



General Assembly

Distr.: Limited
6 March 2012

Original: English

**United Nations Commission
on International Trade Law**
Working Group VI (Security Interests)
Twenty-first session
New York, 14-18 May 2012

Draft Technical Legislative Guide on the Implementation of a Security Rights Registry Guide: Annex I. Terminology and recommendations

Note by the Secretariat

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Annex I. Terminology and recommendations

[Note to the Working Group: The Working Group may wish to recall that, at its twentieth session, it decided that the text being prepared should take the form of a guide with recommendations, while examples of model regulations could be prepared where the text offered options (see A/CN.9/740, para. 18). In line with this decision and the approach taken in the UNCITRAL Legislative Guide on Secured Transactions (the “Guide”), this document reproduces in an annex the terminology and recommendations of the draft Technical Legislative Guide on the Implementation of a Security Rights Registry (the “draft Registry Guide”). Following the same approach, the terminology will also be included in the introduction and the recommendations will also be included at the end of the relevant chapters of the draft Registry Guide. In view of the specific and comprehensive formulation of the recommendations, as well as the need for a flexible approach with respect to matters addressed in these recommendations with various options, the Working Group may wish to consider that there is no need to prepare any examples of model regulations. In this context, the Working Group may wish to note that document A/CN.9/WG.VI/WP.50/Add.2 contains examples of registration forms, implementing the recommendations of the draft Registry Guide and offering concrete guidance to the registry system designers and users.]

Terminology*

(a) “Address” means: (i) a physical address, including a street address and number, city, postal code and State; (ii) a post office box number, city, postal code and State; (iii) an electronic address; or (iv) an address that is equivalent to (i), (ii) or (iii);

(b) “Amendment” means the addition, deletion or modification of information contained in the registry record;

[Note to the Working Group: The Working Group may wish to note that the commentary will include examples of amendments, such as: (a) the extension of the period of effectiveness of a registration (renewal of a registration); (b) where two or more secured creditors or grantors are identified in the registered notice, the deletion of a secured creditor or grantor identifier; (c) where one secured creditor or grantor is identified in the registered notice, the deletion of the secured creditor or grantor identifier and the addition of a new secured creditor or grantor identifier; (d) the addition or deletion of encumbered assets; (e) the modification of the identifier of the grantor; (f) the modification of the identifier of the secured creditor; (g) the modification of the address of a grantor or secured creditor; (h) the modification in the maximum monetary amount for which the security right may be enforced (if applicable); (i) the assignment of the secured obligation by the secured creditor and the addition of the identifier and address of the new secured creditor; (j) the transfer of the encumbered assets and the addition of the identifier and address of the transferee (in the case of a partial transfer) or the replacement of the

* The terminology contained in the *Guide* (see Introduction, section B on terminology and interpretation) applies also to the draft Registry Guide, supplemented by the terminology contained in the draft Registry Guide, which is part of the commentary (see Introduction, [...]).

information of the transferor with the information of the transferee (in the case of a transfer of all the encumbered assets); (k) the subordination by the secured creditor; and (l) the subrogation of a secured creditor's right. The Working Group may also wish to note that the commentary will clarify that: (a) in the case of an assignment, subrogation or subordination, the registered notice may be amended to indicate the identifier and address of the new secured creditor, but a notice not so amended remains effective (see recommendation 75); (b) "amendment" means the change and the result of the change of the information in a notice entered in the registry record; and (c) an amendment is made with an "amendment notice".]

(c) "Grantor" means the person identified in the notice as the grantor;

(d) "Law" means the law governing security rights in movable assets;

[*Note to the Working Group: The Working Group may wish to note that the commentary will clarify that the law meant here is the law based on the recommendations of the Guide. The commentary will also explain that the recommendations of the draft Registry Guide may be enacted by States that have substantially implemented the recommendations of the Guide. For example, in order to enact the recommendations of the draft Registry Guide, a State would need to have in place or be prepared to enact a secured transactions law that would require notice (rather than document) registration for the purpose of making a security right effective against third parties (rather than creating a security right).*]

(e) "Notice" means a communication in writing (paper or electronic) and includes an initial notice, an amendment notice or a cancellation notice;¹

