



General Assembly

Distr.: General
16 April 2013

Original: English

**United Nations Commission
on International Trade Law**
Forty-sixth session
Vienna, 8-26 July 2013

Report of Working Group VI (Security Interests) on the work of its twenty-third session (New York, 8-12 April 2013)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-8	3
II. Organization of the session	9-14	5
III. Deliberations and decisions	15	6
IV. Registration of security rights in movable assets	16-62	6
A. Preface (A/CN.9/WG.VI/WP.54)	16	6
B. Introduction (A/CN.9/WG.VI/WP.54 and A/CN.9/WG.VI/WP.54/Add.1, paras. 1-23)	17-22	6
C. Establishment and functions of the security rights registry (A/CN.9/WG.VI/WP.54/Add.1, paras. 34-49)	23-25	8
D. Access to registry services (A/CN.9/WG.VI/WP.54/Add.1, paras. 50-65)	26-29	8
E. Registration (A/CN.9/WG.VI/WP.54/Add.2, paras. 1-49)	30-37	9
F. Registration of initial notices (A/CN.9/WG.VI/WP.54/Add.2, paras. 50-71, and A/CN.9/WG.VI/WP.54/Add.3, paras. 1-35)	38-44	11
G. Registration of amendment and cancellation notices (A/CN.9/WG.VI/WP.54/Add.4, paras. 1-41)	45-48	12
H. Search criteria and search results (A/CN.9/WG.VI/WP.54/Add.4, paras. 42-51)	49	13
I. Registration and search fees (A/CN.9/WG.VI/WP.54/Add.4, paras. 52-58)	50	14



J.	Annex I. Terminology and recommendations (A/CN.9/WG.VI/WP.54/Add.5)	51	14
K.	Annex II. Examples of registry forms (A/CN.9/WG.VI/WP.54/Add.6)	52-61	14
L.	Title of the draft Registry Guide	62	16
V.	Draft Model Law on Secured Transactions	63-64	17
VI.	Future work	65-66	17

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 its eighteenth session (Vienna, 8-12 November 2010), the Working Group began its work 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 that should be consistent with the UNCITRAL Legislative Guide on Secured Transactions (the "*Secured Transactions Guide*") and take into account the approaches taken 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).

3. 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 whether the text should include model regulations or recommendations (A/CN.9/719, para. 46).

4. 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 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.³

5. 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, as to the form of the text, it should be 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, it was agreed that, where the draft

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

² *Ibid.*, para. 265.

³ *Ibid.*, *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 237.

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, it was 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).

6. 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). 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).

7. 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 2013.⁴ 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.⁵ 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.

8. At its twenty-second session (Vienna, 10-14 December 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.52 and Add.1-6). At that session, 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 (A/CN.9/764, para. 15).

⁴ Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 100.

⁵ 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-third session in New York from 8 to 12 April 2013. The session was attended by representatives of the following States members of the Working Group: Austria, Belarus, Benin, Brazil, Canada, Chile, China, Colombia, El Salvador, France, Germany, India, Italy, Japan, Kenya, Mexico, Nigeria, Paraguay, Philippines, Poland, Republic of Korea, Russian Federation, Thailand, Turkey, Ukraine and United States of America.

10. The session was attended by observers from the following States: Angola, Burkina Faso, Croatia, Guatemala, Indonesia, Kuwait, Qatar and Switzerland. The session was also attended by observers from the Holy See.

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

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

(b) *Intergovernmental organizations*: Organization of American States (OAS);

(c) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Commercial Finance Association (CFA), European Law Students' Association (ELSA), Inter-American Bar Association (IABA), Inter-Pacific Bar Association (IPBA), International Insolvency Institute (III), Moot Alumni Association (MAA), National Law Centre for Inter-American Free Trade (NLCIFT), New York City Bar (NYCBAR) and Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ).

12. The Working Group elected the following officers:

Chairman: Mr. Rodrigo LABARDINI FLORES (Mexico)

Rapporteur: Mr. Madhukar R. UMARJI (India)

13. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.53 (Annotated Provisional Agenda), A/CN.9/WG.VI/WP.54 and Addenda 1-6 (Draft Technical Legislative Guide on the Implementation of a Security Rights Registry) and A/CN.9/WG.VI/WP.55 and Addenda 1-4 (Draft Model Law on Secured Transactions).

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. Model law on secured transactions.
6. Other business.
7. Adoption of the report.

