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Chapter VI. Rights and obligations of the parties and third-party obligors

Section I. Mutual rights and obligations of the parties to a security agreement

A. General rules

Article 50. Sources of mutual rights and obligations of the parties

1. The mutual rights and obligations of the grantor and the secured creditor arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.
2. The grantor and the secured creditor are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

Article 51. Obligation of the party in possession to exercise reasonable care

A grantor or secured creditor in possession of an encumbered asset must exercise reasonable care to preserve the asset and its value.

Article 52. Obligation of a secured creditor to return an encumbered asset

Upon extinction of a security right in an encumbered asset, a secured creditor in possession must return the asset to the grantor.

Article 53. Right of a secured creditor to use and inspect an encumbered asset, and to be reimbursed for expenses

1. A secured creditor in possession of an encumbered asset has the right:
 - (a) To be reimbursed for reasonable expenses it incurs for the preservation of the asset and its value in accordance with article 51;
 - (b) To make reasonable use of the asset and apply the revenues it generates to the payment of the secured obligation.
2. A secured creditor not in possession has the right to inspect an encumbered asset in the possession of the grantor.

Article 54. Right of the grantor to obtain information

1. Within [a short period of time to be specified by the enacting State] after receipt of a request by a grantor, a secured creditor other than a transferee in an outright transfer of a receivable must send to the grantor at the address specified in the request:
 - (a) A statement of the obligation currently secured; and
 - (b) A description of the assets currently encumbered.
2. A grantor is entitled without charge to one response to a request during [a period of time to be specified by the enacting State].

3. The secured creditor may require payment of a charge not exceeding [a nominal amount to be specified by the enacting State] for each additional response.

B. Asset-specific rules

Article 55. Representations of the grantor of a security right in a receivable

1. At the time of conclusion of a security agreement that creates a security right in a receivable, the grantor represents that:
 - (a) The grantor has not previously created a security right in the receivable in favour of another secured creditor; and
 - (b) The debtor of the receivable does not and will not have any defences or rights of set-off.
2. The grantor does not represent that the debtor of the receivable has, or will have, the ability to pay.

Article 56. Right of the grantor or the secured creditor to notify the debtor of the receivable

1. The grantor or the secured creditor or both may give the debtor of the receivable notification of the security right and a payment instruction, but after notification of the security right has been received by the debtor of the receivable only the secured creditor may send a payment instruction.
2. Notification of a security right or of a payment instruction sent in breach of an agreement between the grantor and the secured creditor is not ineffective for the purposes of article 61, but nothing in this article affects any obligation or liability of the party in breach for any damages arising as a result of the breach.

Article 57. Right of the secured creditor to payment of a receivable

1. As between the grantor of a security right in a receivable and the secured creditor, whether or not notification of the security right has been sent:
 - (a) If payment is made to the secured creditor or a tangible asset is returned to the grantor with respect to the receivable, the secured creditor is entitled to retain the proceeds of the payment and to delivery of the asset;
 - (b) If payment is made or a tangible asset is returned to the grantor with respect to the receivable, the secured creditor is entitled to payment of the proceeds of the payment and to delivery of the asset; and
 - (c) If payment is made to another person over whom the secured creditor has priority or a tangible asset is returned to the grantor with respect to the receivable, the secured creditor is entitled to payment of the proceeds of the payment and to delivery of the asset.
2. The secured creditor may not retain more than the value of its right in the receivable.

Article 58. Right of the secured creditor to preserve encumbered intellectual property

If so agreed between the grantor and the secured creditor, the secured creditor is entitled to [the enacting State to specify the steps necessary to preserve encumbered intellectual property].

Section II. Asset-specific rules: Rights and obligations of third-party obligors

A. Receivables

Article 59. Protection of the debtor of the receivable

1. Except as otherwise provided in this Law, the creation of a security right in a receivable does not, without the consent of the debtor of the receivable, affect its rights and obligations, including the payment terms contained in the contract giving rise to the receivable.
2. A payment instruction may change the person, address or account to which the debtor of the receivable is required to make payment, but may not change:
 - (a) The currency of payment specified in the original contract; or
 - (b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor of the receivable is located.

