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Report of Working Group VI (Security Interests) on the work of its twenty-seventh session (New York, 20-24 April 2015)

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I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a model law on secured transactions (the "draft Model Law"), pursuant to a decision taken by the Commission at its forty-fifth session (New York, 25 June-6 July 2012).[1] At that session, the Commission agreed that, upon its completion of the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "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 UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide") and consistent with all texts prepared by UNCITRAL on secured transactions, including the United Nations Convention on the Assignment of Receivables in International Trade (the "Assignment Convention"), the Supplement on Security Rights in Intellectual Property (the "Intellectual Property Supplement") and the UNCITRAL Guide on the Implementation of a Security Rights Registry (the "Registry Guide").[2]

2. At its twenty-third session (New York, 8-12 April 2013), the Working Group had a general exchange of views on the basis of a note prepared by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.55 and Add.1 to 4).

3. At its forty-sixth session (Vienna, 8-26 July 2013), the Commission agreed that the preparation of the draft Model Law was an extremely important project to complement the work of the Commission in the area of security interests and provide urgently needed guidance to States as to how to implement the recommendations of the Secured Transactions Guide. It was also agreed that, in view of the importance of modern secured transactions law for the availability and the cost of credit, and the importance of credit for economic development, such guidance was extremely important and urgent to all States at a time of economic crisis but in particular to States with developing economies and economies in transition. In addition, it was stated that the scope of the draft Model Law should include all economically valuable assets.[3] After discussion, the Commission confirmed the mandate it had given to Working Group VI in 2012 (see para. 1 above).[4] The Commission also agreed that whether that work would include security interests in non-intermediated securities would be assessed at a future time.[5]

4. At its twenty-fourth session (Vienna, 2-6 December 2013), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.57 and Add.1 and 2) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (A/CN.9/796, para. 11). At its twenty-fifth session (New York, 31 March-4 April 2014), the Working Group continued its work based on a note by the Secretariat entitled "Draft Model Law on Secured Transactions"

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[1] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), para. 105.

[2] Ibid.

[3] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 193.

[4] Ibid., para. 194.

[5] Ibid., para. 332.

(A/CN.9/WG.VI/WP.57/Add.2-4 and A/CN.9/WG.VI/WP.59 and Add.1) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/802, para. 11). The Working Group also decided to recommend to the Commission that the draft Model Law address security rights in non-intermediated securities along the lines agreed upon by the Working Group at that session (see A/CN.9/802, para. 93).

5. At its forty-seventh session (New York, 7-18 July 2014), the Commission expressed its satisfaction for the considerable progress achieved by the Working Group in its work and requested the Working Group to expedite its work so as to complete the draft Model Law, including certain definitions and provisions on non-intermediated securities, and to submit it to the Commission for adoption together with a guide to enactment as soon as possible.[6]

6. At its twenty-sixth session (Vienna, 8-12 December 2014), the Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.61 and Add.1-4) and requested the Secretariat to revise the draft Model Law to reflect the deliberations and decisions of the Working Group (see A/CN.9/830, para. 12).

II. Organization of the session

7. The Working Group, which was composed of all States members of the Commission, held its twenty-seventh session in New York from 20 to 24 April 2015. The session was attended by representatives of the following States members of the Working Group: Algeria, Armenia, Austria, Belarus, Brazil, Cameroon, Canada, China, Ecuador, France, Gabon, India, Israel, Italy, Japan, Kenya, Malaysia, Pakistan, Panama, Paraguay, Philippines, Republic of Korea, Russian Federation, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda and United States of America.

8. The session was attended by observers from the following States: Ethiopia, Haiti, Libya, Romania and Trinidad and Tobago. The session was also attended by observers from the Holy Sea and the European Union.

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

(a) *United Nations system*: World Bank and World Intellectual Property Organization (WIPO);

(b) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Asociación Americana de Derecho Internacional Privado (ASADIP), Commercial Finance Association (CFA), European Federation for Factoring and Commercial Finance (EUF), European Law Students' Association (ELSA), Factors Chain International (FCI), International Factors Group (IFG), International Insolvency Institute (III), Moot Alumni Association (MAA), National Law Centre for Inter-American Free Trade (NLCIFT) and New York City Bar (NYCBAR).

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[6] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 163.

10. The Working Group elected the following officers:

Chairperson: Ms. Kathryn SABO (Canada)

Rapporteur: Mr. Hiroo SONO (Japan)

11. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.62 (Annotated Provisional Agenda) and A/CN.9/WG.VI/WP.63 and Add.1-4 (Draft Model Law on Secured Transactions).

12. 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. Draft Model Law on Secured Transactions.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

13. The Working Group considered a note by the Secretariat entitled "Draft Model Law on Secured Transactions" (A/CN.9/WG.VI/WP.63/Add.1, 2 and 4). The deliberations and decisions of the Working Group are set forth below in chapter IV. The Secretariat was requested to revise the draft Model Law to reflect the deliberations and decisions of the Working Group.

IV. Draft Model Law on Secured Transactions

A. Chapter VI. Rights and obligations of the parties and third-party obligors (A/CN.9/WG.VI/WP.63/Add.2)

Article 61. Source of rights and obligations of the parties

14. Differing views were expressed as to whether article 61 should be retained or deleted. One view was that it should be deleted as it dealt with matters that were typically addressed in contract law and, in any case, could be discussed in the draft Guide to Enactment. Another view was that article 61 should be retained, in particular, to give legislative strength to usages agreed upon by the parties and trade practices established between them that might not be generally recognized in all jurisdictions. After discussion, the Working Group decided that article 61 should be retained.

15. The Working Group next turned to the formulation of article 61. A number of suggestions were made. One suggestion was that the secured transactions law based on the draft Model Law should be added to the list of sources of the mutual rights and obligations of the parties in article 61. It was noted, however, that only chapter VI, section I of the draft Model Law dealt with the contractual rights and obligations of the parties to a security agreement. It was also noted that for those

rights it would be more appropriate to refer to contractual law. Another suggestion was that subparagraph 1(b) should make it clear that agreements with respect to trade usages did not need to be explicit but could also be implicit (see art. 9(2) CISG). It was noted, however, that that did not need to be addressed in the draft Model Law, as it was a typical matter of contract law, which the Secured Transactions Guide did not address. Yet another suggestion was that subparagraph 1(b) should refer to the right of the parties to agree otherwise. It was noted, however, that, by not listing article 61 as a mandatory law rule, article 4 was sufficient in providing that parties could agree otherwise. After discussion, the Working Group agreed that, while the formulation of article 61 could be improved, all those matters could usefully be discussed in the draft Guide to Enactment. Subject to those changes, the Working Group approved the substance of article 61.

