



**United Nations Commission  
on International Trade Law**  
**Working Group VI (Security Interests)**  
**Twenty-eighth session**  
 Vienna, 12-16 October 2015

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

### **Note by the Secretariat**

#### **Addendum**

#### **Contents**

	<i>Page</i>
Chapter IV. The registry system . . . . .	3
Article 26. Establishment of a public registry . . . . .	3
Registry-related provisions . . . . .	4
Section A. General provisions . . . . .	4
Article 1. Establishment of a public registry . . . . .	4
Article 2. Definitions . . . . .	4
Article 3. Grantor's authorization for registration . . . . .	4
Article 4. One notice sufficient for security rights under multiple security agreements. . . . .	5
Article 5. Advance registration . . . . .	6
Section B. Access to registry services . . . . .	6
Article 6. Public access . . . . .	7
Article 7. Rejection of the registration of a notice or a search request. . . . .	8
Article 8. No verification by the Registry. . . . .	8

\* Reissued for technical reasons on 15 September 2015.



---

Section C.	Registration of a notice . . . . .	9
	Article 9. Information required in an initial notice . . . . .	9
	Article 10. Grantor identifier . . . . .	9
	Article 11. Secured creditor identifier . . . . .	10
	Article 12. Description of encumbered assets . . . . .	11
	Article 13. Language of information in a notice . . . . .	12
	Article 14. Time of effectiveness of the registration of a notice . . . . .	12
	Article 15. Period of effectiveness of the registration of a notice . . . . .	13
	Article 16. Obligation to send a copy of a registered notice . . . . .	14
Section D.	Amendments and cancellations . . . . .	14
	Article 17. Right to register an amendment or cancellation notice . . . . .	14
	Article 18. Information required in an amendment notice . . . . .	15
	Article 19. Global amendment of secured creditor information . . . . .	15
	Article 20. Information required in a cancellation notice . . . . .	15
	Article 21. Compulsory registration of an amendment or cancellation notice . . . . .	16
	Article 22. Amendment or cancellation notices not authorized by the secured creditor . . . . .	17
Section E.	Searches . . . . .	19
	Article 23. Search criteria . . . . .	19
	Article 24. Search results . . . . .	19
Section F.	Errors and post-registration changes . . . . .	20
	Article 25. Registrant errors in required information . . . . .	20
	Article 26. Post-registration change of grantor's identifier . . . . .	22
	Article 27. Post-registration transfer of an encumbered asset . . . . .	23
Section G.	Organization of the Registry and the registry record . . . . .	24
	Article 28. Appointment of the registrar . . . . .	24
	Article 29. Organization of information in registered notices . . . . .	24
	Article 30. Integrity of information in the registry record . . . . .	24
	Article 31. Removal of information from the public registry record and archival . . . . .	25
	Article 32. Correction of errors by the Registry . . . . .	25
	Article 33. Limitation of liability of the Registry . . . . .	25
	Article 34. Registry fees . . . . .	26

## Chapter IV. The registry system

### Article 26. Establishment of a public registry

1. The promotion of certainty and transparency by providing for the registration of notices with respect to security rights in movable assets is a key objective of a modern secured transactions regime (see Secured Transactions Guide, rec. 1, subpara. (f)). Accordingly, the establishment of a general security rights registry (the “Registry”) is an integral component of the third-party effectiveness and priority provisions of the draft Model Law (see Secured Transactions Guide, chap. IV, paras. 1-8, and Registry Guide, para. 73). Thus, article 26, which is based on recommendation 1 of the Secured Transactions Guide and the Registry Guide, provides for the establishment by the enacting State of a public registry for recording and searching information about the possible existence of security rights in movable assets within the scope of application of the draft Model Law.

2. The text in square brackets recognizes that an enacting State may decide to enact some or all of the provisions relating to the registry system in the secured transactions law, a separate law, subordinate regulations, or a combination thereof. For ease of reference, all the relevant provisions are collected below in a single separate instrument called “the registry-related provisions”.<sup>1</sup>

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

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

5. Some States provide for the registration in their general security rights registries of notices in addition to those contemplated by the draft Model Law, such as, for example, notices relating to judgments obtained by unsecured creditors against their debtors, claims of non-consensual preferential creditors or non-possessory ownership rights of long term lessors (see Registry Guide, paras. 40, 46, 50 and 51). If the enacting State follows this approach, it will need to specify whether registration is necessary

---

<sup>1</sup> A reference to an article below is a reference to an article of the registry-related provisions, unless otherwise indicated.

for the creation or third-party effectiveness of these other rights and the priority effect of registration, including priority as against rights within the scope of the draft Model Law.

## **Registry-related provisions**

### **Section A. General provisions**

#### **Article 1. Establishment of a public registry**

6. Article 1 reiterates article 26 of chapter IV of the draft Model Law. It would be necessary only if the registry-related provisions are implemented in a law or other act other than the secured transactions law.

#### **Article 2. Definitions**

7. Article 2 contains definitions of key terms defined in the Registry Guide (see paras. 8 and 9). If the enacting State decides to implement the registry-related provisions in its enactment of the draft Model Law, these definitions should be included in the provision of the secured transactions law implementing article 2 of the draft Model Law.

#### *Registry*

8. If the Registry is operated by a governmental entity, it can exercise the supervisory functions foreseen in the registry-related provisions (e.g. art. 6, para. 2, art. 13, para. 2, art. 28, and art. 34, para. 2, below). Otherwise these functions should only be exercised by the governmental authority supervising the private entity operating the Registry.

#### **Article 3. Grantor's authorization for registration**

9. Article 3 is based on recommendations 71 of the Secured Transactions Guide (see chap. IV, para. 106) and recommendation 7, subpara. (b), of the Registry Guide (see para. 101). Paragraph 1 states the basic principle that the registration of an initial notice must be authorized by the grantor in writing. To ensure that this basic rule does not unnecessarily interfere with the efficiency of the registration process, paragraph 6 confirms that the authorization is to be given off-record. Thus, the Registry is not entitled to require evidence of the existence of the grantor's registration as part of the registration process. Paragraphs 4 and 5 further confirm that the grantor's authorization may be given before or after registration and that the conclusion of a written security agreement with the grantor automatically constitutes authorization.

10. Paragraphs 3 and 4, with which deal with amendment notices, are derived from the basic principle in paragraph 1. Paragraph 2 requires a new authorization from the grantor only for amendment notices that may affect the rights of the grantor. Thus, a new authorization is needed for the registration of an amendment notice that adds encumbered assets not included in a security agreement or any amendments to it. A new authorization from the grantor is not needed if the amendment notice merely seeks to add assets that were not described, inadvertently

or otherwise, in the initial registered notice but were covered by the security agreement or any amendments to it. In addition, there is no need to register an amendment notice or obtain the authorization of the grantor with respect to “additional assets” that are proceeds of encumbered assets described in a prior registered notice if the proceeds are: (a) of a type that fall within the existing description (for example, the description covers “all tangible assets” and the grantor exchanges one type of tangible asset for another (see Secured Transactions Guide, rec. 39); or (b) “cash proceeds” (money, receivables, negotiable instruments or funds credited to a bank account) (see art. 17, para. 1).

