



# General Assembly

Distr.: Limited  
18 September 2013

Original: English

**United Nations Commission  
on International Trade Law**  
Working Group VI (Security Interests)  
Twenty-fourth session  
Vienna, 2-6 December 2013

## Draft Model Law on Secured Transactions

### Note by the Secretariat

#### Addendum

#### Contents

	<i>Page</i>
Chapter IV. The registry system .....	3
Article 24. The security rights registry .....	3
Article 25. The registrar and the registry regulation .....	3
Article 26. Authority to register an initial notice .....	3
Article 27. One notice sufficient for multiple security rights arising from multiple agreements between the same parties .....	3
Article 28. Information required in an initial notice .....	4
Article 29. Grantor identifier .....	4
Article 30. Impact of a change of the grantor's identifier on the effectiveness of the registration .....	5
Article 31. Secured creditor identifier .....	5
Article 32. Description of an encumbered asset covered by a notice .....	5
Article 33. Period of effectiveness of the registration of a notice .....	6
Article 34. Consequences of an incorrect statement or insufficient description .....	6
Article 35. Authority to register an amendment or cancellation notice .....	7



Article 36. Information required in an amendment notice . . . . .	8
Article 37. Information required in a cancellation notice . . . . .	8
Article 38. Compulsory amendment or cancellation . . . . .	8
Article 39. Time of effectiveness of the registration of an initial or amendment notice . . . . .	9
Article 40. Searches . . . . .	10
Article 41. Errors by the registry . . . . .	10
Article 42. Responsibility for loss or damage . . . . .	10
Article 43. General registry operation provisions . . . . .	11
Article 44. Registry forms . . . . .	12
Article 45. Impact of a transfer of an encumbered asset on the effectiveness of the registration . . . . .	12

## Chapter IV. The registry system

*[Note to the Working Group: In considering the structure and the content of chapter IV, the Working Group may wish to note that it has been revised to reflect the thrust of the relevant recommendations of both the Secured Transactions Guide and the Registry Guide in a way that would fit a model law.]*

### Article 24. The security rights registry

1. The security rights registry is established under [the enacting State to specify the relevant act] for registration of notices with respect to security rights in accordance with this Law and the administrative rules dealing with the operation of the registry and the requirements for effecting a registration and conducting a search (the “Regulation”).
2. The security rights registry is open to the public in accordance with this Law and the Regulation.

*[Note to the Working Group: The Working Group may wish to note that the commentary will explain that the registry may be established in different ways (e.g. by law, ministerial decree or other act).]*

### Article 25. The registrar and the registry regulation

The [enacting State to insert a person or entity] is authorized to:

- (a) Appoint the registrar and determine the registrar’s duties; and
- (b) Enact the Regulation.

### Article 26. Authority to register an initial notice

1. The secured creditor may register an initial notice with respect to a security right, before or after the creation of the security right or the conclusion of the security agreement.
2. Registration of an initial notice is ineffective unless authorized by the grantor in writing, before or after registration.
3. A written security agreement is sufficient to constitute authorization for the registration.

### **[Article 27. One notice sufficient for multiple security rights arising from multiple agreements between the same parties**

The registration of a single notice is sufficient to achieve third-party effectiveness of one or more than one security right in the encumbered asset described in the notice, 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 consider whether this article should be moved to the third-party effectiveness chapter.]*

### Article 28. Information required in an initial notice

An initial notice must contain the following information in the designated field:

(a) The identifier of the grantor, satisfying the standard provided in article 29, the address of the grantor [and any other information to be specified by the enacting State to assist in uniquely identifying the grantor];

(b) The identifier of the secured creditor or its representative, satisfying the standard provided in article 31, and their addresses; [and]

(c) A description of the asset covered by the notice, satisfying the standard provided in article 32;

[(d) The period of effectiveness of the registration;<sup>1</sup> and

(e) A statement of that maximum amount].<sup>2</sup>

*[Note to the Working Group: The Working Group may wish to note that the reference to additional information in the notice to assist in uniquely identifying the grantor has been added in subparagraph (a) and deleted from article 29, paragraph 2. These changes are intended to reflect decisions of the Working Group with respect to recommendation 23, subparagraph (a) (i), of the Registry Guide so as to avoid making the additional information part of the grantor's identifier and thus a search criterion.]*

### Article 29. Grantor identifier

1. The registration of an initial notice, or an amendment notice that amends the grantor's identifier or adds a grantor, is effective if the notice provides the grantor's correct identifier in accordance with paragraphs 2 and 3 of this article, or, in the case of an incorrect statement, as provided in article 34, paragraphs 1 and 2.