III. Deliberations and decisions

15. The Working Group first 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.54 and Add.1-6), adopted the draft Registry Guide and referred it to the Commission for adoption at its forty-sixth session, which was scheduled to take place in Vienna from 8 to 26 July 2013. Thereafter, the Working Group considered a note by the Secretariat entitled “Draft Model Law on Secured Transactions” (A/CN.9/WG.VI/WP.55 and Add.1-4). The deliberations and decisions of the Working Group are set forth below respectively in chapters IV to VI. The Secretariat was requested to revise the draft Registry Guide to reflect the deliberations and decisions of the Working Group.

IV. Registration of security rights in movable assets

A. Preface (A/CN.9/WG.VI/WP.54)

16. The Working Group adopted the substance of the preface of the draft Registry Guide on the understanding that the preface would be updated to reflect the results of the present session and the Commission session.

B. Introduction (A/CN.9/WG.VI/WP.54 and A/CN.9/WG.VI/WP.54/Add.1, paras. 1-23)

17. With respect to section A (purpose of the draft Registry Guide and its relationship with the *Secured Transactions Guide*), it was agreed that: (a) in paragraph 3, reference should be made to registration as a method of achieving third-party effectiveness or, at least, as a method of establishing priority; (b) in paragraph 4, reference should be made to other texts on registration, such as texts prepared by the World Bank; and (c) in paragraph 6 (e), reference to academics should be added.

18. With respect to section B (terminology and interpretation), it was agreed that: (a) the explanation of the meaning of the term “amendment” should be revised to refer to “a modification with respect to information ...”; (b) paragraph 10 should be revised to read along the following lines “registration of an amendment notice does not result in the deletion or modification of information in previously registered notices to which the amendment notice relates. The legal consequence of the registration of an amendment notice is that the effect of the information to which it relates in the previously registered notice is modified to the extent of the change specified in the amendment notice. Under recommendation 11, an amendment notice is effective from the time it is accessible to searchers.”; (c) at the end of paragraph 11, a sentence along the following lines should be added “Under recommendation 11, a cancellation notice is effective from the time the previously registered notice to which the cancellation notice relates is no longer accessible to searchers of the public registry record.”; (d) the explanation of the meaning of the term “cancellation” should refer to “the removal of *all* information” from the public registry record; (e) in the explanation of the meaning of the term “registrant”, the

bracketed text “and may be a service provider” should be deleted; (f) in the explanation of the meaning of the term “registration”, the term “database” should be deleted and the word “record” should be retained outside square brackets; (g) in the explanation of the meaning of the term “registry record”, the terms “record” and “database” should be deleted and reference should be made to “information ... that is stored *by* the registry”; (h) in the explanation of the meaning of the term “secured creditor”, the bracketed text “and may be the secured creditor or its representative” should be deleted; and (i) an explanation of the meaning of the term “registry” should be added to read along the following lines “a system for registering and searching information about security rights in movable assets”.

19. With respect to section D (overview of secured transactions law and the role of registration), it was agreed that: (a) in subsection D.2 (concept of a security right), a security right should be qualified as a “limited” property right; (b) in subsection D.4 (third-party effectiveness of a security right), paragraph 30 should include a reference to paragraph 37 (dealing with the exclusion of securities from the scope of the *Secured Transactions Guide*), while footnote 9, dealing with the same issue, should be deleted, and paragraph 31 should be clarified to explain that registration in a specialized registry would be an alternative method of third-party effectiveness only if intellectual property law did not provide otherwise; (c) in subsection D.5, (a) to (d) and throughout the draft Registry Guide, the Secretariat should make any editorial changes necessary to ensure consistency of expression and to avoid duplication; (d) in subsection D.5 (e), it should be explained that, even if preferential claims were made subject to registration, the first-to-register priority rule might not necessarily apply; (e) in subsection D.6 (extended transactional scope of the registry), the heading of the subsection should be revised to read along the following lines “extended scope of the registry” as preferential claims (e.g. tax claims) did not necessarily arise as a result of a transaction, a subheading “preferential claims” should be added before paragraph 5, the paragraph should refer to the fact that the *Secured Transactions Guide* “discussed but made no recommendation on that matter” (an expression that should be used throughout the draft Registry Guide to refer to such instances) and the last sentence of paragraph 5 should be deleted; (f) in subsection D.7 (registration and enforcement of security rights), reference should be made directly to what was recommended in the *Secured Transactions Guide*; and (g) in subsection D.9 (notice registration), for consistency reasons, reference should be made to the “grantor” rather than to the “debtor”.

