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Draft Guide to Enactment of the draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

Contents

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Chapter IV. The registry system

Article 27. Establishment of a registry

1. Article 27, which is based on recommendation 1, subparagraph (f), of the Secured Transactions Guide and recommendation 1 of the Registry Guide, provides for the establishment by the enacting State of a public registry to give effect to the provisions of the Model Law relating to the registration of notices with respect to security rights. In particular, under article 18 of the Model Law, a non-possessory security right in an encumbered asset is effective against third parties, as a general rule, only if a notice with respect to the security right is registered in the registry (see Secured Transactions Guide, chap. III, paras. 29-46 and the Registry Guide, paras. 20-35). Under article 28 of the Model Law, the time of registration is also relevant, again as a general rule, to the ordering of priorities among competing claimants (see Secured Transactions Guide, chap. V, paras. 42-50, and the Registry Guide, paras. 36-46).

2. Depending on its drafting conventions, an enacting State may decide to incorporate the provisions relating to the registry system in its secured transactions law enacting the Model Law, in a separate law, or in another legal instrument, such as rules, regulations, orders, by-laws or the like issued by a governmental authority, or in a combination thereof. To preserve flexibility for enacting States, all the relevant provisions are collected below in a set of rules presented after article 27 of the Model Law and called the “Model Registry-related Provisions”.[1]

3. These Provisions have been drafted to accommodate flexibility in registry design. The Secured Transactions Guide recommends that, if possible, the Registry should be electronic (see Secured Transactions Guide, rec. 54, subpara. (j)). The registry record should be electronic in the sense of permitting information in registered notices to be stored in electronic form in a single computer database (see Secured Transactions Guide, rec. 54, subpara. (j)(i), and chap. IV, paras. 38-41 and 43). An electronic registry record is the most efficient and practical means of enabling enacting States to implement the recommendations of the Secured Transactions Guide that the registry record should be centralized and consolidated (see rec. 54, subpara. (e), and chap. IV, paras. 21-24).

4. The access to registry services should be electronic in the sense of permitting the direct electronic submission of notices and search requests by users over the Internet or via direct networking systems as an alternative to the submission of paper notices and search requests (see Secured Transactions Guide, rec. 54, subpara. (j)(ii), and chap. IV, paras. 23-26 and 43). This approach eliminates the risk of human error in entering the information contained in a paper notice into the registry record, facilitates speedier and more efficient access to registry services by users, and greatly reduces the operational costs of the registry process (for a discussion of these advantages and guidance on implementation, see Registry Guide, paras. 82-89).

5. Some States provide for the registration in their general security rights registries of notices in addition to those contemplated by the Model Law, such as,

[1] A reference to an article in this chapter is a reference to an article of the Model Registry-related Provisions, unless otherwise indicated.

for example, notices relating to judgements obtained by unsecured creditors against their debtors, non-consensual non-possessory security rights, non-consensual preferential claims or non-possessory ownership rights of commercial consignors or long-term lessors (see Registry Guide, paras. 40, 46, 50 and 51). If the enacting State follows this approach, it will need to specify whether registration is necessary for the creation or third-party effectiveness of these other rights and the priority effect of registration, including priority as against rights within the scope of the Model Law.

Model Registry-related Provisions

Section A. General rules

Article 1. Definitions and rules of interpretation

6. Article 1 contains definitions of key terms used in the Model Registry-related Provisions. These terms are derived in part from the Registry Guide (see Registry Guide, paras. 8 and 9). If the enacting State decides to incorporate the Model Registry-related Provisions in its enactment of the Model Law, these definitions should be included in the provision of the secured transactions law implementing article 1 of the Model Law. In general, the definitions are self-explanatory. Where elaboration is needed, it is provided in the commentary on the relevant articles below.

Article 2. Grantor's authorization for registration

7. Article 2 is based on recommendations 71 of the Secured Transactions Guide (see chap. IV, para. 106) and 7, subpara. (b), of the Registry Guide (see para. 101). Paragraph 1 states the basic principle that the registration of an initial notice is ineffective unless authorized by the grantor in writing (the rule is formulated in the negative, as effectiveness of a registration is also subject to other requirements). To ensure that this basic rule does not interfere with the efficiency of the registration process, paragraph 6 confirms that the authorization is to be given off-record. Thus, the Registry is not entitled to require evidence of the existence of the grantor's registration as part of the registration process.

8. Paragraphs 4 and 5 confirm that: (a) the grantor's authorization need not be obtained before registration; and (b) the conclusion of a written security agreement with the grantor automatically constitutes authorization without the need to include an express authorization clause. Thus, the post-registration conclusion of a security agreement will constitute "ratification" of an initially unauthorized registration to the extent of the assets described in the security agreement. If the security agreement covers a narrower range of encumbered assets than that described in the registered notice, the registration would still be unauthorized to the extent of those additional assets. However, if the parties were to later conclude a new security agreement covering the additional assets, this would constitute retroactive authorization.

9. Paragraph 2 requires the grantor's authorization for the registration of an amendment notice that adds encumbered assets to those described in the initial registered notice or any amendment notice. The grantor's authorization is not

needed if the amendment notice adds assets that are covered by a security agreement between the parties, since under paragraph 6 the conclusion of a security agreement automatically constitutes authorization. Moreover, as explained above, authorization may be given under paragraph 4 before the registration of a notice. Consequently, the subsequent conclusion of a security agreement covering the additional assets would constitute retroactive authorization for the registration of the amendment notice.

10. It should be noted that there is no need to register an amendment notice (and thus no need to obtain the authorization of the grantor) with respect to "additional assets" that are proceeds of encumbered assets described in a prior registered notice if the proceeds are: (a) of a type that fall within the existing description (for example, the description covers "all tangible assets" and the grantor exchanges one type of tangible asset for another (see Secured Transactions Guide, rec. 39); or (b) "cash proceeds", that is, money, receivables, negotiable instruments or funds credited to a bank account (see art. 16, para. 1, of the Model Law).

11. Under the bracketed language in paragraph 2, the grantor's written authorization must also be obtained for the registration of an amendment notice to increase the maximum amount set out in a registered notice for which the security right to which the registration relates may be enforced. This provision is only needed in systems that require this information to be set out in the security agreement and in the registered notice (see art. 8, subpara. (e)). A separate authorization from the grantor is not needed if the grantor has agreed to a new amount in a security agreement since the conclusion of a security agreement automatically constitutes authorization under paragraph 6 (even if the agreement is concluded after the registration of the amendment notice).

12. Where an amendment notice seeks to add a new grantor, paragraph 3 requires the additional grantor's written authorization to be obtained in line with the general principle in paragraph 1 and in the same manner. The bracketed wording in paragraph 3 is necessary only if the enacting State implements option A or option B of article 26. It creates an exception to the requirement to obtain the grantor's written authorization where the new grantor is a transferee of an encumbered asset from the original grantor and the purpose of the amendment is to enable the secured creditor to protect its priority status as against claimants that acquire rights in the encumbered asset from that transferee in accordance with these options. Likewise, where the grantor identifier changes after the registration, the grantor's authorization is not required for the registration of an amendment notice to disclose the new identifier of the grantor for the purposes of protecting the priority of the security right against subsequent claimants dealing with the grantor after the change of name pursuant to article 25.

13. The registration of a notice, whether or not authorized by the grantor, is effective against third parties only to the extent that the assets described in the registered notice are actually covered by a security agreement between the parties. However, third parties have no means of obtaining this information with a search of the public registry record. Consequently, the grantor's ability to sell, or create a security right in, the assets described in a registered notice will be impaired, even if those assets are not subject to a security right, because of the priority risk for subsequent secured creditors and buyers posed by the potential existence of a security right. If the grantor did not authorize the registration of the notice, or only

authorized the registration of a notice covering a narrower range of encumbered assets, article 20 provides a procedure by which the grantor can compel the secured creditor to register a cancellation or amendment notice as the case may be. This procedure is not available, however, if the grantor separately authorized the registration of a notice covering the assets described in the notice even if any actual or contemplated security agreement between the parties only covers a narrower range of assets.

14. While this point is not directly relevant to the issue of the grantor's authorization in article 2, it should be noted that registration of an amendment notice may affect intervening competing claimants, if it: (a) adds encumbered assets; (b) increases the maximum amount; or (c) adds a new grantor. Thus, it takes effect only from the time when the registration of the amendment notice (not the initial notice) becomes effective (see art. 13, para. 1).

