

# UNCITRAL Guide on the Implementation of a Security Rights Registry



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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL  
Guide on the  
Implementation of a  
Security Rights Registry



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# Preface

The *UNCITRAL Guide on the Implementation of a Security Rights Registry* (the “*Registry Guide*”) was prepared by the United Nations Commission on International Trade Law (UNCITRAL).

At its forty-second session, in 2009, the Commission noted with interest the future work topics discussed by Working Group VI (Security Interests) at its fourteenth and fifteenth sessions and agreed that the Secretariat could hold an international colloquium early in 2010 to obtain the views and advice of experts with regard to possible future work in the area of security interests.<sup>1</sup> The colloquium was held in Vienna from 1 to 3 March 2010. At the colloquium, several topics were discussed, including the registration of security rights in movable assets, security rights in non-intermediated securities, a model law on secured transactions, a contractual guide on secured transactions, intellectual property licensing and the implementation of UNCITRAL texts on secured transactions.<sup>2</sup>

At its forty-third session, in 2010, the Commission considered a note by the Secretariat on possible future work in the area of security interests (A/CN.9/702 and Add. 1). The note discussed all of the topics considered at the colloquium. The Commission agreed that all of them were interesting and should be retained on its future work agenda for consideration at a future session. However, in view of the limited resources available to it, the Commission agreed that priority should be given to work on the topic of registration of security rights in movable assets.<sup>3</sup> After discussion, the Commission decided that Working Group VI should be entrusted with the preparation of a text on the registration of security rights in movable assets.<sup>4</sup>

Working Group VI considered the first draft of the registry guide in November 2010. The work of the Working Group was developed through six one-week sessions.<sup>5</sup> In addition to the 60 States members of the Commission, representatives of many other States and a number of international, both governmental and non-governmental, organizations participated actively in the preparatory work.

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<sup>1</sup>*Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 313-320.

<sup>2</sup>For the colloquium papers, see [www.uncitral.org/uncitral/en/commission/colloquia/3rdint.html](http://www.uncitral.org/uncitral/en/commission/colloquia/3rdint.html).

<sup>3</sup>*Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 264 and 273.

<sup>4</sup>*Ibid.*, paras. 266-268.

<sup>5</sup>The reports of the Working Group on its work during these six sessions are contained in documents A/CN.9/714, A/CN.9/719, A/CN.9/740, A/CN.9/743, A/CN.9/764 and A/CN.9/767. During these sessions, the Working Group considered documents A/CN.9/WG.VI/WP.44 and Add. 1 and 2, A/CN.9/WG.VI/WP.46 and Add. 1-3, A/CN.9/WG.VI/WP.48 and Add. 1-3, A/CN.9/WG.VI/WP.50 and Add. 1 and 2, A/CN.9/WG.VI/WP.52 and Add. 1-6 and A/CN.9/WG.VI/WP.54 and Add. 1-6.

At its forty-sixth session, in 2013, the Commission adopted the *Registry Guide* (see annex III.A below).<sup>6</sup> Subsequently, the General Assembly adopted resolution 68/108 (see annex III.B below), in which it expressed its appreciation to UNCITRAL for the completion and adoption of the *Registry Guide*, requested the Secretary-General to publish and disseminate it and recommended that all States give favourable consideration to both the *Registry Guide* and the *UNCITRAL Legislative Guide on Secured Transactions* (the “*Secured Transactions Guide*”) when revising or adopting legislation relevant to secured transactions and to continue to consider becoming party to the United Nations Convention on the Assignment of Receivables in International Trade (2001), the principles of which were also reflected in the *Secured Transactions Guide*.

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<sup>6</sup>*Official Records of the General Assembly, Sixty-eighth Session, Supplement No., 17 (A/68/17)*, para. 191. The draft registry guide was contained in documents A/CN.9/WG.VI/WP.54 and Add. 1-4 and A/CN.9/781 and Add. 1 and 2.

# Contents

	<i>Paragraphs</i>	<i>Page</i>
Preface.....		iii
Introduction.....	1-72	1
A. Purpose of the present guide and its relationship with the <i>UNCITRAL Legislative Guide on Secured         Transactions</i> .....	1-7	1
B. Terminology and interpretation .....	8-9	4
C. Key objectives and fundamental policies of an efficient registry .....	10	7
D. Overview of secured transactions law and the role of registration .....	11-72	7
1. General.....	11	7
2. Concept of a security right.....	12-14	8
3. Creation of a security right .....	15-19	9
4. Third-party effectiveness of a security right.....	20-25	10
5. Priority of a security right .....	36-46	12
6. Extended scope of the registry.....	47-51	19
7. Registration and enforcement of security rights ..	52	21
8. Conflict-of-laws considerations.....	53-54	21
9. Notice registration.....	55-63	22
10. Coordination with specialized movable property registries.....	64-66	24
11. Coordination with immovable property registries.	67-69	26
12. International coordination among national security rights registries .....	70	27
13. Transitional considerations: applicability of a new Law to prior security rights .....	71	27
14. Legislative drafting considerations.....	72	28
I. Establishment and functions of the security rights registry..	73	29
A. General remarks .....	73-89	29
1. Establishment of the registry .....	73	29
2. Appointment of the registrar .....	74	29

