



General Assembly

Distr.: Limited
24 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 VII. Asset-specific rules	4
Section I. Receivables	4
Article 74. Anti-assignment clauses	4
Article 75. Creation of a security right in a personal or property right that secures a receivable	5
Article 76. Representations of the assignor	6
Article 77. Right to notify the debtor of the receivable	6
Article 78. Right of the assignee to payment	7
Article 79. Protection of the debtor of the receivable	7
Article 80. Notification of the assignment	8
Article 81. Discharge of the debtor of the receivable by payment	8
Article 82. Defences and rights of set-off of the debtor of the receivable	9
Article 83. Agreement not to raise defences or rights of set off	9
Article 84. Modification of the original contract	9
Article 85. Recovery of payments made by the debtor of the receivable	10



Article 86.	Third-party effectiveness of a security right in a right that secures payment of a receivable	10
Article 87.	Application of the chapter on enforcement to an outright transfer of a receivable	11
Article 88.	Enforcement	11
Article 89.	Distribution of proceeds of disposition	11
Article 90.	Law applicable to the relationship between the debtor of the receivable and the assignee	11
Section II.	Negotiable instruments	12
Article 91.	Rights and obligations of the obligor	12
Article 92.	Priority	12
Article 93.	Law applicable to third-party effectiveness in certain cases	12
Section III.	Rights to payment of funds credited to a bank account	13
Article 94.	Creation	13
Article 95.	Rights and obligations of the depositary bank	13
Article 96.	Third-party effectiveness	14
Article 97.	Priority	14
Article 98.	Enforcement	14
Article 99.	Law applicable	15
Section IV.	Money	16
Article 100.	Priority of a security right in money	16
Section V.	Negotiable documents and tangible assets covered by a negotiable document ..	16
Article 101.	Extension of a security right in a negotiable document to the tangible asset covered by the negotiable document	16
Article 102.	Rights and obligations of the issuer of a negotiable document	16
Article 103.	Third-party effectiveness	16
Article 104.	Priority	17
Article 105.	Enforcement	17

Section VI. Intellectual property	17
Article 106. Security rights in tangible assets with respect to which intellectual property is used.....	17
Article 107. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration.....	18
Article 108. Priority of rights of certain licensees of intellectual property	18
Article 109. Right of the secured creditor to preserve the encumbered intellectual property..	18
Article 110. Application of acquisition security right provisions to security rights in intellectual property.....	18
Article 111. Law applicable to a security right in intellectual property.....	18
Chapter VIII. Transition.....	19
Article 112. General	19
Article 113. Actions commenced before the effective date.....	19
Article 114. Creation of a security right	20
Article 115. Third-party effectiveness of a security right	20
Article 116. Priority of a security right.....	20

Chapter VII. Asset-specific rules

[Note to the Working Group: The Working Group may wish to note that, to emphasize that, depending on whether it already has modern asset-specific rules, a State may implement all, some or none of the asset-specific rules, the Secured Transactions Guide presents them in a separate section in each chapter. For the same reason but also to give States an overview of all asset-specific rules, they are all included in chapter VII of this version of the draft Model Law. If the Working Group decides that asset-specific rules should be included in the draft Model Law, the Working Group may wish to consider whether the way in which this material is currently presented (that is, in an asset-specific chapter) is the best way. Another alternative might be to keep the asset-specific rules, as in the Secured Transactions Guide, in a separate section of each relevant chapter (that is, creation, third-party effectiveness, priority, etc.). Yet another alternative might be to incorporate the asset-specific rules into the general rules in each relevant chapter. In any case, the way in which this material is presented would be a “recommended” approach but not the only approach. In other words, it would be up to each enacting State to decide how to implement the provisions of the draft Model Law, such as, for example, in a single statute on secured transactions, in one chapter of a single statute (civil or commercial code or other statute), in various parts of a statute or in various statutes.]