11. Under paragraph 2, the grantor’s authorization must also be obtained for the registration of an amendment notice that seeks to increase the maximum amount for which the security right to which the registration relates may be enforced. This provision only applies in systems that require this information to be set out in the security agreement and in the registered notice. A new authorization from the grantor would not be needed for an amendment notice that merely seeks to correct an error in the maximum amount stated in the initial notice to bring it into line with the amount actually set out in the initial security agreement since the grantor’s authorization would already have been given. It should be noted that the registration of an amendment notice takes effect only from the time when the registration of the amendment notice (not the initial notice) becomes effective (see article 14, para. 1).

12. Where an amendment notice seeks to add a new grantor, paragraph 3 requires the additional grantor’s authorization to be obtained in line with the general principle in paragraph 1 and in the same manner. The bracketed wording in paragraph 3, which will be necessary only if the enacting State implements option A or option B of article 27 below, creates an exception to the requirement in paragraph 3. Where the new grantor is a transferee of an encumbered asset from the original grantor and the purpose of the amendment is to enable the secured creditor to protect its priority status as against claimants that acquire rights in the encumbered asset from that transferee the authorization of the grantor would not be necessary. Likewise, where the grantor’s identifier changes after the registration, the grantor’s authorization is not required for an amendment notice to disclose the new identifier of the grantor (see art. 26).

#### **Article 4. One notice sufficient for security rights under multiple security agreements**

13. Article 4 is based on recommendations 68 of the Secured Transactions Guide (see chap. IV, para. 101) and 14 of the Registry Guide (see paras. 125 and 126). It confirms that a single registered notice is sufficient to achieve the third-party effectiveness of security rights arising under multiple security agreements [between the parties identified in the notice] [with the same secured creditor]. This rule applies regardless of whether the agreements are related to one another or are separate and distinct, and regardless of whether the registration relates to security rights in the grantor’s current assets or assets in which the grantor acquires rights only after the registration. This is consistent with notice registration system contemplated by the draft Model Law, which requires a registrant to submit a standardized “notice” in the prescribed form rather than the underlying security agreements giving rise to the security rights to which their registrations relate or tender these for scrutiny.

14. A registration is effective only to the extent that the information in a registered notice accurately reflects the terms of any security agreement, as revised (see Registry Guide, para. 126). If, for example, the parties enter into a security agreement that covers assets not covered by the description in a previously registered notice, a new initial notice (or an amendment to an existing notice) will be needed for the security right in the additional assets to be effective against third parties, and it will take effect against third parties only from the time of its registration (see art. 14, para. 1).

#### **Article 5. Advance registration**

15. Article 5 is based on recommendations 67 of the Secured Transactions Guide (see chap. IV, paras. 98-100) and 13 of the Registry Guide (see paras. 122-124). It confirms that a registration may be made even before the conclusion of a security agreement [between the parties identified in the notice] [to which the notice relates], or the creation of any security rights contemplated by any such agreement. Article 5 is consistent with article 4, according to which the underlying security documentation is not required to be deposited with the Registry or tendered for scrutiny in the type of notice registration system contemplated by the draft Model Law. It is also consistent with article 8, subparagraph (a), of the draft Model Law, which provides that a security agreement may cover future assets (see art. 2, subpara. (m)).

16. Registration does not create, and is not necessary for the creation of, a security right (see Registry Guide, paras. 20 and 123). Accordingly, advance registration does not protect a secured creditor against a competing claimant, other than a competing secured creditor that acquires rights in encumbered assets before the security agreement with the secured creditor that made an advance registration is actually entered into and the other requirements for creation are satisfied. However, where the competing claimant is another secured creditor, advance registration will ensure its priority regardless of the order of creation of the competing security rights, provided that priority among them is governed by the general first-to-register rule.

17. If a security agreement is never concluded between the parties, or covers different assets than those described in the registered notice, advance registration may have a negative impact on the ability of the person identified as the grantor to obtain financing against or dispose of its assets. Accordingly, article 21 below provides for a procedure to enable the grantor to obtain the compulsory amendment or cancellation of a registered notice that does not accurately reflect their relationship.

### **Section B. Access to registry services**

#### **Article 6. Public access**

18. Article 6 is based on recommendations 54, subparagraph (c), (f) and (g), and 55, subparagraph (b), of the Secured Transactions Guide (see chap. IV, paras. 25-28) and 4, 6 and 9 of the Registry Guide (see paras. 95-97 and 103-105).

19. Paragraphs 1 and 3 confirm that the Registry is public in the sense that any person is entitled to register a notice of a security right or search the registry record subject only to meeting the conditions governing access. With one qualification, the conditions are the same for both types of service. The user must use the form of notice or search request prescribed by the registry (which includes both a paper and an electronic form or screen) and pay or make any arrangements to pay any fees prescribed by the Registry for the relevant service (if payment of a fee is required; see art. 34). The one qualification relates to the requirement in subparagraph 1(b) for a user to identify itself to the Registry in the prescribed manner. This requirement only applies to users that submit a notice for registration as opposed to a search request. This requirement is aimed at assisting the person identified in a registered notice as the grantor to determine the identity of the registrant in the event that the grantor did not authorize the registration (see Registry Guide, para. 96). This consideration must be balanced against the need to ensure efficiency and speed in the registration process. Accordingly, the evidence of identity required of a registrant should be that which is generally accepted as sufficient in day-to-day commercial transactions in the enacting State (for example, a driver's licence or other state-issued official document).

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

21. In order to facilitate access to registry services, and avoid their unnecessary refusals, the Registry should be designed to accept all modes of payment in common commercial use in the enacting State. However, if cash payments are allowed, controls will need to be introduced for registry staff access to cash payments; and, in the case, of other modes of payment, controls will be necessary with respect to the registry staff use of financial information submitted by clients (see Registry Guide, para. 138). In addition, users should be given the option of setting up a pre-payment account with the Registry that enables them to deposit funds on an ongoing basis to pay for their ongoing requests for services. This would facilitate more efficient access by frequent users (such as financial institutions, automobile dealers, lawyers and other intermediaries).

22. In order to protect secured creditors and third parties against the risk of the registration of amendments and cancellations not authorized by the secured creditor paragraph 2 provides for security requirements to be specified by the Registry (if it is a governmental authority and, otherwise, by the governmental authority supervising the Registry). For example, the system might require registrants to set up a password-protected account with the Registry when submitting an initial notice, and then require all amendments and cancellations to be submitted through that account. The registrant will thus not be able to amend or cancel registered

notices that do not appear in its own account. Alternatively (or in addition), the system might be designed to provide a unique confidential user code to registrants upon registration of an initial notice and then require entry of that code on all amendment and cancellation notices submitted for registration (see art. 22).

#### **Article 7. Rejection of the registration of a notice or a search request**

23. Article 7 is based on recommendations 8 and 10 of the Registry Guide (see paras. 97-99 and 106). Paragraph 1 obligates the Registry to reject the registration of a notice if no information, or only illegible information, has been entered in one or more of the required designated fields in a notice submitted for registration. As all required fields must be completed legibly for a registered notice to be effective, this provision is designed to ensure that the information in submitted notices that clearly do not satisfy the minimum requirements for effectiveness are never entered into the registry record. On the other hand, even if all required fields in a submitted notice contain legible information and the notice is therefore accepted for registration, it does not follow that the registration is effective since the information that is entered, while being legible, may be erroneous or incomplete.