	<i>Paragraphs</i>	<i>Page</i>
3. Functions of the registry . . . . .	75	29
4. Additional implementation considerations . . . . .	76-79	30
5. Registry terms and conditions of use . . . . .	80-81	31
6. Electronic or paper-based registry . . . . .	82-89	31
B. Recommendations 1-3 . . . . .	—	33
II. Access to registry services . . . . .	90-106	35
A. General remarks . . . . .	90-106	35
1. Public access . . . . .	90-91	35
2. Operating days and hours of the registry . . . . .	92-94	35
3. Access to registration services . . . . .	95-99	36
4. Verification of registrant’s identity, evidence of grantor authorization and scrutiny of the content of the notice not required . . . . .	100-102	38
5. Access to search services . . . . .	102-106	39
B. Recommendations 4-10 . . . . .	—	41
III. Registration . . . . .	107-156	45
A. General remarks . . . . .	107-156	45
1. Time of effectiveness of the registration of a notice . . . . .	107-112	45
2. Period of effectiveness of the registration of a notice . . . . .	113-121	47
3. Time when a notice may be registered . . . . .	122-124	49
4. Sufficiency of a single notice . . . . .	125-126	50
5. Unique registration number to be assigned to initial notices . . . . .	127	50
6. Grantor-based organization and retrieval of registered notices . . . . .	128-130	51
7. Organization and retrieval of registered notices by serial number . . . . .	131-134	51
8. Preserving the integrity and security of the registry record . . . . .	135-140	53
9. Liability of the registry . . . . .	141-144	55
10. Registry’s duty to send a copy of the registered notice to the secured creditor . . . . .	145-147	55
11. Secured creditor’s duty to send a copy of the registered notice to the grantor . . . . .	148-149	56
12. Amendment of information in the public registry record . . . . .	150	57



	<i>Paragraphs</i>	<i>Page</i>
13. Removal and archiving of information from the public registry record . . . . .	151-152	58
14. Language of notices and search requests . . . . .	153-156	58
B. Recommendations 11-22 . . . . .	—	60
IV. Registration of initial notices. . . . .	157-217	65
A. General remarks . . . . .	157-217	65
1. Introduction . . . . .	157-158	65
2. Grantor information. . . . .	159-183	65
3. Secured creditor information . . . . .	184-189	76
4. Description of encumbered assets . . . . .	190-198	77
5. Period of effectiveness of the registration of a notice . . . . .	199	80
6. Maximum amount for which the security right may be enforced . . . . .	200-204	81
7. Effect of errors or omissions on the effectiveness of the registration of a notice. . . . .	205-220	82
B. Recommendations 23-29 . . . . .	—	88
V. Registration of amendment and cancellation notices. . . . .	221-263	93
A. General remarks . . . . .	221-263	93
1. Amendment notices. . . . .	221-242	93
2. Cancellation notices . . . . .	243-244	101
3. Effect of inadvertent expiration or cancellation of a registered notice . . . . .	245-248	102
4. Effectiveness of amendment or cancellation notices not authorized by the secured creditor . . . . .	249-259	103
5. Compulsory amendment or cancellation . . . . .	260-263	108
B. Recommendations 30-33 . . . . .	—	110
VI. Search criteria and search results . . . . .	264-273	113
A. General remarks . . . . .	264-273	113
1. Search criteria . . . . .	264-267	113
2. Search results. . . . .	268-273	114
B. Recommendations 34 and 35 . . . . .	—	116
VII. Registration and search fees . . . . .	274-280	119
A. General remarks . . . . .	274-280	119
B. Recommendation 36. . . . .	—	121

	<i>Page</i>
<i>Annexes</i>	
I. Terminology and recommendations . . . . .	123
II. Examples of registry forms . . . . .	137
III. Decision of the United Nations Commission on International Trade Law and General Assembly resolution 68/108 . . . . .	153
A. Decision of the United Nations Commission on International Trade Law. . . . .	153
B. General Assembly resolution 68/108 . . . . .	155

# Introduction

## A. Purpose of the present guide and its relationship with the *UNCITRAL Legislative Guide on Secured Transactions*

1. The *UNCITRAL Guide on the Implementation of a Security Rights Registry* (the “*Registry Guide*”) builds on the *UNCITRAL Legislative Guide on Secured Transactions* (the “*Secured Transactions Guide*”) and its *Supplement on Security Rights in Intellectual Property* (the “*Intellectual Property Supplement*”), which deal with the full range of issues that should be addressed in modern laws on secured transactions. The establishment of a publicly accessible registry in which information about the potential existence of a security right in a movable asset may be registered is an essential feature of the *Secured Transactions Guide* and of modern law reform initiatives in this area generally. Chapter IV of the *Secured Transactions Guide* contains commentary and recommendations on many aspects of a general security rights registry. Chapters III and V of that *Guide* address the related issues of the effectiveness of a security right against third parties and the priority of a security right.