Section I. Receivables

Article 74. Anti-assignment clauses

1. An assignment of a receivable is effective as between the assignor and the assignee and as against the debtor of the receivable notwithstanding an agreement between the initial or any subsequent assignor and the debtor of the receivable or any subsequent assignee limiting in any way the assignor’s right to assign its receivables.
2. Nothing in this article affects any obligation or liability of the assignor for breach of the agreement mentioned in paragraph 1 of this article, but the other party to the agreement may not avoid the original contract or the assignment contract on the sole ground of the breach of that agreement[, or raise against the assignee any claim it may have as a result of such a breach against the assignor, as provided in article 82, paragraph 3].
3. A person that is not a party to the agreement mentioned in paragraph 1 of this article is not liable on the sole ground that it had knowledge of the agreement.
4. This article applies only to assignments of receivables:
 - (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property;
 - (b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;
 - (c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

[Note to the Working Group: The Working Group may wish to note that article 74 is based on recommendation 24 of the Secured Transactions Guide, which in turn is based on article 9 of the United Nations Convention on the Assignment of Receivables in International Trade (the “United Nations Assignment Convention”). The main difference is the text within square brackets in article 74, paragraph 2 (and article 75, paragraph 5) which includes a cross-reference to article 82, paragraph 3. The Working Group may wish to consider whether paragraph 4 should be retained or deleted and the matter addressed therein discussed in the commentary.]

Article 75. Creation of a security right in a personal or property right that secures a receivable

1. A secured creditor with a security right in a receivable has the benefit of any personal or property right that secures payment or other performance of the receivable automatically without further action by either the grantor or the secured creditor.
2. If the right referred to in paragraph of this article is an independent undertaking, the security right automatically extends to the right to receive the proceeds under the independent undertaking, but not to the right to draw under the independent undertaking.
- [3. This article does not affect a right in immovable property that under other law is transferable separately from a receivable that it may secure.]¹
4. A secured creditor with a security right in a receivable has the benefit of any personal or property right that secures payment or other performance of the receivable notwithstanding any agreement between the assignor and the debtor of the receivable limiting in any way the assignor’s right to create a security right in the receivable, or in any personal or property right securing payment or other performance of the receivable.
5. Nothing in this article affects any obligation or liability of the assignor for breach of the agreement mentioned in paragraph 4 of this article, but the other party to the agreement may not avoid the contract from which the receivable arises, or the agreement creating the personal or property security right on the sole ground of the breach of that agreement[, or raise against the assignee any claim it may have as a result of such a breach against the assignor, as provided in article 82, paragraph 3].
6. A person that is not a party to the agreement mentioned in paragraph 4 of this article is not liable on the sole ground that it had knowledge of the agreement.
7. Paragraphs 4 to 6 of this article apply only to security rights in receivables:
 - (a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property;

¹ An enacting State may wish to consider implementing this paragraph only if it has a law such as the one described therein.

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

8. Paragraph 1 of this article does not affect any duties of the assignor to the debtor of the receivable.

9. To the extent that the automatic effects under paragraph 1 of this article and article 102 are not impaired, this article does not affect any requirement under other law relating to the form or registration of the creation of a security right in any asset, securing payment or other performance of a receivable.

[Note to the Working Group: The Working Group may wish to note that article 75 is based on recommendation 25 of the Secured Transactions Guide, which in turn is based on article 10 of the United Nations Assignment Convention (references to negotiable instruments and negotiable documents have been deleted since this section of the draft Model Law deals with receivables, but these articles are made applicable to negotiable instruments-see footnote 3). The Working Group may wish to consider whether: (a) the words the heading and the text of this article as a whole (and article 86) should refer to a secured creditor "having the benefit" of a personal or property right securing payment of a receivable (as is done in para. 1 of this article) or to the security right "extending to" the personal or property right (as is done in paragraph 2 of this article and article 86); (b) paragraphs 7-9 should be retained or deleted and the matters addressed therein discussed in the commentary; and (c) the provisions in the sections on receivables should refer to the "assignor" and the "assignee" rather than to the "grantor" and the "secured creditor", terms that are used in the rest of the draft Model Law and, for convenience, are defined to include the "assignor" and the "assignee" (see article 2).]