Article 3. One notice sufficient for multiple security rights

15. Article 3 is based on recommendations 68 of the Secured Transactions Guide (see chap. IV, para. 101) and 14 of the Registry Guide (see paras. 125 and 126). It confirms that a single registered notice is sufficient to achieve the third-party effectiveness of security rights arising under one or more security agreements between the parties identified in the notice. This rule applies regardless of whether the agreements are related to one another or are separate and distinct, and regardless of whether the notice relates to security rights in the grantor's current assets or assets in which the grantor acquires rights only after the registration. This is consistent with the notice registration system contemplated by the Model Law, under which a registrant need only submit a standardized "notice" containing basic information about the parties and the encumbered assets rather than having to register the underlying security agreements giving rise to the security rights to which the registration relates (see arts. 8 and 17-19).

16. A single registration is effective for security rights arising under one or more security agreements between the parties identified in the notice only to the extent that the information in the registered notice corresponds to the content of off-record agreements between those parties (see Registry Guide, para. 126). If, for example, the parties enter into a security agreement that extends to assets not covered by the description of the encumbered assets in the registered notice, a new initial notice (or an amendment to the existing notice) will have to be registered for the security right in the additional assets to be effective against third parties, and that notice will take effect against third parties only from the time of its registration (see art. 13, para. 1).

Article 4. Advance registration

17. Article 4 is based on recommendations 67 of the Secured Transactions Guide (see chap. IV, paras. 98-100) and 13 of the Registry Guide (see paras. 122-124). It confirms that a registration may be made before the conclusion of a security agreement to which the notice relates, or the creation of any security rights contemplated by any such agreement. Thus, article 4 is consistent with article 8, subparagraph (a), of the Model Law, which provides that a security agreement may cover the grantor's future assets (see art. 2, subpara. (n), of the Model Law).

18. Registration in advance of the conclusion of any security agreement between the parties is practically possible under the notice registration system contemplated by the Model Law because, as noted in relation to article 3 (see para. 15 above), the underlying security agreement does not have to be deposited with the Registry or tendered for scrutiny. Where priority among competing secured creditors is determined by the general order of registration or third-party effectiveness rule in article 28 of the Model Law, advance registration is useful because it enables a secured creditor to be sure of its priority ranking even before the security agreement with the grantor is formally concluded. However, for a security right to be effective against other classes of competing claimants, the security right must also have been created (see Registry Guide, paras. 20 and 123). Accordingly, advance registration does not protect a secured creditor against a competing claimant, other than a competing secured creditor that acquires rights in the encumbered assets before the security agreement is actually entered into and the other requirements for creation are satisfied.

19. If a security agreement is never concluded between the parties, or only covers a narrower range of assets than those described in the registered notice, advance registration may have a negative impact on the ability of the person identified in the notice as the grantor to sell or create a security in the assets described in the notice. As noted in relation to article 2 (see para. 13 above), article 20 provides for a procedure to enable the grantor to obtain the compulsory amendment or cancellation of a registered notice in this scenario, unless the grantor expressly authorized the registration of the notice.

Section B. Access to registry services

Article 5. Conditions for access to registry services

20. Article 5 is based on recommendations 54, subparagraph (c), (f) and (g), and 55, subparagraph (b), of the Secured Transactions Guide (see chap. IV, paras. 25-228) and 4, 6 and 9 of the Registry Guide (see paras. 95-97 and 103-105).

21. Paragraphs 1 and 3 confirm that the Registry is public in the sense that any person is entitled to register a notice of a security right or search the registry record subject only to meeting the conditions governing access. With one qualification, the conditions are the same for both types of service. For both types of service, the user must submit the (paper or electronic) form of notice or search request prescribed by the registry and pay or make any arrangements to pay the prescribed fees, if any (see art. 33). The one qualification relates to the requirement in subparagraph 1(b) for a user to identify itself to the Registry in the prescribed manner. This requirement only applies to users that submit a notice for registration as opposed to a search request. This requirement is aimed at assisting the person identified in a registered notice as the grantor to determine the identity of the registrant in the event that the grantor did not authorize the registration (see Registry Guide, para. 96). This consideration must be balanced against the need to ensure efficiency and speed in the registration process. Accordingly, the evidence of identity required of a registrant should be that which is generally accepted as sufficient in day-to-day commercial transactions in the enacting State (for example, an identity card, driver's licence or other state-issued official document).

22. If access to registry services is refused, paragraph 4 requires the Registry to communicate the specific reason (for example, the user failed to use the prescribed form or to pay the prescribed fee). The reasons must be communicated without delay. What this means in practice depends on the mode by which the notice or search request is submitted to the Registry. If the system is designed to enable users to submit notices and search requests through electronic means of communication directly to the Registry, the system can and should be programmed to automatically communicate the reason during the registration process and display the reason on the registrant's screen. In the case of notices and search requests submitted in paper form, the registry staff will need a reasonable period of time to examine the notice or search request and prepare and communicate a formal response.

23. In order to facilitate access to registry services and avoid unnecessary refusals, the Registry should be organized to accept all modes of payment in common commercial use in the enacting State. However, controls will need to be introduced to avoid the risk of staff embezzlement of cash payments and to ensure the confidentiality of financial information submitted by users (see Registry Guide, para. 138). To facilitate efficient access by frequent users (such as financial institutions, automobile dealers or other suppliers of goods on credit, lawyers and other intermediaries), users should be given the option of setting up a pre-payment account that enables them to deposit funds on an ongoing basis to pay for their ongoing requests for services.

24. To limit the risk of the registration of amendment and cancellation notices not authorized by the secured creditor, paragraph 2 requires persons who submit an amendment or cancellation notice to specify the secure access details required by the Registry. For example, the Registry might require registrants to set up a password-protected account when submitting an initial notice, and then require all amendment and cancellation notices to be submitted through that account. This would prevent the grantor or third parties from amending or cancelling a registered initial notice without being given access to the account by the registrant. Alternatively, the system might be designed to assign a unique user code to registrants upon registration of an initial notice and then require entry of that code on all amendment and cancellation notices submitted for registration. This would ensure that only the registrant and those to whom the registrant chooses to disclose the code are able to register an amendment or cancellation notice (with respect to the effectiveness of the registration of unauthorized amendment or cancellation notices, see art. 21).

Article 6. Rejection of the registration of a notice or a search request

25. Article 6 is based on recommendations 8 and 10 of the Registry Guide (see paras. 97-99 and 106). Paragraph 1 obligates the Registry to reject the registration of a notice submitted for registration if no information, or only illegible information, has been entered in one or more of the mandatory designated fields in the notice. As all mandatory fields must be completed for a registered notice to be effective, this provision ensures that the information in submitted notices that clearly do not satisfy the minimum requirements for effectiveness are never entered into the registry record. On the other hand, even if all the mandatory fields in a submitted notice contain legible information and the notice is therefore accepted for registration, it does not follow that the registration is effective if the information

that is entered, while being legible, is erroneous or incomplete (with respect to whether and to what extent an error or omission in the information contained in a registered notice renders the registration ineffective, see art. 24; with respect to whether and to what extent a secured creditor is obligated to update the record where the information in a registered notice becomes inaccurate as a result of post-registration events, see arts. 25 and 26).

26. Paragraph 2 obligates the Registry to reject a search request if no information, or only illegible information, has been entered in either one of the designated fields for entering a search criterion. Since searchers are entitled to search by either or both the identifier of the grantor and the registration number assigned to the initial notice (see art. 22), it is sufficient if legible information is entered into at least one of the search criterion fields. The fact that at least one of the search criteria fields contains legible information does not necessarily mean that a search result will be accurate since the criterion entered by the searcher may be erroneous or incomplete. To avoid any arbitrary decisions on the part of the Registry, paragraph 3 confirms that the Registry may not reject the registration of a notice or search request where the registrant or searcher satisfies the access conditions set out in paragraphs 1 and 2.

27. Paragraph 4 obligates the Registry to provide the reason for rejecting the registration of a notice or a search request without delay. What this means in practice depends on the mode by which the notice or search request was submitted to the Registry. If the system is designed to enable users to submit notices and search requests through electronic means of communication directly to the Registry, the system can and should be designed to automatically reject the submission of incomplete or illegible notices during the registration process and display the reasons on the registrant's screen. In the case of notices and search requests submitted in paper form, there will necessarily be some delay between the time of receipt by registry staff and the communication of the refusal and reason to the user. In the case of notices and search requests submitted in paper form, the registry staff will need a reasonable period of time to examine the notice or search request and then prepare and communicate a formal response.