2. Where the grantor is a natural person, the identifier of the grantor for the purposes of effective registration is the grantor's name, as it appears in [an official document to be specified by the enacting State].

3. Where the grantor is a legal person, the grantor's identifier for the purposes of effective registration is the name that appears in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person.

[4. Where the grantor falls within a special case, such as a person that is subject to insolvency proceedings and a trustee or representative of an estate, the enacting State should specify the grantor identifier.]

*[Note to the Working Group: The Working Group may wish to note that the changes to paragraphs 1, 2 and 3 of this article (compared with recommendations 58-60 of the Secured Transactions Guide on which they are based) are intended to align them respectively with recommendations 29, 23, subparagraph (a) (i), and 25 of the Registry Guide.]*

---

<sup>1</sup> This provision will be necessary, if the enacting State implements option B or C of article 33.

<sup>2</sup> This provision will be necessary, if the enacting State determines that an indication in the notice of the maximum monetary amount for which the security right may be enforced would be helpful in order to facilitate lending from another creditor.

**Article 30. Impact of a change of the grantor's identifier on the effectiveness of the registration**

1. If, after an initial or amendment notice is registered, the identifier of the grantor changes and as a result the grantor's identifier set forth in the notice does not meet the standard provided in article 29, the secured creditor [may] [must] register an amendment notice providing the new identifier in compliance with that standard.

2. If the secured creditor does not register the amendment within [a short period of time, such as thirty days, to be specified by the enacting State] after the change, the security right is ineffective against:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the change in the grantor's identifier but before registration of the amendment notice; and

(b) A person that buys, leases or licenses the encumbered asset after the change in the grantor's identifier but before registration of the amendment notice.

*[Note to the Working Group: The Working Group may wish to note that recommendation 61 of the Secured Transactions Guide leaves an amendment to the discretion of the secured creditor, because if the secured creditor chooses not to register an amendment notice, the only consequence is that its security right will become ineffective as provided in paragraph 2. The Working Group may wish to consider whether failure of the secured creditor to register an amendment notice may affect other parties (e.g., the grantor's insolvency representative) and thus an amendment must be made.]*

**Article 31. Secured creditor identifier**

1. If the secured creditor is a natural person, the identifier is the name of the secured creditor determined in accordance with article 29, paragraph 2;

2. If the secured creditor is a legal person, the identifier is the name of the secured creditor determined in accordance with article 29, paragraph 3; and

(c) If the secured creditor falls within a special case, the identifier is the name as determined in accordance with article 29, paragraph 4.

**Article 32. Description of an encumbered asset covered by a notice**

The registration of an initial notice, or an amendment notice that affects the description of the encumbered assets, is effective if the notice describes the encumbered assets in a way that reasonably allows their identification, and if it does not so describe all assets, as provided in article 34, paragraph 4.

*[Note to the Working Group: The Working Group may wish to note that this article, which is based on recommendation 63 of the Secured Transactions Guide, has been revised to be aligned with the formulation of article 29 and to deal with the description of the encumbered assets, leaving the consequences of an insufficient description to article 34, paragraph 4.]*

### **Article 33. Period of effectiveness of the registration of a notice**

#### **Option A**

1. The registration of an initial notice is effective for [a short period of time, such as five years, specified in the law of the enacting State];
2. The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry; and
3. The registration of an amendment notice extending the period of effectiveness extends the period for [the period of time specified in subparagraph (a)] beginning from the time of expiry of the current period.

#### **Option B**

1. The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice;
2. The period of effectiveness of the registration may be extended at any time before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness; and
3. The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice beginning from the time of expiry of the current period.

#### **Option C**

1. The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice, not exceeding [a long period of time, such as, twenty years, specified in the law of the enacting State];
2. The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness not exceeding [the maximum period of time specified in subparagraph (a)]; and
3. The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice beginning from the time of expiry of the current period.

*[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 12 of the Registry Guide, which in turn is based on recommendation 69 of the Secured Transactions Guide.]*

### **Article 34. Consequences of an incorrect statement or insufficient description**

1. An incorrect statement of the grantor identifier in a notice does not render the registration ineffective if the notice would be retrieved by a search of the registry record [conducted by the registry] under the correct identifier.