Article 60. Notification of a security right in a receivable

1. Notification of a security right in a receivable or a payment instruction is effective when received by the debtor of the receivable if it reasonably identifies the encumbered receivable and the secured creditor, and is in a language that is reasonably expected to inform the debtor of the receivable about its contents.
2. It is sufficient if a notification of the security right or a payment instruction is in the language of the contract giving rise to the receivable.
3. Notification of a security right in a receivable or a payment instruction may relate to receivables arising after notification.
4. Notification of a subsequent security right in a receivable constitutes notification of all prior security rights.

Article 61. Discharge of the debtor of the receivable by payment

1. Until the debtor of the receivable receives notification of a security right in a receivable, it is discharged by paying in accordance with the original contract.
2. After the debtor of the receivable receives notification of a security right in a receivable, subject to paragraphs 3-8, it is discharged only by paying the secured creditor or, if otherwise instructed in the notification or subsequently by the secured creditor in a writing received by the debtor of the receivable, in accordance with the payment instruction.

3. If the debtor of the receivable receives more than one payment instruction relating to a single security right in the same receivable created by the same grantor, it is discharged by paying in accordance with the last payment instruction received from the secured creditor before payment.
4. If the debtor of the receivable receives notification of more than one security right in the same receivable created by the same grantor, it is discharged by paying in accordance with the first notification received.
5. If the debtor of the receivable receives notification of one or more subsequent security rights in the same receivable created by a secured creditor that acquired its right from the initial or any other secured creditor, it is discharged by paying in accordance with the notification of the last of such subsequent security rights.
6. If the debtor of the receivable receives notification of the security right in a part of or an undivided interest in one or more receivables, it is discharged by paying in accordance with the notification or in accordance with this article as if the debtor of the receivable had not received the notification.
7. If the debtor of the receivable receives a notification as provided in paragraph 6 and pays in accordance with the notification, it is discharged only to the extent of the part or undivided interest paid.
8. If the debtor of the receivable receives notification of a security right in the receivable from the secured creditor, the debtor is entitled to request the secured creditor to provide within a reasonable period of time adequate proof of its security right and, if the secured creditor acquired its right from the initial or any other secured creditor, adequate proof of the security right created by the initial grantor in favour of the initial secured creditor, and of any intermediate security right. Unless the secured creditor does so, the debtor of the receivable is discharged by paying in accordance with this article as if it had not received notification of the security right.
9. Adequate proof of a security right referred to in paragraph 8 includes but is not limited to any writing emanating from the grantor and indicating that a security right has been created.
10. This article does not affect any other ground on which payment by the debtor of the receivable to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor of the receivable.

[Note to the Commission: The Commission may wish to note that the draft Guide to Enactment will explain that: (a) reflecting normal practices (e.g. undisclosed invoice discounting or securitization), paragraph 2 recognizes payment instruction as a notion distinct from notification and clarifies that a payment instruction should be in writing; and (b) paragraph 3 is intended to ensure that the assignee may change or correct its payment instructions and to protect the debtor against the risk of having to pay twice by allowing the debtor to disregard a payment instruction received by the debtor after payment.]

Article 62. Defences and rights of set-off of the debtor of the receivable

1. Unless otherwise agreed in accordance with article 63, in a claim by the secured creditor against the debtor of the receivable for payment of the encumbered receivable, the debtor of the receivable may raise against the secured creditor:

(a) In the case of a receivable arising from a contract, all defences and rights of set-off arising from that contract, or any other contract that was part of the same transaction, of which the debtor of the receivable could avail itself as if the security right had not been created and the claim were made by the grantor; and

(b) Any other right of set-off that was available to the debtor of the receivable at the time it received notification of the security right.

2. Notwithstanding paragraph 1, the debtor of the receivable may not raise a breach of an agreement referred to in article 13, paragraph 2, as a defence or right of set-off against the grantor.