20. It was also agreed that a paragraph should be added at the end of section D to address international coordination among national security rights registries along the following lines: “States would benefit from coordinating and harmonizing their registry rules and procedures to the greatest extent possible in order to reduce transaction costs for registrants and searchers of the registry record. Accordingly, registrars would be well-advised to consult with registrars in other States and take into consideration the rules and procedures of registries in those States.”

21. With respect to section E (transitional considerations), it was agreed that: (a) paragraphs 24 to 30 should be deleted; (b) paragraphs 31 and 32 should be placed at the end of section D or in a more appropriate place; and (c) paragraph 33 should follow paragraph 39 as it referred to additional implementation considerations.

22. Subject to the above-mentioned changes (see paras. 17-21 above), the Working Group adopted the Introduction.

C. Establishment and functions of the security rights registry (A/CN.9/WG.VI/WP.54/Add.1, paras. 34-49)

23. With respect to subsection A.2 (appointment of the registrar), it was agreed that it should be made clear that the registrar could be either a legal person or a natural person.

24. With respect to recommendation 3, subparagraphs (d) and (g), in line with the decision with respect to the terms “registration” and “registry record” (see para. 18 above), it was agreed that reference should be made to “registry record” rather than to the “registry database”.

25. Subject to the above-mentioned changes (see paras. 23 and 24 above), the Working Group adopted chapter I.

D. Access to registry services (A/CN.9/WG.VI/WP.54/Add.1, paras. 50-65)

26. With respect to subsection A.3 (access to registration services), it was agreed that the third sentence of paragraph 56 should be deleted as the grantor would send a demand to amend or cancel an unauthorized registration to the secured creditor, and not to the registrant.

27. With respect to subsections A.4 (verification of identity, evidence of authorization or scrutiny of the content of the notice not required), it was agreed that: (a) paragraphs 59 to 61 would apply to notices in general and would not necessarily be limited to initial notices; (b) references should be made to authorization by the grantor, as the authorization of amendment or cancellation notices by the secured creditor was dealt with elsewhere in the draft Registry Guide (see A/CN.9/WG.VI/WP.54/Add.4, paras. 28-37); and (c) reference should be made to the discussion in the draft Registry Guide of types of amendment that required the grantor’s authorization as the grantor’s authorization was not required for all types of amendment (see A/CN.9/WG.VI/WP.54/Add.4, para. 3).

28. With respect to recommendations 4 to 10, it was agreed that: (a) in recommendation 4, the bracketed text should be retained outside square brackets; (b) in recommendation 6, the bracketed text in the chapeau should be deleted and subparagraph (b) should be revised to read along the following lines “identifies itself in the manner prescribed by the registry”; (c) in recommendations 6 and 9, a subparagraph should be added to require the registry to provide grounds for the rejection of access to registration and searching services respectively; (d) in recommendation 7, the bracketed text in subparagraph (a) should be retained outside square brackets and the relevant commentary should explain that subparagraph (b) referred to authorization by the grantor with a cross-reference to the part in the draft Registry Guide in which the effectiveness of amendment and cancellation notices that were not authorized by the secured creditor was discussed; (e) in recommendation 8, subparagraph (a) should be revised to read along the following

lines “the registry rejects the registration of a notice submitted to it if information is not entered in all the required designated fields ...”; (f) the commentary should explain the relationship between recommendation 6, which dealt with access to registration services, and recommendation 8, which dealt with the rejection of a notice, and discuss situations in which the registry might need to provide reasons for denying access to registration services (e.g. where the notice was submitted by mail and the registrant used the wrong form, an identity card that had expired or a credit card the limit of which had been exceeded); and (g) in recommendation 10, subparagraph (a) should be revised to read along the following lines “the registry rejects ...”, while the Secretariat should make similar editorial changes throughout the draft Registry Guide to ensure consistency of expression.

29. Subject to the above-mentioned changes (see paras. 26-28 above), the Working Group adopted chapter II.

E. Registration (A/CN.9/WG.VI/WP.54/Add.2, paras. 1-49)

30. With respect to subsection A.2 (period of effectiveness of registered notice), it was agreed that the first sentence of paragraph 11 should be revised to read along the following lines “if a State adopts option A, it is not necessary to design its registry system to allow the registrant to reduce the legal period of effectiveness”.