[*Note to the Working Group: The Working Group may wish to note that the terminology of the Guide (which is part of the commentary and not the recommendations, same as the terminology in the draft Registry Guide) refers to the term "notice" in the sense of a medium rather than the contents of the medium so that the term could be referred to in contexts outside the registration context (for example, with respect to notices of extrajudicial disposition of an encumbered asset; see recs. 149-151). The Working Group may wish to consider using the term "notice" in the draft Registry Guide in the same sense. The commentary could clarify this approach and also refer to two other terms referred to in the registry chapter of the Guide, to put the term "notice" in context, that is, to the terms: (a) "information contained in a notice" or "the content of the notice" (see recs. 54, subpara. (d) and 57); and (b) "registry record" in the sense of information in a notice once this information has been accepted by the registry and entered into the database of the registry that is accessible to the public (see rec. 70). In view of these terminological clarifications, the recommendations in the draft Registry Guide could use the term "notice" only where the medium is meant, the term "information in a notice" where the contents of the medium are meant and the term "registry record" where information in a notice that has already been entered into the database of the registry is meant (see the term "registry record" below). If the Working Group preferred to use the term "notice" throughout the text, the term would need to be explained in the terminology differently than in the Guide, that is, by reference to information rather than (or, in addition to) the medium of communicating information to the registry. Finally, the Working Group may wish to*

¹ See term "notice" in the introduction, section B, terminology and interpretations of the *Guide*.

consider whether the registration of a notice of enforcement should be discussed in the commentary, although it is not recommended in the Guide. The most important of such a notice benefit would be to warn off third parties that the grantor might wish to deal with during the enforcement period. It would also improve the value of the information in the registry for interested third parties (that under rec. 151 must be notified by the enforcing secured creditor).]

(f) “Registrant” means the person identified in the notice as the secured creditor;

[Note to the Working Group: The Working Group may wish to note that the commentary will clarify that the person identified in the notice as the secured creditor (“the registrant”) may be the secured creditor or its representative (see rec. 57, subpara. (a)).]

(g) “Registrar” means the person designated pursuant to the law and the regulations to supervise and administer the operation of the registry;

(h) “Registration” means the entry of information contained in a notice into the registry record;

(i) “Registration number” means a unique number allocated to an initial notice by the registry and permanently associated with that notice [and any related subsequent notice];

[Note to the Working Group: The Working Group may wish to consider the words within square brackets. These words are intended to clarify that any subsequent notice is also associated with the registration number of the initial notice, namely that there is no other registration number (see recs. 10, 28 and 30 below).]

(j) “Registry record” means the information in [all registered notices] [a registered notice as amended] that is stored electronically in the registry database.

[Note to the Working Group: The Working Group may wish to consider whether the term “registry record” should be used in the sense of information relating to one notice as amended or to all the notices in the registry database. In the former case, the term “registry record” could be used to reflect information in a registered notice or information in a registered notice as amended; and the term “registry records” could be used to refer to information in all registered notices.]

Recommendations

I. Registry and registrar

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that the recommendations below address several different sorts of issues. Recommendations 1 and 2 address the establishment of the registry and the appointment of the registrar. Recommendations 4-9 address access to the registry services. A number of recommendations reiterate or implement recommendations of the Guide because of their importance or of the need to put a technical matter in the context of the law. Such recommendations include the following: 8, subparagraph (a) (see rec. 71), subparagraph (b) (see rec. 73),

subparagraph (c) (see rec. 71) and subparagraph (d) (see rec. 54, subpara. (d)); 10, subparagraph (c) (see rec. 70); 11 (see rec. 69); 12 (see rec. 67); 13 (see rec. 68); 21 (see rec. 57); 25, subparagraph (a) (see rec. 63); 27, subparagraph (a) (see rec. 58); 27, subparagraph (b) (see rec. 64); 27, subparagraph (c) (see rec. 65); 31, subparagraph (a) (see rec. 55, subpara. (d)) and subparagraph (c) (see rec. 55, subpara. (c)); and 32 (see rec. 72). The rest of the recommendations address purely technical registration matters.]

Recommendation 1: The registry

The regulations should provide that the registry is established for the purposes of receiving, storing and making accessible to the public information relating to existing or potentially existing security rights in movable assets according to the law and the regulations.

Recommendation 2: Appointment of the registrar

The regulations should provide that [the entity or person identified by the enacting State or authorized by the law] designates the person responsible to supervise and administer the operation of the registry, determines that person's duties and monitors performance according to the law and the regulations.