Article 63. Agreement not to raise defences or rights of set-off

1. Subject to paragraph 3, the debtor of the receivable may agree with the grantor in a writing signed by the debtor of the receivable not to raise against the secured creditor the defences and rights of set-off that it could raise in accordance with article 62.

2. The agreement referred to in paragraph 1 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 64, paragraph 2.

3. The debtor of the receivable may not waive defences arising from fraudulent acts on the part of the secured creditor or based on the incapacity of the debtor of the receivable.

Article 64. Modification of the original contract

1. In the case of a receivable arising from a contract, an agreement concluded before notification of a security right in a receivable between the grantor and the debtor of the receivable that affects the secured creditor's rights is effective as against the secured creditor, and the secured creditor acquires corresponding rights.

2. An agreement concluded after notification of a security right in a receivable between the grantor and the debtor of the receivable that affects the secured creditor's rights is ineffective against the secured creditor unless:

(a) The secured creditor consents to it; or

(b) The receivable is not fully earned by performance and either the modification is provided for in the contract giving rise to the receivable or, in the context of that contract, a reasonable secured creditor would consent to the modification.

3. Paragraphs 1 and 2 do not affect any right of the grantor or the secured creditor arising from breach of an agreement between them.

Article 65. Recovery of payments made by the debtor of the receivable

The failure of the grantor of a security right in a receivable arising from a contract to perform that contract does not entitle the debtor of the receivable to recover from the secured creditor a sum paid by the debtor of the receivable to the grantor or the secured creditor.

B. Negotiable instruments

Article 66. Rights as against the obligor under a negotiable instrument

The rights of a secured creditor that has a security right in a negotiable instrument as against any person obligated on the negotiable instrument are determined by [the relevant law relating to negotiable instruments to be specified by the enacting State].

C. Rights to payment of funds credited to a bank account

Article 67. Rights as against the depositary institution

1. The creation of a security right in a right to payment of funds credited to a bank account maintained with a depositary institution does not:

(a) Affect the rights and obligations of the depositary institution without its consent; or

(b) Obligate the depositary institution to provide any information about the bank account to third parties.

2. Any rights of set-off that a depositary institution, with which a bank account is maintained, may have are not affected by any security right that the depositary institution may have in a right to payment of funds credited to that bank account.

D. Negotiable documents and tangible assets covered by negotiable documents

Article 68. Rights as against the issuer of a negotiable document

The rights of a secured creditor that has a security right in a negotiable document as against the issuer of the document or any other person obligated on the document are determined by [the relevant law relating to negotiable documents to be specified by the enacting State].

E. Non-intermediated securities

Article 69. Rights as against the issuer of a non-intermediated security

The rights of a secured creditor that has a security right in non-intermediated securities as against the issuer of the securities are determined by [the relevant law relating to the obligations of the issuer of non-intermediated securities to be specified by the enacting State].

Chapter VII. Enforcement of a security right

A. General rules

Article 70. Post-default rights

1. After default, the grantor and the secured creditor are entitled to exercise:
 - (a) Any right under the provisions of this chapter; and
 - (b) Any other right provided in the security agreement or any other law, except to the extent it is inconsistent with the provisions of this Law.
2. The exercise of one post-default right does not prevent the exercise of another post-default right, except to the extent that the exercise of one right makes the exercise of another right impossible.
3. Before default, the grantor and the debtor may not waive unilaterally or vary by agreement any of its rights under the provisions of this chapter.

Article 71. Methods of exercising post-default rights

1. The secured creditor may exercise its post-default rights by application to [a court or other authority to be specified by the enacting State] or without such an application.
2. The exercise of the secured creditor's post-default rights by application to [a court or other authority to be specified by the enacting State] is determined by the provisions of this chapter and [the provisions to be specified by the enacting State], including the provisions on proceedings in the form of [the expeditious proceedings to be specified by the enacting State].
3. The exercise of the secured creditor's post-default rights without application to [a court or other authority to be specified by the enacting State] is determined by the provisions of this chapter.