31. With respect to subsection A.3 (time when a notice may be registered), it was agreed that, where the draft Registry Guide recommended a rule typically found in the secured transactions law, which, depending on the drafting conventions in the enacting State might need to be included or reiterated in the registry regulation, reference should be made to the part in the draft Registry Guide which dealt with issues of legislative technique and drafting (see A/CN.9/WG.VI/WP.54/Add.1, para. 32).

32. With respect to subsection A.7 (preserving the integrity and security of the registry record), it was agreed that: (a) in line with recommendation 18, the commentary should refer to the obligation of the registry to send a copy of the registered notice to the secured creditor, rather than to the registrant; and (b) the commentary should explain that the registry could correct only errors it made in entering into the registry record information contained in a paper notice, but not possible errors made by the registrant.

33. With respect to section A.9 (registry’s duty to send a copy of the registered notice to the registrant), in line with the decision made by the Working Group with respect to subsection A.7 (see para. 32 above), it was agreed that reference should be made to the obligation of the registry to send a copy to the secured creditor, rather than to the registrant.

34. With respect to subsection A.12 (removal of information from the public registry record and archival), it was agreed that a reference should be made to recommendation 74 of the *Secured Transactions Guide*, under which information should be archived upon expiration or cancellation of a notice as provided in recommendations 69, 72 or 73 and to the part in the draft Registry Guide in which the effectiveness of amendment and cancellation notices that were not authorized by the secured creditor was discussed (see A/CN.9/WG.VI/WP.54/Add.4, paras. 28-37).

35. With respect to subsection A.13 (language of notices and search requests), it was agreed that paragraph 49 should be recast to set out the issue (multiple linguistic versions of a grantor that was a legal person under the law of its constitution) and provide options for States with advantages and disadvantages. It was noted that one option, for example, might be to require that all linguistic versions of the grantor's name be listed in the notice. In that connection, it was pointed out that that approach would protect third-party searchers using one of the versions but expose the secured creditor to the risk of error and potential ineffectiveness of the notice. It was also noted that another approach might be to require that only one of the linguistic versions of the grantor's name be listed in the notice. It was stated that that approach would protect the secured creditor against the risk of error and ineffectiveness of the notice, but expose third-party searchers to the risk that they might not find the registered notice if they used another version of the grantor's name.

36. With respect to recommendations 11-22, it was agreed that: (a) in line with the decision made by the Working Group with respect to terminology and interpretation (see para. 18 above), in recommendation 11, reference should be made to the "registry record", rather than to the "registry database", and, as the words "as soon as practicable" were sufficient, the words "or within [a short period of time to be specified by the enacting State]" should be deleted from subparagraph (c); (b) in recommendation 11, references to a "notice" in subparagraphs (a), (b) and (c) should be qualified with the words "initial or amendment"; (c) in recommendation 11, subparagraphs (d) and (e) should be added to read along the following lines "(d) The registration of a cancellation notice is effective from the date and time when the previously registered notice to which it relates is no longer accessible to searchers of the public registry record" and "(e) The registry maintains a record of the date and time when the previously registered notice to which a cancellation notice relates is no longer accessible to searchers of the public registry record", while commentary should be prepared to explain the new subparagraphs that addressed an issue that was not specifically dealt with in the *Secured Transactions Guide*"; (d) in recommendation 12, the bracketed text should be retained outside square brackets and revised to read along the following lines "all notices related to an initial notice are [identified by] or [associated with] the same number"; (e) in all the options of recommendation 13, subparagraph (c) should be deleted and replaced with words to be inserted after the first sentence of subparagraph (b) along the following lines "by an amendment notice indicating that its purpose was to extend the period of effectiveness"; (f) in recommendation 14, the bracketed texts should be deleted; (g) in recommendation 16, the bracketed text should be retained outside square brackets; (h) in recommendation 18, subparagraph (b) should state that the secured creditor "must" send a copy of an initial notice to each grantor and indicate that the copy of the registered notice mentioned at the end of that subparagraph was a copy transmitted by the registry to the secured creditor in accordance with subparagraph (a), while the commentary should explain that, where there were multiple secured creditors, it was sufficient if one of the secured creditors sent the copy to the grantor; and (i) in recommendation 22, consistent with the terminology used in the draft Registry Guide, the obligation of the registrant in subparagraph (a) should be reflected with the verb "must", while the obligation of the registry in subparagraph (b) should be reflected with the verbs "specifies" and "makes".