2. The *Secured Transactions Guide* does not, however, address in every detail the myriad legal, technological, administrative and operational issues involved in developing and operating an effective and efficient general security rights registry. This is in line with the typical legislative drafting approach in which the detailed rules applicable to the establishment and the operation of such a registry, as well as the registration and search process, are dealt with in subordinate regulations, ministerial guidelines or the like. The *Registry Guide* is aimed at implementing the *Secured Transactions Guide* by addressing these issues in greater detail.

3. It should be emphasized at the outset that the recommendations of the *Registry Guide* are intended to be implemented by States that have enacted or are prepared to enact a law that is substantially in conformity with the recommendations of the *Secured Transactions Guide*. For example, in order to implement the recommendations of the *Registry Guide*, a State would need to have in place, or be prepared to enact a law that provides for, a system for the registration of notices (rather than documents) that treats registration as a method of making a security right effective against third

parties, or at least as a method of determining priority (rather than of creating a security right). It follows that, in order to understand the legal framework in which the registry is intended to function, a user of the *Registry Guide* should have a basic understanding of the Law contemplated by the *Secured Transactions Guide*. Thus, section D below offers a summary of the Law recommended by the *Secured Transactions Guide*, and other chapters include additional guidance. For a thorough understanding, however, the *Registry Guide* should be read together with the *Secured Transactions Guide*.

4. The experience of States that have instituted the kind of general security rights registry contemplated by the *Secured Transactions Guide* demonstrates how advances in information technology can significantly improve the operational efficiency of such a registry. Particularly in relation to the technical aspects of registry design and operation, the *Registry Guide* draws on these national precedents. In addition, the *Registry Guide* has benefited from international sources that deal with secured transactions, including the following:

(a) *Law and Policy Reform at the Asian Development Bank*, part 2 (A Guide to Movable Registries) (Asian Development Bank (ADB), 2002);

(b) “Publicity of security rights: guiding principles for the development of a charges registry” (European Bank for Reconstruction and Development (EBRD), 2004);

(c) “Publicity of security rights: setting standards for charges registries” (EBRD, 2005);

(d) Model Registry Regulations under the Model Inter-American Law on Secured Transactions (Organization of American States, 2009);

(e) *Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR)*, volume 6, book IX (Proprietary security in movable assets), chapter 3 (Effectiveness as against third persons), section 3 (Registration), prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group) (Sellier European Law Publishers, Munich, Germany, 2009);

(f) *Secured Transactions Systems and Collateral Registries* (International Finance Corporation (World Bank Group), Washington, DC, 2010);

(g) Convention on International Interests in Mobile Equipment of 2001 and its Protocol on Matters Specific to Aircraft Equipment,<sup>1</sup> both done at Cape Town, South Africa, in 2001, and the corresponding Regulations and Procedures for the International Registry, 5th ed. (International Civil Aviation Organization, 2013); and

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<sup>1</sup>United Nations, Treaty Series, vol. 2307, No. 41143, and vol. 2367, No. 4113.

(i) “Making security interests public: registration mechanisms in 35 jurisdictions” (World Bank/International Finance Corporation, 2012).

5. The national, regional and international sources referred to above are largely consistent with, but do not always fully accord with, the recommendations of the *Secured Transactions Guide*. Where appropriate, the *Registry Guide* explains the policy rationale for a particular approach recommended in the *Secured Transactions Guide*.

6. The *Registry Guide* is addressed to all those who are interested or actively involved in the design and implementation of a security rights registry, as well as to those who may be affected by or interested in the establishment and operation of such a registry, including:

(a) Policymakers implementing the recommendations of the *Secured Transactions Guide*, especially in relation to the establishment of a security rights registry;

(b) Registry system designers, including technical staff charged with the preparation of design specifications and with the fulfilment of the hardware and software requirements for the registry;

(c) Registry administrators and staff;

(d) Registry clientele, including potential secured creditors, other creditors of grantors of security rights and the insolvency representatives of grantors, as well as all other persons whose rights may be affected by a security right, such as potential buyers of encumbered assets;

(e) Credit reporting agencies, which in practice may base their reports in part on whether a search of the registry record discloses the potential grant of security rights by a particular prospective debtor;

(f) The general legal community, including academics, judges, arbitrators and practising lawyers; and

(g) All those involved in secured transactions law reform and the provision of technical assistance, such as the World Bank Group, EBRD, ADB and the Inter-American Development Bank.