Article 76. Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:

(a) The assignor has the right to assign the receivable;

(b) The assignor has not previously assigned the receivable to another assignee; and

(c) The debtor of the receivable does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor of the receivable has, or will have, the ability to pay.

Article 77. Right to notify the debtor of the receivable

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor of the receivable notification of the

assignment and a payment instruction, but after notification has been sent only the assignee may send a payment instruction.

2. Notification of an assignment or a payment instruction sent in breach of an agreement referred to in paragraph 1 of this article is not ineffective for the purposes of article 84, but nothing in this article affects any obligation or liability of the party in breach for any damages arising as a result of the breach.

[Note to the Working Group: The Working Group may wish to note that in this and other articles reference is made to “notification of the assignment”, as it is a defined term (see article 2, subpara. (r)). The Working Group may wish to consider whether the defined term to be used should rather be the term “notification of an assignment”.]

Article 78. Right of the assignee to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent, the assignee is entitled:

(a) To retain the proceeds of any payment made to the assignee and tangible assets returned to the assignee in respect of the assigned receivable;

(b) To the proceeds of any payment made to the assignor and also to any tangible assets returned to the assignor in respect of the assigned receivable; and

(c) To the proceeds of any payment made to another person and tangible assets returned to such person in respect of the assigned receivable, if the right of the assignee has priority over the right of that person.

2. The assignee’s rights under paragraph 1 of this article are limited to the value of the obligation secured by its security right in the receivable.

[Note to the Working Group: The Working Group may wish to note that the commentary will clarify that articles 76-78 are based on recommendations 114-116 of the Secured Transactions Guide, which in turn are based articles 12-14 of the United Nations Assignment Convention. The changes made are intended to clarify without changing the substance of these articles.]

Article 79. Protection of the debtor of the receivable

1. Except as otherwise provided in this Law, an assignment does not, without the consent of the debtor of the receivable, affect the rights and obligations of the debtor of the receivable, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor of the receivable is required to make payment, but may not change:

(a) The currency of payment specified in the original contract; or

(b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor of the receivable is located.

Article 80. Notification of an assignment

1. Notification of an assignment or a payment instruction is effective when received by the debtor of the receivable if it is in a language that is reasonably expected to inform the debtor of the receivable about its contents.
2. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract between the assignor and the debtor of the receivable.
3. Notification of the assignment or a payment instruction may relate to receivables arising after notification.
4. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 81. Discharge of the debtor of the receivable by payment

1. Until the debtor of the receivable receives notification of the assignment, it is entitled to be discharged by paying in accordance with the original contract.
2. After the debtor of the receivable receives notification of the assignment, subject to paragraphs 3-8 of this article, it is discharged only by paying the assignee or, if otherwise instructed in the notification or subsequently by the assignee in a writing received by the debtor of the receivable, in accordance with the payment instruction.
3. If the debtor of the receivable receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, it is discharged by paying in accordance with the last payment instruction received from the assignee before payment.
4. If the debtor of the receivable receives notification of more than one assignment of the same receivable made by the same assignor, it is discharged by paying in accordance with the first notification received.
5. If the debtor of the receivable receives notification of one or more subsequent assignments, it is discharged by paying in accordance with the notification of the last of such subsequent assignments.
6. If the debtor of the receivable receives notification of the assignment of a part of or an undivided interest in one or more receivables, it is discharged by paying in accordance with the notification or in accordance with this article as if the debtor of the receivable had not received the notification.
7. If the debtor of the receivable receives a notification as provided in paragraph 6 of this article and pays in accordance with the notification, it is discharged only to the extent of the part or undivided interest paid.
8. If the debtor of the receivable receives notification of the assignment from the assignee, it is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor of the receivable is discharged by paying in accordance with this article as if the notification from the assignee had not been received.

9. Adequate proof of an assignment referred to in paragraph 8 of this article includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.
10. This article does not affect any other ground on which payment by the debtor of the receivable to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor of the receivable.