2. An incorrect identifier of a grantor in a notice does not render the registration ineffective with respect to other grantors correctly identified in the notice.
3. An incorrect statement of the identifier or address of the secured creditor or its representative that does not meet the requirements of article 31 or a description of the encumbered asset that does not meet the requirements of article 32 does not render the registration of the notice ineffective unless the incorrect or insufficient statement would seriously mislead a reasonable searcher.
4. A description of certain encumbered assets that does not meet the requirements of article 32 does not render a registration of the notice ineffective with respect to other encumbered assets sufficiently described.
- [5. An incorrect statement in a notice with respect to the period of effectiveness of registration and the maximum amount for which the security right may be enforced, if applicable, does not render a registered notice ineffective except to the extent that it seriously misled third parties that relied on the registered notice.]<sup>3</sup>

*[Note to the Working Group: The Working Group may wish to note that, with the exception of the change within square brackets in paragraph 1, the changes made in this article (as compared to recommendations 64-66, on which it is based) are intended to align it with recommendation 29 of the Registry Guide. The Working Group may wish to consider the change that appears within square brackets in paragraph 1, which is intended to validate registrations retrieved even though the searcher did not use the correct grantor identifier (because, for example, a State makes the data available for searching by a third party using other, more powerful software that picks up more “hits” than does the search software of the registry office). The Working Group may wish to note that the “seriously misleading test” in the context of paragraph 5 is objective, while the “seriously misleading test” of paragraph 3 is subjective (see Secured Transactions Guide, chap. IV, paras. 84 and 96) and consider whether this matter should be more explicitly reflected in this article and explained in the relevant commentary to be prepared.]*

#### **Article 35. Authority to register an amendment or cancellation notice**

1. The secured creditor may register an amendment or cancellation notice, before or after the creation of the security right or the conclusion of the security agreement.
2. The grantor’s authorization is required for the following types of amendment:
  - (a) Adding encumbered assets;
  - (b) Increasing the amount of the secured obligation [or the maximum amount for which the security right may be enforced];<sup>4</sup> and
  - (c) [...].

<sup>3</sup> This provision will be necessary, if the enacting State implements option B or C of article 33 and determines that an indication in the notice of the maximum monetary amount for which the security right may be enforced would be helpful in order to facilitate lending from another creditor.

<sup>4</sup> The words within square brackets will be necessary, if the enacting State determines that an indication in the notice of the maximum monetary amount for which the security right may be enforced would be helpful in order to facilitate lending from another creditor.

3. Registration of an amendment or cancellation notice is [effective regardless of whether it was authorized by the secured creditor or ordered by a judicial or administrative authority] [ineffective unless authorized by the secured creditor or ordered by a judicial or administrative authority, before or after registration].

*[Note to the Working Group: The Working Group may wish to note that, while paragraphs 1 and 2 of this article reflect recommendations or principles of the Secured Transactions Guide and the Registry Guide, paragraph 3 provides alternatives for a matter that was discussed but not resolved in the Registry Guide. The Working Group may also wish to consider and add other types of amendment for which authorization by the grantor should be required.]*

#### **Article 36. Information required in an amendment notice**

An amendment notice must contain the following information in the designated field:

- (a) The unique registration number assigned by the registry to the initial notice to which the amendment relates; and
- (b) If information is to be added, deleted or changed, the information to be added, deleted or changed in the manner for entering the relevant kind of information in an initial notice in accordance with articles 29, 31 and 32; and
- (c) An amendment notice may relate to one or multiple items of information in a notice.

#### **Article 37. Information required in a cancellation notice**

A cancellation notice must contain in the designated field the unique registration number assigned by the registry to the initial notice to which the cancellation relates.