Article 7. Information about the registrant's identity and scrutiny of the form or contents of the notice by the Registry

28. Article 7 is based on recommendations 54, subparagraph (d), and 55, subparagraph (b), of the Secured Transactions Guide (see chap. IV, paras. 15-17 and 48) and 7 of the Registry Guide (see paras. 100 and 102). Paragraph 1 obligates the Registry to maintain the identity information submitted by registrants in compliance with article 5, subparagraph 1(b), and to provide information upon request to the person identified in the registered notice as the grantor. While this information does not form part of the public or archived registry record, it nonetheless must be preserved by the Registry in a manner that enables it to be retrieved in association with the registered notice to which it relates. This is consistent with the rationale for obtaining and preserving this information which is to assist the grantor in identifying the registrant in cases where the registration of the notice was not authorized by the grantor (see para. 21 above). In order to ensure that this objective is balanced against the need to facilitate efficiency of the registration process, paragraph 2 provides that the Registry may not require further verification of the

identity information provided by a registrant under article 5, subparagraph 1(b). With the same objective in mind, paragraph 3 generally prohibits the Registry from scrutinizing the form or content of notices and search requests submitted to it except to the extent needed to give effect to articles 5 and 6.

Section C. Registration of a notice

Article 8. Information required in an initial notice

29. Article 8 is based on recommendations 57 of the Secured Transactions Guide (see chap. IV, para. 65) and 23 of the Registry Guide (see paras. 157-160). It sets out the items of information required to be entered in the appropriate designated fields in an initial notice submitted to the Registry for registration. The items of information specified in subparagraphs (a), (b) and (c) are the subject of articles 9, 10 and 11, and the reader is generally referred to the commentary on those articles. It should be noted, however, that where a notice relates to more than one grantor or secured creditor, the required information should be entered separately for each grantor or secured creditor.

30. An enacting State may decide to require "additional information" (such as the birth date of the grantor or an identification number issued by the enacting State) to be entered to assist in uniquely identifying a grantor where there is a risk that many persons may have the same name (see bracketed text in art. 8, subpara. (a)). If this approach is adopted, the form of notice prescribed by the enacting State should provide a separate designated field for entering the "additional information". The enacting State should also specify the type of additional information to be included and make its inclusion mandatory in the sense that it must be entered in the relevant field for a notice to be accepted by the Registry (on all these points, see Registry Guide, rec. 23, subpara. (a)(i), and paras. 167-169, 171, 181-183, 226, as well as examples of forms in Annex II).

31. Subparagraph (d) appears within square brackets, as an indication of the duration of registration on an initial notice is required only if the enacting State adopts options B or C of article 14 (see paras. 50-52 below; see also Registry Guide, paras. 199-204). Subparagraph (e) also appears within square brackets, as an indication of the maximum amount for which the security right may be enforced is required only if the enacting State implements the approach set out article 6, subparagraph 3(d), of the Model Law, which also appears within square brackets (see para. A/CN.9/885, para. 79).

Article 9. Grantor identifier

32. Article 9 is based on recommendations 59 and 60 of the Secured Transactions Guide (see chap. IV, paras. 68-74), as well as recommendations 24 and 25 of the Registry Guide (see paras. 161-180). It provides that the identifier of the grantor is its name. It then sets out separate rules for determining the name of the grantor depending on whether the grantor is a natural person or a legal person or other entity.

33. If the grantor is a natural person, paragraph 1 provides that the grantor's name is the name that appears in the official document specified by the enacting State as

the authoritative source. Since not all grantors may possess a common official document (e.g., an identity card or driver's licence), the enacting State will need to specify alternative official documents as authoritative sources and specify the hierarchy of authoritativeness among them (for examples of possible approaches, see Registry Guide, paras. 163-168).

34. The enacting State may require the entry of a State-issued identity or other official number to uniquely identify a grantor either as additional information (see para. 30 above) or as alternative grantor identifier. If this approach is adopted, it will be necessary for the enacting State to address cases in which the grantor is not a citizen or resident of the enacting State, or for any other reason has not been issued an identification number. The enacting State might, for example, provide that the number of the grantor's foreign passport or the number in some other foreign official document is a sufficient substitute (see Registry Guide, para. 169).

35. Paragraph 2 requires the enacting State to indicate which components of a name of a grantor, who is a natural person, must be entered into the registered notice. Accordingly, the enacting State will need to specify, for example, whether only the given and family name of the grantor is required or whether a middle name or initial must also be included. It will also need to specify, in the event the grantor's name consists of a single word, whether that name should be entered in the field designated for entering the grantor's family name (see Registry Guide, para. 165).

36. Paragraph 3 requires the enacting State to address how the grantor's name is to be determined where the grantor's name has legally changed under applicable law after the issuance of the official document designated in paragraph 1 as the authoritative source of the grantor's name (for example, by reason of marriage or as a result of a formal application for a name change under change of name legislation; see Registry Guide, para. 164(f)).

37. Paragraph 4 provides that where the grantor is a legal person the name of the grantor is the name that appears in the relevant document, law or decree to be specified by the enacting State constituting the legal person (see Registry Guide, paras. 170-173).

38. Paragraph 5, which appears in square brackets, provides for the possibility that an enacting State may wish to require additional information pertaining to the grantor's status to be entered in a registered notice in special cases, such as where the grantor subject to insolvency proceedings (see Registry Guide, paras. 174-179).

Article 10. Secured creditor identifier

39. Article 10 is based on recommendations 57, subparagraph (a), of the Secured Transactions Guide (see chap. IV, para. 81) and 27 of the Registry Guide (see paras. 184-189). It largely replicates the rules in article 9 for determining the identifier of the grantor. Unlike article 9, however, article 10 provides that the registrant may enter the name of a representative of the secured creditor (e.g. a service provider or an agent of a syndicate of lenders). This approach is intended to protect the privacy of the actual secured creditor and facilitate the efficiency of arrangements such as syndicated loans where there are multiple secured lenders whose identity may change over time. This approach does not have a negative impact on the grantor, who would typically know the identity of the actual secured

creditor from their dealings, or third parties, as long as the representative is authorized to act on behalf of the actual secured creditor (see Registry Guide, paras. 186 and 187). It should also be noted that, as the security right is created by an off-record security agreement, the entry of the name of a representative as the secured creditor on a registered notice does not make the representative the actual secured creditor.

Article 11. Description of encumbered assets

40. Article 11 is based on recommendations 62 of the Secured Transactions Guide (see chap. IV, paras. 82-86) and 28 of the Registry Guide (see paras. 190-192). The test for the adequacy of a description of the encumbered assets in a registered notice in paragraph 1 parallels the test for the adequacy of a description of the encumbered assets in a security agreement (see art. 9 of the Model Law). The description in a registered notice need not be identical to the description in any related security agreement so long as it reasonably allows identification of the relevant encumbered assets in accordance with the test in paragraph 1. On the other hand, a description in a registered notice that satisfies this test will not make a security right effective against third parties to the extent that the description includes assets that are not covered by any related security agreement, since the requirements for the effective creation of a security right will not have been satisfied.

41. Paragraph 2 confirms that a description in a registered notice that refers to all of the grantor's movable assets or to all of the grantor's assets within a specified generic category (for example, all receivables owing to the grantor) satisfies the test in paragraph 1 that the description reasonably allow identification of the encumbered assets. It follows that a generic description will be sufficient even if any related security agreement only covers a specific asset within that broad generic category (for example, the description in the registered notice refers to all "tangible assets of the grantor", whereas the security agreement only covers a specific tangible asset). However, the effectiveness of the registration in this scenario is dependent on the authorization of the grantor pursuant to article 2; if the grantor only authorized a registration covering a specific asset, the registration will only be effective with respect to that asset. Moreover, the grantor is entitled, pursuant to article 20, paragraph 1, to compel the secured creditor to register an amendment notice that narrows the description of the assets in the registered notice to correspond to the encumbered assets covered by any security agreement between them unless the grantor separately authorized the secured creditor to register a broader description (see para. 8 above).

42. The secured transactions laws of some States adopt specific alphanumerical ("serial number") rules for describing specified classes of high-value assets that have a significant resale market. In States that adopt this approach, entry of the serial number in its own designated field is required in the sense of being necessary to preserve the priority of the security right as against specified classes of third parties that acquire rights in the asset. States that are interested in adopting this approach are referred to the discussion in the Registry Guide (for the organization of the registry record to permit searches by serial number, see paras. 131-134; for the consequences of an error in a serial number, see para. 212; and for a search by serial number, see para. 266).