**Article 82. Defences and rights of
set-off of the debtor of the receivable**

1. Unless otherwise agreed as provided in article 83, in a claim by the assignee against the debtor of the receivable for payment of the assigned receivable, the debtor of the receivable may raise against the assignee:
 - (a) All defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor of the receivable could avail itself as if the assignment had not been made and the claim were made by the assignor; and
 - (b) Any other right of set-off that was available to the debtor of the receivable at the time it received notification of the assignment.
3. Notwithstanding paragraph 1 of this article, the debtor of the receivable may not raise as a defence or right of set-off against the assignor breach of an agreement mentioned in article 74, paragraph 2, or article 75, paragraph 5, limiting in any way the assignor's right to make the assignment.

**Article 83. Agreement not to raise
defences or rights of set-off**

1. Subject to paragraph 3 of this article, the debtor of the receivable may agree with the assignor in a writing signed by the debtor of the receivable not to raise against the assignee the defences and rights of set-off referred to in article 82.
2. An agreement under paragraph 1 of this article may be modified only by an agreement in a writing signed by the debtor of the receivable and its effectiveness as against the assignee is subject to article 84, paragraph 2.
3. The debtor of the receivable may not waive defences arising from fraudulent acts on the part of the assignee or based on the incapacity of the debtor of the receivable.

Article 84. Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor of the receivable that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.
2. An agreement concluded after notification of the assignment between the assignor and the debtor of the receivable that affects the assignee's rights is ineffective as against the assignee unless:
 - (a) The assignee consents to it; or

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

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

**Article 85. Recovery of payments
made by the debtor of the receivable**

1. The failure of the assignor to perform the original contract does not entitle the debtor of the receivable to recover from the assignee a sum paid by the debtor of the receivable to the assignor or the assignee.

2. Paragraph 1 of this article does not affect any rights that the debtor of the receivable may have against the assignor under other law.

[Note to the Working Group: The Working Group may wish to note that the commentary will clarify that articles 79-85 are based on recommendations 117-123 of the Secured Transactions Guide, which in turn are based articles 15-21 of the United Nations Assignment Convention. Paragraph 2 of article 85 (which is based on recommendation 123 of the Secured Transactions Guide and article 21 of the United Nations Assignment Convention has been added to clarify that this article is not intended to deprive the debtor of the receivable of any rights it might have under other law to seek recovery of payments from its contractual partner; that is, the assignor.]

**Article 86. Third-party effectiveness of a security right in a right
that secures payment of a receivable**

1. If a security right in a receivable is effective against third parties, such third-party effectiveness extends to any personal or property right that secures payment or other performance of the receivable without further action by either the grantor or the secured creditor.

2. If the personal or property right referred to in paragraph 1 of this article is an independent undertaking, the third-party effectiveness of the security right automatically extends to the right to receive the proceeds under the independent undertaking.

[3. This article does not affect a right in immovable property that under other law is transferable separately from the receivable that it may secure.]²

[Note to the Working Group: The Working Group may wish to note that article 86 is based on recommendation 48 of the Secured Transactions Guide (references to negotiable instruments have been deleted since this section of the draft Model Law deals with receivables but these articles are made applicable to negotiable instruments-see footnote 3). If the Working Group decides that reference should be made to a secured creditor “acquiring the benefit of”, rather than to the creation or third-party effectiveness of a security right “extending to”, a personal or property

² An enacting State may wish to consider implementing this paragraph only if it has a law such as the one described therein.

right securing payment or other performance of a receivable, it may wish to consider whether article 86 should be subsumed into article 75.]

**Article 87. Application of the chapter on
enforcement to an outright transfer of a receivable**

The provisions of chapter VI of this Law do not apply to the collection or other enforcement of a receivable assigned by an outright transfer with the exception of:

- (a) Articles 56 and 57 in the case of an outright transfer with recourse; and
- (b) Articles 88 and 89.

Article 88. Enforcement

1. Subject to articles 79-86:

(a) In the case of a receivable assigned by an outright transfer, the assignee has the right to collect or otherwise enforce the receivable;

(b) In the case of a receivable assigned otherwise than by an outright transfer, the assignee has the right to collect or otherwise enforce the receivable after default, or before default with the agreement of the assignor.