37. Subject to the above-mentioned changes (see paras. 30-36 above), the Working Group adopted chapter III.

F. Registration of initial notices (A/CN.9/WG.VI/WP.54/Add.2, paras. 50-71 and A/CN.9/WG.VI/WP.54/Add.3, paras. 1-35)

38. With respect to subsection A.2 (grantor information), it was agreed that: (a) the row “other entity” in the table following paragraph 66 should be deleted, as it was too general to provide any guidance and, in any case, enacting States would have to adjust the examples in the table to fit in their context; (b) following the order of examples in the table, the order of paragraphs 67 and 68 should be reversed; and (c) paragraphs 69 to 71 should be recast to state how the address of the grantor was dealt with in the *Secured Transactions Guide*, list additional issues that needed to be addressed, and conclude with a reference to the recommendations of the draft Registry Guide that dealt with those issues. In that connection, it was also agreed that the commentary should elaborate on instances where the grantor had multiple addresses or no address at all in the State in which the registry was located with a cross-reference to recommendation 18, subparagraph (b), which required the secured creditor to send a copy of the initial notice to the grantor at the address set forth in the notice and a copy of an amendment notice to the grantor at the address set forth in the notice or at the current address known to the secured creditor.

39. With respect to subsection A.3 (secured creditor information), it was agreed that: (a) paragraphs 2 and 4 should be aligned; and (b) paragraph 4 should make it clear that third parties should be able to rely on the fact that, even if it was not the actual secured creditor, the person mentioned in the notice as the secured creditor could act on behalf and bind the secured creditor, without having to determine what its exact relationship with the actual secured creditor was.

40. With respect to subsection A.4 (description of encumbered assets), it was agreed that paragraphs 10 and 11 should be revised to clarify that the need to amend the description of the encumbered assets in the notice would arise only if the proceeds were of a type that was not covered by the description of the encumbered assets in the initial notice.

41. With respect to subsection A.6 (maximum amount for which the security right may be enforced), it was agreed that: (a) the discussion of the possibility that the requirement to include in a notice the maximum amount might be used as a pretext to impose a tax on secured transactions should be deleted from paragraph 15 as it was addressed elsewhere (see A/CN.9/WG.VI/WP.54/Add.3, para. 19, and A/CN.9/WG.VI/WP.54/Add.4, para. 56); and (b) the commentary should explain that, in accordance with recommendation 11, subparagraph (a), an amendment of the maximum amount would only be effective when the registration of the amendment notice became effective and thus third parties that relied on the previous maximum amount would be protected.

42. With respect to subsection A.7 (effect of errors or omissions on the effectiveness of the registration of a notice), it was agreed that: (a) paragraph 27 should include a reference to the part of the draft Registry Guide in which serial number indexing and searching was discussed (see A/CN.9/WG.VI/WP.54/Add.2,

paras. 24-27); and (b) paragraphs 30 and 31 (with the exception of the first sentence, which should be placed after para. 28) should be deleted as the matter was addressed in paragraphs 32-35.

43. With respect to recommendations 23-29, it was agreed that: (a) references to the representative of the secured creditor in recommendations 23 and 27 should be deleted as the draft Registry Guide used the term “secured creditor” to encompass its representative, if that person was identified in the notice as the secured creditor; (b) recommendation 24, subparagraph (e), should be aligned with the relevant commentary (see A/CN.9/WG.VI/WP.54/Add.2, para. 56, and the table following that paragraph); (c) recommendation 26, subparagraph (a), should be revised to read along the following lines “if the grantor is subject to insolvency proceedings and the security right is created in the assets of the grantor by the insolvency representative ...” to ensure that it would not be understood as implying that an amendment notice would be required for a security right created by the grantor prior to the insolvency proceedings (see para. 52, (d), and 53 below); (d) recommendation 26, subparagraphs (b) and (d), should be deleted, while the relevant issues should be discussed in the commentary; (e) recommendation 26, subparagraph (c), should be aligned with the relevant commentary (see A/CN.9/WG.VI/WP.54/Add.2, para. 66, and the table following that paragraph) to refer to a trustee or representative of an estate; (f) the commentary to recommendation 27, subparagraph (c), should explain that subparagraph (c) would be of little practical importance, as it would be rather rare that an insolvent person or a trustee of an estate of a deceased person would be a secured creditor; (g) in recommendation 29, the word “registration” in subparagraphs (b)-(e) should be replaced with the words “registration of a notice” to ensure consistency of expression with other parts of the draft Registry Guide; (h) the reference in recommendation 29 to the fact that the registration of a notice might be rendered ineffective did not mean that the entry of information would be rejected but rather that the legal consequences of the registration would not be achieved; and (i) recommendation 29, subparagraph (c), should be revised to refer to an “insufficient” rather than to “incorrect” grantor identifier as, according to recommendation 29, subparagraph (a), even a notice with an incorrect grantor identifier might be effective (if the notice would be retrieved by a search of the public registry record using the grantor’s correct identifier).