43. If proceeds of an encumbered asset are not in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account and are already covered by the description of the encumbered assets in a registered notice, the secured creditor must register an amendment notice to add a description of the proceeds within a short period of time after the proceeds arise in order to preserve the third-party effectiveness and priority of its security right in the proceeds as from the date of the initial registration (see art. 19, para. 2, of the Model Law). An amendment is necessary because otherwise a search result would not disclose the potential existence of a security right in the assets constituting the proceeds (see Registry Guide, paras. 193-197).

44. It should be noted that the inclusion of a description of an encumbered asset in a registered notice does not imply or represent that the grantor has or will have rights in that asset (see art. 6, para. 1, of the Model Law). That is to say, the Registry only provides for the disclosure of potential security rights in assets, not ownership or other rights. Whether the grantor owns or has rights in the relevant asset is determined by other law.

Article 12. Language of information in a notice

45. Article 12 is based on recommendation 22 of the Registry Guide (see paras. 153-156; the Secured Transactions Guide includes a discussion of this matter in chapter IV, paras. 44-46, but does not include a recommendation). Paragraph 1 requires the information contained in a notice to be expressed in the language or languages to be specified by the enacting State with the exception of the names and addresses of the grantor and the secured creditor or its representative. Typically, the enacting State would require registrants to use its officially recognized language or languages. As the names and addresses of the grantor and the secured creditor or its representative need not be translated, registrants will only need to translate the description of the encumbered assets (as the other items of information required to be entered in a notice may be expressed by numbers). Where the description of the encumbered assets is not expressed in the required language or languages, the registration of the notice would likely seriously mislead a reasonable searcher and thus would be ineffective (see art. 24, para. 4).

46. Paragraph 2 requires all information in a notice to be in the character set prescribed and publicized by the Registry. Where the names and addresses of the grantor and secured creditor or its representative are expressed in a character set different from the character set used in the language or languages recognized by the enacting State, guidance will need to be given on how the characters are to be adjusted or transliterated to conform to the language of the Registry (see Registry Guide, para. 155). If the information in a notice submitted to the Registry is not in the character set prescribed and publicized by the Registry, the notice will be rejected as illegible under article 6, subparagraph 1(a) (for the same rule with respect to search requests, see art. 6, para. 2).

Article 13. Time of effectiveness of the registration of a notice

47. Article 13 is based on recommendations 70 of the Secured Transactions Guide (see paras. 102-105) and 11 of the Registry Guide (see paras. 107-112). Paragraph 1 provides that the registration of an initial or amendment notice submitted to the Registry becomes effective only once the information in the notice is entered into

the public registry record so as to be available to searchers (see the definition of the term "registry record" in art. 1, subpara. (l)). If the registry system is designed to enable users to submit information in a notice to the Registry through electronic means of communication directly without the intervention of registry staff, there will be little or no delay between the time when the information in a notice is submitted to the Registry and the time when it becomes available to searchers. But in systems that permit or require the use of paper notice forms, there will inevitably be some time lag since the registry staff must enter the information on the paper notice form into the registry record on behalf of registrants. In view of the importance of the timing and order of registration to the third-party effectiveness and priority of a security right, paragraph 2 obligates the Registry to enter the information into the registry record without delay after the notice is submitted and in the order in which it was submitted. For the same reason, paragraph 3 requires the date and time of effectiveness of the registration to be set out in the registry record and made available to searchers.

48. Paragraph 4 deals with the time of effectiveness of the registration of a cancellation notice. Option A provides that the registration of a cancellation notice becomes effective once the information in the registered notices to which the cancellation notice relates is no longer publicly searchable. Accordingly, option A should be adopted by enacting States that adopt option A or B of article 21, since in States that adopt that approach the Registry is obligated to remove information in a registered notice from the public registry record and archive it upon registration of a cancellation notice pursuant to option A of article 30. Option B provides that the registration of a cancellation notice becomes effective once the information in the registered notices to which the cancellation notice is entered into the registry record so as to be accessible to searchers. Accordingly, option B should be adopted by enacting States that adopt option C or D of article 21, since in States that adopt that approach the Registry is obligated to retain the information in all registered notices, including cancellation notices, on the public registry record until the registration lapses pursuant to option B of article 30.

49. Option A and option B of paragraph 5 require the Registry to record the date and time of effectiveness of the registration of the cancellation notice as determined by option A and option B of paragraph 4 respectively. Accordingly, enacting States that adopt option A of paragraph 4 should adopt option A of paragraph 5, while enacting States that adopt option B of paragraph 4 should adopt option B of paragraph 5.

Article 14. Period of effectiveness of the registration of a notice

50. Article 14 is based on recommendations 69 of the Secured Transactions Guide (see chap. IV, paras. 87-91) and recommendation 12 of the Registry Guide (see paras. 113-121, 240 and 241). It offers enacting States a choice of three different approaches to the determination of the initial period of effectiveness (or duration) of the registration of a notice. If option A is enacted, an initial notice (and any associated amendment notices) would be effective for the period of time stipulated by the enacting State. If option B is enacted, registrants would be permitted to choose the desired period of effectiveness for themselves. If option C is enacted, registrants would likewise be permitted to choose the period of effectiveness but without exceeding a maximum number of years stipulated by the enacting State.

51. All options permit registrants to extend (more than once) the period of effectiveness of a notice before its expiry by the registration of an amendment notice. Under option A, the duration of the registration would be extended by an equivalent period of time. Under option B or option C the registrant would be permitted to select the further period of effectiveness, but up to the stipulated maximum number of years in the case of option C.

52. If option B or option C is enacted, the period of effectiveness of a registered notice is a mandatory component of the information required to be included in a notice submitted to the registry (see art. 8, subpara. (d)). States that adopt either of these options would also need to indicate on the prescribed notice form how registrants must enter the desired period of effectiveness. The notice form might be designed to enable registrants to simply enter the desired number of whole years from the date of registration. Alternatively, the notice form might permit registrants to enter the specific day, month and year on which the registration is to expire unless renewed.

Article 15. Obligation to send a copy of a registered notice

53. Article 15 is based on recommendations 55 subparagraphs (c), (d) and (e) of the Secured Transactions Guide (see chap. IV, paras. 49-53) and 18 of the Registry Guide (see paras. 145-149). Paragraph 1 obligates the Registry to send a copy of the information in a registered notice to the person identified in the notice as the secured creditor without delay after the registration becomes effective. This enables the person identified in a notice as the secured creditor to find out about erroneous or unauthorized amendment or cancellation notices (see art. 21; see also Registry Guide, paras. 245-248; with respect to the liability of the Registry for failure to send a copy of a notice, see art. 32).

54. In order to enable the grantor to take the steps necessary to protect its position if the registration of a notice is wholly or partially unauthorized (see art. 20), paragraph 2 obligates the person identified as the secured creditor in the copy of the registered notice sent to it by the Registry pursuant to paragraph 1 to forward it to the person identified in the notice as the grantor. The secured creditor has to comply with this obligation within the period of time specified by the enacting State after it receives the notice. The copy must be sent to the grantor at its address set forth in the registered notice or, if the secured creditor knows that the grantor changed its address and the secured creditor knows or could reasonably discover that address, at the grantor's new address.

55. Paragraphs 3 and 4 confirm that non-compliance by the secured creditor with its obligation under paragraph 2 does not affect the effectiveness of its registration but only exposes the secured creditor to a nominal penalty and liability to compensate the grantor for any actual loss or damage caused by the non-compliance.

Section D. Registration of an amendment and cancellation notice

Article 16. Right to register an amendment or cancellation notice

56. Article 16 is based on recommendations 73 of the Secured Transactions Guide (see chap. IV, paras. 110-116) and 19, subparagraph (a), of the Registry Guide (see paras. 150 and 225-244). Paragraph 1 gives the person identified in an initial notice as the secured creditor the right to register a related amendment or cancellation notice at any time (this right is given to the registrant as the Registry cannot know or have to determine the identity of the actual secured creditor).

57. Paragraph 2 provides that, after an amendment notice changing the secured creditor identifier has been registered, only the new secured creditor is entitled to register an amendment or cancellation notice. If more than one amendment has been registered, only the person identified in the latest registered notice has the right to register an amendment or cancellation notice.

58. Where an amendment notice changes the secured creditor of record, the registry system should be designed to assign a new unique secure access code to the new secured creditors so as to prevent the previous secured creditor from registering an amendment or cancellation notice (see para. 24 above).