24. Paragraph 2 obligates the Registry to reject a search request if no information, or only illegible information, has been entered in one of the designated fields for entering a search criterion. Since searchers are entitled to search by either or both of the identifier of the grantor and the registration number assigned to the initial notice (see art. 23), it is sufficient if legible information is entered into at least one of the search criterion fields. That having been said, the fact that at least one of the search criteria fields contains legible information does not ensure that the search result will be accurate since the criterion entered by the searcher may be erroneous or incomplete. To avoid any arbitrary decisions on the part of the Registry, paragraph 3 clarifies that the Registry may not reject the registration of a notice or search request where registrant or searcher satisfies the access conditions set out in paragraphs 1 and 2.

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

#### **Article 8. No verification by the Registry**

26. Article 8 is based on recommendations 54, subparagraph (d), and 55, subparagraph (b), of the Secured Transactions Guide (see chap. IV, paras. 15-17 and 48) and 7 of the Registry Guide (see paras. 100 and 102). It obligates the Registry to maintain the identity information submitted by registrants in compliance with

article 6, subparagraph 1(b). It should be noted that, while this information does not form part of the public or archived registry record, it nonetheless must be preserved by the Registry in a manner that enables it to be retrieved in association with the registered notice to which it relates. In order to facilitate the time and cost efficiency of the registration process, article 8 goes on to provide that the Registry may not require verification of the identity information provided by a registrant under article 6, subparagraph 1(b).

## **Section C. Registration of a notice**

### **Article 9. Information required in an initial notice**

27. Article 9 is based on recommendations 57 of the Secured Transactions Guide (see chap. IV, para. 65) and 23 of the Registry Guide (see paras. 157-160). It sets out the items of information required to be entered in the appropriate designated fields in an initial notice submitted to the Registry for registration. As each of these required elements is the subject of separate specific articles below, the reader is generally referred to the commentary on the relevant articles. It should be noted, however, that a notice might relate to more than one grantor or secured creditor, and the required information should be entered separately for each grantor or secured creditor.

28. An enacting State may require “additional information” (such as the birth date of the grantor or an identification number issued by the enacting State) to be entered to assist in uniquely identifying a grantor where there is a risk that many persons may have the same name (see bracketed text in art. 9, subpara. (a)). However, this additional information does not constitute a separate and independent search criterion. Accordingly, if this approach is adopted, the form of notice prescribed by the enacting State should provide a separate designated field for entering this “additional information”. The enacting State should also enact provisions specifying the type of additional information to be included. It should also specify that this additional information is required in the sense that it must be entered in the relevant field for a notice to be accepted by the Registry (on all these points, see Registry Guide, rec. 23, subpara. (a)(i), and paras. 167-169, 171, 181-183, 226, as well as examples of forms in Annex II).

29. It should also be noted that subparagraphs (d) and (e) appear within square brackets, as their inclusion depends on the decision of the enacting State with respect to the options in article 15 below and article 6, subparagraph 3(e), of the draft Model Law (see paras. 47-49 and commentary to art. 6, subpara. 3(e); see also Registry Guide, paras. 199-204).

### **Article 10. Grantor identifier**

30. Article 10 is based on recommendations 59-60 of the Secured Transactions Guide (see chap. IV, paras. 68-74) and 24 and 25 of the Registry Guide (see paras. 161-180). It provides that the identifier of the grantor is its name. It then sets out separate rules for determining the name of the grantor depending on whether the grantor is a natural person or a legal person or other entity.

31. If the grantor is a natural person, paragraph 1 provides that the grantor's name is the name that appears in the official document specified by the enacting State as the authoritative source. Since not all grantors may possess a common official document, the enacting State will need to specify alternative official documents as authoritative sources and specify the hierarchy of authoritativeness among them (for examples of possible approaches, see Registry Guide, paras. 163-168).

32. In view of the conflict-of-laws provisions of the draft Model Law (see, for example, art. 79), the law of the enacting State could apply to a security right created by a foreign grantor. Thus, if the enacting State requires the entry of a State-issued identity or other official number to uniquely identify a grantor, it will be necessary for the enacting State to address cases in which the grantor is not a citizen or resident of the enacting State, or for any other reason has not been issued an identification number. The enacting State might, for example, provide that the number of the grantor's foreign passport or the number in some other foreign official document is a sufficient substitute (see Registry Guide, para. 169).

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

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

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

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

#### **Article 11. Secured creditor identifier**

37. Article 11 is based on recommendations 57, subparagraph (a), of the Secured Transactions Guide (see chap. IV, para. 81) and 27 of the Registry Guide (see paras. 184-189). It largely seeks to replicate the rules set out in article 10 concerning what constitutes the identifier of the grantor. Unlike article 10, however, article 11 provides that the registrant may also enter the name of a representative of the secured creditor (e.g. a service provider or an agent of a syndicate of lenders). This approach is intended to protect the privacy of the secured creditor. It is based on the assumption that it does not have a negative impact on the rights of the

grantor, who would typically know the identity of the actual secured creditor from the security agreement and other dealings with the actual secured creditor) or third parties, as long as the representative is authorized to act on behalf of the actual secured creditor (see Registry Guide, paras. 186 and 187). It should also be noted that, as registration does not create the security right, the fact that the name of a representative is entered into a notice does not make the representative the actual secured creditor.

#### **Article 12. Description of encumbered assets**

38. Article 12 is based on recommendations 62 of the Secured Transactions Guide (see chap. IV, paras. 82-86) and 28 of the Registry Guide (see paras. 190-192). The test for the adequacy of a description contained in a registered notice in paragraph 1 consciously parallels the test for the adequacy of a description in a security agreement (see art. 9). In any case, a description in a registered notice need not be identical to the description in any related security agreement so long as it satisfies the requirement in paragraph 1 that it reasonably allows identification of the relevant encumbered assets. On the other hand, a description in a registered notice that satisfies this test will not make a security right effective against third parties, if the description exceeds the description in any related security agreement, since the requirements for the effective creation of a security right will not have been satisfied.

39. Paragraph 2 confirms that a description in a registered notice that refers to all of the grantor's movable assets or to all of the grantor's assets within a specified generic category (for example, all receivables owing to the grantor) satisfies the requirement in paragraph 1 that the description reasonably allow identification of the encumbered assets. It follows that a generic description will be sufficient even if any related security agreement only covers a specific asset within that broad generic category (for example, the description in the registered notice refers to all "tangible assets of the grantor", whereas the security agreement only covers a specific tangible asset). However, the grantor is entitled, pursuant to article 21, paragraph 1, to compel the secured creditor to register an amendment notice that narrows the description of the assets in the registered notice. Further, the efficacy of the registration in this scenario is dependent on the authorization of the grantor pursuant to article 3; it follows that, if the grantor did not authorize a registration covering all assets within the specified category, but only a specific asset within that category, the registration will not be effective. It should be noted that reference to an asset in a registered notice does not imply or represent that the grantor presently or in the future will have rights in the asset.

40. The secured transactions laws of some States adopt specific alphanumerical description requirements ("serial number") for specified classes of high-value assets that have a significant resale market. In States that adopt this approach, entry of the serial number in its own designated field is required, in the sense of being necessary to achieve the third-party effectiveness and priority of the security right as against specified classes of third parties that acquire rights in the asset. States that are interested in adopting this approach are referred to the discussion in the Registry Guide (for the organization of the registry record to permit searches by serial number, see paras. 131-134; for the description of proceeds in a notice, see

paras. 193-194; for the consequence of an error in a serial number, see para. 212; and for a search by serial number, see para. 266).