44. Subject to the above-mentioned changes (see paras. 38-43 above), the Working Group adopted chapter IV.

G. Registration of amendment and cancellation notices (A/CN.9/WG.VI/WP.54/Add.4, paras. 1-41)

45. With respect to subsection A.1 (amendment notices), it was agreed that the commentary should clarify that: (a) the secured creditor, rather than the registrant, had a right to make an amendment; (b) an amendment to reflect a voluntary subordination would be optional; (c) the discussion was exhaustive to the extent that it related to all amendments with respect to the minimum content of a notice, but not exhaustive to the extent that it could not address all the reasons for an amendment; (d) in the case of a change in the grantor’s name, a search under the name of the old or the new grantor should retrieve the registration; (e) the *Intellectual Property Supplement* took a different position than the *Secured Transactions Guide* with

respect to the effectiveness of a registration in the case of a transfer of the encumbered assets (recommendation 244); and (f) the registry system could be designed to accommodate the registration of an amendment notice to disclose a subordination but adding new features to the registry system would be associated with cost.

46. With respect to subsection A.4 (effectiveness of amendment and cancellation notices not authorized by the secured creditor), it was agreed that it should be replaced by new text that would describe the issue, state that the *Secured Transactions Guide* did not address it explicitly and fully, identify the specific policy issues that an enacting State would need to address and discuss some of the possible approaches to those issues. In addition, it was agreed that the new text should reflect the two basic policy approaches (protection of third-party searchers relying on the registry record and protection of the secured creditor) and indicate the need to distinguish cases involving fraud by a third party (which could be addressed with secured access mechanisms) from cases involving a mistake by the secured creditor, its employees or agents (which could be addressed by rules relating to professional liability). Moreover, it was agreed that the new text should explain that the registry and bona fide third-party searchers would have no way of knowing whether fraud or mistake were involved in an unauthorized amendment or cancellation. It was also agreed that the new text should clarify that, upon registration of a cancellation notice, under recommendation 74 of the *Secured Transactions Guide*, the registry had to remove the relevant notice from the public registry record, irrespective of whether it was authorized by the secured creditor or not, as the registry had no way of verifying whether a cancellation notice had been authorized by the secured creditor.

47. With respect to recommendation 30, it was agreed that subparagraphs (a) and (f) should be retained to provide guidance as to amendments that related to information required in a notice, while subparagraphs (b)-(e) should be deleted and the matters addressed therein should be discussed in the commentary (for a change to recommendation 33, subpara. (g), see para. 57 below).

48. Subject to the above-mentioned changes (see paras. 45-47 above), the Working Group adopted chapter V.

H. Search criteria and search results (A/CN.9/WG.VI/WP.54/Add.4, paras. 42-51)

49. With respect to subsection A.2 (search results), it was agreed that the commentary should clarify that: (a) the registration number was the only other search criterion in addition to the identifier of the grantor; and (b) the discussion on close matches would only be applicable to searches conducted using the grantor identifier and not the registration number. Subject to those changes, the Working Group adopted chapter VI.

I. Registration and search fees (A/CN.9/WG.VI/WP.54/Add.4, paras. 52-58)

50. With respect to recommendation 36, it was agreed that it should refer to “paper” rather than to “paper-based” notices. Subject to those changes, the Working Group adopted chapter VII.

J. Annex I. Terminology and recommendations (A/CN.9/WG.VI/WP.54/Add.5)

51. Having adopted the commentary and recommendations of all the chapters of the draft Registry Guide, the Working Group noted that, it had also adopted Annex I, which reproduced the terminology and recommendations, set forth in the relevant chapters of the draft Registry Guide.