*[Note to the Working Group: The Working Group may wish to note that articles 36-37 are based on recommendations 30 and 32 of the Registry Guide. The Working Group may also wish to consider whether a definition of the term "registration number" should be included in article 2 or whether that term should be addressed in a separate article.]*

#### **Article 38. Compulsory amendment or cancellation**

1. The secured creditor must register an amendment or cancellation notice, as the case may be, if:

- (a) The registration of an initial or amendment notice has not been authorized by the grantor at all or to the extent described in the notice;
- (b) The registration of an initial or amendment notice has been authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded;
- (c) The security agreement has been revised in a way that makes the information contained in the notice incorrect or insufficient; or

(d) The security right to which the notice relates has been extinguished by payment or other performance of the secured obligation or otherwise and there is no further commitment by the secured creditor to extend credit;

2. In the case of subparagraphs 1(b) to (d) of this article, the secured creditor may charge any fee agreed upon with the grantor;

3. Not later than [a short period of time, such as fifteen days, to be specified by the enacting State] after receipt of a written request from the grantor, the secured creditor must comply with its obligation under subparagraph (a) of this article;

4. Notwithstanding paragraph 2 of this article, no further fee or expense may be charged or accepted by the secured creditor if it complies with the written request from the grantor in accordance with paragraph 3 of this article;

5. If the secured creditor does not comply within the time period provided in paragraph 3 of this article, the grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through a summary judicial or administrative procedure;

6. The grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through a summary judicial or administrative procedure even before expiry of the period stated in paragraph 3 of this article, provided that there are appropriate mechanisms to protect the secured creditor.

*[Note to the Working Group: The Working Group may wish to note that article 38 is based on recommendation 33 of the Registry Guide (rec. 33, subpara. (g) has not been included though, as it does not seem to fit in a model law). The Working Group may also wish to note that paragraph 4 seems to suggest that, if the secured creditor does not comply, it may charge more, which is not the intended result. The Working Group may thus wish to consider replacing the words "if it complies" with the words "with respect to compliance". Alternatively, the Working Group may wish to consider deleting paragraph 4 altogether and clarifying in paragraph 2 that the secured creditor may charge "only" the agreed upon fees. Another alternative would be to delete paragraphs 2 and 4, and to deal with that matter in the commentary as a matter of contract law.]*

### **Article 39. Time of effectiveness of the registration of an initial or amendment notice**

The registration of an initial or amendment notice becomes effective when the information contained in the notice is entered into the registry record so as to be available [accessible] to searchers of the public registry record.

*[Note to the Working Group: The Working Group may wish to consider whether this article, which is based on recommendation 11 of the Registry Guide, should include language along the lines of recommendations 11, subparagraphs (b) and (c) (the registry to record date and time of effectiveness and enter notices in the order they were received), and 15 (the registry to assign a registration number to the initial notice) of the Registry Guide. The Working Group may also wish to consider the bracketed text in this article in view of the formulation of recommendations 11, subparagraph (a), and 16 of the Registry Guide. The Working*

*Group may also wish to consider whether the time of effectiveness of a cancellation notice should also be addressed.]*

#### **Article 40. Searches**

1. Any person may submit a search request to the registry in the manner prescribed by the Regulation.
2. Upon receipt of a search request, the registry must conduct a search and provide a search result in the manner prescribed by the Regulation.
3. Upon receipt of a request, the registry must issue a certificate providing the search result in the manner prescribed by the Regulation.

#### **Article 41. Errors by the registry**

1. The registry may register an amendment notice to correct an error or omission made by the registry in entering into the registry record information contained in a notice.
2. In the case of a correction in accordance with paragraph 1 of this article, this Law applies as if the error or omission had never been made.
3. The registry may register an amendment notice to restore data in the registry record (including an entire registration) if it appears to the registry that the data was incorrectly removed from the registry under this Law.
4. In the case of a data restoration in accordance with paragraph 3 of this article, for the purposes of this Law the data is taken never to have been removed from the registry record.

*[Note to the Working Group: The Working Group may wish to consider article 41, which is new. The Working Group may also wish to consider whether article 41 should also deal with the rights of parties that relied on the erroneous information on the registry record.]*

#### **Article 42. Responsibility for loss or damage**

##### **Option A<sup>5</sup>**

The responsibility of the registry for loss or damage is limited to system malfunction.

##### **Option B<sup>6</sup>**

The registry is liable for any loss or damage caused by an error in the entry of the information contained in a notice in the registry record.

---

<sup>5</sup> For States that permit direct registration and searching by registry users without the intervention of registry personnel.

<sup>6</sup> For States that permit or require the submission of paper notices, the information in which is entered into the registry record by the registry personnel.