[Recommendation 3: Duties of the registry

The regulations should provide that the registry should:

- (a) Provide access to the registry services to any person entitled to have access according to recommendations 4 and 7;
- (b) Publish on the registry's website, if any, the registry office locations and their respective opening days and hours and post them at the respective office according to recommendation 5;
- (c) Provide the grounds for rejection of a registration or a search request as soon as practicable according to recommendation 9;
- (d) Assign a date and time to each registration and a unique registration number to the initial notice, as well as enter the information contained in a notice into the registry record in the order it was received according to recommendation 10;
- (e) Index or otherwise organize information in the registry record so as to make it searchable according to recommendation 14;
- (f) Remove information from the registry record that is available to the public upon the expiry of the term of effectiveness of the relevant notice or [allow the removal of such information] pursuant to a judicial or administrative order according to recommendation 16;
- (g) Amend [or allow the removal of] information in the registry record only pursuant to a judicial or administrative order according to recommendation 17;
- (h) Archive information removed from the registry record that is accessible to the public at least for a period of [20] years in a manner that enables the registry to retrieve that information according to recommendation 18;

- (i) Provide to each registrant a copy of a notice according to recommendation 31; and
- (j) Where applicable, keep user details confidential.]

[Note to the Working Group: The Working Group may wish to note that recommendation 3, which appears within square brackets for the consideration of the Working Group, sets forth in detail the role of the registry referring to recommendations of the draft Registry Guide, some of which draw on recommendations of the Guide. The advantage of listing the role of the registry in one recommendation is clarity and transparency as to the role of the registry. The possible disadvantage is that such a list may appear but not be comprehensive or may be limiting where it should not be. An alternative approach might be to delete recommendation 3 and explain the role of the registry in the appropriate context in the recommendations and in the commentary. Yet a third possible approach might be to retain both recommendation 3 as a general indication of the duties of the registry and the other recommendations setting out the duties of the registry in the appropriate context, but review these recommendations to avoid any inconsistency or unnecessary repetition. The Working Group may wish to note that subparagraphs (f) and (g) contain text within square brackets. This text is intended to ensure that a judicial or administrative officer may amend or remove information from the registry record directly. In this way, the registry would not be burdened with this task, a result that could preserve the efficient and economic character of the registry. The Working Group may wish to consider whether this text should be retained (at least as an alternative) or deleted. The Working Group may also wish to note that the commentary will explain that the user details referred to in subparagraph (j) apply only to registry systems that grant access by way of user accounts.]

II. Access to the registry services

Recommendation 4: Public access to the registry services

The regulations should provide that any person is entitled to have access to the registry services in accordance with the law and the regulations.

Recommendation 5: Operating days and hours of the registry

The regulations should provide that:

- (a) Each office of the registry is open to the public [during the days and hours specified by the enacting States];
- (b) Registry office locations and their respective opening days and hours should be published on the registry's website, if any, and opening days and hours of each office should be posted at that office;
- (c) Electronic access to the registry services is available at all times; and
- (d) Notwithstanding subparagraphs (a) to (c) of this recommendation, the registry may suspend access to registry services in whole or in part [for maintenance purposes, because of force majeure or, in the case of an electronic registry, due to a general network failure]. Notification of the suspension of access to the registry

services and its expected duration is published in advance when feasible and as soon as reasonably possible on the registry's website and posted at the respective registry offices.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that each enacting State may specify the registry office days and hours by separate administrative instructions and that the minimum registry office days and hours should be the usual business days and hours in that jurisdiction. Where the registration of paper notices is foreseen, the time for receiving paper notices may be set independently from the business hours. For example, the office may close at 17:00 but all notices should be received by 16:30 so that the registry has sufficient time to enter the information into the registry record. The Working Group may also wish to consider whether the circumstances in which the registry may suspend access to the registry services should be enumerated in the recommendation in an exhaustive or indicative way. An exhaustive list would provide more certainty but less flexibility in covering all possible circumstances, while an indicative list would provide more flexibility but less certainty. In any case, the commentary could explain the circumstances and in particular that: (a) in the case of an electronic registry, access to registry services may be suspended automatically (for example, when the Internet network goes down); and (b) access to any registry office may be suspended when circumstances arise that make it impossible or impractical to provide access (force majeure, due, for example, to fire, flood, earthquake or war). As a separate matter, the Working Group may wish to note that the recommendations do not address the issue of liability of the registry staff. The commentary will explain that secured transactions law may foresee liability of registry staff for loss or damage suffered by a registry user as a result of negligence, gross negligence or wilful conduct on the part of the registry staff in general or in the case of specified situations (for example, information submitted in a paper notice was entered erroneously into the registry record by the registry staff) or that the registry staff are exonerated from any liability, or, alternatively, the matter may be left to general law.]