Article 72. Relief for non-compliance

Option A

If a secured creditor does not comply with its obligations under the provisions of this chapter, the debtor, the grantor or a competing claimant

Option B

Any person whose rights are affected by the non-compliance of another person with the provisions of this chapter

is entitled to apply for relief to [a court or other authority to be specified by the enacting State], including expeditious relief in the form of [expeditious proceedings to be specified by the enacting State].

Article 73. Right of affected persons to terminate enforcement

1. The grantor, the debtor and any other person with a right in the encumbered asset is entitled to terminate the enforcement process by paying or otherwise

performing the secured obligation in full, including the reasonable cost of enforcement.

2. The right of termination may be exercised until the earlier of the sale or other disposition, acquisition or collection of an encumbered asset by the secured creditor or until the conclusion of an agreement by the secured creditor for the sale or other disposition of an encumbered asset.

3. Where the secured creditor has leased or licensed the encumbered asset to a third party, the right of termination may still be exercised subject to the rights of the lessee or licensee.

**Article 74. Right of a higher-ranking secured creditor
to take over enforcement**

1. Notwithstanding commencement of enforcement by another creditor, a secured creditor whose security right has priority over that of the enforcing creditor is entitled to take over enforcement at any time before the earlier of the sale or other disposition, acquisition or collection of an encumbered asset by the enforcing creditor or until the conclusion of an agreement by that creditor for the sale or other disposition of an encumbered asset.

2. Where the enforcing creditor has leased or licensed the encumbered asset to a third party, the higher-ranking secured creditor may take over enforcement subject to the right of the lessee or licensee.

3. The right of the higher-ranking secured creditor to take over enforcement includes the right to enforce by any method available to a secured creditor under this Law.

**Article 75. Right of the secured creditor to obtain possession
of an encumbered asset**

1. Subject to the rights of a person with a superior right to possession, including a lessee or licensee with such a right, after default, the secured creditor is entitled to obtain possession of an encumbered asset by applying to a [court or other authority to be specified by the enacting State].

[2. If a secured creditor decides to exercise the right provided in paragraph 1 by applying to a court or other authority, all of the following conditions must be satisfied: [to be specified by the enacting State].]

[3]. If a secured creditor decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], all of the following conditions must be satisfied:

(a) The grantor has consented in writing to the secured creditor obtaining possession without applying to a [court or other authority to be specified by the enacting State];

(b) The secured creditor has given the grantor and any person in possession of the encumbered asset notice of default and of the secured creditor's intent to obtain possession; and

(c) At the time the secured creditor attempts to obtain possession of the encumbered asset, the person in possession of the encumbered asset does not object.

[4.] The notice referred to in subparagraph 3(b) need not be given if the encumbered asset is perishable, may decline in value speedily or is of a kind sold on a recognized market.

[5.] If a higher-ranking secured creditor is in possession of the encumbered asset, a lower-ranking secured creditor is not entitled to obtain possession of the asset.

[Note to the Commission: The Commission may wish to note that paragraph 2 has been added by the Secretariat to align the structure of this article with the structure of article 76. In line with the recommendations of the Secured Transactions Guide, this article and the following article leave the details of judicial enforcement to the law to be specified by the enacting State but repeat this statement in each relevant article.]

Article 76. Right of the secured creditor to dispose of an encumbered asset

1. After default, a secured creditor is entitled to sell or otherwise dispose of, lease or license an encumbered asset by applying or without applying to a [court or other authority to be specified by the enacting State].

2. If a secured creditor decides to exercise the right provided in paragraph 1 by applying to a [court or other authority to be specified by the enacting State], the method, manner, time, place and other aspects of the sale or other disposition, lease or licence are determined by [the rules to be specified by the enacting State].

3. If a secured creditor decides to exercise the right provided in paragraph 1 without applying to a [court or other authority to be specified by the enacting State], the secured creditor may select the method, manner, time, place and other aspects of the sale or other disposition, lease or licence, including whether to sell or otherwise dispose of, lease or license encumbered assets individually, in groups or altogether.