7. The *Registry Guide* uses neutral generic legal terminology that is consistent with the terminology used in the *Secured Transactions Guide*. Consequently, the *Registry Guide* can be adapted readily to the diverse legal traditions and drafting styles of different States. It is also formulated in a flexible fashion, enabling it to be implemented in accordance with local drafting conventions and legislative policies regarding which types of rule must be incorporated in principal legislation and which may be left to subordinate regulations or to ministerial or other administrative rules.

## B. Terminology and interpretation

8. Except as modified below, the terminology of the *Registry Guide* is consistent with the terminology in the introductory chapter of the *Secured Transactions Guide* (see Introduction, para. 20, of the *Security Transactions Guide*), as well as with the refinement of those terms and the explanations of additional terms in other chapters of the *Secured Transactions Guide*. For example, when the *Registry Guide* uses the term “future asset”, it means an asset that comes into existence or is acquired by the grantor after the time the security agreement is entered into (see *Secured Transactions Guide*, chap. I, para. 8; chap. II, para. 51; and chap. V, para. 141). In addition, while the terms “grantor” and “secured creditor” have generally the same meaning in the *Registry Guide* that they have in the *Secured Transactions Guide*, they may, depending on the context, also mean, respectively, the person identified in the field designated on a registry notice form for specifying the name of the grantor or the person identified in the field designated for specifying the name of the secured creditor, even if that person is not, or is not yet, a party to the security agreement.

9. However, the *Registry Guide* modifies certain of the terms used in the *Secured Transactions Guide* and also introduces additional terms, as follows:

(a) Address:

“Address” means: (i) a physical address or a post office box number, city, postal code and State; or (ii) an electronic address;

*Address includes any address that would be effective for communicating information. A physical address includes a street address. Each enacting State should design its registry forms so as to refer to the types of address covered in its Regulation;*

(b) Amendment:

“Amendment” means a modification with respect to information contained in a previously registered notice to which the amendment relates;

*Registration of an amendment notice does not result in the deletion or modification of information in previously registered notices to which the amendment notice relates, i.e. a search result will continue to disclose that information in its original state. Assuming that the amendment notice was properly submitted and is legally effective, the legal consequence of the registration of an amendment notice is that the effect of the information in the previously registered notice to which the amendment notice relates is modified to the extent specified in the amendment notice. As the registrar has*

*no way of knowing whether the amendment notice was properly submitted, the registrar cannot take action such as deleting or modifying information in its original state. It is up to the searcher, not the registrar, to form its own view concerning the legal consequence of the registration of the amendment notice. An amendment notice is effective from the time it is accessible to searchers of the public registry record (see rec. 11, subpara. (a), below);*

(c) Cancellation:

“Cancellation” means the removal from the public registry record of all information contained in a previously registered notice to which the cancellation relates;

*The legal consequence of the registration of a cancellation notice is that the previously registered notice to which it relates is no longer effective (see para. 243 below). A cancellation notice is effective from the time the previously registered notice to which the cancellation notice relates is no longer accessible to searchers of the public registry record (see rec. 11, subpara. (d) below);*

(d) Designated field:

“Designated field” means the space on the prescribed registry notice form designated for entering the specified type of information;

(e) Law:

“Law” means the law of the enacting State governing security rights in movable assets;

*The law of the enacting State has to be in substantial conformity with the recommendations of the Secured Transactions Guide (see para. 3 above);*

(f) Notice:

“Notice” means a communication in writing (paper or electronic) to the registry of information with respect to a security right; a notice may be an initial notice, an amendment notice or a cancellation notice;

*In the registration context, the Secured Transactions Guide uses the term “notice” to refer both to the form that a registrant uses to submit information to the registry and to the “information contained in a notice” or “the content of the notice” (see Secured Transactions Guide, Introduction, para. 20, rec. 54, subparas. (b) and (d), and rec. 57). The Registry Guide uses the term “notice” in the same way;*

(g) Registrant:

“Registrant” means the person who submits the prescribed registry notice form to the registry;

*The registrant may be the secured creditor (including an agent or trustee in the case of multiple lenders), its representative (for example, a law firm or other service provider) or another person that is identified in the notice as the secured creditor. A courier or other mail service provider used by the registrant to transmit a paper registry notice form is not the registrant, and its identity is irrelevant;*

(h) Registrar:

“Registrar” means the person appointed pursuant to the Law and the Regulation to supervise and administer the operation of the registry;

(i) Registration:

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

*Registration of an initial or amendment notice should be understood as the entry of information into the public registry record so that it is accessible to searchers of the public registry record. Registration of a cancellation notice, however, results in the information in the cancellation notice (along with the information in the registered notices to which the cancellation notice relates) being removed from the public registry record and entered into the registry archives;*

(j) Registration number:

“Registration number” means a unique number assigned to an initial notice by the registry and permanently associated with that notice and any related notice;

(k) Registry:

“Registry” means [the enacting State’s] system for receiving, storing and making accessible to the public certain information about security rights in movable assets;

(l) Registry record:

“Registry record” means the information in all registered notices stored by the registry; it consists of the record that is publicly accessible (public registry record) and the record that has been removed from the public registry record and archived (registry archives);