*[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 56 of the Secured Transactions Guide, which, however, deals only with the matter addressed in option A of this article. Option B has been added to complete this article. The Working Group may wish to consider whether this article should be retained or the matter should be left to other law of the enacting State. If the Working Group decides to retain this article, it may wish to consider its substance.]*

#### **Article 43. General registry operation provisions**

1. The [the enacting State to determine the authority] may determine registration and search fees, if any, at a level no higher than necessary to recover the cost of setting up and operating the registry.
2. A notice must be submitted in the mode prescribed by the registry.
3. As soon as practicable, the registry must send a copy of a registered notice to each person identified in the notice as the secured creditor at the address set forth in the notice, indicating the date and time when the registration of the notice became effective and the registration number.
4. Within [a short period of time, such as ten days, to be specified by the enacting State] after the person identified in the notice as the secured creditor has received a copy of the registered notice in accordance with paragraph 3 of this article, that person must send a copy of a notice to each person identified in the notice as grantor.
5. Except if an amendment or cancellation notice is submitted by the person identified in the notice as the secured creditor, the registry may not amend information in or remove information from the registry record.
6. The registry must protect the registry record from loss or damage, and provides for back-up mechanisms to allow reconstruction of the registry record.
7. Promptly after a registered notice has expired or has been cancelled the registry must remove from the public registry record information contained in the notice and archive it for [a long period of time, such as twenty years, to be specified by the enacting State].

*[Note to the Working Group: The Working Group may wish to note that article 44 is an omnibus provision dealing with registry “housekeeping” matters and consider whether the various paragraphs should be presented as separate articles (e.g., paragraph 1 could be in a separate article, paragraph 2 could be moved to article 44, paragraphs 3 and 4 could form one article and paragraphs 5 and 6 could form yet another article). The Working Group may also wish to consider whether there should be a reasonableness test for the registry office in paragraph 1 so that the fee is not declared invalid because it is, for example, 1 € too high. The Working Troup may also wish to consider “cost” should also include indirect costs (e.g., salary of a person who runs the relevant section of the Government).]*

#### **Article 44. Registry forms**

The registry must issue standard registration and search request forms, and accept them for registration and searching, unless information is not entered in each required designated field of the notice or if the information entered is not legible.

#### **Article 45. Impact of a transfer of an encumbered asset on the effectiveness of the registration**

##### **Option A**

1. If, after an initial or amendment notice describing the encumbered assets is registered, the encumbered asset is transferred and a search against the transferee's name by a third party does not disclose the security right created by the transferor, the secured creditor must amend the notice to provide the transferee's identifier as a new grantor.

2. If the secured creditor does not register the amendment notice within [a short period of time to be specified by the enacting State] days after the transfer of the encumbered asset, the security right is ineffective against:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before registration of the amendment notice; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before registration of the amendment notice.

##### **Option B**

1. If, after an initial or amendment notice describing the encumbered assets is registered, the encumbered asset is transferred and a search against the transferee's name by a third party does not disclose the security right created by the transferor, the secured creditor must amend the notice to provide the transferee's identifier as a new grantor.

2. If the secured creditor does not register the amendment notice within [a short period of time, such as fifteen days, to be specified by the enacting State] days after *the secured creditor acquires [actual] knowledge about* the transfer of the encumbered asset, the security right is ineffective against:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before registration of the amendment notice; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before registration of the amendment notice.

##### **Option C**

Registration of an initial or amendment notice in the security rights registry remains effective notwithstanding a transfer of the encumbered asset.

*[Note to the Working Group: The Working Group may wish to note that: (a) this article reflects the three approaches to the issue discussed in the commentary of the Secured Transactions Guide (see chap. IV, paras. 78-80), as*

*recommendation 62 of that Guide had left the matter to the discretion of each State; (b) the difference between options A and B lies in the text that appears in option B in italics (the word “actual” appears within square brackets as the term “knowledge” is defined to mean actual knowledge” (see article 2, subpara.(p)); and (c) option C has been implemented in recommendation 244 of the Supplement on Security Rights in Intellectual Property. The Working Group may also wish to consider whether the registration of an amendment notice should be left to the discretion of the secured creditor (“may” instead of “must”), assuming that failure of the secured creditor to register such an amendment notice would only have an impact on the third-party effectiveness and priority of its security right as provided in paragraph 2 (see also note to article 30). The Working Group may also wish to consider including in article 22 a cross-reference to article 45, as article 22 seems to suggest that a transfer of an encumbered asset does not affect its third-party effectiveness, without requiring any other act (option C).]*

---