Recommendation 6: Access to registration services

The regulations should provide that:

- (a) Any person is entitled to register an initial notice if that person:
 - (i) Uses an authorized medium of communication;
 - (ii) Identifies itself as required by the law and the regulations;
 - (iii) Tenders payment or made arrangements to pay any registry fees prescribed in recommendation 35;
 - (iv) Provides a grantor identifier sufficient to allow indexing or other organization of the information in the notice so as to make it searchable;
 - (v) Provides the information with respect other items required by the law and the regulations to be included in a notice; and
 - (vi) Provides all the required information in a legible manner; and

- (b) The registrant is entitled to amend or cancel information in [the registry record] [a registered notice], if that registrant:
- (i) Uses an authorized medium of communication;
 - (ii) Identifies itself as required by the law and the regulations;
 - (iii) Tenders payment or made arrangements to pay any registry fees prescribed in recommendation 35;
 - (iv) Provides a grantor identifier sufficient to allow indexing or other organization of the information in the [registry record] [registered notice] so as to make it searchable;
 - (v) Provides the information with respect to other items required by the law and the regulations to be included in a notice; and
 - (vi) Provides all the required information in a legible manner; and
- (c) The registry does not require verification of the identity or the existence of authorization for registration of the notice or conduct other scrutiny of the content of the notice.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain this recommendation by referring to: (a) recommendations 54, subparagraph (c), and 55, subparagraph (b), setting out the rule that the registry, in principle, accepts a notice with the exception of certain situations listed in that recommendation; and (b) the discussion of identification of the registrant in the Guide, which refers to the registry requiring the registrant's identity but no proof of the registrant's identity or at least minimal proof (see recommendations 54, subpara. (d) and 55, subpara. (b); see also the Guide, chap. IV, para. 48, which refers to the identification procedure being built in the payment process or to the assignment of a permanent secure code to repeat users of the registry, thus eliminating the need to repeat the identification procedure).]

Recommendation 7: Access to searching services

The regulations should provide that any person is entitled to conduct a search of the registry record accessible to the public using the search criteria prescribed in the regulations, provided that that person tendered payment or made arrangements to pay any search fees. That person need not identify itself or provide any reasons for the search.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that the search relates to the registry record accessible to the public through the interface that is just a gateway to the database that contains the data.]

Recommendation 8: Authorization

The regulations should provide that:

- (a) Except as provided in subparagraph (b) of this recommendation, registration of an initial or amendment notice has to be authorized by the grantor;

(b) Registration of an amendment notice that affects only the rights of the secured creditor [the enacting State to specify types of amendment] or a cancellation notice need only be authorized by the secured creditor;

(c) Authorization of a notice should be in writing and may be given before or after registration. A written security agreement is sufficient to constitute authorization; and

(d) The registry does not require verification of the existence of authorization for registration of a notice.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that: (a) subparagraph (a) is based on recommendation 71; (b) subparagraph (b) is based on recommendation 73; (c) subparagraph (c) is based on recommendation 71; and (d) subparagraph (d) is based on recommendations 54, subparagraph (d), and 55, subparagraph (b). Accordingly, if someone submitted a notice without authorization or otherwise fraudulently and that resulted in harm to the grantor or the secured creditor, they would have to prove that the registrant had no authority to effect the notice. However, this would be done outside of the registry system. The function of the registry is to do what is set forth in the recommendations mentioned above. Whether or not the registrant had authority to submit a notice, or whether the submission could be attributed to a user account holder is outside the scope of the registry regulations. The commentary may also explain that, where electronic access to the registry is used, there are very effective methods to prevent fraudulent registrations, amendments or discharges. For example, in an electronic registry system, a secured creditor could request a user identification number when effecting a registration. No amendments to or discharge of the registration would be possible unless that number were used. If the secured creditor were careless and allowed anyone to use the number, he or she should have no basis for a complaint about unauthorized discharges or amendments. However, if he or she were careful it would be virtually impossible for the registration to be changed in any way without his or her involvement. However, where paper is used, the registry has no way to determine whether an amendment or discharge was submitted by the secured creditor or fraudulently by someone else forging the signature of the secured creditor. For this reason, some paper-based registry systems built in the "fail safe" mechanisms that provide for automatic notification of the secured creditor of a discharge and an opportunity to reinstate a discharged registration within a short period after discharge. The Working Group may also wish to note that the commentary will also explain that possibly, all amendments affect the rights of the secured creditor. Typically, only two amendments, the addition of a grantor and of encumbered assets, require only the grantor's authorization.]