*Because the term “registry record” means the information contained in all registered notices (and not just the notices relating to*



a specified grantor), reference is made, when referring to a particular notice in the registry record, to a “registered notice” as opposed to the “registry record”;

(m) Regulation:

“Regulation” means the body of rules adopted by the enacting State with respect to the registry, whether these rules are found in administrative guidelines or the Law;

*The exact form and contents of the Regulation will depend on the legislative policy and drafting technique of each enacting State. For example, if the Law is enacted in two or more statutes (for example, one that deals with all the substantive rules, another that deals with conflict-of-laws rules and another that establishes the registry), there may be rules relating to registration that are enacted as subordinate legislation (for example, a body of rules enacted in a separate enactment) in respect of all of these statutes.*

## **C. Key objectives and fundamental policies of an efficient registry**

10. The security rights registry envisaged by the *Secured Transactions Guide* and the *Registry Guide* is governed by the following overarching principles:

(a) The legal and operational guidelines governing registry services, including registration and searching, should be simple, clear and certain from the perspective of all potential users; and

(b) Registry services, including registration and searching, should be designed to be as fast and inexpensive as possible, while also ensuring the security and searchability of the information in the registry record.

## **D. Overview of secured transactions law and the role of registration**

### *1. General*

11. As already mentioned, a general security rights registry is an integral component of the secured transactions regime recommended by the *Secured Transactions Guide*. The potential users of the *Registry Guide* might not necessarily be versed in the intricacies of that regime or even have legal training. Accordingly, the present section provides an overview of secured

transaction law and the role of registration, focusing in particular on the legal function and consequences of registration. For more detailed guidance, the reader is encouraged to refer to the *Secured Transactions Guide*.

## 2. Concept of a security right

12. In general terms, a security right is a limited property right (a right in rem, as distinct from ownership or a personal right) in a movable asset that is created by agreement and secures payment or other performance of an obligation (see the terms “security right” and “grantor” in the *Secured Transactions Guide*, Introduction, para. 20). The function of a security right is to mitigate the risk of loss resulting from a default in payment by entitling the secured creditor to claim the value of the assets encumbered by the security right as a back-up source of repayment in preference to the claims of the grantor’s other creditors. For example, if a business that borrows funds on the security of its equipment fails to repay the loan, a secured creditor with a security right in that equipment will be entitled to obtain possession and dispose of the equipment and apply the proceeds to the outstanding balance. As the risk of loss from default is mitigated, the grantor’s access to credit is expanded, quite often on more favourable terms.

13. The *Secured Transactions Guide* adopts a functional approach to the concept of a security right. Under this approach, the term encompasses any type of property right in a movable asset that functions in substance to secure the performance of an obligation. Thus, the concept is not limited to the types of denominated security device conventionally recognized by different legal systems, such as a pledge, charge or hypothec. It encompasses any type of property right that functions as security. As such, it includes a transfer of tangible assets or an assignment of intangible assets for security purposes, as well as a retention of title by a seller to secure payment of the purchase price of an asset or the residual ownership of a lessor under a financial lease (see *Secured Transactions Guide*, chap. I, paras. 101-112 and recs. 2, 8, 9 and 10).

14. The *Secured Transactions Guide* recommends this functional, integrated and comprehensive approach to the concept of security in order to ensure that the legal rights of creditors, debtors and third parties are subject to a common legal framework regardless of the form of the transaction, the type of encumbered asset, the nature of the secured obligation or the status of the parties. However, it recognizes that secured transactions covering specified types of encumbered asset may need to be excluded, either because they are already covered by other law of the enacting State (for example, aircraft equipment covered by the Convention on International Interests in

Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment or because they raise concerns that are more appropriately dealt with by a more specialized regime (for example, investment securities covered by the International Institute for the Unification of Private Law (UNIDROIT) Convention on Substantive Rules for Intermediated Securities, done at Geneva in 2009). Nevertheless, any additional exceptions (for example, employment benefits) should be narrow and clearly specified in the Law (see *Secured Transactions Guide*, chap. I, para. 44 and recs. 4 and 7).

### 3. Creation of a security right

15. The *Secured Transactions Guide* recommends that a distinction should be drawn between the creation of a security right (i.e. its effectiveness between the grantor and the secured creditor) and its effectiveness against third parties. The main reason for detaching the requirements for creation of a security right from the requirements for its third-party effectiveness is to enable parties to create a security right in their assets in an uncomplicated and efficient manner (see *Secured Transactions Guide*, chap. I, paras. 1-7, chap. III, paras. 6-8, and recs. 1, subpara. (c), 13 and 30).