K. Annex II. Examples of registry forms (A/CN.9/WG.VI/WP.54/Add.6)

52. The Working Group next turned to the examples of registry forms, set forth in Annex II of the draft Registry Guide. With respect to form A (example of initial notice), it was agreed that: (a) the disclaimer at the top of form A should also mention that it was the responsibility of the registrant to ensure that all information in the notice was complete, accurate and legally effective (it was noted that the same change should also be made to forms B, C, D and E); (b) to the indication of the time of effectiveness that was to be automatically generated by the registry, minutes and seconds should be added (it was noted that the same change should also be made to forms B, C, D, E, G and H); (c) the reference to additional grantor information throughout form A should be revised to read along the following lines “additional information about the grantor”, placed within square brackets and accompanied by a note that would read along the lines of the relevant part of the commentary (see A/CN.9/WG.VI/WP.54/Add.2, para. 53; it was noted that the same change should also be made to form B); (d) section A.3 should be revised to indicate whether the grantor was the person that was subject to insolvency proceedings or that person’s insolvency representative; (e) throughout form A, reference to a “syndicate or joint venture” and to “an entity other than those mentioned above” should be deleted, and the reference to “a named trust or estate” should be revised to read along the following lines “a trustee or representative of an estate” (it was noted that the same change should also be made to form B); (f) in section C, reference to a description of the encumbered assets by serial number should be deleted; (g) in section D, reference should be made to the duration of registration, and the commentary should explain that that reference meant the last day of that period; and (h) in section G, the reference to the indication that the registration was transitional should be retained, while the reference to the indexing criterion and the date and time of effectiveness was not necessary and should thus be deleted.

53. As a result of the change to section A.3 of form A (see para. 52, (d) above) the Working Group revisited recommendation 26, subparagraph (a) (see para. 43, (c) above). It was widely felt that the answer to the question as to who might be the

person that had the right to grant a security right in assets that were part of an insolvency estate (i.e. the person that was subject to insolvency proceedings or that person's insolvency representative), and thus the answer to the question as to the person whose name should be entered as grantor in section A.1. or A.2 of form A, would depend on the law of the enacting State, which might differ from State to State. Accordingly, it was agreed that recommendation 26 (a) (and the relevant commentary) should be revised to state that the grantor identifier could be either the name of the person that was subject to insolvency proceedings or that person's insolvency representative.

54. With respect to form B (example of amendment notice), it was agreed that: (a) the list of acts, set forth at the top of the form, should be deleted and registrants should be instructed to fill out as many of the fields on the form as they might need; (b) with respect to a global amendment, to implement the options offered in recommendation 31, the commentary should explain that enacting States would need to design a form for a secured creditor to implement that amendment or an application for the secured creditor to request the registry to make that amendment; (c) in section D, wording along the following lines should be inserted "enter name of the grantor to whom the amendment relates"; and (d) in section G, wording along the following lines should be inserted "enter name of the secured creditor to whom the amendment relates".

55. With respect to form C (example of mandatory amendment notice), it was agreed that: (a) the heading should be revised to read along the following lines "example of amendment notice pursuant to a judicial or administrative order" (it was noted that a similar change should also be made to the heading of form E); (b) in section B, reference should also be made to "changes" of information pursuant to a judicial or administrative order; (c) in section C, reference should be made to a "registrant", and to its name and position, as well as to the name of the authority and its address (it was noted that the same change should also be made in form E); (d) the commentary to recommendation 33 should explain that an enacting State would need to determine whether a copy of all of the order (with the facts, the rationale and the actual decision) or only the actual decision should be attached, and whether a certified copy should be attached, and, if so, what constituted a certified copy under the law of the enacting State (it was noted that the same commentary would apply also with respect to form E); and (e) in section D, reference should be made to a copy of the judicial or administrative order (the same change should also be made in form E).

56. With respect to form D (example of cancellation notice), it was agreed that: (a) it should be revised to refer to the "registration number of the initial notice to be cancelled"; (b) a note should be added to alert the secured creditor to the legal consequences of a cancellation; and (c) the commentary should discuss the issue of inadvertent cancellations by secured creditors and ways in which such cancellations might be prevented (e.g. by requiring that additional information, such as the grantor identifier, be mentioned in a cancellation notice, and that the cancellation notice should be rejected if the registration number did not match the grantor identifier, or by designing the registry so as to have the entire record relating to the notice to be cancelled appear on a screen upon entry of the registration number).