4. If a secured creditor decides to sell or otherwise dispose of, lease or license an encumbered asset without applying to a [court or other authority to be specified by the enacting State], the secured creditor must give notice of its intention to:

(a) The grantor and the debtor;

(b) Any person with a right in the encumbered asset that notifies in writing the secured creditor of that right at least [a short period of time to be specified by the enacting State] before the notice is sent;

(c) Any other secured creditor that registered a notice with respect to a security right in the encumbered asset at least [a short period of time to be specified by the enacting State] before the notice is sent; and

(d) Any other secured creditor that was in possession of the encumbered asset when the enforcing secured creditor took possession of the asset.

5. The notice must be given at least [a short period of time to be specified by the enacting State] before the sale or other disposition, lease or licence takes place and must contain:

(a) A description of the encumbered assets;

(b) A statement of the amount required at the time notice is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement;

(c) A statement that the grantor, the debtor and any other person with a right in the encumbered asset are entitled to terminate the enforcement process as provided in article 73; and

(d) A statement of the date after which the encumbered asset will be sold or otherwise disposed of, leased or licensed, or, in the case of a public disposition, the time, place and manner of the intended disposition.

6. The notice must be in a language that is reasonably expected to inform the recipient about its content.

7. It is sufficient if the notice to the grantor is in the language of the security agreement.

8. The notice need not be given if the encumbered asset is perishable, may decline in value speedily or is of a kind sold on a recognized market.

**Article 77. Right of the secured creditor to distribute the proceeds
of a disposition of an encumbered asset**

1. If a secured creditor decides to exercise the right provided in article 76 by applying to a [court or other authority to be specified by the enacting State], the distribution of the proceeds of sale or other disposition of, lease or licence of an encumbered asset is determined by [the rules to be specified by the enacting State], but in accordance with the provisions of this Law on priority.

2. If a secured creditor decides to exercise the right provided in article 76 without applying to a [court or other authority to be specified by the enacting State]:

(a) [Subject to the rights of holders of preferential claims in accordance with article 34,] the enforcing secured creditor must apply the net proceeds of its enforcement to the secured obligation after deducting the reasonable cost of enforcement;

(b) Except as provided in subparagraph 2(c), the enforcing secured creditor must pay any surplus remaining to any subordinate competing claimant that, prior to any distribution of the surplus, notified the enforcing secured creditor of its claim, to the extent of the amount of that claim, and remit any balance remaining to the grantor; and

(c) Whether or not there is any dispute as to the entitlement or priority of any competing claimant under this Law, the enforcing secured creditor may pay the surplus to [a competent judicial or other authority or to a public deposit fund to be specified by the enacting State] for distribution in accordance with the provisions of this Law on priority.

3. A debtor remains liable for any shortfall owing after application of the net proceeds of enforcement to the secured obligation.

**Article 78. Right of the secured creditor and the grantor to propose
the acquisition of an encumbered asset by the secured creditor**

1. After default, the secured creditor may propose in writing to acquire one or more of the encumbered assets in total or partial satisfaction of the secured obligation.
2. The secured creditor must send the proposal to:
 - (a) The grantor and the debtor;
 - (b) Any person with a right in the encumbered asset that notified in writing the secured creditor of that right, at least [a short period of time to be specified by the enacting State] before the proposal is sent;
 - (c) Any other secured creditor that registered a notice with respect to a security right in the encumbered asset at least [a short period of time to be specified by the enacting State] before the proposal is sent; and
 - (d) Any other secured creditor that was in possession of the encumbered asset when the secured creditor took possession.
3. The proposal must include:
 - (a) A statement of the amount of the secured obligation owed at the time the proposal is sent, including interest and the reasonable cost of enforcement, and the amount of the secured obligation that is proposed to be satisfied;
 - (b) A statement that the secured creditor proposes to acquire the encumbered asset described in the proposal in total or partial satisfaction of the secured obligation;
 - (c) A statement that the debtor, the grantor and any other person with a right in the encumbered asset are entitled to terminate the enforcement as provided in article 73;
 - (d) A statement of the date after which the encumbered asset will be acquired by the secured creditor.
4. The secured creditor acquires the encumbered asset:
 - (a) In the case of a proposal for the acquisition of the encumbered asset in full satisfaction of the secured obligation, unless the secured creditor receives an objection in writing from any person entitled to receive a proposal under paragraph 2 within [a short period of time to be specified by the enacting State] after the proposal is received by that person; and
 - (b) In the case of a proposal for the acquisition of the encumbered asset in partial satisfaction of the secured obligation, only if the secured creditor receives the affirmative consent of each person entitled to receive a proposal under paragraph 2 in writing within [a short period of time to be specified by the enacting State] after the proposal is received by that person.
5. The grantor may request the secured creditor to make a proposal under paragraph 1 and, if the secured creditor accepts the grantor's request, it must proceed as provided in paragraphs 1-4.