Article 17. Information required in an amendment notice

59. Article 17 is based on recommendation 30 of the Registry Guide (see paras. 221-224; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 provides that an amendment notice must contain in the designated field the registration number assigned by the Registry to the initial notice to which the amendment relates (see art. 28, para. 1, and para. 111 below). This ensures that the amendment will be associated in the registry record with the initial notice so as to be retrieved and included in a search result (see the definition of the term “registration number” in art. 1(j) , as well as arts. 22, subpara. (b)).

60. Subparagraph 1(b) requires the amendment notice to set out the information to be “added or changed”. The term change should be understood to include an amendment notice that releases an item or kind of asset or one of several grantors. Although this type of change amounts in effect to a cancellation of the registration as it relates to the relevant asset or grantor, it should be effected by registering an amendment notice and not a cancellation notice. A cancellation notice is to be used only when the purpose is to cancel the effectiveness of the registration of an initial notice and all related notices in their entirety (see the definitions of “amendment notice” and “cancellation notice” in art. 1, subparas. (b) and (c)).

61. Paragraph 2 makes it clear that an amendment notice may relate to more than one item of information in a registered notice. That is to say, a registrant need register only one amendment notice even if it wishes, for example, to add both a description of new encumbered assets and a new grantor. It follows that the form of amendment notice prescribed by the Registry must be designed to enable a registrant to change any and all items of information in an initial notice using a single form (see Registry Guide, Annex II, Examples of registry forms, amendment notice form).

Article 18. Global amendment of secured creditor information

62. Article 18 is based on recommendation 31 of the Registry Guide (see para. 242; the Secured Transactions Guide does not contain an equivalent recommendation). It addresses the scenario where there is a change in the identifier or address, or both, of the person identified in multiple registered notices as the secured creditor. Its purpose is to make it possible for the person identified in multiple registered notices as the secured creditor (option A) or for the Registry on the application of that person (option B) to amend the relevant information in all the notices in which it is contained with the registration of a single global amendment notice. For example, a secured creditor's name or address, or both, may change as a result of: (a) a merger with another company; (b) a relocation; or (c) an assignment of the secured obligations owing to a secured creditor under multiple security agreements with different grantors to an assignee who would then usually become the secured creditor of record.

63. In order to effectuate the global amendment of secured creditor information in multiple notices through a single registration, the registry record must be organized in a manner that enables the retrieval of all registered notices in which a particular person is identified as the secured creditor. To avoid the risk of unauthorized global amendments, the Registry should institute secure access requirements to ensure that the person requesting or effecting a global amendment is in fact the secured creditor of record (see para. 24 above).

Article 19. Information required in a cancellation notice

64. Article 19 is based on recommendation 32 of the Registry Guide (see paras. 243 and 244; the Secured Transactions Guide does not contain an equivalent recommendation). It requires a cancellation notice to contain in the designated field the registration number assigned by the Registry under article 28, paragraph 1, to the initial notice to which the cancellation relates. The registration number is the only item of information required to be included in a cancellation notice form (see Registry Guide, Annex II, example of cancellation notice form).

65. The purpose of assigning a registration number to an initial notice is to ensure that all related amendment and cancellation notices are associated in the registry record with the initial notice (see the definition of the term "registration number" in art. 1(j)). The inclusion of the registration number in a cancellation notice ensures that the cancellation notice extends to the information in all registered notices containing that number. To minimize the risk of inadvertent cancellations, the prescribed cancellation notice form should include a note alerting the secured creditor to the effect of a cancellation (see Registry Guide, Annex II, example of cancellation notice form; with respect to the effectiveness of a cancelation notice not authorized by the secured creditor, see paras. 74-82 below).

Article 20. Compulsory registration of an amendment or cancellation notice

66. Article 20 is based on recommendations 72 of the Secured Transactions Guide (see paras. 260-263) and 33 of the Registry Guide (see paras. 260-263). It should be read in conjunction with article 2 which requires the person identified as the grantor in a registered notice to authorize its registration.

67. Subparagraph 1(a) obligates the secured creditor to register an amendment notice deleting encumbered assets from the description in a registered notice if the grantor has not authorized (and the secured creditor knows that the grantor will not authorize) the registration of a notice in relation to those assets. For example, the secured creditor may have registered an initial notice covering "all assets" of the grantor but the security agreement between the parties ultimately covers only a specific tangible asset and the grantor does not contemplate entering into any further security agreements with the secured creditor. Provided that the grantor did not otherwise authorize the registration of the "all assets" notice, subparagraph 1(a) obligates the secured creditor to amend the description in its registered notice to limit it to the specific encumbered asset.

68. Subparagraph 1(b) addresses the scenario where the security agreement to which a registered notice relates is revised to release some of the initially encumbered assets from the security right. In this scenario, the secured creditor is obligated to register an amendment notice to delete the released assets from the description in the registered notice provided that the grantor did not authorize the registration of a notice covering the released assets otherwise than by entering into the initial security agreement.

69. States that implement article 8, subparagraph (d), will need to adopt paragraph 2 which requires a secured creditor to register an amendment notice reducing the maximum amount specified in a registered notice if: (a) the grantor only authorized the registration of a notice in the reduced amount; or (b) the security agreement to which the notice relates has been revised to reduce the maximum amount.

70. Paragraph 3 obligates a secured creditor to register a cancellation notice where the registration of an initial notice was not authorized by the grantor or the grantor has withdrawn its authorization and no security agreement has been entered into between the parties (see subparas. 3(a) and 3(b)). A cancellation notice must also be registered if the obligation secured by the security right to which the registered notice relates has been extinguished (see subpara. 3(c)). It should be noted that, under article 12 of the Model Law, a security right is extinguished upon full payment or other satisfaction of the secured obligation[, provided that there is no further commitment by the secured creditor to extend any further secured credit.

71. Paragraph 4 prohibits the secured creditor from charging any fee for complying with its obligations under subparagraphs 1(a), 2(a) or 3(a) and (b). These provisions require a secured creditor to amend or cancel a registration because it was either never authorized by the grantor or because the grantor's initial authorization was withdrawn owing to the failure of the parties to ultimately conclude a security agreement. In these circumstances, it is appropriate to impose the cost on the secured creditor.

72. It is assumed that a secured creditor will comply with its obligation under paragraphs 1, 2 and 3 within a short period of time after it became aware that any of the relevant conditions are met. In the event it does not, any obligation of the secured creditor to compensate the grantor for loss or damage caused by non-compliance is left to the general law of the enacting State on liability for violations of statutory obligations. However, paragraph 5 gives the grantor the right to send at any time (i.e. without having to wait for the secured creditor to comply) a

formal written request. If the secured creditor does not comply with the grantor's request within the time period specified by the enacting State, under paragraph 6, the grantor is entitled to apply for an order compelling registration of the appropriate notice. The enacting State needs to establish a summary judicial or administrative procedure and identify the relevant court or other authority to enable the grantor to exercise this right. Depending on local institutional considerations, the enacting State may decide to use an existing administrative or judicial summary procedure or it may decide to set up a new procedure administered, for example, by the Registrar or registry staff. As noted in the Registry Guide (see para. 262), the process should be speedy and inexpensive while also incorporating appropriate safeguards to protect the secured creditor against an unwarranted demand by the grantor (for example, by requiring the relevant authority to notify the secured creditor of a demand submitted to it and give the secured creditor an opportunity to challenge the demand within a short period of time).

73. Once an order for registration has been issued pursuant to the procedure established by the enacting State under paragraph 6, paragraph 7 requires the appropriate notice to be registered by the Registry upon receipt of a copy of the order (option A), or by the judicial or administrative officer who issued the order upon presenting a copy of the order to the Registry (option B). Where the officer charged by the enacting State with administering the process is the Registrar or a member of the Registry staff, the enacting State should simply provide that the Registry may itself make the relevant registration upon its issuance of the order.

Article 21. Effectiveness of the registration of an amendment or cancellation notice not authorized by the secured creditor

74. While not based on a recommendation of the Secured Transactions Guide or the Registry Guide, the options set out in article 21 are based on the discussion of the matter in the Registry Guide (see paras. 249-259). Its purpose is to address the effectiveness of a registered amendment or cancellation notice where the registration was not authorized by the secured creditor.

75. An unauthorized registration may occur as a result of fraud or error made by the grantor or a third party, or even a member of the registry staff (for corrections of errors by the Registry, see art. 31). The issue is whether and to what extent conclusive effect should be given to a registered amendment or cancellation notice for the purposes of determining the third-party effectiveness and priority of the related security right as against a competing claimant.

