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Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Chapter II. Creation of a security right (effectiveness as between the parties)

Article 5. Creation of a security right

1. A security right in an asset is created by a security agreement.
2. In the case of an asset with respect to which the grantor has rights or the power to encumber at the time of the conclusion of the security agreement, the security right in that asset is created at that time.
3. In the case of an asset with respect to which the grantor acquires rights or the power to encumber thereafter, the security right in that asset is created when the grantor acquires rights in the asset or the power to encumber the asset.

Article 6. Minimum content of a security agreement

A security agreement must:

- (a) Reflect the intent of the parties to create a security right;
- (b) Identify the secured creditor and the grantor;
- (c) Describe the secured obligation;
- (d) Describe the encumbered assets in a manner that reasonably allows their identification[; and
- (e) Indicate the maximum monetary amount for which the security right may be enforced, if the enacting State determines that such an indication would be helpful in order to facilitate subordinate lending].

Article 7. Form of a security agreement

1. A security agreement may be oral if accompanied by the secured creditor's possession of the encumbered asset.
2. If it is not accompanied by possession of the encumbered asset, the security agreement must be concluded in or evidenced by a writing that, by itself or in conjunction with the course of conduct between the parties, indicates the grantor's intent to create a security right.

Article 8. Obligations secured by a security right

A security right may secure any type of obligation, whether present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.

Article 9. Assets subject to a security right

1. With the exception of [any limited and specific exceptions to be set out by the enacting State], a security right may encumber any type of asset, including:
 - (a) Parts of assets and undivided rights in assets;
 - (b) Assets that, at the time the security agreement is concluded, may not yet exist or that the grantor may not yet own or have the power to encumber; and

(c) All assets of a grantor.

2. Except as provided in articles 13-15, this Law does not override provisions of any other law to the extent that they limit the creation or enforcement of a security right in, or the transferability of, specific types of asset.

Article 10. Continuation of a security right in proceeds

1. Unless otherwise agreed by the parties to a security agreement, a security right in an encumbered asset extends to its identifiable proceeds, including proceeds of proceeds.

2. Where proceeds in the form of money or funds credited to a bank account have been commingled with other assets of the same kind so that the proceeds are no longer identifiable, the amount of the proceeds immediately before they were commingled is nevertheless to be treated as identifiable proceeds after commingling.

3. If, at any time after commingling, the total amount of the asset is less than the amount of the proceeds, the total amount of the asset at the time that its amount is lowest plus the amount of any proceeds later commingled with the asset is to be treated as identifiable proceeds.

Article 11. Creation and continuation of a security right in an attachment

1. A security right may be created in a tangible asset that is an attachment at the time of creation of the security right or continues in a tangible asset that becomes an attachment subsequently.

2. A security right in an attachment to immovable property may be created under this Law or under the law governing immovable property.

Article 12. Continuation of a security right into a mass or product

1. A security right created in tangible assets before they are commingled in a mass or product continues in the mass or product.

2. The amount secured by a security right that continues in the mass or product is limited to the value of the encumbered assets immediately before they became part of the mass or product.

Article 13. Bulk assignments of receivables

1. An assignment of a contractual receivable that is not specifically identified, a future receivable or a part of or an undivided interest in a receivable is effective as between the assignor and the assignee and as against the debtor of the receivable as long as, at the time of the assignment or, in the case of a future receivable, at the time it arises, it can be identified to the assignment to which it relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.¹

¹ For articles 13-15, see articles 8-10 of the United Nations Assignment Convention.

Article 14. 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 such an agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person that is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.
3. 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.

Article 15. 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 personal or property right is an independent undertaking, the security right automatically extends to the right to receive the proceeds under the independent undertaking but does not extend 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.
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 grantor and the debtor of the receivable limiting in any way the grantor'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 grantor for breach of the agreement mentioned in paragraph 4 of this article, but the other party to such an agreement may not avoid the contract from which the receivable arises, or the security agreement creating the personal or property security right on the sole

ground of that breach. A person that is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

6. Paragraphs 4 and 5 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;

(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.

7. Paragraph 1 of this article does not affect any duties of the grantor to the debtor of the receivable.

8. To the extent that the automatic effects under paragraph 1 of this article and article 32 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 that is not covered by this Law.

Chapter III. Effectiveness of a security right against third parties

Article 16. Achieving third-party effectiveness

A security right is effective against third parties only if it is created and one of the methods for achieving third-party effectiveness referred to in article 19, 21 or 22 has been followed.

Article 17. Effectiveness against the grantor of a security right that is not effective against third parties

A security right that has been created is effective between the grantor and the secured creditor even if it is not effective against third parties.

Article 18. Continued third-party effectiveness after a transfer of the encumbered asset

After transfer of a right other than a security right in an encumbered asset, a security right in the encumbered asset that is effective against third parties at the time of the transfer continues to encumber the asset except as provided in article 50, and remains effective against third parties except as provided in article 39.

Article 19. General method for achieving third-party effectiveness: registration

1. A security right is effective against third parties if a notice with respect to the security right is registered in the general security rights registry referred to in articles 33-47.
2. Registration of a notice does not create a security right and is not necessary for the creation of a security right.

