A.1.(a) (general), it was agreed that: (a) the terminology used should be adjusted to avoid implying that an amendment could result in a change (as opposed to the addition) of information in the registry record; (b) the question of whether an amendment would require the authorization by the grantor should be clarified by setting out examples (rather than setting a general test of adverse economic impact), such as adding encumbered assets or increasing the maximum amount for which the security right could be enforced; (c) situations in which the grantor had authorized an amendment should be distinguished from situations in which the grantor had not given such authorization; (d) emphasis should be given to multiple amendments with a single notice; and (e) the focus should be on guidance to registrants, while the text that provided guidance to the registry should be moved to the appropriate place in the draft Registry Guide.

64. With respect to subsection A.1.(b) (change of the grantor identifier), it was agreed that: (a) reference should be made to permanent unique numbers (rather than identity card numbers) and to the fact that their use as a supplementary identifier could not address the problem that arose from the change in the grantor identifier as the name would still be the main grantor identifier; (b) it was the function of the registry to preserve the old grantor identifier even if a new identifier was entered; (c) the impact of the old and the new grantor identifier on the third-party effectiveness and priority of the security right to which the notice related should be explained; and (d) the question whether a search would be possible against both the new and the old identifier, and if so, what would be the consequence for third parties that relied on a negative search result should be elaborated on.

65. With respect to subsection A.1.(c) (transfer of an encumbered asset), it was agreed that: (a) the different approaches taken by States with respect to the effectiveness of the registration upon the transfer of the encumbered asset should be

discussed in a more streamlined manner; (b) even in States that did not require an amendment notice, the registrant could make such an amendment if it wished to; and (c) an amendment did not involve the deletion of information from the registry record.

66. With respect to subsection A.1.(e) (assignment of the secured obligation and transfer of the security right), it was agreed that: (a) reference should be made to article 10 of the United Nations Convention on the Assignment of Receivables in International Trade; (b) the new secured creditor would not have to provide to the registry evidence of consent by the original secured creditor to register an amendment notice, and the matter would be left to the parties in their agreement; (c) the registry record would not need to disclose whether an amendment notice was registered by the original or the new secured creditor; and (d) the secured creditor was under no obligation to disclose the identity of the assignee to the grantor upon request.

67. With respect to subsections A.1.(f) (addition of newly encumbered assets) and (g) (deletion of encumbered assets), it was agreed that the discussion of instances where the grantor had partially satisfied the secured obligation should be merged with the discussion of the deletion of encumbered assets.

68. With respect to subsection A.1.(h) (change of description of encumbered assets), it was agreed that: (a) where the description of the encumbered assets in the registered notice was correct but no longer corresponded to the encumbered assets due to changes in their characteristics, the registration continued to be effective against third parties as long as it reasonably allowed their identification; (b) where the description of the encumbered assets in the registered notice was erroneous and the amendment notice corrected the errors, third-party effectiveness would be achieved as of the time the amendment notice was registered.

69. With respect to subsection A.1.(i) (extension of the period of effectiveness of a registration), it was agreed that: (a) the registration of an amendment notice to extend that period was not an obligation of, but an option for, the registrant; (b) the extension of the period of effectiveness before it expired was an amendment and not a new registration; (c) cross-references should be made to the relevant part of the draft Registry Guide providing options with regard to the period of effectiveness; and (d) the possibility of setting no limit to the period of effectiveness should not be mentioned as it was not an approach recommended in the *Secured Transactions Guide*.

70. With respect to subsection A.1.(j) (global amendment), it was agreed that the discussion should be shortened and explain how a global amendment was made with a single notice.

71. With respect to subsection A.2 (voluntary cancellation), it was agreed that: (a) the registrant should be able to cancel a notice at any time; (b) the grantor identifier was not required for a cancellation notice in order to facilitate the cancellation of registered notices; and (c) all relevant issues with respect to a cancellation notice submitted by one of the secured creditors in the registered notice should be discussed, including: (i) what kind of effect such a notice would have on the rights of other secured creditors and on third parties that relied on the non-existence of such information in the publicly accessible registry record; (ii) whether authorization by other secured creditors would be required and if so, the

mechanism to obtain such authorization; (iii) whether the registry should be designed to reject such a notice and to request that it be submitted as an amendment notice; and (iv) whether the registry should be designed to treat such a notice as an amendment notice.