[Note to the Commission: The Commission may wish to consider whether the deadline included in subparagraph 4(b), which was not included in recommendation 158 of the Secured Transactions Guide, on which this article is based, should be retained.]

Article 79. Rights acquired in an encumbered asset

1. If a secured creditor sells or otherwise disposes of an encumbered asset by applying to a [court or other authority to be specified by the enacting State], the buyer or other transferee acquires the asset [the enacting State to specify whether the buyer or other transferee acquires its rights free of any rights, except rights that have priority over the right of the enforcing secured creditor].
2. If a secured creditor leases or licenses an encumbered asset by applying to a [court or other authority to be specified by the enacting State], [the enacting State to specify whether a lessee or licensee is entitled to the benefit of the lease or licence during its term, except as against creditors with rights that have priority over the right of the enforcing secured creditor].
3. If a secured creditor sells or otherwise disposes of an encumbered asset without applying to a [court or other authority to be specified by the enacting State], the buyer or other transferee acquires the grantor's right in the asset free of the rights of the enforcing secured creditor and any competing claimant, except rights that have priority over the right of the enforcing secured creditor.
4. If a secured creditor leases or licenses an encumbered asset without applying to a [court or other authority to be specified by the enacting State], the lessee or licensee is entitled to the benefit of the lease or licence during its term, except as against creditors with rights that have priority over the right of the enforcing secured creditor.
5. If a secured creditor sells or otherwise disposes of, leases or licenses the encumbered asset not in compliance with the provisions of this chapter, the buyer or other transferee, lessee or licensee of the encumbered asset acquires the rights or benefits described in paragraphs 1 and 2[, provided that it had no knowledge of a violation of the provisions of this chapter that materially prejudiced the rights of the grantor or another person].

[Note to the Commission: The Commission may wish to consider whether the bracketed text in paragraph 5 should be retained outside square brackets.]

B. Asset-specific rules

Article 80. Collection of payment under a receivable, negotiable instrument, right to payment of funds credited to a bank account or non-intermediated security

1. After default, a secured creditor with a security right in a receivable, negotiable instrument, right to payment of funds credited to a bank account or non-intermediated security is entitled to collect payment from the debtor of the receivable, obligor under the negotiable instrument, depositary institution or issuer of the non-intermediated security.

2. The secured creditor may exercise the right to collect under paragraph 1 before default provided that the grantor consents.
3. A secured creditor exercising the right to collect under paragraph 1 or 2 is also entitled to enforce any personal or property right that secures or supports payment of the encumbered asset.
4. If a security right in a right to payment of funds credited to a bank account has been made effective against third parties by registration of a notice, the secured creditor is entitled to collect or otherwise enforce its security right only pursuant to an order of a court, unless the depositary institution agrees otherwise.
5. The right of the secured creditor to collect under paragraphs 1 to 4 is subject to articles 59-69.

Article 81. Collection of payment under a receivable by an outright transferee

In the case of an outright transfer of a receivable, the transferee is entitled to collect the receivable before or after default of the transferor.