Article 62. Obligation of a person in possession to preserve an encumbered asset

16. With respect to article 62, the Working Group agreed that: (a) the obligation to preserve an encumbered asset should be placed on both the grantor and the secured creditor in possession; (b) reference should be made to the obligation of the person in possession to "exercise reasonable care" rather than to "take reasonable steps"; and (c) the reference to the preservation of "the asset and its value" should be revised to take into account the meaning of this wording in the Secured Transactions Guide and in particular that, in many cases, the preservation of the asset would also result in the preservation of its value. Subject to those changes, the Working Group approved the substance of article 62.

17. With respect to the question whether the obligation in article 62 should also be placed on third parties in possession, it was agreed that it did not need to be addressed in article 62 but could be discussed in the draft Guide to Enactment as: (a) such an obligation could be placed on third parties only with their consent; and (b) if a third party agreed, such an agreement would be enforceable under contractual law.

18. With respect to certificated non-intermediated securities, it was agreed that the draft Guide to Enactment should explain that the obligation to preserve their value could be challenging for the person in possession, since that person might not be in control of their value, which may fluctuate according to market conditions. In addition, the Guide to Enactment should clarify that a rule of securities law along the lines of article 5(1) of the Financial Collateral Directive giving a secured creditor a right to use certificated non-intermediated securities and the rule in article 62 should be read together and their relationship would be a matter for domestic rules of interpretation.

Article 63. Obligation of a secured creditor to return an encumbered asset or to register a cancellation notice

19. The Working Group noted that article 63 dealt with the following three different issues: (a) the extinction of a security right upon full satisfaction of all secured obligations; (b) the obligation of the secured creditor to return the encumbered asset upon extinction of the security right by full satisfaction of all secured obligations or otherwise (e.g. by the statute of limitations); and (c) the obligation of the secured creditor to register a cancellation notice upon extinction of a security right, which was also addressed in article 39, subparagraph 1(d).

20. Despite some initial doubt, the Working Group agreed that, while the extinction of a security right upon full satisfaction of all secured obligations was a matter that should be addressed in the draft Model Law, the extinction of the secured obligation was a contractual matter that should be left to contractual law. As to the placement of the provision that would deal with the extinction of a security right upon full satisfaction of all secured obligations, the Working Group agreed that, as it was not a matter relating to the rights and obligations of the parties to the security agreement but rather to the termination of a security right, it should be placed at the end of chapter II (creation) within square brackets for further consideration by the Working Group.

21. With regard to the obligation of the secured creditor to return the encumbered asset upon extinction of the security right by full satisfaction of all secured obligations or otherwise, the Working Group agreed that it should be addressed in article 63 with wording that would be more in line with article 39, subparagraph 1(d), of the draft Model Law and recommendation 112 of the Secured Transactions Guide (the encumbered asset should not necessarily be returned to the grantor as the parties might have agreed otherwise).

22. With regard to the obligation of the secured creditor to register a cancellation notice upon extinction of a security right by full satisfaction of all secured obligations or otherwise, it was agreed that the relevant wording should be retained in article 63 within square brackets for further consideration of the question whether the issue should be addressed only in article 63, only in article 39, subparagraph 1(d) or in both articles.

23. Subject to the above-mentioned changes, the Working Group approved the substance of article 63 and the new article to be placed at the end of chapter II (creation).

24. The Working Group also agreed that the Guide to Enactment should clarify that: (a) article 63 did not need to address the obligation of an assignee to withdraw the notification to the debtor of the receivable as the obligation of the secured creditor to return any surplus was sufficient to address that matter (see arts. 67, para. 2, and 90, 1(c)); (b) article 63 was not relevant to outright transfers of receivables as the term “secured obligation” did not apply to outright transfers of receivables (see art. 2, subpara. (ee)), and receivables could not be subject to actual (physical) possession (see art. 2, subpara. (z)); and (c) whether the secured creditor could return equivalent non-intermediated securities (see art. 5(2) of the Financial Collateral Directive) was a matter left to securities law.

Article 64. Rights of a secured creditor with respect to an encumbered asset

25. With respect to article 64, it was agreed that subparagraph 1(a) should be aligned with article 62 to refer to the preservation of not only the “asset” but also of “its value” (see para. 16 above). It was also suggested that subparagraphs 1(b) and 1(c) should be aligned with recommendation 113, subparagraph (b), of the Secured Transactions Guide, which combined the two elements and made reference to “revenues generated”, rather than to “monetary proceeds”. In that connection, a note of caution was struck, as: (a) unlike the term “proceeds” (see art. 2, subpara. (bb)), the term “revenues” was not a defined term; and (b) the term “revenues” could be

understood in a broad sense (to include, for example, revenues generated through sales of goods produced using encumbered machinery).

26. It was also agreed that both sets of bracketed text in paragraph 2 should be deleted as the obligation of the parties to exercise their rights and perform their obligations in good faith and in a commercially reasonable manner was already addressed in article 5 (general standards of conduct). While a suggestion was made that the word "reasonable" in subparagraph 1(b) could also be deleted for the same reason, it was widely felt that there was a need to retain that word which qualified the manner in which the asset was to be used.

27. Subject to the above-mentioned changes, the Working Group approved the substance of article 64.

Article 65. Representations of the grantor

28. With respect to article 65, the Working Group agreed that, unlike recommendation 114 of the Secured Transactions Guide on which it was based, it should apply to all types of receivables, since representations of the kind addressed in article 65 could be given with respect to any type of receivable, whether contractual or not. With respect to subparagraphs 1(a) and 1(b), it was suggested that, as they set out rules applicable to all types of asset, they should be either moved to the general rules or deleted and the matters addressed therein left to contractual law. While there was support for the deletion of subparagraph 1(a), there was no sufficient support for the deletion of subparagraph 1(b) as it reflected a type of representation that was particularly important for receivables financing transactions. After discussion, the Working Group agreed to delete subparagraph 1(a) but retain the remaining part of article 65. The Working Group also agreed that the Guide to Enactment should explain that the deletion of subparagraph 1(a) was not a policy change but rather an effort to avoid giving the impression that the representation in subparagraph 1(a) was not relevant for types of asset other than receivables and to defer in that regard to contractual law. Subject to those changes, the Working Group approved the substance of article 65.

Article 66. Right of the grantor or the secured creditor to notify the debtor of the receivable

29. The Working Group agreed that article 66 and other articles in the draft Model Law should reflect the general rule that receipt by the debtor of the receivable would be required for a notification to be effective. As a matter of drafting, it was thus suggested that reference should be made to the notification being "received by" or "given to" the debtor of the receivable. The Working Group also agreed that paragraph 2 should be revised to clarify what was the agreement to which it referred (see rec. 115 of the Secured Transactions Guide). Subject to those changes, the Working Group approved the substance of article 66.