2. The assignee's right to collect or otherwise enforce a receivable includes the right to collect or otherwise enforce any personal or property right that secures payment of the receivable.

Article 89. Distribution of proceeds of disposition

In the case of collection or other enforcement of a receivable, the enforcing secured creditor must:

(a) Apply the net proceeds of its enforcement after deducting costs of enforcement to the secured obligation; and

(b) Pay any surplus remaining to the competing claimants that, prior to any distribution of the surplus, notified the enforcing secured creditor of their claims, to the extent of those claims, and remit any balance remaining to the grantor.

[Note to the Working Group: The Working Group may wish to note that articles 87-89 are based on recommendations 167-169 and 172 of the Secured Transactions Guide.]

**Article 90. Law applicable to the relationship between the debtor of the
receivable and the assignee**

The law applicable to a receivable also is the law applicable to:

(a) The relationship between the debtor of the receivable and the assignee of the receivable;

(b) The conditions under which an assignment of the receivable may be invoked against the debtor of the receivable, including whether an anti-assignment agreement may be asserted by the debtor of the receivable; and

(c) Whether the obligations of the debtor of the receivable, have been discharged.

[Note to the Working Group: The Working Group may wish to note that article 90 is based on recommendation 217 of the Secured Transactions Guide (references to negotiable instruments and negotiable documents have been deleted since this section of the draft Model Law deals with receivables).]

Section II. Negotiable instruments³

Article 91. Rights and obligations of the obligor

A secured creditor's rights under a negotiable instrument as against a person obligated on the negotiable instrument are subject to the law relating to negotiable instruments.

Article 92. Priority

1. [Except as provided in paragraph 2 of this article], a security right in a negotiable instrument that is made effective against third parties by possession of the instrument has priority as against a security right in a negotiable instrument that is made effective against third parties by registration.

2. A security right in a negotiable instrument that is made effective against third parties by registration is subordinate to the rights of a secured creditor, buyer or other consensual transferee that:

(a) Qualifies as a protected holder under the law relating to negotiable instruments; or

(b) Takes possession of the negotiable instrument and gives value in good faith and without knowledge that the transfer is in violation of the rights of the secured creditor under the security agreement.

[Note to the Working Group: The Working Group may wish to note that article 91 is based on recommendation 124 of the Secured Transactions Guide, and article 92 on recommendations 101 and 102. The words added at the beginning of paragraph 1 of this article within square brackets are intended to avoid a potential inconsistency between paragraph 1 (possession beats the only other possible method, that is, registration) and paragraph 2 (possession does not beat protected holder or a secured creditor, buyer or other consensual transferee that takes in good faith).]

Article 93. Law applicable to third-party effectiveness in certain cases

If the State in which the grantor is located recognizes registration as a method of achieving effectiveness against third parties of a security right in a negotiable instrument, the law of the State in which the grantor is located is the law applicable

³ Articles 75, 86, 89 and 90 of section I on receivables apply also to negotiable instruments.

to the issue of whether effectiveness against third parties has been achieved by registration under the laws of that State.

[Note to the Working Group: The Working Group may wish to note that article 93 is based on recommendation 211 of the Secured Transactions Guide.]

Section III. Rights to payment of funds credited to a bank account⁴

Article 94. Creation

Subject to article 95, a security right in a right to payment of funds credited to a bank account is effective notwithstanding an agreement between the grantor and the depositary bank limiting in any way the grantor's right to create the security right.

Article 95. Rights and obligations of a depositary bank

1. The creation of a security right in a right to payment of funds credited to a bank account does not affect the rights and obligations of a depositary bank without its consent.
2. Any rights of set-off that a depositary bank may have under other law are not impaired by reason of any security right that the bank may have in a right to payment of funds credited to a bank account maintained with the depositary bank.
3. With respect to a bank account maintained with it, a depositary bank is not obligated:
 - (a) To pay any person other than a person that has control with respect to funds credited to a bank account;
 - (b) To respond to requests for information about whether it has entered into a control agreement with a grantor maintaining a bank account with the depositary bank and a secured creditor or acquired a security right in its own favour and whether the grantor retains the right to dispose of the funds credited in the account; or
 - (c) To enter into a control agreement.