Recommendation 9: Rejection of a registration or search request

The regulations should provide that a registration or search request may be rejected by the registry if:

(a) It is not transmitted to the registry in one of the authorized media of communication;

(b) It is not accompanied by any registry fee or arrangements to pay any registry fees have not been made;

(c) It fails to provide the identity of the registrant as required by the law and the regulations;

(d) The registration request fails to provide a grantor identifier sufficient to allow indexing or other organization of the information in the notice so as to make it searchable;

(e) It fails to provide the information with respect to other items required under the law and the regulations to be included in the notice; or

(f) The information in the notice is illegible.

The grounds for rejection of a registration or search request should be provided by the registry as soon as practicable.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that: (a) recommendation 6 above deals with the conditions for a person to obtain access to the registry services in line with recommendations 54, subparagraph (c), and 55, subparagraph (b); (b) recommendation 9 deals with the conditions of rejection of a registration or search request, reiterating the conditions set out in recommendation 6 and recommendations 54, subparagraph (c), and 55, subparagraph (b); (c) recommendation 15 below deals with the question whether the registry may remove from the record accessible to the public information already registered; (d) the registry may reject non-conforming requests submitted in paper form, while an electronic registry will be designed so as to reject automatically non-conforming requests; and (e) while in the case of a paper registry the grounds for rejection will be communicated as soon as practicable, in the case of an electronic registry, the reasons for the rejection will be immediately displayed to the user.]

III. Registration

Recommendation 10: Date and time of registration

The regulations should provide that:

(a) The registry assigns a date and time to each registration, as provided under subparagraphs (b) and (c) of this recommendation, and a unique registration number to an initial notice, by which the initial notice and any subsequent notice are identified;

(b) The registry enters into the registry record and indexes or otherwise organizes information in a notice so as to make it available to searchers in the order it was received;

(c) [Notwithstanding subparagraph (b) of this recommendation,] the registration of a notice is effective from the date and time when the information in the notice is entered into the registry record so as to be available to searchers of the registry record.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that this recommendation is intended to provide a basis for the application of a rule along the lines of recommendation 70. Subparagraphs (a) and (b) deal with technical issues, while subparagraph (c) states the substance of

recommendation 70 (which may be retained in the recommendations of the draft Registry Guide because of its importance or simply discussed in the commentary). The date and time when information in a notice becomes available to searchers may be different from the time the notice was received (in particular where paper notices are submitted by registrants and entered into the registry record by the registry), but should follow the order in which the notice was received by the registry (that is, a notice received on 1 January at 08:00 am should become available to searchers before a notice received by the registry on the same date at 08:01 am). If as a result of negligent or wilful conduct or malfunction of the registry, a registrant loses its priority, the registry may be liable to the registrant for damages. In the case of an acquisition security right, if a notice is registered within the time period specified in the law, the acquisition security right obtains priority even over a previously registered non-acquisition security right (see recommendation 180, alternative A, subparagraph (a) (ii)). Thus, where the registry enters the information in a notice into the registry record and if the law requires that the notice specifies that it relates to an acquisition security right (the Guide does not require that), it is important that this be done within the time period specified in the law for registration of an acquisition security right. Otherwise, as a matter of the law of the enacting State (the Guide does not address this issue), the registry may be liable for damages sustained by a registrant as a result of loss of priority. The Working Group may wish to note that the rule in subparagraph (b) is fine if the registry system is entirely electronic or entirely paper based. However, it could create problems in a hybrid registry system where for instance, a paper notice is received at 08:00 am and is entered into the registry record by the registry staff at 08:10, after a notice that was transmitted electronically entered the registry record at 08:05. The text in square brackets in subparagraph (b) is intended to ensure that, even in the case just described, the electronically transmitted notice would have an earlier date and time of effectiveness than the paper notice, even though the latter was received a little later than the former. The Working Group may wish to consider whether the bracketed text in subparagraph (b) should be retained or deleted, and, if deleted, whether it should be replaced by another text.]