Article 67. Right of the secured creditor to payment

30. It was suggested that the heading of article 67 should make it clear that the article dealt only with receivables. Subject to that change and the changes necessary to reflect the receipt rule (see para. 29 above), the Working Group approved the substance of article 67.

Article 68. Right of the secured creditor to preserve encumbered intellectual property

31. The Working Group approved the substance of article 68 unchanged.

Article 69. Protection of the debtor of the receivable

32. The Working Group approved the substance of article 69 unchanged.

Article 70. Notification of the security right in a receivable

33. The Working Group agreed that article 70 should be revised to avoid restating the receipt rule set out in article 66 (see para. 29 above). Subject to that change, the Working Group approved the substance of article 70.

Article 71. Discharge of the debtor of the receivable by payment

34. The Working Group approved the substance of article 71 unchanged.

Article 72. Defences and rights of set-off of the debtor of the receivable

35. The Working Group agreed that subparagraph 1(a) should be revised to make it clear that it applied only to contractual receivables. Subject to that change, the Working Group approved the substance of article 72.

Article 73. Agreement not to raise defences or rights of set-off

36. The Working Group agreed that the bracketed text in paragraph 2 should be retained outside square brackets to conform article 73 more closely to recommendation 121, subparagraph (c), of the Secured Transactions Guide. As a matter of drafting, it was suggested that that result might be better achieved by language along the following lines: “the agreement … may be modified only by an agreement in a writing signed by the debtor of the receivable in accordance with article 74, paragraph 2” or “the agreement … may be modified only by an agreement in a writing signed by the debtor of the receivable and its effectiveness against the secured creditor is determined by article 74, paragraph 2”. Subject to that change, the Working Group approved the substance of article 73.

Article 74. Modification of the original contract

37. The Working Group approved the substance of article 74 unchanged.

Article 75. Recovery of payments made by the debtor of the receivable

38. The Working Group agreed that article 75, paragraph 1, should clarify that, where a receivable was transferred from the original creditor to another person and a security right was created by that transferee, it would apply in the case of failure of the transferor (rather than the grantor) to perform the contract giving rise to the receivable. The Working Group also agreed that paragraph 2 should be deleted as it was unnecessary (paragraph 1 did not affect the rights of the debtor of the receivable against the grantor) and was not included in recommendation 123 of the Secured Transactions Guide, on which article 75 was based. Subject to those changes, the Working Group adopted the substance of article 75.

Article 76. Rights as against the obligor under a negotiable instrument

39. With respect to article 76, it was agreed that the words "subject to" should be replaced with words along the lines of "determined by", to clarify the policy of the draft Model Law to defer in that regard to other law. It was agreed that the same change should be made to articles 78, 79 and where appropriate in the draft Model Law. Subject to that change, the Working Group adopted the substance of article 76.

Article 77. Rights and obligations of the depositary bank

40. The Working Group approved the substance of article 77 unchanged.

Article 78. Rights as against the issuer of a negotiable document

41. Subject to the change agreed upon in the context of the discussion of article 76 (see para. 39 above), the Working Group adopted the substance of article 78.

Article 79. Rights as against the issuer of a non-intermediated security

42. Subject to the change agreed upon in the context of the discussion of article 76 (see para. 39 above), the Working Group approved the substance of article 79.

B. Chapter VII. Enforcement of a security right (A/CN.9/WG.VI/WP.63/Add.2)

Article 80. Post-default rights

43. It was noted that article 80 set out a catalogue of the rights of the grantor and the secured creditor in the case of default, which, with the exception of the rights in subparagraphs 1(d) and 2(e), and paragraphs 2 and 3, were then reflected in other provisions of chapter VII. Differing views were expressed as to whether such a catalogue should be retained. One view was that it should be retained, as it was helpful to the reader, but, for that purpose, it should be revised to be more complete and accurate. The prevailing view, however, was that such a catalogue should be deleted. It was stated that, while appropriate for a legislative guide, such a catalogue did not belong in a model law. It was also observed that duplication was unnecessary and could even be harmful, as it was likely to result in inconsistencies and confusion. After discussion, the Working Group agreed that article 80 should be revised to refer only to the rights in in subparagraphs 1(d) and 2(e), and the rules in paragraphs 3 and 4.

44. The Working Group next considered the question whether some of the grantor's remedies set out in paragraph 1 should be available to the grantor even before default and be dealt with in chapter VI, Section I, of the draft Model Law. The Working Group agreed that, for example, the right of redemption and the right to apply to a court or other authority for relief should indeed be available to the grantor even before default. However, in line with its approach to set out some basic provisions with regard to the pre-default contractual rights of the parties, the Working Group agreed that those rights should be left to the relevant contractual law, and the matter usefully explained in the draft Guide to Enactment.

45. The Working Group then turned to the question whether, in the case of a security right in all assets of a grantor, the secured creditor could dispose of the business as a going concern. It was agreed that, depending on what was commercially reasonable, the secured creditor should be able to decide whether to dispose of the encumbered assets individually, in groups or as a whole. It was also agreed that the sale of the encumbered assets as a whole might have the effect of a sale of a business as a going concern, but it did not really amount to a sale of a business as a going concern as the business was not an encumbered asset. It was further agreed that, in any case, that terminology should be avoided as it could create confusion and interfere with insolvency and receivership law. It was suggested that the matter might be addressed in article 88, paragraph 2, or discussed in the draft Guide to Enactment.

46. Subject to the aforementioned changes, the Working Group approved the substance of article 80.

Article 81. Waiver of post-default rights

47. The Working Group agreed that article 81 should clarify that the default referred to in paragraph 1 meant the default on the secured obligation, whether it was owed by the grantor or any other party. As a matter of drafting, it was suggested that it would be sufficient to clarify the matter in the first article dealing with enforcement. The Working Group also agreed that paragraph 2 should be deleted, as its substance was already captured by article 4 on party autonomy. It was also suggested that article 81 could be merged with article 80. Subject to those changes, the Working Group approved the substance of article 81.