[Note to the Working Group: The Working Group may wish to consider whether a definition of the term "control agreement" should be included in article 2 along the following lines: "'Control agreement' means an agreement between a depositary bank, a grantor and a secured creditor, evidenced by a signed writing, according to which the depositary bank has agreed to follow instructions from the secured creditor with respect to the payment of funds credited to the bank account without further consent from the grantor (see Terminology of the Secured Transactions Guide).]

⁴ Article 93 of section II on negotiable instruments applies also to rights to payment of funds credited to a bank account

Article 96. Third-party effectiveness

A security right in a right to payment of funds credited to a bank account may be made effective against third parties by registration or by the secured creditor obtaining control.

Article 97. Priority

1. A security right in a right to payment of funds credited to a bank account that is made effective against third parties by control has priority as against a competing security right that is made effective against third parties by registration.
2. Priority among secured creditors that obtain a control agreement with the grantor and the depositary bank is determined according to the order in which the control agreements are concluded.
3. A security right of a secured creditor that obtains control automatically has priority as against a security right made effective against third parties by a control agreement with the depositary bank, except a security right of a secured creditor that obtains control by becoming the account holder.
4. A depositary bank's right under other law to set off obligations owed to it by the grantor against the grantor's right to payment of funds credited to a bank account maintained with the depositary bank has priority as against a security right in the right to payment of funds credited to the bank account, except a security right of a secured creditor that obtains control by becoming the account holder.
5. A transferee of funds from a bank account pursuant to a transfer initiated by the grantor takes free of a security right in the right to payment of funds credited to the bank account, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under the security agreement.
6. This article does not adversely affect the rights under other law of transferees of funds from bank accounts.

[Note to the Working Group: The Working Group may wish to consider whether a definition of the term "control" should be included in article 2 along the following lines: "'Control' with respect to a right to payment of funds credited to a bank account exists: (a) Automatically upon the creation of a security right if the depositary bank is the secured creditor; (b) If the depositary bank has concluded a control agreement with the grantor and the secured creditor; or (c) If the secured creditor is the account holder (see Terminology of the Secured Transactions Guide).]

Article 98. Enforcement

1. After default or before default with the agreement of the grantor, a secured creditor with a security right in a right to payment of funds credited to a bank account is entitled, subject to article 94, to collect or otherwise enforce its right to payment of the funds.
2. A secured creditor that has control is entitled, subject to article 94, to enforce its security right without having to apply to a court or other authority.

3. A secured creditor that does not have control is entitled, subject to article 94, to collect or otherwise enforce the security right in the right to payment of funds credited to a bank account against the depositary bank only pursuant to a court order, unless the depositary bank agrees otherwise.

Article 99. Law applicable

1. Subject to article 94, the law applicable to the creation, effectiveness against third parties, priority and enforcement of a security right in a right to payment of funds credited to a bank account, as well as rights and duties of the depositary bank with respect to the security right, is

Alternative A⁵

The law of the State in which the bank with which the account is maintained has its place of business.

2. If the bank has places of business in more than one State, reference should be made to the place where the branch maintaining the account is located.

Alternative B

The law of the State expressly stated in the account agreement as the State whose law governs the account agreement or, if the account agreement expressly provides that another law is applicable to all such issues, that other law.

2. The law of the State determined pursuant to paragraph 1 of this article applies only if the depositary bank has, at the time of the conclusion of the account agreement, an office in that State that is engaged in the regular activity of maintaining bank accounts.

3. If the applicable law is not determined pursuant to paragraph 1 or 2 of this article, the applicable law is to be determined pursuant to default rules based on article 5 of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary.

[Note to the Working Group: The Working Group may wish to note that article 95 is based on recommendation 26 of the Secured Transactions Guide, article 96 on recommendation 49, article 97 on recommendations 103-106, article 98 on recommendations 173-175, and article 99. The Working Group may wish to consider whether, instead of referring to article 5 of The Hague Securities Convention, paragraph 3 should set forth the rule contained in that article.]