41. If proceeds of an encumbered asset are in the form of cash or equivalent types of asset and are not encompassed by the description of the encumbered assets in a registered notice, the secured creditor must amend its registered notice to add a description of the proceeds within a short period of time after the proceeds arise in order to preserve the third-party effectiveness and priority of its security right in the proceeds as from the date of the initial registration (see art. 17, para. 2). An amendment is necessary because otherwise there would not be a registered notice that would provide a description of the assets constituting the proceeds (see Registry Guide, paras. 195-197).

### **Article 13. Language of information in a notice**

42. Article 13 is based on recommendation 22 of the Registry Guide (see paras. 153-156; the Secured Transactions Guide includes a discussion of this matter in chapter IV, paras. 44-46, but does not include a recommendation). Paragraph 1 requires the enacting State to specify the language or languages in which the information contained in notices submitted for registration must be expressed. Typically, the enacting State would require registrants to use its officially recognized language or languages. Information that needs to be translated in the officially recognized language or languages does not include the name and addresses of the grantor and the secured creditor or its representative and is essentially limited to the description of the encumbered assets (as the other items of information required to be entered in a notice may be reflected by numbers). Where such information is not expressed in the required language or languages, the registration of the notice would be ineffective or ineffective if it would seriously mislead a reasonable searcher (see art. 25, para. 4).

43. Paragraph 2 requires all information in a notice to be in the character set to be prescribed and publicized by the Registry (where the Registry is a governmental authority and otherwise the government authority supervising the Registry). Where the names and addresses of the grantor and secured creditor or its representative are expressed in a character set different from the character set used in the language or languages recognized by the enacting State, guidance will need to be given on how the characters are to be adjusted or transliterated to conform to the language of the registry (see Registry Guide, para. 155). If the information is not in the character set prescribed and publicized by the Registry, the notice will be rejected as illegible under article 7, subparagraph 1(b) (for the same rule with respect to search requests, see art. 7, subpara. 2(b)).

### **Article 14. Time of effectiveness of the registration of a notice**

44. Article 14 is based on recommendations 70 of the Secured Transactions Guide (see paras. 102-105) and 11 of the Registry Guide (see paras. 107-112). Paragraph 1 provides that the registration of an initial or amendment notice submitted to the Registry becomes effective only once the information in the notice is entered into the public registry record so as to be available to searchers. If the registry system is designed to enable users to electronically submit information in a notice to the Registry directly without the intervention of registry staff, there will be little or no delay between the time when the information in a notice is submitted to the Registry

and the time when it becomes available to searchers. But in systems that permit or require the use of paper notice forms, there will inevitably be some time lag since the registry staff must enter the information on the paper notice form into the registry record on behalf of registrants. In view of the importance of the timing and order of registration to the third-party effectiveness and priority of a security right, paragraph 2 obligates the Registry to enter the information into the registry record without delay after the notice is submitted and in the order in which it was submitted. For the same reason, paragraph 3 requires the date and time of effectiveness of the registration to be set out in the registry record and made available to searchers.

45. Paragraph 4 deals with the time of effectiveness of the registration of a cancellation notice. Option A reflects option A of article 31, which obligates the Registry to remove information in a registered notice from the public registry record, and archive it, upon registration of a cancellation notice. Accordingly, option A of paragraph 4 provides that the registration of a cancellation notice becomes effective once the information in the registered notices to which the cancellation notice relates is no longer publicly searchable. Option B of paragraph 4 reflects the “open-drawer approach” (in which all information in the registry record is available to searchers and the Registry has no authority to do anything but accept, retain and disclose all information submitted) enshrined in option B of article 31. Accordingly, it provides that the registration of a cancellation notice becomes effective once the information in the registered notices to which the cancellation notice relates is entered into the registry record so as to be accessible to searchers.

46. Option A and option B of paragraph 5 require the Registry to maintain a record in its archives of the date and time of effectiveness of the registration of the cancellation notice, reflecting the approaches taken in option A and option B of paragraph 4 respectively.

#### **Article 15. Period of effectiveness of the registration of a notice**

47. Article 15 is based on recommendations 69 of the Secured Transactions Guide (see chap. IV, paras. 87-91) and recommendation 12 of the Registry Guide (see paras. 113-121, 240 and 241). It offers enacting States a choice of three different approaches to the determination of the initial period of effectiveness (or duration) of the registration of a notice. If option A is enacted, an initial notice (and any associated amendment notices) would be effective for the period of years stipulated by the enacting State. If option B is enacted, registrants would be permitted to choose the desired period of effectiveness for themselves. If option C is enacted, registrants would likewise be permitted to choose the period of effectiveness not to exceed a maximum number of years stipulated by the enacting State.

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

49. If option B or option C is enacted, the period of effectiveness of a registered notice is a mandatory component of the information required to be included in a

notice submitted to the registry (see art. 9, subpar. (d)). States that adopt either of these options would also need to indicate on the prescribed notice form how registrants must enter the desired period of effectiveness. The notice form might be designed to enable registrants to simply enter the desired number of whole years from the date of registration. Alternatively, the notice form might permit registrants to enter the specific day, month and year on which the registration is to expire unless renewed.

#### **Article 16. Obligation to send a copy of a registered notice**

50. Article 16 is based on recommendations 55 subparagraphs (c), (d) and (e) of the Secured Transactions Guide (see chap. IV, paras. 49-53) and 18 of the Registry Guide (see paras. 145-149).

51. Paragraph 1 obligates the Registry to send a copy of a registered (initial, amendment or cancellation) notice to the person identified in the notice as the secured creditor without delay after the registration becomes effective (the Registry cannot know or have to determine the identity of the actual secured creditor). This is important for the grantor to be able to protect its rights where the registration was not authorized at all or only partially (see art. 21). It is also important for the person identified in a notice as the secured creditor to be able to protect its position where an amendment or cancellation notice was registered by error (see Registry Guide, paras. 245-248) or without the secured creditor's authorization (see art. 22; as to the liability of the Registry for failure to send a copy of a notice, see art. 33).

52. Paragraph 2 obligates the person identified as the secured creditor in a registered notice sent to it by the Registry pursuant to paragraph 1 to forward it to the person identified in the notice as the grantor. The secured creditor has to comply with this obligation within the period of time specified by the enacting State after it receives the notice.

53. [Paragraph 3 clarifies that compliance by the secured creditor with its obligation under paragraph 2 should not be a precondition to the effectiveness of the registration but rather should result in only a nominal penalty and liability to compensate the grantor for any actual damage caused by the non-compliance.]

### **Section D. Amendments and cancellations**

#### **Article 17. Right to register an amendment or cancellation notice**

54. Article 17 is based on recommendations 73 of the Secured Transactions Guide (see chap. IV, paras. 110-116) and 19, subparagraph (a), of the Registry Guide (see paras. 150 and 225-244). Paragraph 1 gives the person identified in an initial notice as the secured creditor the right to register a related amendment or cancellation notice at any time (this right is given to the registrant as the Registry cannot know or have to determine the identity of the actual secured creditor). Paragraph 2 provides that after an amendment notice changing the secured creditor identifier has been registered, only the new secured creditor is entitled to register an amendment or cancellation notice. If more than one amendment has been registered, only the person identified in the latest registered notice has the right to register an amendment or cancellation notice. It should be noted that article 17 should be read

in combination with the discussion of article 22 below on the effectiveness of a registered amendment or cancellation notice not authorized by the secured creditor.