16. Thus, the *Secured Transactions Guide* recommends imposing minimal formalities on the creation of a security right. It recommends that: (a) a security right should be capable of being created simply by an agreement between the grantor and the secured creditor without the need for a transfer of actual possession of the encumbered asset to the secured creditor; (b) the agreement must, at a minimum, indicate the intent of the parties to create a security right, identify the parties and describe the secured obligation and the encumbered assets (but those are the only requirements); (c) the agreement must be in writing only if it is not accompanied by a transfer of actual possession of the encumbered asset to the secured creditor; and (d) the required form of writing must be flexible and include electronic means of communication (see *Secured Transactions Guide*, recs. 11-15).

17. By dispensing with the need for a transfer of possession of an encumbered asset to create a security right, the *Secured Transactions Guide* enables an enterprise to continue to use its tangible assets in its business and also to encumber its intangible assets. In addition, it enables an enterprise to create a security right in its future assets, as well as pools of circulating assets, including, most significantly, receivables and inventory (see *Secured Transactions Guide*, chap. II, paras. 49-70 and recs. 2 and 17), although it should be noted that a security right in future assets is created only when the grantor acquires rights in those assets (see *Secured Transactions Guide*, rec. 13). This approach is likely to increase access to credit by enabling an

enterprise to utilize the full range of its present and future assets as security. Moreover, by also permitting a security right to secure any type of obligation, including future and indeterminate obligations, the *Secured Transactions Guide* facilitates a number of modern credit practices, such as revolving lines of credit (see *Secured Transactions Guide*, rec. 16).

18. This recognition by the *Secured Transactions Guide* of non-possessory security rights also enhances consumer access to credit, since it enables consumer grantors to take immediate possession of assets acquired on secured credit terms. The *Secured Transactions Guide* takes into account, however, the need to preserve the rights of consumers and other persons that may require special protection. Thus, it recommends that the Law should not affect the rights of consumers under consumer protection legislation or override statutory limitations on the types of asset that may be transferred or encumbered (see *Secured Transactions Guide*, chap. I, paras. 10 and 11; chap. II, paras. 56, 57 and 107; recs. 2, subpara. (b) and 18).

19. The *Secured Transactions Guide* also confirms that, unless otherwise agreed, a security right automatically extends to any proceeds of the encumbered assets (and proceeds of proceeds) without the need for a specific agreement to that effect (see *Secured Transactions Guide*, rec. 19). This approach is consistent with the normal expectations of the parties (see *Secured Transactions Guide*, chap. II, paras. 72-81).

#### 4. *Third-party effectiveness of a security right*

20. Under the *Secured Transactions Guide*, a security right becomes effective between the parties as soon as the requirements for creation outlined above (see paras. 15-19) are satisfied. However, the security right cannot be made effective against rights acquired by third parties in the encumbered assets unless and until the requirements for third-party effectiveness are satisfied. The principal reason for this distinction is to ensure that a security right created by a private agreement between a grantor and a secured creditor is adequately publicized to third parties that might be negatively affected by its existence.

21. Registration of a notice in a general security rights registry is the main method recognized by the *Secured Transactions Guide* for achieving the third-party effectiveness of a security right (see *Secured Transactions Guide*, recs. 32 and 33). Registration as a method of achieving third-party effectiveness is available for all types of encumbered asset, except for the right to receive the proceeds under an independent undertaking (see *Secured Transactions Guide*, rec. 50). However, the *Secured Transactions Guide* also

recognizes other methods for achieving third-party effectiveness of rights in specific types of encumbered asset (see paras. 22-25 below), including one that may confer priority advantages on a secured creditor (see paras. 26-38 below).

22. First, the transfer of possession of the encumbered assets to the secured creditor or its representative qualifies as an alternative method of achieving third-party effectiveness, provided that it is actual (i.e. not constructive, fictive, deemed or symbolic). The dispossession of the grantor is considered to be sufficient practical notice to third parties that the grantor's rights in the assets are likely to be encumbered (see *Secured Transactions Guide*, Introduction, para. 20, entry on "possession", and rec. 37). Since physical dispossession is required, this method of achieving third-party effectiveness is available only for tangible assets (and not for intangible assets) and then only if, as a practical matter, the grantor is prepared to relinquish possession.

23. Second, the *Secured Transactions Guide* recommends that, when the encumbered asset is a right to payment of funds credited to a bank account, secured creditors should be given the option of achieving third-party effectiveness by taking "control" of the encumbered asset in lieu of registration in the general security rights registry of security rights in the right to receive the proceeds under an independent undertaking. A form of "control" is the exclusive method recognized for achieving third-party effectiveness in such instances (see *Secured Transactions Guide*, Introduction, para. 20, entry on "control", and rec. 103). It should be noted that security rights in securities, and payment rights arising under or from either financial contracts governed by netting agreements or foreign exchange contracts, are excluded from the scope of the *Secured Transactions Guide* (see *Secured Transactions Guide*, chap. I, paras. 37-39, and rec. 4, subparas. (c)-(e)). As a result, enacting States will need to determine whether they should enact "control" or other special third-party effectiveness rules for these types of asset.