Article 82. Judicial and extrajudicial methods of exercising post-default rights

48. The Working Group first considered a suggestion that alternative dispute resolution ("ADR") mechanisms, such as conciliation and arbitration, should be listed as methods for exercising post-default rights in article 82. In support of that suggestion, it was stated that, by referring only to judicial and extrajudicial proceedings, rather than to exercising those rights by applying or without applying to court or other authority, as did recommendation 142 of the Secured Transactions Guide, article 82 appeared to preclude ADR as a method of enforcement of post-default rights. In addition, it was observed that the fact that only the note to article 83, which dealt with judicial or other official relief by the grantor for non-compliance by the secured creditor, made reference to ADR reinforced the impression that ADR was not available as a method for exercising post-default rights under article 82. Moreover, it was pointed out that, in line with the Secured Transactions Guide, the draft Model Law made reference in the context of its chapter on transition to the fact that disputes with regard to post-default rights of the parties could be resolved by way of judicial or arbitral proceedings (see rec. 229 and art. 113, subpara. (a)). It was also mentioned that the resolution of such disputes by ADR was generally recognized in international instruments, such as the World Bank Toolkit on Secured Transactions and the OAS Model Law on Secured Transactions, as well as in secured transactions laws recently enacted in Latin America.

49. While there was agreement in the Working Group as to the importance of ADR methods, doubt was expressed as to whether the draft Model Law should specifically refer to ADR in the context of enforcement. It was stated that there was

nothing in articles 82 or 83 that precluded parties from agreeing to resolve a dispute arising in the context of the exercise of a post-default right by an ADR method. In addition, it was observed that the draft Model Law should not attempt to address the potentially complex issues arising in the context of the exercise of post-default rights, such as repossession and disposition of encumbered assets. Moreover, it was pointed out that the disputes that could arise in the context of article 82 were not of the same magnitude as the disputes that could arise in the context of article 83, as the former could involve the rights of third parties, while the latter would typically involve a bilateral dispute between the grantor and the secured creditor. It was also noted that consideration of the matter would require coordination with other working groups, such as Working Group II (Arbitration and Conciliation), a matter that would have to be addressed by the Commission.

50. After discussion, the Working Group agreed that the matter should be considered at a future session on the basis of a detailed proposal.

51. With respect to article 82, the Working Group agreed that it should be aligned more closely with recommendation 142 of the Secured Transactions Guide to refer to the right of the secured creditor to exercise its post-default rights with or without applying to a court or other authority. In addition, it was agreed that the reference to "court or other authority" should be within square brackets followed by the words "to be specified by the enacting State", thus leaving it to each enacting State to determine the relevant court or other authority (e.g. a chamber of commerce). Moreover, it was agreed that, in paragraph 2, reference should be made to "the rules to be specified by the enacting State" as those rules might not necessarily be civil procedure rules (e.g. administrative rules with respect to proceedings before an authority other than a court). It was further agreed that, in paragraph 3: (a) the reference to article 5 should be deleted, as the general standard of conduct applied to the exercise of any right under the draft Model Law, including the right to exercise post-default rights without applying to a court or other authority (but not the right to apply to a court or other authority, which was typically enshrined in procedural and constitutional law rules); and (b) the reference to articles 87-90 should be replaced by a reference to the "provisions of this chapter", as the secured creditor could exercise post-default rights without having to apply to a court or other authority on the basis other provisions of chapter VII (e.g. article 91 dealing with the acquisition of the encumbered asset in total or partial satisfaction of the secured obligation).

52. In that connection, the suggestion was made that article 82 should be revised to state that the post-default rights that the secured creditor could exercise by applying to a court or other authority were limited to the right to obtain possession and the right to dispose of the encumbered asset. It was stated that all other post-default rights (including acquisition of an encumbered asset in total or partial satisfaction of the secured obligation and collection) could not be exercised before a court or other authority. That suggestion was objected to. It was stated that, in some jurisdictions, collection of a receivable or under a negotiable instrument might require a court order. In addition, it was observed that there might be other post-default rights that could be exercised before a court or other authority (e.g. appointment of a receiver). Moreover, it was pointed out that, even if a post-default right could only be exercised without an application to a court or other authority, there was no reason to preclude the grantor or the secured creditor from

seeking the assistance of a court or other authority to resolve a dispute that might arise with respect to the exercise of that post-default right. It was also mentioned that, in any case, the draft Model Law should not attempt to harmonize national enforcement rules and thus potentially become less acceptable to States. After discussion, it was agreed that, while some post-default rights could be exercised only without an application to a court or other authority, the draft Model Law should not limit the ability of the parties to avail themselves of the assistance of a court or other authority to exercise a post-default right or resolve disputes arising in that respect.

53. Subject to the above-mentioned changes, the Working Group approved the substance of article 82.

Article 83. Judicial or other official relief of the grantor for non-compliance by the secured creditor

54. Recalling its decision with respect to article 82 (see para. 51 above), the Working Group agreed that article 83 should be revised to refer to the exercise of post-default rights without an application to a court or other authority. In addition, it was agreed that article 83 should be revised to more closely reflect recommendations 137 and 138 of the Secured Transactions Guide and provide the possibility for all parties to obtain relief, including relief by way of expedited proceedings before a court or other authority. Moreover, it was agreed that the term "any other interested person", which was said to be vague and inappropriate for a legislative text, should be retained within square brackets along with the term "competing claimant", which was defined in the draft Model Law (see art. 2, subpara. (e)) for further consideration by the Working Group. It was also agreed that reference should be made to the enforcement of a security right "in accordance with the provisions of this chapter" (and not only article 82). It was further agreed that the Guide to Enactment should: (a) include a discussion of relief offered by an arbitral tribunal or conciliator along the lines of the discussion in the note to the Working Group following article 83; and (b) clarify that a violation of the secured creditor's obligations, included violations by the secured creditor's agents, employees or service providers. Subject to those changes, the Working Group approved the substance of article 83.

Article 84. Grantor's right of redemption

55. With respect to article 84 and its heading, the Working Group agreed that neutral terminology should be used, as the term "redemption" was used in some jurisdictions and only with respect to loans secured by mortgages. As a matter of drafting, the suggestion was made that reference could instead be made to the grantor's right to terminate the enforcement process (for the extinction of the security right by full payment of all secured obligations, see para. 20 above).

56. With respect to paragraph 1, the Working Group agreed that reference should be made to the "reasonable" cost of enforcement. In that connection, it was agreed that the draft Guide to Enactment should clarify that: (a) in the case of enforcement before a court or other authority, the court or other authority would set the cost of enforcement based on evidence; and (b) in the case of enforcement without an application to a court or other authority, the grantor could seek the assistance of a

court or other authority if it were to disputer the reasonableness of the cost of enforcement.

57. With respect to paragraph 2, the Working Group agreed that it should clarify that it referred to a "post-default" agreement of the secured creditor to dispose of the encumbered asset. It was also agreed that language should be included in paragraph 2 within square brackets to ensure that, even after the encumbered asset was leased or licensed, the grantor could pay the secured obligation and obtain the encumbered asset free of the security right, subject to the rights of the lessee or licensee.