#### **Article 18. Information required in an amendment notice**

55. Article 18 is based on recommendation 30 of the Registry Guide (see paras. 221-224; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 provides that an amendment notice must contain in the designated field the registration number assigned by the Registry to the initial notice to which the amendment relates. This ensures that the amendment will be associated in the registry record with the initial notice so as to be retrieved and included in a search result (see arts. 23, subpara. (b), and 29, para. 1, below).

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

#### **Article 19. Global amendment of secured creditor information**

57. Article 19 is based on recommendation 31 of the Registry Guide (see para. 242; the Secured Transactions Guide does not contain an equivalent recommendation). It addresses the scenario where there is a change in the identifier or address or both of the person identified in multiple registered notices as the secured creditor. Its purpose is to make it possible for the person identified in multiple registered notices as the secured creditor (option A) or for the Registry on the application of that person (option B) to register a single global amendment notice. The secured creditor's name and/or, address may change either as a result of a name or address change (e.g. merger with another company), or as a result of an assignment of the secured obligation.

58. As provided in article 18, the amendment must contain in the relevant field the registration number and the new name, address or both. In addition, as provided in article 29, subparagraph 2(b), the Registry must organize the registry record in a manner that enables the retrieval of all registered notices according to secured creditor identifier. Moreover, as provided in article 6, paragraph 2, a person that submits a global amendment notice or requests the Registry to make such a global amendment must satisfy the secured access requirements to be specified by the enacting State. This should reduce the risk of the registration of unauthorized global amendments.

#### **Article 20. Information required in a cancellation notice**

59. Article 20 is based on recommendation 32 of the Registry Guide (see paras. 243 and 244; the Secured Transactions Guide does not contain an equivalent recommendation). It requires a cancellation notice to contain in the designated field the registration number assigned by the Registry under article 29, paragraph 1, to the initial notice to which the cancellation relates. The registration number is the

only item of information required to be included in a cancellation notice form (see Registry Guide, Annex II, example of cancellation notice form).

60. As already noted (see paras. 55 above and 100 below), the purpose of assigning a registration number to an initial notice is to ensure that all related amendment and cancellation notices are associated in the registry record with the initial notice. This ensures that the effect of the registration of a cancellation notice extends to the information in all registered notices containing that number. To minimize the risk of inadvertent cancellations, the prescribed cancellation notice form should be designed to include a note alerting the secured creditor to the legal consequences of a cancellation (see Registry Guide, Annex II, example of cancellation notice form; for the effectiveness of a cancellation notice not authorized by the secured creditor, see paras. 66-72 below).

#### **Article 21. Compulsory registration of an amendment or cancellation notice**

61. Article 21 is based on recommendations 72 of the Secured Transactions Guide (see paras. 260-263) and 33 of the Registry Guide (see paras. 260-263). It should be read in conjunction with article 3, which requires the person identified as the grantor in a registered notice to authorize its registration.

62. Paragraph 1 obligates the secured creditor to register an amendment notice, if the information in a registered notice exceeds the scope of the grantor's authorization. This is the case, for example, where the description of the encumbered assets in the registered notice is broader than that included in the security agreement and the broader description is not otherwise authorized (see subpara. 1(a)). An amendment notice must also be registered if the security agreement to which a registered notice relates has been revised so as to make the information in the registered notice excessively broad and the grantor has not otherwise authorized the revised registered notice. For example, the parties have agreed to delete certain assets from the description of the encumbered assets in the original security agreement (see subpara. 1(b)). States that implement article 9, subparagraph (c), will also need to include in subparagraph 1(b) a requirement for the registration of an amendment notice in the case of a reduction of the maximum amount for which the security right may be enforced.

63. Paragraph 2 obligates the secured creditor to register a cancellation notice where the registration of an initial notice was not authorized by the grantor or the grantor has withdrawn its authorization and no security agreement has been entered into between the parties (see subparas. 2(a) and 2(b)). A cancellation notice must also be registered, if the obligation secured by the security right to which the registered notice relates has been extinguished. It should be noted that, under article 11bis, a security right is extinguished upon full payment or other satisfaction of the secured obligation[, provided that there is no further commitment by the secured creditor to extend any further secured credit] (see subpara. 2(c)). Paragraph 3 provides that the secured creditor may not charge any fee for complying with its obligation[, except if ...].

64. Normally a secured creditor will comply with its obligation under paragraphs 1 and 2 within a short period of time after it became aware that any of the relevant conditions were met. In the event it does not, any liability of the secured creditor is left to the law of the enacting State on liability for violations of

statutory obligations. However, to protect the grantor, paragraph 4 gives the grantor the right to send at any time (i.e. without having to wait for the secured creditor to comply) a formal written request. If the secured creditor does not comply with the grantor's request within the time period specified by the enacting State, paragraph 5 contemplates that the enacting State will need to establish a summary judicial or administrative procedure and identify the relevant court or other authority to enable the grantor to seek an order compelling registration of the appropriate notice. Depending on local institutional considerations, the enacting State may decide to use an existing administrative or judicial summary procedure or it may decide to set up a special new procedure administered, for example, by the Registrar or registry staff. As noted in the Registry Guide (see para. 262), the process should be speedy and inexpensive while also incorporating appropriate safeguards to protect the secured creditor against an unwarranted demand by the grantor (for example, through a requirement to notify the secured creditor of a demand submitted to the relevant authority).

65. Once an order for registration has been issued pursuant to the procedure established by the enacting State under paragraph 5, paragraph 6 contemplates that the appropriate notice must be registered by the Registry upon receipt of a copy of the order (option A), or by the judicial or administrative officer who issued the order upon presenting a copy of the order to the Registry (option B). Where the officer charged by the enacting State with administering the process is the Registrar or a member of the Registry staff, it would be sufficient for the enacting State to simply provide that the Registry may make the relevant registration upon its issuance of the order.

#### **Article 22. Amendment or cancellation notices not authorized by the secured creditor**

66. Article 22 is a new provision and is not based on a recommendation of the Secured Transactions Guide or the Registry Guide. However, the options set out in article 22 are based on the discussion of the matter in the Registry Guide (see paras. 249-259). Article 22 addresses the effectiveness of a registered amendment or cancellation notice where the registration was not authorized by the secured creditor. An unauthorized registration may occur, for example, as a result of fraud or error by a third party, or even a member of the registry staff (for corrections of errors by the Registry, see art. 32). The issue is whether conclusive effect should be given to the registered notice in a priority competition with a competing claimant.

67. Under option A, the registration of an amendment or cancellation notice is effective regardless of whether or not it is authorized by the person identified as the secured creditor in the registered notice to which the amendment or cancellation relates. If a State adopts this approach, it would need to put in place security procedures in order to limit the risk of unauthorized registrations (see art. 6, para. 2).

68. Option B is a variation of option A in the sense that it places an important qualification on the extent of the effectiveness of an unauthorized amendment or cancellation. The priority of the security right to which the unauthorized registration relates is preserved as against the right of a competing claimant over whom it would have had priority but for the registration. This qualification is predicated on the theory that, to award priority to a competing claimant that would have been subordinated but for the unauthorized registration, would result in an unjustified

windfall. The words in square brackets in option B are directed at the scenario where the competing claimant is a secured creditor that acquired its security right under a security agreement that was entered into before the unauthorized registration of the cancellation or amendment notice but that only made its security right effective against third parties after the unauthorized registration. The competing claimant in this scenario would have been subordinated at the time of the unauthorized registration, since it had not yet made its right effective against third parties.