24. Third, to the extent that the *Secured Transactions Guide* applies to security rights in certain types of movable asset that are subject to specialized registration systems, such as aircraft, railway rolling stock, space objects, ships and other categories of mobile equipment, as well as intellectual property (see *Secured Transactions Guide*, chap. I, paras. 32-36, and rec. 4, subparas. (a) and (b)), it recommends that registration in the relevant specialized registry should be recognized as an alternative method of achieving third-party effectiveness, except to the extent that intellectual property law provides otherwise (see *Secured Transactions Guide*, recs. 4, subpara. (b), and 38; and *Intellectual Property Supplement*, paras. 121-129).

25. Fourth, when the encumbered movable asset is attached to immovable property at the time of the conclusion of the security agreement, or subsequently becomes attached to immovable property, the *Secured Transactions Guide* recommends that the security right may be made effective against third parties by registration in either the general security rights registry or the immovable property registry (see *Secured Transactions Guide*, rec. 43).

## 5. Priority of a security right

### (a) Competing security rights

26. If more than one security right created by the same grantor in the same encumbered asset has been made effective against third parties, it is necessary to have a priority rule to rank the competing security rights (see *Secured Transactions Guide*, chap. III, paras. 12-14). If the competing security rights were all made effective against third parties by registration, priority is generally determined by the temporal order of registration (see *Secured Transactions Guide*, rec. 76, subpara. (a)). If the competing security rights were all made effective against third parties by a method other than registration (for example, by delivery of possession), priority is generally determined by the temporal order of when third-party effectiveness was achieved (see *Secured Transactions Guide*, rec. 76, subpara. (b)). In the event a security right that was made effective against third parties by a method other than registration comes into competition with a security right that was made effective against third parties by registration, priority is generally determined by the temporal order of registration or third-party effectiveness, whichever occurs first (see *Secured Transactions Guide*, rec. 76, subpara. (c)).

27. Although the above recommendations provide the baseline rules, a modern Law along the lines recommended in the *Secured Transactions Guide* will invariably recognize exceptions in the interest of facilitating other business practices and policy objectives. The following paragraphs summarize the exceptions recognized by the *Secured Transactions Guide*.

28. First, the *Secured Transactions Guide* recognizes a special priority in favour of a secured creditor that finances the grantor's acquisition of tangible assets, such as consumer goods, equipment or inventory (see *Secured Transactions Guide*, chap. IX, paras. 125-139). Provided that the requirements recommended by the *Secured Transactions Guide* for obtaining this special priority are satisfied, i.e. registration of a notice and, in the case of inventory, possibly notification of inventory financiers of record (see rec. 180, alternative A, subpara. (b), and alternative B, subpara. (b)), the "acquisition security right" has priority over prior security rights in the grantor's future assets of that kind that were previously made effective against third parties.

This approach does not prejudice the prior secured creditor, since the grantor would likely not have been able to acquire the new assets but for the new financing. Giving priority to acquisition security rights also benefits the grantor by giving it access to diversified sources of secured credit to finance new acquisitions. A similar special priority, adapted to the special context of intellectual property law and practice, is also accorded to secured creditors who finance the grantor's acquisition of intellectual property rights (see *Intellectual Property Supplement*, chap. IX, and rec. 247).

29. Second, a security right in money and in negotiable instruments or negotiable documents that is made effective against third parties by a transfer of possession to the secured creditor has priority over a security right that was previously made effective against third parties by registration (see *Secured Transactions Guide*, recs. 101, 102, 108 and 109). This exception is based on the policy of preserving the free negotiability of these types of asset in the market.

30. Third, if the encumbered asset is the right to payment of funds credited to a bank account, the security right of a secured creditor that achieves third-party effectiveness by taking "control" has priority over a security right that is made effective against third parties by registration, even if the registration preceded the establishment of "control" (see *Secured Transactions Guide*, Introduction, para. 20, entry on "control", and recs. 103 and 107). As already noted, "control" is the exclusive mode of achieving the third-party effectiveness of a security right in a right to receive the proceeds of under an independent undertaking (see para. 23 above). Accordingly, there is no possibility of a priority competition between a secured creditor that has achieved "control" and a secured creditor that has achieved third-party effectiveness by registration. As also already mentioned, security rights in securities, and payment rights arising under or from either financial contracts governed by netting agreements or foreign exchange contracts, are excluded from the scope of the *Secured Transactions Guide* (see para. 23 above). As a result, enacting States will need to enact special priority rules in relation to those types of asset.

31. Fourth, to the extent that the Law applies to security rights in types of movable asset that are subject to specialized registration systems, such as aircraft, railway rolling stock, space objects, ships and other categories of mobile equipment, as well as intellectual property (see *Secured Transactions Guide*, chap. I, paras. 32-36, and rec. 4, subparas. (a) and (b)), the *Secured Transactions Guide* recommends that priority should be given to a security right that was made effective against third parties by registration in the relevant specialized registry as against a security right made effective against third parties by registration in the general security rights registry. If both

security rights are made effective against third parties by registration in the relevant specialized registry, the *Secured Transactions Guide* recommends that priority should be determined by the order of registration in the specialized registry (see *Secured Transactions Guide*, recs. 77 and 78). These rules are designed to preserve the reliability and comprehensiveness of the specialized registry record, if any.