58. Subject to the above-mentioned changes, the Working Group approved the substance of article 84.

Article 85. Right of higher-ranking secured creditor to take over enforcement

59. With respect to article 85, the Working Group agreed that it should be aligned more closely with recommendation 145 of the Secured Transactions Guide to refer to the right of a higher-ranking secured creditor to take over enforcement initiated by another secured creditor or a judgement creditor. It was also agreed that paragraph 2 should be retained to reflect the right of the higher-ranking secured creditor to continue the enforcement proceedings initiated by another creditor or terminate them and initiate new proceedings. In that connection, it was agreed that the draft Guide to Enactment should clarify that, in determining whether to continue or terminate the enforcement proceedings, the secured creditor should: (a) have the right, for example, to correct mistakes of the enforcing creditor; and (b) be obliged to act in a commercially reasonable manner, for example, to avoid unnecessary enforcement costs. Subject to those changes, the Working Group approved the substance of article 85.

Article 86. Secured creditor's right to possession

60. At the outset, the Working Group agreed that article 86 should apply to all types of tangible asset referred to in the definition contained in article 2, subparagraph (kk), of the draft Model Law. It was also agreed that article 86 should be revised to provide that, after default, the secured creditor was entitled to obtain possession of an encumbered asset by applying to a court or other authority or in accordance with article 87. It was also agreed that the draft Guide to Enactment should clarify that the mere fact that the grantor had defaulted on the secured obligation did not give to the secured creditor a right to obtain possession of the asset from a person that obtained its rights in the asset free of the security right (e.g. a lessee or licensee).

61. Differing views were expressed as to whether a lower-ranking secured creditor should be entitled to obtain possession of an encumbered asset from a higher-ranking secured creditor. One view was that the lower-ranking secured creditor should have that right. Otherwise, it was stated, a higher-ranking secured creditor in possession without an interest to enforce its security right could delay or preclude enforcement. Another view was that the lower-ranking secured creditor should not have the right to obtain possession of the encumbered asset from the higher-ranking secured creditor. It was stated that, if the higher-ranking secured creditor relinquished possession, its security right might cease to be effective

against third parties and lose its priority status. It was also observed that, if the encumbered asset was disposed of by the lower-ranking secured creditor, it could diminish in value. After discussion, the Working Group requested the Secretariat to prepare options for consideration by the Working Group at a future session.

62. Subject to the above-mentioned changes, the Working Group approved the substance of article 86.

Article 87. Extrajudicial repossession of encumbered assets

63. Recalling its decision with respect to article 66 (see para. 29 above), the Working Group agreed that article 87 should be revised to reflect the receipt rule.

64. With respect to subparagraph 1(b), the Working Group agreed that the first bracketed text (which mirrored the definition of the term "debtor" in art. 2, subpara. (h) of the draft Model Law) should be deleted, as it was sufficient for the secured creditor to give notice of default to the grantor and any person in possession of the encumbered asset. It was also agreed that no example should be given of a short period of time within which notice should be given, as the length of a "short notice" could differ from State to State.

65. With respect to subparagraph 1(c), the Working Group agreed that the words "at the time the secured creditor seeks to obtain possession" should be revised to clearly refer to the time when the secured creditor attempted to obtain actual (physical) possession of the encumbered asset and not when the secured creditor "declared its intent" to that effect, which was a matter already dealt with in subparagraph 1(b).

66. With respect to paragraph 2, the Working Group agreed that it should be retained outside square brackets to refer to instances where the value of the encumbered asset was likely to diminish quickly and, therefore, no notice would be required of the secured creditor. In that connection, it was also agreed that the reference to encumbered assets being of a kind sold on the recognized market should be deleted, as it was too broad and could thus include any type of asset.

67. Subject to those changes, the Working Group approved the substance of article 87.

Article 88. Extrajudicial disposition of encumbered assets

68. Recalling its decision to delete article 80, subparagraphs 2(b) and 2(c) (see, para. 43 above), the Working Group agreed that article 88 should be revised to provide that, in the case of a security right in all assets of the grantor, the secured creditor would be free to decide whether to dispose of the encumbered assets individually, in groups or as a whole, as long as it acted in a commercially reasonable manner (see para. 45 above). In that connection, it was agreed that the reference in paragraph 2 to article 5 was unnecessary and should be deleted, as it was understood that article 5 was a general standard that applied to the entire draft Model Law. It was also agreed that the draft Guide to Enactment should highlight the flexibility provided to the secured creditor in disposing of the encumbered assets by public or private sale, and if by public sale, through auction or tender. Subject to those changes, the Working Group approved the substance of article 88.

Article 89. Advance notice of extrajudicial disposition of encumbered assets

69. Recalling its decision with respect to article 66 (see para. 29 above), the Working Group agreed that article 89 should be revised to reflect the receipt rule. Also recalling its decision with respect to article 87 (see para. 64 above), the Working Group agreed that no example should be given of a short period of time within which notice should be given. Also recalling its decision with respect to article 83, the Working Group agreed that the term "any person with rights in the encumbered asset" should be placed within square brackets along with the term "competing claimant" for the Working Group to consider the matter at a future session.

70. With respect to paragraph 1, it was agreed that it should be revised to clarify that the secured creditor had to give notice to the grantor if, after default, the secured creditor had decided to dispose of the encumbered asset without applying to a court or other authority. However, a suggestion to clarify that matter further by merging article 89 with article 88 did not receive sufficient support.

71. With respect to paragraph 3, it was agreed that reference should be made to "a reasonable estimate of the cost of enforcement" as it would be impossible for the secured creditor to come up with an accurate cost of enforcement at the time when it would give notice. It was further agreed that the content of recommendation 150 of the Secured Transactions Guide, which was relevant to article 89, should be discussed in the draft Guide to Enactment.

72. Subject to the above-mentioned changes, the Working Group approved the substance of article 89.

Article 90. Distribution of proceeds of disposition of encumbered assets

73. At the outset, the Working Group agreed that article 90 should not apply to outright transfers of receivables (see art. 1, para. 2, of the draft Model Law). In addition, it was agreed that the words "in accordance with generally applicable procedural rules" in subparagraph 1(c) should be deleted, as other law would apply anyway. Moreover, it was agreed that no new article should be included in the draft Model Law to deal with damages for non-compliance with enforcement obligations along the lines of recommendation of 136 of the Secured Transactions Guide, as that was a matter for other law. It was agreed, however, that the matter could be discussed in the draft Guide to Enactment, in particular in relation to consumer transactions. Subject to those changes, the Working Group approved the substance of article 90.