⁵ A State may adopt alternative A or alternative B of this article.

Section IV. Money

Article 100. Priority of a security right in money

1. A person that obtains possession of money that is subject to a security right takes the money free of the security right, unless that person has knowledge that the transfer violates the rights of the secured creditor under the security agreement.
2. This article does not adversely affect the rights of holders of money under other law.

Section V. Negotiable documents and tangible assets covered by a negotiable document⁶

Article 101. Extension of a security right in a negotiable document to the tangible asset covered by the negotiable document

A security right in a negotiable document extends to the tangible asset covered by the document, provided that the issuer or its representative is in possession of the asset at the time the security right in the document is created.

Article 102. Rights and obligations of the issuer of a negotiable document

A secured creditor's rights under a negotiable document are, as against the issuer or any other person obligated on the negotiable document, subject to the law relating to negotiable documents.

Article 103. Third-party effectiveness

1. A security right in a negotiable document may be made effective against third parties by registration or by the secured creditor's possession of the document.
2. If a security right in a negotiable document is effective against third parties, the corresponding security right in the asset covered by the document is also effective against third parties.
3. During the period when a negotiable document covers an asset, a security right in the asset may be made effective against third parties by the secured creditor's possession of the document.
4. A security right in a negotiable document that was made effective against third parties by the secured creditor's possession of the document remains effective against third parties for [a short period of time to be specified by the enacting State] after the negotiable document has been relinquished to the grantor or other person for the purpose of ultimate sale or exchange, loading or unloading, or otherwise dealing with the assets covered by the negotiable document.

⁶ Article 90 of section I on receivables applies also to negotiable documents.

Article 104. Priority

1. A security right in a negotiable document and the tangible assets covered thereby is subordinate to any superior rights acquired by a transferee of the document under the law relating to negotiable documents.
2. Subject to paragraph 3 of this article, a security right in a tangible asset made effective against third parties by possession of a negotiable document has priority as against a competing security right made effective against third parties by registration or by possession of the tangible asset.
3. A security right in a tangible asset other than inventory made effective against third parties by registration or by possession of the tangible asset has priority over a security right made effective against third parties by possession of a negotiable document if the security right was made effective against third parties before the earlier of:
 - (a) The time that the asset became covered by the negotiable document; and
 - (b) The time of conclusion of an agreement between the grantor and the secured creditor in possession of the negotiable document providing for the asset to be covered by a negotiable document so long as the asset became so covered within [a short period of time to be specified by the enacting State] from the date of the agreement.

Article 105. Enforcement

After default or before default with the agreement of the grantor, subject to article 102, the secured creditor has the right to enforce a security right in a negotiable document or a tangible asset covered by the document.

[Note to the Working Group: The Working Group may wish to note that article 101 is based on recommendation 28 of the Secured Transactions Guide, article 102 on recommendation 130, article 103 on recommendations 51-53, article 104 on recommendations 108 and 109, and article 105 on recommendation 177.]

[Section VI. Intellectual property

Article 106. Security rights in tangible assets with respect to which intellectual property is used

In the case of a tangible asset with respect to which intellectual property is used, a security right in the tangible asset does not extend to the intellectual property and a security right in the intellectual property does not extend to the tangible asset.

Article 107. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration

The registration of a notice of a security right in intellectual property in the general security rights registry remains effective notwithstanding a transfer of the encumbered intellectual property.

Article 108. Priority of rights of certain licensees of intellectual property

Article 47, paragraph 6 applies to the rights of a secured creditor under this Law and does not affect the rights the secured creditor may have under the law relating to intellectual property.

Article 109. Right of the secured creditor to preserve the encumbered intellectual property

The grantor and the secured creditor may agree that the secured creditor is entitled to take steps to preserve the encumbered intellectual property.