Recommendation 11: Period of effectiveness of registration

The regulations should provide that:

Option A

- (a) A registration is effective for the period of time specified in the law.
- (b) The period of effectiveness of a registration may be extended for an additional period of time equal to the initial period specified in the law at any time before the period of effectiveness of the registration expires.

Option B

- (a) A registration is effective for the period of time indicated in the initial notice.
- (b) The period of effectiveness of a registration may be extended or reduced for the period of time indicated in an amendment notice at any time before the period of effectiveness of the registration expires.

Option C

(a) A registration is effective for the period of time indicated in the initial notice, not exceeding [20] years.

(b) The period of effectiveness of a registration may be extended or reduced for the period of time indicated in an amendment notice not exceeding [20] years at any time before the period of effectiveness of the registration expires.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that, whether a State enacts option A or B, the rules applying to the calculation of the periods in national law will apply to the period of effectiveness of a registration, unless the secured transactions law provides otherwise. For example, national law may provide that where the calculation is from the day of registration or from the anniversary of the day of registration, a year runs from the beginning of that day. The Working Group may also wish to note that the commentary will explain that, where the law requires the registrant to enter the period of effectiveness of registration in a notice, the requirement is a mandatory requirement. This means that, if the period of effectiveness of registration is not entered in a notice, the notice will likely be rejected. The Working Group may wish to consider whether the registry may be designed to automatically include a certain period of effectiveness of registration, if the registrant fails to do so. If the Working Group considers this approach desirable and feasible, it may include a default rule along the following lines: "When no period of time is indicated in the notice, the registration is effective for [5] years". The commentary will also explain that: (a) while in option A the renewal period is specified in the law, in options B and C, the renewal period can be specified by the registrant in the amendment notice; (b) under option A there is no possibility to reduce the period of effectiveness by a voluntary amendment submitted by the creditor or by an amendment that is compelled by the grantor and, as a result, this additional function to amend the period of registration will not have to be designed and built; and (c) a renewal extends the period of effectiveness of the registration so that effectiveness is continuous (see recommendation 28, subpara. (f)). In addition, the Working Group may wish to note that, while option B is consistent with recommendation 69, it is not realistic (at least for movable property registries; immovable property registries are different in this respect too). This is so because, unless there is a control mechanism, all registrations will be effective for infinity. Arguably, it is one thing to give flexibility to registrants to choose the duration of the period of effectiveness of a registration, but it is quite another thing to permit this choice without some control (other than the period authorized by the grantor). Some modern registry systems provide for infinity registrations but charge a very large registration fee to control abuse. In addition, in such systems, fees are calculated on a per year basis, thus discouraging overreaching in the choice of the duration of the period of effectiveness of a registration. In view of this problem, the Working Group may wish to consider whether option B should be retained or deleted and, if option B is retained, whether the commentary should include the above-mentioned or other explanations.]

Recommendation 12: Time when a notice may be registered

The regulations should provide that a notice may be registered before or after the creation of the security right or the conclusion of the security agreement.

Recommendation 13: Sufficiency of a single notice

The regulations should provide that a registration of a single notice is sufficient to achieve third-party effectiveness of one or more than one security right, whether they exist at the time of registration or are created thereafter, and whether they arise from one or more than one security agreement between the same parties.

[Note to the Working Group: The Working Group may wish to note that the commentary may explain that the single notice would be sufficient with respect to future security rights only as long as the description of the encumbered assets in the notice is sufficient according to recommendation 63.]

Recommendation 14: Indexing of information in the registry record

The regulations should provide that:

(a) Information in the registry record contained in an initial notice is indexed or otherwise organized so as to become searchable according to the grantor identifier as provided in the law and the regulations;

(b) [For internal purposes of the registry, information in the registry record contained in an initial notice may be indexed or otherwise organized so as to become searchable by the registry staff according to the secured creditor identifier; and

(c)] Information in the registry record contained in an amendment or cancellation notice is indexed or otherwise organized so as to become searchable in a manner that associates it with the information in the initial notice.