Article 91. Acquisition of encumbered assets in satisfaction of the secured obligation

74. With respect to article 91, the Working Group agreed that: (a) the words "and any other person that owes payment or other performance of the secured obligation, including a guarantor" in subparagraph 2(a) should be deleted, as the term "debtor" was sufficient to encompass that person; (b) the article should be revised to reflect the receipt rule and use neutral terminology, rather than refer to redemption (see, para. 29 and para. 55 above); (c) paragraphs 4 and 5 should state the rule that the secured creditor should be deemed to have acquired the encumbered asset (in para. 4, unless one of the addressees of the notice objects and in para. 5, if each

addressee gave its affirmative consent within the relevant time period). Subject to those changes, the Working Group approved the substance of article 91.

Article 92. Rights acquired through judicial disposition of encumbered assets

75. Recalling its earlier decision with respect to article 82 (see, para. 51 above), the Working Group agreed that reference should be made to disposition before a court or other authority. It was also agreed that article 92 should be revised to deal in one paragraph with the question whether a buyer or other transferee of an encumbered asset in the context of enforcement of a security right would take the asset free of any rights of the grantor and any competing claimant and in another paragraph with the same question with regard to lessees and licencees of an encumbered asset. In that connection, it was agreed that the latter paragraph should read along the lines of article 93, paragraph 2. Subject to those changes, the Working Group approved the substance of article 92.

Article 93. Rights acquired through extrajudicial disposition of encumbered assets

76. With respect to paragraph 1, the Working Group agreed that it should be revised to provide explicitly that the transferee of encumbered assets in an out-of-court (or other authority) disposition acquired the grantor's right in the encumbered asset free of the rights of the secured creditor and any competing claimant with a lower-ranking right, but subject to the rights that have priority over the security right of the enforcing secured creditor. With respect to paragraph 3, it was agreed that reference should be made in that regard to knowledge of a violation that materially prejudiced the rights of the grantor (within square brackets), but was not necessarily the result of reckless behaviour. Subject to those changes, the Working Group approved the substance of article 93.

Article 94. Collection of payment under a receivable, negotiable instrument, right to payment of funds credited to a bank or non-intermediated security

77. The Working Group noted that the word "also" in paragraph 1 was intended to ensure that the secured creditor could collect a receivable under article 94 but also, for example, sell it under article 88. It was stated, however, that that word could inadvertently give the impression that not only the secured creditor but also the grantor were entitled to collect the receivable. Thus, the Working Group agreed to delete the word "also" in paragraph 1.

78. With respect to outright transfers of receivables, the Working Group agreed that: (a) article 1, paragraph 2, should be revised to provide that articles 80-93, but also 94, did not apply to outright transfers of receivables; and (b) a new article should be prepared to deal with that matter. In that connection, it was agreed that, in line with recommendation 167 of the Secured Transactions Guide, the new article should provide that: (a) the secured creditor (transferee) was entitled to collect the receivable whether the grantor (transferor) had defaulted or not; and (b) the standard of good faith and commercial reasonableness (art. 5) did not apply to an outright transfer without recourse as the grantor (transferor) had no remaining vested interest in the receivable that could be protected by a limitation on the way in which the secured creditor (transferee) could collect the receivable.

79. The Working Group noted that, unless specifically regulated and the grantor's right to due process sufficiently protected, out-of-court collection might run counter to constitutional guarantees of due process. However, the Working Group agreed that the conditions for the secured creditor to obtain possession without applying to a court or other authority did not apply to the out-of-court collection of a receivable. It was stated that, for example, advance notice was required when the secured creditor wanted to obtain possession of an encumbered asset without applying to a court or other authority to avoid a breach of peace and to ensure that a disposition would produce good value, matters that would not arise in the case of out-of-court collection of receivables. In addition, it was observed that, if the secured creditor (transferee), acting in a commercially unreasonable manner, collected less than what was owed from the debtor of the receivable, the grantor (transferor) would be protected and the secured creditor (transferee) would be liable for damages. Moreover, it was pointed out that that approach was consistent with the Assignment Convention and the Secured Transactions Guide.

80. Subject to the above-mentioned changes, the Working Group approved the substance of article 94.

C. Chapter IV. Registration of a notice with respect to a security right (A/CN.9/WG.VI/WP.63/Add.1)

81. To reflect the content of chapter IV more accurately, the Working Group agreed that its heading should be revised to read along the following lines: "Registry system".

Article 26. Establishment of the general security rights registry

82. With respect to article 26, the Working Group agreed that the registry should be established by the secured transactions law, so that the enactment of the law and the establishment of the registry would be coordinated. It was widely felt that that would not necessarily result in undue delays as the effective date of the law would be deferred to a time when a State would be prepared to set up the registry. Subject to that change, the Working Group approved the substance of article 26.

Article 27. Public access to registry services

83. The Working Group agreed that paragraph 1 should be deleted, as paragraph 2 was sufficient to state the principle of public access to registry services. Subject to that change, the Working Group approved the substance of article 27.

Article 28. Grantor's authorization for registration

84. At the outset, the Working Group noted that, while grantor authorization was required for a registration to be effective, it could be given before or after registration and its existence did not need to be evidenced for registration to take place. It was agreed that: (a) subparagraph 2(d) should be deleted and guidance on any other amendment notices that required the grantor's authorization should be provided in the draft Guide to Enactment (e.g. an amendment notice to extend the duration of the registered notice); (b) paragraph 3 should be clarified and thus refer directly to the registration of an amendment notice that added a grantor, which had

to be authorized by the additional grantor; (c) paragraph 4 should also be clarified and thus refer to a transferee of encumbered assets that took its rights subject to the security right; (d) paragraph 6 should refer to evidence of authorization for the registration to occur (rather than for the registrar to "accept" a registration at its discretion); and (e) new rules should be added to the priority chapter to address the priority issues relating to the registration of an amendment notice that added encumbered assets or increased the maximum amount for which the security right might be enforced. Subject to those changes, the Working Group approved the substance of article 28.

Article 29. A notice may relate to more than one security right

85. The Working Group agreed that, to avoid inadvertently creating the impression that a notice ought to identify a security right, article 29 should be revised to provide that a single notice was "sufficient to make effective against third parties" one or more than one security right. Subject to that change, the Working Group approved the substance of article 29.

Article 30. Time when a notice may be registered

86. The Working Group agreed that the words at the end of article 30 ("provided that registration is authorized by the grantor in accordance with article 28") were unnecessary as the matter was already covered in article 28 and should thus be deleted. Subject to that change, the Working Group approved the substance of article 30.