69. If a State decides to adopt option A or option B, it would need to implement option B of article 31 below, which obligates the Registry to remove information in a registered notice from the public registry record, and archive it, upon the expiry of its period of effectiveness or upon registration of a cancellation notice.

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

71. Option D is a variation of option C in the sense that it places an important qualification on the general rule in option C. It provides that the unauthorized registration is nonetheless effective as against a competing claimant whose right was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, and who did not have knowledge that the registration was unauthorized at the time it acquired its right. This qualification differs from the qualification in option B above insofar as it requires the competing claimant that would have priority if the registration were treated as effective to provide factual evidence that it actually searched and relied on the registry record prior to acquiring its right.

72. If a State decides to adopt option C or option D (that is, an “open drawer system”), it would need to implement option B of article 31 below, which obligates the Registry to remove information in a registered notice from the public registry record, and archive it, only upon the expiry of its period of effectiveness. The cancellation notice and the registered notices to which it relates would need to remain in the public registry record in order for searchers to know whom they should contact to verify whether the cancellation was authorized.

*[Note to the Working Group: The Working Group may need to consider what constitutes an unauthorized registration (at least for States that adopt option A or B). In this regard, the Working Group may wish to note that it is not uncommon for secured creditors to delegate authority to register amendments or cancellations to third-party service providers. In this context the question arises whether, if the third party erroneously or inadvertently registers an amendment or cancellation notice, this would constitute an unauthorized registration. Similarly, the question arises whether, if the third party acts maliciously or fraudulently, this would be an unauthorized registration or the secured creditors should bear the risk of dishonesty by third parties they authorize to effect registrations on their behalf.]*

## Section E. Searches

### Article 23. Search criteria

73. Article 23 is based on recommendation 54, subparagraph (h), of the Secured Transactions Guide (see chap. IV, paras. 31-36) and 34 of the Registry Guide (see paras. 264-265). It sets out the two criteria according to which any person may conduct a search of the public registry record.

74. Under subparagraph (a), the first and principal search criterion is the identifier of the grantor. The identifier of the grantor is its name, determined according to the rules set out in article 10. If an enacting State decides to require “additional information” to be entered in a separate field to assist in uniquely identifying a grantor, this additional information does not constitute an alternative search criterion (see art. 9, subpara. (a)). Rather it will simply appear as additional information in a search result.

75. Under subparagraph (b), the registration number assigned to the initial notice under article 29, paragraph 1, constitutes an alternative search criterion. A search by registration number gives secured creditors an efficient means of identifying and retrieving a registered notice for the purposes of registering an amendment or cancellation notice. However, searches by registration number generally will not be conducted by third parties as they typically will not know the relevant registration number.

76. If the enacting State provides for the entry of the serial number of an asset in a separate designated field (see para. 40 above), entry of this serial number in its own designated field in the initial or amendment notice is required in the sense of being necessary to achieve the third-party effectiveness and priority of the security right as against specified classes of competing third-party claimants. If a State decides to adopt this approach, it would need to list the serial number of the asset as an additional search criterion in this article. It would also need to deal with a number of issues, including what constitutes the correct serial number, design the registry system so that registered notices can be searched and retrieved by serial number and third-party effectiveness and priority achieved by serial number registration (see Registry Guide, para. 266).

77. To allow the registration of global amendment notices, as provided in article 17, the Registry must organize the registry record to permit registered notices to be identified and retrieved by reference to the relevant secured creditor. However, for public policy reasons relating to privacy and confidentiality, the name or other identifier of the secured creditor should not be an available criterion for general public searching (see Secured Transactions Guide, chap. IV, para. 81 and Registry Guide, para. 267).

### Article 24. Search results

78. Article 24 is based on recommendation 35 of the Registry Guide (see paras. 268-273; the Secured Transactions Guide does not contain an equivalent recommendation). Paragraph 1 sets out the required content of search results provided by the Registry in response to a search request. The search result must first indicate the date and time when the search was performed.

79. No reference is made to a “currency date” indicating that the search result includes only information contained in notices that were registered as of that date (as opposed to the actual date of the search result). The reason is that registration becomes effective when the information in a notice submitted to the Registry has been entered into the registry record so as to be accessible to searchers (see art. 14, para. 1). Thus, the “currency date” is the actual date of the search (see Registry Guide, para. 273).

80. With respect to the substantive content of the search result, paragraph 1 contemplates that an enacting State may enact one of two options. The difference between the two options is whether the system should be designed to retrieve notices that match the search criterion (grantor name or registration number) exactly or the grantor name closely (close matches do not apply to registration numbers). What constitutes a “close match” under option B of paragraph 1 is not a free-floating concept but rather depends on the current close-match search programme or logic adopted by the enacting State.

81. Options A and B should be read in conjunction with article 25, paragraph 1, which provides that an error in the grantor identifier entered in a notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor’s correct identifier as the search criterion. The result of applying this test differs depending on whether option A or B of article 24, paragraph 1, is adopted. If option A is adopted, a registration is ineffective if the registrant fails to enter the correct name of the grantor in the notice. But if option B is adopted, the registration of a notice that contains an error in the grantor’s name would still be effective as long as the name that is entered is a sufficiently close match to result in the notice being retrieved on a search using the grantor’s correct name.

82. Paragraph 2 obligates the Registry to issue an official search certificate setting out a search result on the request of a searcher. Paragraph 3 minimizes the administrative burden on the Registry in this respect by providing that a search certificate may take the form of a printed search result issued by the Registry. Paragraph 3 also facilitates the use of search results by providing that they are proof of their contents in the absence of evidence to the contrary.

## **Section F. Errors and post-registration changes**

### **Article 25. Registrant errors in required information**

83. Article 25 is based on recommendations 58 and 64-66 of the Secured Transactions Guide (see chap. IV, paras. 66-74, and 82-97) and 29 of the Registry Guide (see paras. 205-220). Its overall aim is to provide guidance on when the effectiveness of a registration may be challenged owing to errors or omissions in the information in registered notices.

84. Paragraph 1 addresses errors in the grantor identifier set out in a registered notice. It provides that: (a) if the registrant enters the name of the grantor in accordance with article 10 above, the effectiveness of the registration cannot be challenged on the ground of an error in the grantor name; and (b) if the registrant

makes an error, the registration may still be effective if the notice would be retrieved by a search using the correct grantor identifier.

85. Paragraph 4 deals with errors or omissions in the other items of information required to be set out in registered notices under article 9, subparagraphs (a)-(c). It provides that an error does not make a registration ineffective unless it “would seriously mislead a reasonable searcher.” This language implies an objective test in the sense that a person challenging the registration need not show that any person was actually misled by the error. It is sufficient to show that a reasonable person hypothetically would have been misled.

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

87. Paragraph 6 creates a special test for assessing the impact of errors made by a registrant in two instances. The first arises where an enacting State allows a registrant to self-select the period (duration) of effectiveness of the registration of a notice pursuant to options B or C of article 15 (and art. 9, subpara. (d)). The second arises where the enacting State requires a registrant to indicate the maximum sum for which a security right may be enforced pursuant to article 9, subparagraph (e). In these two cases, an error in the entry of the information does not render a registration ineffective even if the error would be seriously misleading from the perspective of an abstract reasonable searcher. Rather, the registration will be treated as ineffective only as against, and only to the extent that, the competing claimant that challenges the effectiveness of the registration shows that it was personally misled by the error (see Registry Guide, paras. 215 and 217-220). This approach may give rise to circular priority problems.