[Note to the Working Group: The Working Group may wish to note that the commentary will explain that: (a) information may be organized with an index or not as long as it is organized in a way that makes it searchable (see rec. 54, subpara. (h)); (b) if the secured transactions law permits it, indexing may be made by serial number (in addition to grantor indexing (see the Guide, chap. IV, paras. 31-36); and (c) for internal purposes of the registry (for example, global amendments; see recommendation 28 below), indexing may be made by secured creditor identifier. With respect to indexing or other organization of information, the commentary will also explain that that it is possible to organize information so as to allow searches without an index (for example, by using a free text or wild card searching with key words). While there may be no registry of security rights that uses this type of search logic as an official search logic, some registries that have a debtor-based index provide in addition unofficial or wild card searches with key words. With respect to indexing by secured creditor identifier, the commentary will also explain that the Guide referred to in the commentary, but did not recommend general indexing by secured creditor identifier in order to avoid violating commercial expectations of confidentiality or damaging public trust in the registry system (see the Guide, chap. IV, para. 29). This is the reason why subparagraph (b) of this recommendation and recommendation 28 below appear within square brackets.]

Recommendation 15: Integrity of the registry record

The regulations should provide that, except as provided in recommendations 16 and 17, the registry may not change information in or remove information from the registry record.

Recommendation 16: Amendment of information in the registry record

The regulations should provide that the registry should amend [or allow the amendment of] information in the registry record accessible to the public only pursuant to an amendment notice according to recommendations 28 and 29 or a judicial or administrative order according to recommendation 32.

[Note to the Working Group: The Working Group may wish to consider the text in square brackets in recommendations 16 and 17. This text is intended to permit an amendment or cancellation of information in the registry record without intervention of the registry staff. For example, in an electronic registry system, the registry staff need not intervene for a registrant to amend information in the registry record. Similarly, a judicial or administrative officer should be able to take the action necessary to implement the amendment or cancellation order directly rather than having to send it to the registry and rely on the registry staff to make the necessary amendment or cancellation. This approach would reduce the responsibility and the risk of error on the part of the registry and preserve the time- and cost-efficiency of the registry.]

Recommendation 17: Removal of information from the registry record

The regulations should provide that the registry should promptly remove information from the registry record accessible to the public upon the expiry of the period of effectiveness of the registration or upon cancellation. The registry should also remove information from the registry record accessible to the public [or allow the removal of such information] pursuant to a judicial or administrative order according to recommendation 32.

Recommendation 18: Archival of information removed from the registry record

The regulations should provide that information removed from the registry record accessible to the public should be archived for at least a period of [20] years in a manner that enables the information to be retrieved by the registry.

[Note to the Working Group: The Working Group may wish to note that the commentary will make it clear that: (a) the registry may not remove or change information in the registry record; (b) a subsequent amendment will change the substance of the registry record through another notice, but it will never change the text of the initial notice; (c) under recommendation 74, when the time of effectiveness of a registered notice has expired or a notice has been cancelled, the registry should remove information from the record accessible to the public and archive it so as to be capable of retrieval if necessary; (d) the archival period may be influenced by the length of the period within which claims may be submitted under a loan agreement (for example, in some legal systems, no action may be brought later than 15 years from the date on which the act that would be the basis of a claim occurred; in those systems, the regulations provide that all registrations must be kept for 15 years; and while it is possible that the 15 year period can be

extended through acknowledgment by the debtor of the debt, the registry is not obligated to keep the records beyond the initial limitation period); and (e) in many States, information in expired or cancelled notices may be retained in the registry record accessible to the public with an indication that it has expired or cancelled. The commentary may also explain that, in many States, where information submitted to the registry is entered in the registry record by the registry, the registry may correct errors that it made in the process of entering information in the registry record. This is intended to ensure that the registry may correct errors made in entering into the record information submitted in a paper form (correctness of the information on the form being the responsibility of the registrant), but may not scrutinize and correct information entered by a registrant electronically, as this would run counter to recommendation 54, subparagraph (d), which is intended to limit the role of the registry and accordingly the scope of error and liability for error. The registry may effectuate the change correcting its error by registering a correction form that identifies the clerk making the corrections and the corrections made. Furthermore, the commentary may explain that enacting States that may wish to allow such corrections by the registry will need to provide rules on the legal consequences of errors made by the registry in entering information in the registry record and in particular whether a “correction” may change the order of priority.]