Article 31. Time of effectiveness of a registered notice

87. With respect to paragraphs 2, 3 and 5 of article 31, it was agreed that they should be revised to make it clear that the functions referred to therein had to be performed by the registry. Subject to that change, the Working Group approved the substance of article 31.

Article 32. Period of effectiveness of a registered notice

88. It was noted that article 3 of the Annex should clarify that, if an amendment notice was not registered within the time period provided in paragraph 2 of options A and C, the amendment notice would be rejected. After discussion, the Working Group approved the substance of article 32 unchanged.

Article 33. Organization of information in registered notices

89. The Working Group approved the substance of article 33 unchanged.

Article 34. Information required in an initial notice

90. The Working Group agreed that the draft Guide to Enactment should refer to the discussion of serial number registration and unique numbers as grantor identifiers in the Secured Transactions Guide and the Registry Guide. After discussion, the Working Group approved the substance of article 34.

Article 35. Impact of a change of the grantor's identifier

91. Recalling its earlier decision with respect to articles 87 and 89 (see paras. 64 and 89 above), the Working Group agreed that examples as to the length of the time periods foreseen in that and other articles should be moved to the Guide to Enactment. In that connection, it was observed that the draft Guide to Enactment should make it clear that how short or long a period might need to be would depend on the nature of the issue and the local circumstances. It was also agreed that paragraph 1 should be revised to refer to the security right retaining "whatever priority it had before the change was made". Subject to those changes, the Working Group approved the substance of article 35.

Article 36. Impact of errors in required information

92. The Working Group approved the substance of article 36 unchanged.

Article 37. Impact of a transfer of an encumbered asset

93. With respect to article 37, the Working Group agreed that: (a) subparagraph 2(a) of options A and B should be revised to refer to a security right created by a transferee (rather than a competing security right); (b) the reference to the secured creditor's knowledge of the transfer should be moved from paragraph 2 to paragraph 1 of option B; (c) reference should be made in the draft Guide to Enactment to the discussion in the Secured Transactions Guide of the options contained in article 37; and (d) the draft Guide to Enactment should discuss the impact of the adoption of option A, B or C of article 37 on article 40. Subject to those changes, the Working Group approved the substance of article 37.

Article 38. Secured creditor's authorization

94. The Working Group agreed that the heading of article 38 should read along the following lines: "Secured creditor's authorization for registration of an amendment or cancellation notice". It was also agreed that all options should be revised to reflect the discussion in the Registry Guide better (see paras. 249-259). It was also agreed that article 38 should be coordinated with article 16 of the Annex to deal with the situation in which upon assignment of the secured obligation (and with it the security right), only the assignee (new secured creditor) would be able to register an amendment or cancellation notice. Subject to those changes, the Working Group approved the substance of article 38.

Article 39. Compulsory registration of an amendment or cancellation notice

95. While some support was expressed in favour of retaining the words "as soon as practicable" in paragraph 1, the Working Group agreed that they should be deleted. It was widely felt that those words were not necessary as, under paragraphs 2 and 3, the grantor was entitled to request the secured creditor to register an amendment or cancellation notice or to apply for that purpose to a judicial or administrative authority at any time. It was also stated that, in any case, the requirement for the grantor to act in good faith and in a commercially reasonable manner was sufficient to oblige the secured creditor to act as soon as practicable. The Working Group also agreed that paragraph 2 should be retained outside square

brackets. Subject to those changes, the Working Group approved the substance of article 39.

Article 40. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration

96. The Working Group approved the substance of article 40 unchanged.

D. Annex I. Regulation (A/CN.9/WG.VI/WP.63/Add.4)

Article 1. Appointment of the registrar

97. While some doubt was expressed as to whether an executive or ministerial authority would determine the registrar's duties (rather than the Regulation), the Working Group approved the substance of article 1 of the Annex unchanged with the understanding that that authority would do so through the Regulation.

Article 2. Public access

98. With respect to article 2 of the Annex, it was agreed that: (a) the heading should be revised to read along the following lines: "access to registry services"; (b) the chapeau of paragraph 1 should be revised to read along the following lines: "to the registry"; (c) the words "to the satisfaction of the registrar" in subparagraphs 1(c) and 2(b) should be deleted as they introduced a subjective element; and (d) reference should be made throughout article 2 to the "Regulation" rather than to the "registry" to ensure that those matters were settled by an executive or ministerial authority in the Regulation rather than by the registry staff in an arbitrary way. Subject to those changes, the Working Group approved the substance of article 2 of the Annex.

Article 3. Rejection of a security right notice or search request

99. The Working Group agreed that references to a registration or a search request being rejected by the "registrar" should be deleted, since they implied a paper-based registry and endowed a subjective power on the registrar to accept or reject a registration or a search request. Acknowledging that most modern registry systems would be electronic and that registration would be automatic, the Working Group also agreed that the term "registry" (rather than the term "registrar") should be used throughout the draft Model Law and the definition of that term in the Registry Guide should be included in the draft Model Law. It was further agreed that the term "registrar" would only be mentioned in article 1 of the Annex and thus it did not need to be defined in the draft Model Law. Subject to those changes, the Working Group approved the substance of article 3 of the Annex.

Article 4. No additional conditions to be imposed on access to registry services

100. The Working Group approved the substance of article 4 of the Annex unchanged.

Article 5. Organization of information in registered notices

101. With respect to article 5 of the Annex, it was agreed that subparagraph (b) should be deleted as it dealt with a matter already addressed in article 18 of the Annex. Subject to those changes, the Working Group approved the substance of article 5 of the Annex.

Article 6. Integrity of information in registered security right notices

102. The Working Group approved the substance of article 6 of the Annex unchanged.

Article 7. Obligation to send a copy of a registered security right notice

103. With respect to article 7 of the Annex, it was agreed that: (a) wording should be added within square brackets to reflect the rule in the second sentence of recommendation 55, subparagraph (c) of the Secured Transactions Guide; (b) the words "as soon as practicable" throughout chapter IV of the draft Model Law (e.g. art. 38, para. 5) and the Annex (e.g. arts. 2, 3 and 7) should be replaced with words along the following lines: "immediately", "without delay" or "forthwith". Subject to those changes, the Working Group approved the substance of article 7 of the Annex.

Article 8. Removal of information from the public registry record and archival

104. The Working Group approved the substance of article 8 of the Annex unchanged.

Article 9. Language in which information in a security right notice must be expressed

105. The Working Group approved the substance of article 9 of the Annex unchanged.

Article 10. Correction of errors by the registrar

106. With respect to article 10 of the Annex, it was agreed that it should be aligned more closely with article 38 of the draft Model Law, as revised, and retained within square brackets. Subject to those changes, the Working Group approved the substance of article 10 of the Annex.