76. Under option A, the registration of an amendment or cancellation notice is effective regardless of whether or not it was authorized by the person identified as the secured creditor in the registered notice to which the amendment or cancellation notice relates. If a State adopts this approach, it will need to put in place secure access procedures for registering amendment or cancellation notices in order to limit the risk of unauthorized registrations (see para. 24 above).

77. Option B is a variation of option A in the sense that it places an important qualification on the effectiveness of an unauthorized amendment or cancellation notice. The priority of the security right to which the unauthorized registration relates is preserved as against the right of a competing claimant over whom it had priority prior to the unauthorized registration. This qualification is predicated on the

theory that to award priority to a competing claimant that would have been subordinated but for the unauthorized registration would result in an unjustified windfall, since that claimant by definition could not have suffered any loss of priority by relying on the unauthorized registration.

78. If an enacting State decides to adopt option A or option B, it will need to also implement option B of article 30 which obligates the Registry to remove information in a registered notice from the public registry record and archive it upon the expiry of its period of effectiveness or upon registration of a cancellation notice. It will also need to implement option A of article 13, paragraphs 4 and 5, dealing with the time of effectiveness of the registration of a cancellation notice.

79. Option C is at the opposite end of the spectrum from option A. It provides that the registration of an amendment or cancellation notice is ineffective, unless authorized by the secured creditor. Under this approach, a searcher will need to conduct off-record inquiries to verify whether the registration of a cancellation or amendment notice which purports to terminate a security right in an asset in which it wishes to acquire rights was in fact authorized by the secured creditor.

80. Option D is a variation of option C in the sense that it places an important qualification on the general rule in option C. It provides that the unauthorized registration of an amendment or cancellation notice is effective as against a competing claimant whose right was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, and who did not have knowledge that the registration was unauthorized at the time it acquired its right. This qualification differs from the qualification in option B above insofar as it requires the competing claimant to provide factual evidence that it actually searched and relied on the registry record prior to acquiring its right in order to prevail over the secured creditor whose registration was amended or cancelled without authority.

81. If an enacting State decides to adopt option C or option D, it will need to implement option B of article 30, which obligates the Registry to remove information in registered notices from the public registry record and archive it only upon the expiry of the period of effectiveness of the initial notice. Under option C or D, all amendment or cancellation notices need to remain in the public registry record in order for searchers to discover the security right and know whom to contact to verify whether the amendment or cancellation was authorized. If all the relevant notices were instead removed from the public record upon registration of a cancellation notice, searchers would be bound by a security right of whose existence they would be entirely ignorant.

82. Searchers may not necessarily appreciate that registered amendment and cancellation notices may not be legally effective. Accordingly, enacting States that implement options C or D may wish to include a note on search results advising searchers of the need to conduct off-record inquiries to verify whether the registration of an amendment or cancellation notice was authorized by the secured creditor.

Section E. Searches

Article 22. Search criteria

83. Article 22 is based on recommendation 54, subparagraph (h), of the Secured Transactions Guide (see chap. IV, paras. 31-36) and 34 of the Registry Guide (see paras. 264-265). It sets out the two criteria according to which any person may conduct a search of the public registry record.

84. Under subparagraph (a), the first and principal search criterion is the identifier of the grantor. The identifier of the grantor is its name, determined according to the rules set out in article 9. If an enacting State decides to require "additional information" to be entered in a separate field to assist in uniquely identifying a grantor, this additional information does not constitute an alternative search criterion (see art. 8, subpara. (a)). Rather it will simply appear as additional information in a search result.

85. Under subparagraph (b), the registration number assigned to an initial notice under article 28, paragraph 1, constitutes an alternative search criterion. A search by registration number gives secured creditors an efficient means of identifying and retrieving a registered notice for the purposes of registering an amendment or cancellation notice. Searches by registration number generally will not be conducted by third parties as they typically will not know the relevant registration number.

86. If the enacting State provides for the entry of the serial number of an asset in a separate designated field (see para. 42 above), entry of this serial number in its own designated field in the initial or amendment notice is required in the sense of being necessary to achieve the third-party effectiveness and priority of the security right as against specified classes of competing third-party claimants. If an enacting State decides to adopt this approach, it will need to list the serial number of the asset as an additional search criterion in this article. It will also need to provide rules for determining what constitutes the correct serial number, design the registry system so that registered notices can be searched and retrieved by serial number, and what categories of subsequent claimants are entitled to priority if the secured creditor omits to include the serial number in its registered notice (see Registry Guide, para. 266).

87. To allow the registration of global amendment notices, as provided in article 18, the registry record must be organized to permit registered notices to be identified and retrieved by reference to the relevant secured creditor. For public policy reasons relating to privacy and confidentiality, the name or other identifier of the secured creditor should not be an available criterion for general public searching (see Secured Transactions Guide, chap. IV, para. 81 and Registry Guide, para. 267).

Article 23. Search results

88. Article 23 is based on recommendation 35 of the Registry Guide (see paras. 268-273; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 sets out the required content of search results provided by the Registry in response to a search request. The search result must first indicate the date and time when the search was performed.

89. Article 23 does not require search results to include a "currency date" indicating that the search result includes only information contained in notices that

were registered as of that date (as opposed to the actual date on which the search result was issued). The reason is that registration becomes effective when the information in a notice submitted to the Registry has been entered into the registry record so as to be accessible to searchers (see art. 14, para. 1). Thus, the "currency date" is the actual date of the search (see Registry Guide, para. 273).

90. With respect to the substantive content of the search result, paragraph 1 contemplates that an enacting State may adopt one of two options. Option A contemplates that the registry system will be designed to only retrieve notices that match the grantor's name exactly. Option B contemplates that the registry system will be designed to also retrieve notices that contain the grantor's name that closely matches the grantor's name entered by the searcher. What constitutes a "close match" under option B is not a free-floating concept but rather depends on the particular close-match search programme or logic used by the Registry.

91. Options A and B should be read in conjunction with article 24, paragraph 1, which provides that an error in the grantor identifier entered in a notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor's correct identifier as the search criterion. The result of applying this test differs depending on whether option A or B is adopted. If option A is adopted, a registration will be ineffective if the registrant fails to enter the correct name of the grantor in the notice. If option B is adopted, the registration of a notice that contains an error in the grantor's name might still be effective if the name that is entered is a sufficiently close match to result in the notice being retrieved on a search using the grantor's correct name. Whether this is the case depends on whether the information in the search result is sufficient to enable the searcher to reasonably identify the relevant grantor from the list of close matches so as to make the error not seriously misleading.

92. Paragraph 2 obligates the Registry to issue an official search certificate setting out a search result upon the request of a searcher. Paragraph 3 minimizes the administrative burden on the Registry in this respect by providing that a printed search result that purports to have been issued by the Registry is proof of its contents in the absence of evidence to the contrary.

Section F. Errors and post-registration changes

Article 24. Registrant errors in required information

93. Article 24 is based on recommendations 58 and 64-66 of the Secured Transactions Guide (see chap. IV, paras. 66-74, and 82-97) and 29 of the Registry Guide (see paras. 205-220). Its overall aim is to provide guidance on when the effectiveness of a registration may be challenged owing to errors or omissions in the information in registered notices.

94. Paragraph 1 addresses errors in the grantor identifier set out in a registered notice. It provides that: (a) if the registrant enters the name of the grantor in accordance with article 9, the effectiveness of the registration cannot be challenged on the ground of an error in the grantor's name; and (b) if the registrant makes an error, the registration may still be effective if the notice would be retrieved by a search using the correct grantor identifier.

95. Paragraph 4 deals with errors or omissions in the other items of information required to be set out in registered notices under article 8. It provides that an error does not make a registration ineffective unless it "would seriously mislead a reasonable searcher." This language implies an objective test in the sense that a person challenging the effectiveness of the registration need not show that any person was actually misled by the error. It is sufficient to show that a reasonable searcher hypothetically would have been misled.

96. Paragraphs 3 and 5 incorporate the general legal concept of severability. A fatal error in entering the name of a particular grantor or the description of a particular encumbered asset does not make the registration of a notice ineffective with respect to other grantors correctly identified or other encumbered assets correctly described in a registered notice.

97. Paragraph 6 creates a special test for assessing the impact of errors made by a registrant on the effectiveness of a registration in two scenarios. The first arises where an enacting State allows a registrant to self-select the period (duration) of effectiveness of the registration of a notice pursuant to options B or C of article 14 (and art. 8, subpara. (d)). The second arises where the enacting State requires a registrant to indicate the maximum sum for which a security right may be enforced pursuant to article 8, subparagraph (e). In these two cases, an error in the entry of the information does not render a registration ineffective even if the error would be seriously misleading from the perspective of a hypothetical reasonable searcher. Rather, the registration will be treated as ineffective only as against, and only to the extent that, the competing claimant that challenges the effectiveness of the registration shows that it was actually misled by the error (see Registry Guide, paras. 215 and 217-220). This approach may give rise to circular priority problems.