Article 110. Application of acquisition security right provisions to security rights in intellectual property

1. The provisions on an acquisition security right in a tangible asset also apply to an acquisition security right in intellectual property or a licence of intellectual property.
2. For the purpose of applying these provisions:
 - (a) Intellectual property or a licence of intellectual property:
 - (i) Held by the grantor for sale or licence in the ordinary course of the grantor's business is treated as inventory; and
 - (ii) Used or intended to be used by the grantor for personal, family or household purposes is treated as consumer goods; and
 - (b) Any reference to:
 - (i) Possession of the encumbered asset by the secured creditor does not apply;
 - (ii) The time of possession of the encumbered asset by the grantor refers to the time the grantor acquires the encumbered intellectual property or licence of intellectual property; and
 - (iii) The time of the delivery of the encumbered asset to the grantor refers to the time the grantor acquires the encumbered intellectual property or licence of intellectual property.

Article 111. Law applicable to a security right in intellectual property

1. The law applicable to the creation, effectiveness against third parties and priority of a security right in intellectual property is the law of the State in which the intellectual property is protected.

2. A security right in intellectual property may also be created under the law of the State in which the grantor is located and may also be made effective under that law against third parties other than another secured creditor, a transferee or a licensee.

3. The law applicable to the enforcement of a security right in intellectual property is the law of the State in which the grantor is located.]

[Note to the Working Group: The Working Group may wish to note that articles 105-110, which appear within square brackets for the Working Group to determine whether they should be included in the draft Model Law, are based on recommendations 243-248 of the Intellectual Property Supplement.]

VIII. Transition

[Note to the Working Group: The Working Group may wish to test transition rules against the following situations: (a) moving from one registration system to another; (b) moving from no registration system to a new registration system; (c) changing the applicable law (e.g. where there is no registry under one but not under the new applicable law or from a law that does not treat a retention-of-title right as a security right but the new law does).]

Article 112. General

1. This Law comes into force on [a date to be specified by the enacting State] [[...] months after a date to be specified by the enacting State].

2. For the purposes of this chapter:

(a) “Effective date” refers to the date on which this Law comes into force;

(b) “Prior law” refers to the law of the enacting State that was in force immediately prior to the effective date of this Law; and

(c) “Prior security right” means a right created by a security agreement or other transaction concluded before the effective date of this Law that is a security right within the scope of this Law and to which this Law would have applied if it had been in force when the security agreement or other transaction was concluded.

3. Subject to paragraph 4 of this article, this Law applies to all security rights within its scope, including prior security rights, except to the extent that this chapter provides for the continued application of prior law.

4. This Law does not apply to prior security rights that were validly terminated under prior law before the effective date.

Article 113. Actions commenced before the effective date

Prior law applies to:

(a) Matters that are the subject of litigation or alternative binding dispute resolution proceedings that were commenced before the effective date; and

(b) The enforcement of a security right if the secured creditor commenced enforcement before the effective date.

Article 114. Creation of a security right

A prior security right created in accordance with prior law remains effective under this Law notwithstanding that it does not comply with the creation requirements of this Law.

Article 115. Third-party effectiveness of a security right

1. A prior security right that was made effective against third parties before the effective date in accordance with prior law remains effective against third parties under this Law until the earlier of:

(a) The time it would have ceased to be effective against third parties under prior law; and

(b) The expiration of [a transition period, such as six months, to be specified by the enacting State] after the effective date.

2. After the period of time referred to in paragraph 1 of this article, a security right remains effective against third parties if the third-party effectiveness requirements of this Law are satisfied.

3. If the third-party effectiveness requirements of this Law are satisfied before third-party effectiveness would have ceased under paragraph 1 of this article, the prior security right remains continuously effective against third parties for the purposes of this Law.

Article 116. Priority of a security right

1. The time to be used for determining priority of a prior security right is the time it was made effective against third parties or became the subject of a registered notice under the prior law.

2. The priority of a prior security right is determined by prior law if:

(a) The security right and the rights of all competing claimants arose before the effective date of this Law; and

(b) The priority status of none of these rights has changed since the effective date of this Law.

3. The priority status of a security right has changed if:

(a) It was effective against third parties on the effective date of this Law as provided in paragraph 1 of article 115 and ceased to be effective against third parties as provided in paragraph 2 of article 115; or

(b) It was not effective against third parties under prior law on the effective date and was made effective against third parties under this Law.