Article 20. Alternatives and exceptions to registration

1. A security right may also be made effective against third parties by one of the following alternative methods:
 - (a) In tangible assets, by the secured creditor's possession, as provided in article 22;
 - (b) In movable assets, rights in which are subject to a specialized registration or title certificate system, by registration in the specialized registry or notation on the title certificate, as provided in article 23;
 - (c) In an attachment to a movable asset, rights in which are subject to a specialized registration or title certificate system, by registration in the specialized registry or notation on the title certificate, as provided in article 26; and
 - (d) In an attachment to immovable property, by registration in the immovable property registry, as provided in article 27.
2. A security right is effective against third parties automatically:
 - (a) In proceeds, if the security right in the original encumbered asset is effective against third parties, as provided in article 24;
 - (b) In an attachment to a movable asset, if the security right in the asset that becomes an attachment was effective against third parties before it became an attachment, as provided in article 25;
 - (c) In a mass or product, if the security right in processed or commingled assets was effective against third parties before they became part of the mass or product, as provided in article 28; and
 - (d) In movable assets, upon a change in the location of the asset or the grantor to this State, as provided in article 29.
3. A security right in a personal or property right that secures payment or other performance of a receivable is effective against third parties, as provided in article 32.

Article 21. Different third-party effectiveness methods for different types of asset

Different methods for achieving third-party effectiveness may be used for different types of encumbered asset, whether they are encumbered pursuant to the same security agreement or not.

**Article 22. Third-party effectiveness of a security right
in a tangible asset by possession**

A security right in a tangible asset may be made effective against third parties by registration as provided in article 19 or by the secured creditor's possession.

**Article 23. Third-party effectiveness of a security right
in a movable asset subject to a specialized registration
or a title certificate system**

A security right in a movable asset that is subject to registration in a specialized registry or notation on a title certificate under other law may be made effective against third parties by registration as provided in article 19 or by:

- (a) Registration in the specialized registry; or
- (b) Notation on the title certificate.

**Article 24. Automatic third-party effectiveness of
a security right in proceeds**

1. If a security right in an encumbered asset is effective against third parties, a security right in any proceeds of the encumbered asset (including any proceeds of proceeds) is effective against third parties when the proceeds arise, provided that the proceeds are described in a generic way in a registered notice or that the proceeds consist of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account.
2. If the proceeds are not described in the registered notice as provided in paragraph 1 of this article and do not consist of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account, the security right in the proceeds continues to be effective against third parties for [a short period of time to be specified by the enacting State] days after the proceeds arise.
3. If the security right in such proceeds is made effective against third parties by one of the methods referred to in article 19 or 20 before the expiry of that time period, the security right in the proceeds continues to be effective against third parties thereafter.

**Article 25. Automatic third-party effectiveness
of a security right in an attachment**

If a security right in a tangible asset is effective against third parties at the time when the asset becomes an attachment, the security right remains effective against third parties thereafter.

**Article 26. Third-party effectiveness of a security right in
an attachment subject to a specialized registration
or a title certificate system**

A security right in an attachment to a movable asset that is subject to registration in a specialized registry or notation on a title certificate under other law may be made effective against third parties automatically as provided in article 25 or by:

- (a) Registration in the specialized registry; or
- (b) Notation on the title certificate.

**Article 27. Third-party effectiveness of a security right
in an attachment to immovable property**

A security right in an attachment to immovable property may be made effective against third parties automatically as provided in article 25 or by registration in the immovable property registry.

**Article 28. Automatic third-party effectiveness
of a security right in a mass or product**

If a security right in a tangible asset is effective against third parties when it becomes part of a mass or product, the security right that continues in the mass or product, as provided in article 12, is effective against third parties.

**Article 29. Continuity in third-party effectiveness
upon change of location to this State**

1. If a security right in an encumbered asset is effective against third parties under the law of the State in which the encumbered asset or the grantor is located (whichever determines the applicable law under the relevant conflict-of-laws provisions), and that location changes to this State, the security right continues to be effective against third parties under the law of this State for [a short period of time to be specified by the enacting State] days after the change.
2. If the requirements of the law of this State to make the security right effective against third parties are satisfied prior to the end of that period, the security right continues to be effective against third parties thereafter under the law of this State.
3. For the purposes of any rule of this State in which time of registration or other method of achieving third-party effectiveness is relevant for determining priority, that time is the time when registration or third-party effectiveness was achieved under the law of the State in which the encumbered asset or the grantor was located before its location changed to this State.

**Article 30. Continuity in third-party effectiveness of a security
right upon change of method of third-party effectiveness**

Third-party effectiveness of a security right is continuous notwithstanding a change in the method by which it is made effective against third parties, provided that there is no time when the security right is not effective against third parties.

**Article 31. Lapse in third-party effectiveness
or advance registration**

1. If a security right has been made effective against third parties and subsequently there is a period during which the security right is not effective against third parties, third-party effectiveness may be re-established, but only from the time when the new registration of a notice with respect to the security right becomes effective.

2. If registration made before creation of a security right as provided in article 42 expires as provided in article 44, it may be re-established, but registration takes effect only from the time when the new registration of a notice with respect to the security right becomes effective.

**Article 32. 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 is an independent undertaking, its third-party effectiveness automatically extends to the right to receive the proceeds under the independent undertaking, but the security right does not extend 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 the receivable that it may secure.
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