Article 11. Liability of the registrar

107. With respect to article 11 of the Annex, it was agreed that it should be revised to address the concerns expressed and to present additional options (e.g. liability limited up to an amount to be specified by the enacting State). Subject to those changes, the Working Group approved the substance of article 11 of the Annex.

Article 12. Determination of grantor identifier

108. With respect to article 12 of the Annex, it was agreed that: (a) the bracketed text in subparagraph 1(a) should be retained outside square brackets; and (b) subparagraph (c) should be aligned more closely with recommendation 24, subparagraph (d) of the Registry Guide. Subject to those changes, the Working Group approved the substance of article 12 of the Annex.

Article 13. Determination of secured creditor identifier

109. The Working Group approved the substance of article 13 of the Annex unchanged.

Article 14. Sufficient description of encumbered assets

110. The Working Group approved the substance of article 14 of the Annex unchanged.

Article 15. Impact of errors in required information

111. With respect to article 15 of the Annex, it was agreed that: (a) paragraph 1 should be deleted as it only provided guidance on matters addressed in other provisions; (b) paragraphs. 2 and 3 should be deleted as they were covered in article 36 of the draft Model Law or the material in article 36 of the draft Model Law and article 15 of the Annex should be placed in one article; and (c) the text within square brackets in paragraph 4 should be retained outside square brackets, while paragraph 4 as a whole should be retained within square brackets. Subject to those changes, the Working Group approved the substance of article 15 of the Annex.

Article 16. Secured creditor's authorization

112. With respect to article 16 of the Annex, it was agreed that it should be merged or aligned with article 38 of the draft Model Law. Subject to those changes, the Working Group approved the substance of article 16 of the Annex.

Article 17. Information required in an amendment security right notice

113. The Working Group approved the substance of article 17 of the Annex unchanged.

Article 18. Global amendment of secured creditor information

114. The Working Group approved the substance of article 18 of the Annex unchanged.

Article 19. Information required in a cancellation security right notice

115. The Working Group approved the substance of article 19 of the Annex unchanged.

Article 20. Compulsory registration of an amendment or cancellation security right notice

116. The Working Group approved the substance of article 20 unchanged.

Article 21. Search criteria

117. The Working Group approved the substance of article 21 unchanged.

Article 22. Search results

118. With respect to article 22 of the Annex, it was agreed that it should be revised to present an additional option under which there would no distinction between a printed search and a search certificate. Subject to those changes, the Working Group approved the substance of article 22 of the Annex.

Article 23. Fees for the services of the registry

119. With respect to article 23 of the Annex, it was agreed that option C or the Guide to Enactment should set out examples of services for which no fee should be charged, such as a restoration of an erroneously cancelled registration (art. 10 of the Annex) or the migration of information from one registry under prior law to another under the new law. Subject to that change, the Working Group approved the substance of article 23 of the Annex.

V. Future work

120. The Working Group considered a proposal that the provisions in chapter IV of the draft Model Law and the Annex should be presented as one whole. It was stated that the inclusion of registry-related provisions in an annex might inadvertently imply that they were less important or did not belong in a law. In addition, it was observed that the division of the registry-related provisions between the draft Model Law and the Annex might result in duplication, gaps or inconsistencies and, in any case, made it more difficult for States to understand and implement. Moreover, it was pointed out that, if the current division of the registry-related provisions was to be maintained, at least the criteria for that division should be explained in the Guide to Enactment to avoid any negative implication and provide guidance to States as to how to implement them. There was broad support in the Working Group for that proposal. It was further stated that it was important to present the registry-related provisions as model legislative rules, leaving it to each State to determine the exact manner of their implementation (e.g. in the secured transactions law, another law, a Regulation or a combination thereof). After discussion, the Working Group agreed that the registration-related provisions in the draft Model Law and the Annex should be reflected all together as a whole in the Annex, while chapter IV could be reduced to a provision stating that a registry was established and enacting States should implement the registry-related provisions in the Annex.

121. The Working Group next considered the question whether to recommend to the Commission the preparation of a guide to enactment of the draft Model Law. The Working Group noted that, in preparing the draft Model Law, it was mindful of the fact that the draft Model Law would be a more effective tool for States modernizing their legislation if background and explanatory information were provided to assist States in considering the draft Model Law for enactment. In addition, the Working Group noted that, in the preparation of the draft Model Law, it had assumed that the draft Model Law would be accompanied by such a guide and referred a number of matters for clarification in that guide. Moreover, the Working Group noted that the draft Model Law would be used in a number of States with limited familiarity with the types of secured transaction considered in the draft Model Law and thus, the draft Guide to Enactment, much of which will be drawn from the travaux

préparatoires of the draft Model Law, would also be helpful to other users of the text, such as judges, arbitrators, practitioners and academics. The Working Group also noted that the draft Guide to Enactment would briefly explain the thrust of each provision or section of the draft Model Law and any difference with the corresponding recommendations of the Secured Transactions Guide or the provisions of another UNCITRAL text on secured transactions. It was also noted that, in order to avoid duplication, the draft Guide to Enactment would include extensive cross-references to those texts and in particular the Secured Transactions Guide and the Registry Guide. After discussion, the Working Group decided to recommend to the Commission that it assign to the Working Group the task of preparing a draft Guide to Enactment of the draft Model Law.

122. The Working Group then turned to discuss the planning of its future work with a view to ensuring that it would be able to submit the draft Model Law and the draft Guide to Enactment to the Commission for final consideration and adoption at its forty-ninth session in 2016. It was agreed that the draft Model Law was a comprehensive text and the work of the Working Group and the Commission would be greatly facilitated if a part of the draft Model Law that was sufficiently mature and distinct could be submitted to the Commission for approval in principle at its upcoming forty-eighth session, which was scheduled to take place in Vienna from 29 June to 16 July 2015. It was also agreed that the registry-related provisions that reflected the policy decisions made by the Commission when it adopted the Registry Guide in 2013 could be submitted to the Commission for approval in principle, as they were sufficiently mature and formed a distinct part of the draft Model Law. It was also agreed that the drafting of those provisions could be finalized by the Working Group at a later stage. It was further agreed that the chapters of the draft Model law on transition and conflict of laws were equally mature and distinct and could thus also be submitted to the Commission for approval in principle. After discussion, the Working Group decided to submit to the Commission the registry-related provisions in the draft Model Law and the Annex, as well as the chapters on transition and conflict of laws, for approval in principle at its upcoming forty-eighth session.

123. The Working Group noted that its next session was scheduled to take place in Vienna from 12 to 16 October 2015, those dates being subject to confirmation by the Commission at its upcoming forty-eighth session.