98. As observed in the commentaries on articles 11 and 22 (see paras. 42 and 85 above), some States provide for the entry of an alphanumerical asset identifier for specified classes of high-value assets that have a significant resale market. In States that adopt this approach, entry of this identifier in its own designated field in the initial notice is required in the sense of being necessary to achieve the third-party effectiveness and priority of the security right as against specified classes of competing third-party claimants. Enacting States that decide to adopt this approach will need to deal with the impact of errors in the serial number on the effectiveness of a registration. They may also wish to consider whether to provide for search results to disclose close matches.

Article 25. Post-registration change of grantor identifier

99. Article 25 is based on recommendation 61 of the Secured Transactions Guide (see chap. IV, paras. 75-77; see also Registry Guide, paras. 226-228). It addresses the impact of a post-registration change in the identifier of the grantor (i.e. its name under art. 9) on the effectiveness of the registration of a notice. If the grantor's name changes after the registration of a notice, a search under the new name will not retrieve registered notices in which the grantor is identified by its old name. This poses a risk for third-party searchers that acquire rights in the grantor's encumbered assets after the name change.

100. To address this risk, paragraph 1 gives the secured creditor a grace period (the duration of which is to be specified by the enacting State) to register an amendment

notice adding the new name of the grantor. If the amendment notice is registered before the expiry of the grace period, the security right retains whatever priority it otherwise would have as against competing claimants, even if their rights arise after the change of name but before the registration of the amendment notice.

101. Under paragraph 2, the secured creditor may still register an amendment notice after the expiry of the grace period. However, its security right will be subordinated to an intervening security right that is made effective against third parties after the change of name but before the amendment notice is registered (see subpara. 2(b)). In addition, buyers, lessees or licensees, who acquire rights in the encumbered assets after the change of name but before the registration of the amendment notice, acquire their rights in the assets free of the security right (see subpara. 2(a)).

102. As against competing claimants other than those specifically protected by subparagraphs 2(a) and (b), the third-party effectiveness and priority of the security right is not prejudiced by the late registration of the amendment notice or the failure of the secured creditor to register an amendment notice altogether. Thus, the secured creditor will retain whatever priority it had against competing claimants whose rights arose before the change of name. Its rights are also preserved as against competing claimants whose rights arise after the change of name that are not specifically mentioned in subparagraphs 2(a) and (b) (for example, the grantor's judgement creditors and insolvency representative).

Article 26. Post-registration transfer of an encumbered asset

103. Article 26 is based on recommendation 62 of the Secured Transactions Guide (see chap. IV, paras. 78-80; see also Registry Guide, paras. 229-232). It addresses the impact of a post-registration transfer of an encumbered asset on the effectiveness of the registration of a notice in relation to a security right in that asset where the transferee acquires the asset subject to the security right under article 32, paragraph 1, of the Model Law. This creates a risk for third parties that acquire rights in the encumbered asset from the transferee: a search of the registry record by the third party under the name of the transferee will not retrieve registered notices in which the grantor is identified as the transferor. This risk is analogous to that addressed in article 25 in relation to post-registration changes in the grantor identifier. Unlike article 25, article 26 does not provide a uniform rule. Rather, it gives enacting States the option to enact any one of three approaches.

104. The approach in paragraphs 1 and 2 of option A is identical to that set out in article 25 for post-registration changes in the grantor identifier. It gives the secured creditor a grace period (the duration of which is to be specified by the enacting State) to register an amendment notice adding the transferee as a new grantor. As under article 25, the secured creditor's failure to register the amendment notice before the expiry of the grace period, or at all, does not generally prejudice the third-party effectiveness and priority status of its security right. However, its security right will be subordinated to competing security rights created by transferees and made effective against third parties after the transfer, and before the amendment notice was registered. Transferees that acquire rights during this same period from another transferee also acquire their rights free of the security right.

105. Paragraph 1 of option B is similar to paragraph 1 of option A, with the important qualification that the grace period to register the amendment notice

begins only when the secured creditor acquires knowledge that the grantor has transferred the encumbered asset and not when the transfer takes place, as under paragraph 1 of option A.

106. In the case of successive transfers of encumbered assets, paragraph 2 of options A and B applies to the last transfer. So, for example, where the encumbered assets are transferred from the grantor to A, and thereafter from A to B, from B to C and from C to D before the amendment notice is registered, the secured creditor need only enter D's name as an additional grantor in its registered amendment notice.

107. Paragraph 3 of options A and B implement recommendation 244 of the Intellectual Property Supplement. It provides that a security right in intellectual property retains its third-party effectiveness and priority status notwithstanding a post-registration transfer by the grantor even as against subsequent parties. The reason for this different approach with respect to intellectual property is that, if the secured creditor were required to register an amendment notice each time intellectual property was transferred or licensed (to the extent that an exclusive licence is treated as a transfer under intellectual property law), intellectual property financing would be discouraged or become more expensive (see Intellectual Property Supplement, paras. 158-166).

108. Under option C, registration of an amendment notice following a transfer of an encumbered asset is optional in the sense that the failure to register does not affect the third-party effectiveness or priority of the security right as against intervening competing claimants. This approach parallels the approach to post-registration transfers of encumbered intellectual property.

Section G. Organization of the Registry and the registry record

Article 27. Appointment of the registrar

109. Article 27 is based on recommendation 2 of the Registry Guide (see para. 74; the Secured Transactions Guide does not contain an equivalent recommendation). Recognizing that these matters may be dealt with differently in each State, article 27 leaves it to the enacting State to specify the authority responsible for the appointment, dismissal and supervision of the registrar. It also leaves it to the authority specified by each enacting State to determine the registrar's duties and monitor their performance.

110. While an enacting State can always provide for the day-to-day operations of the Registry to be carried out by either a private or public entity, the Registry and the registrar should always be subject to the ultimate direction of and accountable to the enacting State. Accordingly, the authority specified by the enacting State under this article should be a governmental ministry or other public agency, such as a central bank (see Registry Guide, para. 77).

Article 28. Organization of information in the registry records

111. Article 28 is based on recommendations 15 and 16 of the Registry Guide (see paras. 127-130; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 requires the Registry to assign a unique registration

number to an initial notice and associate all registered amendment or cancellation notices that contain that number with the initial notice in the registry record. These requirements aim to ensure that amendment and cancellation notices are linked to an initial notice in the registry record so as to be retrievable on a search (see the definition of the term "registration" in art. 1(i), as well as arts. 17, 19 and 22).

112. Option A of paragraph 2 is offered for States that implement option A of article 23, paragraph 1. Option B of paragraph 2 is offered for States that implement option B of article 23, paragraph 1. Option A of paragraph 3 is offered for States that implement option A of article 18. Option B of paragraph 3 is offered for States that implement option B of article 18.

113. Paragraph 3 is intended to ensure that the entire registration record relating to an initial notice remains intact. It provides that the registry record must be organized in a manner that preserves the information in all registered notices, notwithstanding the registration of amendment or cancellation notices that purport to change the information contained in the initial notice.

114. The enacting State will need to revise article 28 to impose additional organizational obligations on the Registry should it decide to provide for: (a) registration and searching according to serial number (see paras. 42 and 86 above); (b) registration and searching according to a grantor identifier other than the name of the grantor (see paras. 30 and 85); and (c) the assignment of unique confidential numbers to secured creditors on the registration of an initial notice, and to require registrants to enter this number as a precondition to the registration of related amendment or cancellation notices (see paras. 24 above).

Article 29. Integrity of information in the registry record

115. Article 29, paragraph 1, is based on recommendation 17, subparagraph (a), of the Registry Guide (see para. 136; the Secured Transactions Guide does not contain an equivalent recommendation). It prohibits the Registry from unilaterally amending or removing information in the registry record except as authorized in articles 30 and 31.

116. Article 29, paragraph 2, is based on recommendations 55, subparagraph (f), of the Secured Transactions Guide (see chap. IV, para. 54), and 17, subparagraph (b), of the Registry Guide (see para. 137). It obligates the Registry to ensure that the information in the registry record is preserved and may be reconstructed in the event of loss or damage. In practice, this obligation requires the Registry to create and maintain a backup copy of the registry record.