88. As observed in the commentaries on articles 12 and 23 above, some States provide for the entry of an alphanumerical asset identifier for specified classes of high-value assets that have a significant resale market. In States that adopt this approach, entry of this identifier in its own designated field in the initial notice is required in the sense of being necessary to achieve the third-party effectiveness and priority of the security right as against specified classes of competing third-party claimants. States that decide to adopt this approach would need to deal with the impact of errors in the serial number on the effectiveness of a registration. They may also wish to consider whether to provide for search results to disclose close matches.

*[Note to the Working Group, the Working Group may wish to consider the following text of paragraph 1 of article 25 for States that adopt option A of article 24, paragraph 1:*

*“An error in a grantor identifier in a registered notice does not render the registration of the notice ineffective if the information in the notice would be retrieved as an exact match by a search of the registry record using the grantor’s correct identifier as the search criterion.”*

*The Working Group may also wish to consider the following text of paragraphs 1 and 2 of article 25 for States that adopt option B of article 24, paragraph 1:*

“1. An error in a grantor identifier in a registered notice does not render the registration of the notice ineffective if the information in the notice would be retrieved as an exact match by a search of the registry record using the grantor’s correct identifier as the search criterion.

“2. An error in the grantor identifier in a registered notice does not render the registration of the notice ineffective if:

(a) The notice would be retrieved as a close match by a search of the registry record using the grantor’s correct identifier as the search criterion, and

(b) The error would not seriously mislead a reasonable searcher.”

*The Working Group may also wish to consider the words “except to the extent in seriously misled third parties that relied on the information set out in the notice, as third parties may not be misled or prejudiced (see Registry Guide, paras. 215 and 217-220).]*

#### **Article 26. Post-registration change of the grantor’s identifier**

89. Article 26 is based on recommendation 61 of the Secured Transactions Guide (see chap. IV, paras. 75-77; see also Registry Guide, paras. 226-228). It addresses the impact of a post-registration change in the identifier of the grantor (i.e. its name under art. 10) on the effectiveness of the registration of a notice. It follows that, if the grantor’s name changes after the registration of a notice, a search under the new name will not retrieve registered notices in which the grantor is identified by its old name. This poses a risk for third parties that acquire rights in the grantor’s encumbered assets after the name change.

90. To address this risk, paragraph 1 gives the secured creditor a grace period (the duration of which is to be specified by the enacting State) to register an amendment notice adding the new name of the grantor. If the amendment notice is registered before the expiry of the grace period, the security right retains whatever priority it otherwise would have as against competing claimants, even if their rights arise after the change of name but before the registration of the amendment notice.

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

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

### Article 27. Post-registration transfer of an encumbered asset

93. Article 27 is based on recommendation 62 of the Secured Transactions Guide (see chap. IV, paras. 78-80; see also Registry Guide, paras. 229-232). It addresses the impact of a post-registration transfer of an encumbered asset on the effectiveness of the registration of a notice in relation to a security right in that asset. In principle, the transferee will acquire its right subject to the security right to which the registered notice relates (see art. 29, para. 1). This creates a risk for third parties that acquire rights in the encumbered asset from the transferee: a search of the registry record by the third party under the name of the transferee will not retrieve registered notices in which the grantor is identified as the transferor. This risk is analogous to that addressed in article 26 above in relation to post-registration changes in the grantor's identifier, but, unlike article 26, article 27 does not provide a uniform rule. Rather, it gives enacting States the option to enact any one of three approaches.

94. The approach in paragraphs 1 and 2 of option A is identical to that set out in article 26 for post-registration changes in the grantor's identifier. It gives the secured creditor a grace period (the duration of which is to be specified by the enacting State) to register an amendment notice adding the transferee as a new grantor. As under article 26, the secured creditor's failure to register the amendment notice before the expiry of the grace period, or at all, does not generally prejudice the third-party effectiveness and priority status of its security right. However, its security right will be subordinated to competing security rights acquired and made effective against third parties after the encumbered asset was transferred, leased or licensed, and before the amendment notice was registered. Transferees that acquire rights during this same period also will take free of the security right.

95. Paragraph 1 of option B is similar to paragraph 1 of option A, with the important qualification that the grace period to register the amendment notice begins (not when the secured creditor acquires knowledge that the grantor has transferred the encumbered asset, as under paragraph 1, option A), but when the transfer takes place.

96. Paragraph 3 of options A and B implement recommendation 244 of the Intellectual Property Supplement. The reason for this different approach with respect to intellectual property is that, if the secured creditor would have to register an amendment notice each time intellectual property was transferred or licensed (to the extent that an exclusive licence is treated as a transfer under intellectual property law), intellectual property financing would be discouraged or become more expensive (see Intellectual Property Supplement, paras. 158-166).

97. Under paragraph 4 of options A and B (and paragraph 2 of option C), in the case of successive transfers of encumbered assets, article 27 applies to the last transfer. So, for example, where the encumbered assets are transferred from A to B, from B to C and from C to D, article 27 applies to the transfer from C to D and thus the secured creditor meant is the secured creditor of C.

98. Under paragraph 1 of option C, registration of the amendment notice is optional in the sense that the failure to register does not affect the third-party effectiveness or priority of the security right as against intervening competing claimants. This approach parallels the approach to post-registration transfers of encumbered intellectual property.

## **Section G. Organization of the Registry and the registry record**

### **Article 28. Appointment of the registrar**

99. Article 28 is based on recommendation 2 of the Registry Guide (see para. 74; the Secured Transactions Guide does not contain an equivalent recommendation). Recognizing that these matters may be dealt with differently in each State, article 28 leaves it to the enacting State to specify the authority responsible for the appointment, dismissal and supervision of the registrar. It also leaves it to the authority specified by each enacting State to determine the registrar's duties in the relevant law, decree, regulation or similar act.

### **Article 29. Organization of information in registered notices**

100. Article 29 is based on recommendations 15 and 16 of the Registry Guide (see paras. 127-130; the Secured Transactions Guide did not include an equivalent recommendation). Paragraph 1 requires the Registry to assign a unique registration number to an initial notice and associate all registered amendment or cancellation notices that contain that number with the initial notice in the registry record. These requirements aim to ensure that amendment and cancellation notices are linked to an initial notice in the registry record so as to be retrievable on a search (see arts. 18, 20 and 23).

101. Option A of paragraph 2 is offered for States that implement option A of article 24, paragraph 1. Option B of paragraph 2 is offered for States that implement option B of article 24, paragraph 1. Option A of paragraph 3 is offered for States that implement option A of article 19, above. Option B of paragraph 3 is offered for States that implement option B of article 19 above.

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

103. The enacting State will need to revise article 27 to impose additional organizational obligations on the Registry should it decide to provide for: (a) registration and searching according to serial number (see the commentary on arts. 12 and 23); (b) registration and searching according to a grantor identifier other than the name of the grantor (see paras. 40 and 76); and (c) the assignment of unique confidential numbers to secured creditors on the registration of an initial notice, and to require registrants to enter this number as a precondition to the registration of related amendment or cancellation notices (see paras. 22, 58 and 67 above).

### **Article 30. Integrity of information in the registry record**

104. Article 30, paragraph 1, is based on recommendation 17, subparagraph (a), of the Registry Guide (see para. 136; the Secured Transactions Guide does not contain an equivalent recommendation). It prohibits the Registry from unilaterally amending or removing information in the registry record except as authorized in articles 31 and 32 below.