72. With respect to subsection A.3 (correction of erroneous lapse or cancellation), it was agreed that the commentary should explain that: (a) regardless of whether the lapse or cancellation of the registered notice was erroneous or not, a new initial notice was required to correct the lapse or cancellation and re-establish third-party effectiveness; and (b) the matter might be discussed together with voluntary cancellation under a revised heading (“effect of lapse or cancellation”).

73. With respect to recommendations 28 to 31, it was agreed that: (a) at the end of recommendation 28, subparagraphs (a)(ii) and (iii), the words “in an initial notice” should be added; (b) recommendation 28, subparagraph (b), should be retained outside square brackets and the commentary should explain that in States that required the disclosure of the transferee identifier in an amendment notice, the recommendation would reflect a requirement, in other States it would indicate an option; (c) in recommendation 28, subparagraph (d), only option B should be retained and the commentary should discuss both options to better explain the recommended option; (d) recommendation 29 should be revised to provide two distinct options; (e) at the end of recommendation 30, the words “of the registered notice to which the cancellation relates” should be added and the formulation of the recommendation should be aligned with the formulation of other recommendations; (f) with respect to recommendation 31, subparagraph (a)(iii), the difference between the terms “inaccurate” and “incorrect” should be explained in the commentary by way of examples; (g) in recommendation 31, subparagraph (c), the words “to the extent appropriate” should be reviewed and perhaps replaced by words along the lines “as the case may be”; and (h) the bracketed text in recommendation 31, subparagraph (g), should be retained outside square brackets.

74. Subject to the above-mentioned changes (see paras. 63-73 above), the Working Group adopted the substance of chapter V (amendment and cancellation information) of the draft Registry Guide.

H. Searches (A/CN.9/WG.VI/WP.52/Add.4, paras. 31-41)

75. With respect to subsection A.1 (search criteria), it was agreed that: (a) commentary on the access to search services and on search results should be removed as those matters were addressed elsewhere in the draft Registry Guide; and (b) the commentary should discuss the use of a serial number as an optional search criterion.

76. With respect to subsection A.2 (search result), it was agreed that: (a) the discussion should be streamlined and carefully illustrate registry systems that disclosed “close matches”; (b) clarify the difference between the terms “match” and “exact match”; and (c) explain the reasons why no reference to currency dates was needed.

77. With respect to recommendations 32 and 33, it was agreed that: (a) only the grantor name should be a search criterion and thus the reference to additional

grantor information in recommendations 22, 23 and 24 could be moved to recommendation 21, subparagraph (a)(i) (see also para. 61 above); (b) in recommendation 33, subparagraph (b), explicit reference should be made to close matches if a State chose to introduce any exceptions to the rule of “exact matches”.

78. Subject to the above-mentioned changes (see paras. 75-77 above), the Working Group adopted the substance of chapter VI (searches) of the draft Registry Guide.

I. Registration and search fees (A/CN.9/WG.VI/WP.52/Add.4, paras. 42-48)

79. After discussion, the Working Group adopted the substance of chapter VII (registration and search fees) unchanged.

J. Examples of registry forms (A/CN.9/WG.VI/WP.52/Add.6)

80. The Working Group next considered examples of registry forms and agreed that a number of changes would need to be made to reflect decisions taken by the Working Group at the present session and ensure the internal consistency of the examples of the registry forms. It was also agreed that the commentary should emphasize the importance to international trade of coordination among States to ensure the harmonization of secured transactions laws and regulations, as well as the standardization of registry forms.

V. Future work

81. The Working Group noted that the twenty-third session of the Working Group was scheduled to take place in New York from 8 to 12 April 2013.