Article 30. Removal of information from the public registry record and archival

117. Option A of article 30 is based on recommendations 74 of the Secured Transactions Guide (see chap. IV, para. 109), as well as recommendations 20 and 21 of the Registry Guide (see paras. 151-152). It requires the Registry to remove information in registered notices from the public registry record once the period of effectiveness of the notice expires or a cancellation notice is registered. If the information in cancelled or expired notices remained publicly searchable, this might create legal uncertainty for third-party searchers, potentially impeding the ability of the grantor to grant a new security right in or deal with the assets described in the

notice (see Registry Guide, para. 151). It should be enacted by States that adopt option A or B of article 21.

118. Option B of article 30 is a new provision that should be enacted by States that adopt options C or D of article 21. It requires the Registry to preserve all information in registered notices, including cancellation notices, on the public registry record until the registration expires. This is necessary since registered amendment and cancellation notices under these options are not legally effective unless authorized by the secured creditor, a matter that can only be determined by conducting off-record inquiries.

119. Paragraph 3 requires the Registry to archive the information in registered notices removed from the public registry record under paragraph 1 in a manner that enables the information to be retrieved in accordance with the search criteria set out in article 22. This is necessary since the information in "expired or cancelled notices may need to be retrieved in the future, for example, in order to determine the time of registration or the scope of the encumbered assets described in the notice for the purposes of a subsequent priority dispute between the secured creditor and a competing claimant" (see Registry Guide, para. 151).

120. As to the duration of the registry's archival obligation, paragraph 3 leaves this decision to the enacting State (while cautioning that it should minimally be coextensive with the prescription period under local law for disputes arising in relation to a security agreement).

Article 31. Correction of errors made by the Registry

121. Article 31 addresses the effect of errors made by the Registry in two scenarios. The first is where the Registry makes an error or omission in entering into the public registry record information contained in a notice submitted for registration. The need to address this scenario arises only if the registry system implemented by a State allows the submission of notices in paper form as opposed to requiring all registrants to transmit the information in notices directly to the Registry via electronic means of communication. The second scenario is where the Registry erroneously removes from the registry record information contained in a registered notice. The need to address this scenario arises even where notices may only be submitted directly to the Registry via electronic means of communication.

122. Paragraph 1 of article 31 requires the Registry to takes steps to correct the error or restore the erroneously removed information without delay after discovering the error. Under option A, the Registry is itself entitled to take the necessary corrective action and must then send to the secured creditor of record a copy of the notice it registered to correct the record. Under option B, the Registry is instead required to inform the secured creditor of record of the error so as to enable it to directly register the notice needed to correct the record.

123. Paragraph 2 addresses the impact of the Registry's error on the third-party effectiveness and priority status of the security right in the event of a competition with the right of a competing claimant which arose prior to the registration of the notice correcting the record referred to in paragraph 1. It offers four options which parallel the four options in article 21 with respect to the effectiveness of the unauthorized registration of an amendment or cancellation notice. The enacting State should adopt the option in article 31 that corresponds to the option it selects in

article 21. Accordingly, a State that adopts option A, B, C or D of article 21 should adopt the corresponding option of article 31 (i.e. A, B, C or D respectively).

Article 32. Limitation of liability of the Registry

124. Article 32 is based on recommendation 56 of the Secured Transactions Guide (see chap. IV, paras. 55-64; see also Registry Guide, paras. 141-144). It offers three options to an enacting State in dealing with the potential liability of the Registry or the enacting State for errors or omissions allegedly committed by the Registry.

125. Option A leaves the issue of the liability of the Registry or the enacting State for loss or damage to other law of the enacting State. However, if liability is foreseen by that other law, option A restricts any right of recovery to the types of errors or omissions listed in subparagraphs (a) through (d). Thus, any potential liability is limited to: (a) errors or omissions in a search result issued to a searcher (subpara. (a)); (b) errors or omissions in a copy of information in a registered notice sent to a secured creditor under article 15 or the failure of the Registry to send a copy of a registered notice as required by that article or article 31 (subparas. (a) and (c)); and (c) the provision of false or misleading information to a registrant or searcher (subpara. (d)).

126. Subparagraph (b) appears within square brackets as it limits any liability that the Registry may have under other law for errors or omissions in registered notices to the scenario where the Registry is responsible for entering into the registry record information submitted by a registrant in a paper notice. It does not permit recovery for errors or omissions in registered notices where the information was directly transmitted to the registry record by a registrant electronically since these errors or omissions would by definition be the responsibility of the registrant as opposed to the Registry. Accordingly, subparagraph (b) should only be adopted by an enacting State if its registry system permits the submission of notices to the Registry using paper forms.

127. Like option A, option B of article 32 leaves to other law any liability that the Registry or the enacting State may have for loss or damage caused by an error or omission in the administration or operation of the Registry. Unlike option A, option B does not restrict any right of recovery that a person may have under other law to particular types of errors or omissions. But like option A, it limits the Registry's liability to the maximum amount specified by the enacting State. As with option A, the enacting State should make it clear whether the maximum monetary limit is based on the maximum value of the relevant encumbered asset or is an absolute limit.

128. Option C of article 32 simply excludes any liability of the Registry or the enacting State for an error or omission in the administration or operation of the Registry.

Article 33. Registry fees

129. Article 33 is based on recommendations 54, subparagraph (i), of the Secured Transactions Guide (see chap. IV, para. 37) and 36 of the Registry Guide (see paras. 274-280). The Secured Transactions Guide recommends that registry fees, if any, should be set a cost-recovery level. If the Registry were instead used as

an opportunity for the enacting State to generate profit, registrants and searchers may be discouraged from using the registry services. In line with this policy, the Registry Guide, sets forth three fee options, namely a cost-recovery option, a no-fee or fee-below cost-recovery option and an option leaving fees to be determined in a subsequent instrument (see Registry Guide, paras. 274-280, and rec. 36).

130. In conformity with these policy considerations, two options are presented in article 33. Under paragraphs 1 and 3 of option A, fees may be charged for the registry services and in the amounts to be specified by the enacting State; the fee schedule must be publicized. To ensure that these fees are based on cost recovery, paragraph 2 entitles the authority responsible for the appointment of the registrar under article 27 to modify the fee schedule on an ongoing basis.

131. In setting the fee schedule, an enacting State might decide to charge a lower fee for the registration of notices and the execution of search requests transmitted directly to the registry via electronic means of communication given that electronic registration or searching does not require the intercession of registry staff and therefore is less costly.

132. To enhance the efficiency of the payment process for frequent users of registry services, paragraph 4 of option A provides that the Registry may enter into an agreement with a person to establish a Registry user account for the payment of fees. This approach has the additional advantage of facilitating the identification of the registrant for the purposes of article 5 (see para. 21 above).

133. Enacting States that adopt option A may decide to limit the charging of fees to registration services and allow searches to be made free of charge. This variant would encourage and facilitate due diligence by potential secured creditors and buyers and thereby reduce risk and future disputes.

134. Another variant would be for the Registry to not charge any fee for the registration of amendments and cancellation notices. This variant would encourage registrants to voluntarily register amendment and cancellation notices in the circumstances contemplated by article 20 and relieve grantors from the time and expense of having to initiate proceedings to force cancellations or amendments under that article. This variant would encourage registrants to voluntarily register amendment and cancellation notices in the circumstances contemplated by article 20 and relieve grantors from time and expense of having to initiate proceedings to force cancellations or amendments under that article.

135. For enacting States that enact option B or C of article 14 (allowing a registrant to select the duration of a notice), another variant would be to charge fees on a sliding scale depending on the period selected by the registrant in an initial notice and any amendment notice. This approach would have the advantage of discouraging registrants from selecting an inflated period out of an excess of caution (see Registry Guide, para. 277).

136. Option B provides that the Registry may not charge any fees for its services. This approach is based on the assumption that the cost of establishing and operating a Registry should be borne by the State. The rationale for this approach is that the Registry is a key component of the public purpose of a modern secured transactions law to enhance the availability of credit at lower cost and with greater speed and efficiency, and not simply a private benefit for grantors and secured creditors. Like

option A, option B might have several variants. For example, the enacting State may wish to offer free registration services for a limited start-up period in order to encourage acclimatization to and use of the registry system. Another variant of this policy approach would be for the enacting State to provide that no fee should be charged for certain types of services (e.g., for the registration of an amendment and cancellation notice, the registration of a notice aimed at restoring an erroneously cancelled notice or at preserving the third-party effectiveness of a security right under prior law during the transition period to the new registry system).