57. In the context of the discussion of form E, it was agreed that, in recommendation 33, subparagraph (g), option A should be aligned with option B to

require that a copy of the relevant judicial or administrative order be attached, rather than the order itself (see para. 47 above).

58. With respect to form F (example of search request form), it was agreed that: (a) at the top of the form, wording along the following lines should be inserted “sections A and B are alternatives and only one of them needs to be filled out”; (b) the reference to the time should be deleted as that information would be set forth in the search result in form G; and (c) reference to “additional grantor information” should be deleted as, in accordance with recommendation 34, that information was not a search criterion.

59. With respect to form G (example of a search result), it was agreed that: (a) in line with the terminology used in the draft Registry Guide, reference should be made to notices being “retrieved”; (b) to indicate which notice matched the search criterion in line with recommendation 35, subparagraph (a), reference should be made to the search criterion used; and (c) the commentary should discuss the kind of information to be provided to a searcher in a search result (all information in an attachment or table, or some information relating to notices that matched the search criterion). In that connection, the Working Group discussed “currency dates” and noted that the relevant commentary (see A/CN.9/WG.VI/WP.54/Add.4, para. 51) was sufficient in discussing that issue.

60. With respect to form H (example of rejection of a registration or a search request), it was agreed that: (a) the form should be presented in a check-box format which would indicate to the registrant or the searcher the reason or reasons for the rejection of a registration or search request; (b) the time of rejection should be indicated in the form; (c) in line with the decision made by the Working Group at the present session (see para. 43 above), the reference to the representative of the secured creditor in section A.1.(b) should be deleted; (d) section A.2.(b) and (c) should be combined and revised to read along the following lines “it failed to provide any legible information”; (e) section B should be revised to read along the following lines “the search request is rejected because it failed to provide a search criterion in a legible manner in the designated field”; (f) the commentary should explain that form H would generally be used in a paper-based registry, as an ideal electronic registry would automatically reject a registration or a search request if some required information was not provided.

61. Subject to the above-mentioned changes, (see paras. 52-60 above), the Working Group adopted the examples of the registry forms and the revised recommendations 26, subparagraph (a), and 33, subparagraph (g), option A.

L. Title of the draft Registry Guide

62. The Working Group decided that the title of the draft Registry Guide should be “UNCITRAL Guide on the Implementation of a Security Rights Registry”. It was agreed that that title was appropriate, mainly as it indicated the contents of the draft Registry Guide but also its relationship to the *Secured Transactions Guide*.

V. Draft Model Law on Secured Transactions

63. Upon completion of its deliberations on the draft Registry Guide, the Working Group had a general exchange of views with respect to the draft Model Law on Secured Transactions (the “draft Model Law”) and in particular with respect to its scope. At the outset, the Working Group expressed its appreciation to the Commission for its decision to refer to the Working Group the preparation of 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 transactions⁶ and to the Secretariat for preparing a first draft of the draft Model Law. One view was that Commission’s mandate for the draft Model Law did not require that matters that were the subject of asset-specific recommendation in the *Secured Transactions Guide* be excluded from the scope of the draft Model Law. It was stated that, the Commission’s mandate rather required that the decisions as to the scope should be made on the basis of the economic value of having the draft Model Law cover a transaction, and not on the basis of whether the asset was the subject of an asset-specific recommendation.

64. Another view was that the main elements of the mandate given by the Commission to the Working Group were that the text to be prepared should be simple, concise and supplement the *Secured Transactions Guide*. It was stated that, before considering the provisions of the draft Model Law, it was premature to discuss in any detail, or to refer to the Commission, the matter of the scope of the draft Model Law. In that connection, it was observed that the draft Model Law could meet the three conditions set by the Commission if it had a broad scope and included general principles but not if it had a broad scope and included detailed provisions. It was also pointed out that, while simplicity might be a subjective criterion, conciseness was objective and referred, for example, to a limited number of provisions. It was also observed that, in any case, the draft Model Law should supplement, and not replace, the *Secured Transactions Guide*.

VI. Future work

65. The Working Group referred the draft Registry Guide to the Commission for adoption at its upcoming forty-sixth session.

66. The Working Group noted that its twenty-fourth session was tentatively scheduled to take place in Vienna from 7 to 11 October 2013, those dates being subject to confirmation by the Commission at its forty-sixth session.

⁶ Ibid.