105. Article 30, paragraph 2, is based on recommendations 55, subparagraph (f), of the Secured Transactions Guide (see chap. IV, para. 54), and 17, subparagraph (b), of the Registry Guide (see para. 137). It obligates the Registry to ensure that the information in the registry record is preserved and may be reconstructed in the event of loss or damage. In practice, this obligation requires the registry to create and maintain a backup copy of the registry record.

### **Article 31. Removal of information from the public registry record and archival**

106. Option A of article 31 is based on recommendations 74 of the Secured Transactions Guide (see chap. IV, para. 109), and 20-21 of the Registry Guide (see paras. 151-152). It requires the Registry to remove information in registered notices from the public registry record once the period of effectiveness of the notice expires or a cancellation notice is registered. If the information in “cancelled or expired notices remained publicly searchable, this might create legal uncertainty for third-party searchers, potentially impeding the ability of the grantor to grant a new security right in or deal with the assets described in the notice” (see Registry Guide, para. 151).

107. Option B of article 31 is a new provision that has been inserted to implement the “open drawer approach”, in the context of which all information in the registry record is available to searchers and the Registry is given no authority to do anything but accept, retain and disclose all information (see art. 22, options C and D).

108. Paragraph 2 requires the Registry to archive the information in registered notices removed from the public registry record under paragraph 1 in a manner that enables the information to be retrieved by the Registry in accordance with article 29. This is necessary since the information in “expired or cancelled notices may need to be retrieved in the future, for example, in order to determine the time of registration or the scope of the encumbered assets described in the notice for the purposes of a subsequent priority dispute between the secured creditor and a competing claimant” (see Registry Guide, para. 151).

109. As to the duration of the registry’s archival obligation, paragraph 2 leaves this decision to the enacting State (while cautioning that it should minimally be coextensive with the prescription period under local law for disputes arising from a security agreement).

### **[Article 32. Correction of errors by the Registry]**

*[Note to the Working Group: The Working Group may wish to note that the commentary on article 32 will be prepared once article 32 has been considered by the Working Group.]*

### **Article 33. Limitation of liability of the Registry**

110. Article 33 is based on recommendation 56 of the Secured Transactions Guide (see chap. IV, paras. 55-64; see also Registry Guide, paras. 141-144).

111. Subparagraph (a) of option A is intended to leave the issue of the liability of the Registry (or the enacting State) for loss or damage to other law of the enacting State and, if liability is foreseen by that other law, to limit that liability to the types of errors or omissions listed in option A (which may be covered by a compensation

fund that the Registry (or the enacting State) may wish to establish and pay from the registry fees). Subparagraph (b) is intended to cover the liability of the Registry in entering or failing to enter in the registry record information submitted by a registrant in a paper notice form. It is not intended to address any liability of the Registry for entering or failing to properly or completely enter information in the registry record directly submitted by a registrant electronically, since it may be impossible or very difficult for the registrant to prove that this was due to the fault of the Registry as opposed to the registrant's own error or omission. Subparagraph (c) is intended to address and limit any liability that the Registry may have under other law for loss or damage caused by a failure of the Registry to send a copy of the registered notice to the secured creditor that can then verify the accuracy and completeness of the information. Subparagraph (d) is intended to limit any liability that the Registry may have under other law for loss or damage caused by false or misleading information provided by the Registry to registrants or searchers.

112. Option B of article 33 is intended to leave any liability that the Registry (or the enacting State) may have for loss or damage caused by an error or omission in the administration or operation of the Registry to other law, and to limit it to an amount to be specified by the enacting State. Option C of article 33 is intended to exclude any liability of the Registry (or the enacting State) for an error or omission in the administration or operation of the Registry.

#### **Article 34. Registry fees**

113. Article 34 is based on recommendations 54, subparagraph (i), of the Secured Transactions Guide (see chap. IV, para. 37) and 36 of the Registry Guide (see paras. 274-280).

114. One of the key objectives of an effective and efficient secured transactions law is to enhance certainty and transparency by providing for registration of a notice in a general security rights registry (see Secured Transactions Guide, rec. 1, subpara. (f)). This objective cannot be achieved if the Registry is used as an opportunity to generate revenue, as borrowers in low-value transactions will not be able to bear the cost of registration, and borrowers in high-value transactions will be discouraged to use the Registry. Accordingly, the Secured Transactions Guide, recommends that registry fees, if any, should be set a cost-recovery level to encourage registrants and searchers to use the registry services. Following the same policy, the Registry Guide, sets forth in an indicative way three options, namely a cost-recovery option, a no-fee or fee-below cost-recovery option and an option leaving fees to be determined, in one of the two other options, not in the regulation, but in a decree to be enacted later (see Registry Guide, paras. 274-280, and rec. 36).

115. In line with the above-mentioned considerations, two options are presented in article 34. There may be other options and, in particular, a fee structure might distinguish between electronic and paper use of the registry, where the fee differential might be designed to stimulate electronic use rather than paper use in an enacting State that offers both. Irrespective of the option a State chooses to implement, it may wish to provide that the Registry may enter into an agreement with a person to establish a Registry user account to facilitate the payment of fees and the identification of the registrant. Similarly, irrespective of the option it decides to adopt, the enacting State may wish to specify the Registry fees in its

registry related act and allow the administrative authority supervising the Registry (e.g. a ministry or the central bank) to modify the fees and methods of payment by decree. This may be necessary, for example, if experience shows that one or the other fee is too low or too high, or that the method payment initially chosen is not sufficiently time- or cost-efficient. Another variant of this approach is to leave the determination or modification of Registry fees to the administrative authority supervising the Registry.

116. Option A provides for fees for all Registry services but only at a cost-recovery level or lower. This cost-recovery option has several variants, including the following. One variant is to limit fees to registration services and to provide that all searching services are free of charge. The advantage of this variant is that it will encourage and facilitate the due diligence that potential financiers have to do and reduce risks and disputes. Another variant is to limit fees to the registration of an initial notice and to provide that the registration of any subsequent notice and searching services are free of charge. This variant has the benefit of ensuring that the enacting State will receive the revenue that it desires to derive at the earliest time. In addition, this variant will remove fee issues from, and thus simplify, all subsequent transactions and searches. Moreover, this variant will encourage registrants to register cancellation notices and relieve grantors from incurring time and expense to initiate proceedings to force cancellations or amendments. Another variant for States that enact option B or C of article 15 (allowing a registrant to select the period of effectiveness) is to charge fees on a sliding scale, depending on the period selected by the registrant in an initial notice and any amendment notice that extends the period of effectiveness of a notice. This approach has the advantage of discouraging registrants from entering an inflated period in a notice out of an excess of caution (see Registry Guide, para. 277).

117. Option B is based on the assumptions that: (a) according to best practices, registries in the future will most likely be all electronic, and thus the cost of their establishment and operation should be minimal; and (b) that cost should be borne by the State, as the Registry is a key component of the public purpose of a modern secured transactions law to enhance the availability of more credit at lower cost and with greater speed and efficiency, and not simply a private benefit for grantors and secured creditors. Like option A, option B also has several variants. One variant is to offer free registration services for a limited start-up period in order to encourage acclimatization to and use of the registry system. Another variant is to charge no fee only for certain types of services (e.g., the registration of an amendment and cancellation notice, or for searching services, the registration of a notice aimed at restoring an erroneously cancelled notice or for registration of a notice aimed at preserving third-party effectiveness achieved by registration in a registry operating under prior law).