32. Fifth, the *Secured Transactions Guide* adopts a similar approach to priority among competing security rights in attachments to immovable property. It recommends that priority should be given to a security right made effective against third parties by registration in the immovable property registry over a security right in the attachment made effective against third parties by registration only in the general security rights registry. If both competing security rights were made effective against third parties by registration in the immovable property registry, it recommends that priority should be determined by the order of registration (see *Secured Transactions Guide*, recs. 87 and 88). These rules are likewise designed to preserve the reliability and comprehensiveness of the immovable property registry.

#### **(b) Buyers, lessees or licensees of encumbered assets**

33. As a general rule, the *Secured Transactions Guide* recognizes that a secured creditor that has complied with the requirements for third-party effectiveness with respect to its security right has a “right to follow” the encumbered asset into the hands of a buyer, lessee or licensee from the grantor that acquires rights in the encumbered asset (see *Secured Transactions Guide*, chap. II, paras. 72-89, chap. III, paras 15, 16 and 89, and rec. 79). Conversely, a buyer, lessee or licensee of an encumbered asset will generally take the asset free of a security right that has not been made effective against third parties by registration or by some other method, even if it has knowledge of the existence of the security right (“knowledge” means actual knowledge; see *Secured Transactions Guide*, Introduction, para. 20). This approach is not unfair to secured creditors, since they could have protected themselves by timely registration or by otherwise making their security right effective against third parties. The *Secured Transactions Guide* recognizes a number of exceptions to this general rule, however. The following paragraphs summarize the principal exceptions.

34. First, when a secured creditor authorizes the grantor to sell, lease or licence an encumbered asset free of the security right, the rights of a buyer, lessee or licensee are unaffected by the security right (see *Secured Transactions Guide* rec. 80). Typically, the secured creditor will give its consent only after some arrangement has been made with the grantor to provide



other security, such as an arrangement ensuring that the proceeds of the transaction will be remitted directly to the secured creditor.

35. Second, the rights of a buyer, lessee or licensee of an encumbered asset that is sold, leased or licensed in the ordinary course of the grantor's business are unaffected by any security right in that asset, even if the secured creditor has registered a notice of the security right or otherwise complied with the requirements for third-party effectiveness (see *Secured Transactions Guide*, rec. 81). This approach is consistent with the reasonable commercial expectations of the parties involved. For example, it is not realistic to expect buyers dealing with a commercial enterprise which routinely sells the types of asset in which the buyer is interested to check the general security rights registry before entering into a transaction. Moreover, a secured creditor that takes a security right in a grantor's inventory will normally have done so on the expectation that the grantor may dispose of the inventory free of the security right in the ordinary course of the grantor's business. After all, for the grantor to be able to generate the revenue necessary to pay back the secured loan, its customers need to be assured that they will acquire unencumbered title in any inventory sold to them in the grantor's ordinary course of business. The same considerations apply to lease and licence agreements entered into by a grantor in the ordinary course of business; the grantor's customers expect that their rights to the possession or use of the encumbered asset during the term of the lease or licence will not be interrupted by their lessor's or licensee's secured creditors, assuming the customers conform to the conditions contemplated by the lease or licence agreement.

36. Third, the same policy of preserving negotiability that justifies awarding a special priority to secured creditors that take physical possession of encumbered assets in the form of money or a negotiable instrument (such as a cheque), or a negotiable document (such as a bill of lading), also justifies awarding priority to the outright transferees of these types of encumbered asset who take possession of the assets (see *Secured Transactions Guide*, recs. 101, 102, 108 and 109).

37. Fourth, as already mentioned, the *Secured Transactions Guide* may apply to assets that are subject to a specialized registration regime, such as motor vehicles, ships, aircraft and intellectual property (see *Secured Transactions Guide*, chap. I, paras. 32-36, and rec. 4, subparas. (a) and (b)). These specialized registries typically serve broader goals than simply publicizing security rights in the relevant assets, notably also recording ownership or transfers of ownership. Accordingly, to the extent that the *Secured Transactions Guide* applies to security rights in these types of asset, it recommends that priority should be given to the rights of a buyer or other transferee with

respect to which a notice has been registered in the specialized registry as against a security right with respect to which a notice has been registered in the general security rights registry. If a notice with respect to the security right has also been registered in the specialized registry, it recommends that priority should be determined by the order of registration (see *Secured Transactions Guide*, recs. 77 and 78).

38. Fifth, a similar approach is taken to priority competitions that relate to encumbered movable assets attached to immovable property. The *Secured Transactions Guide* recommends that priority should be given to the rights of a buyer or lessee of the relevant immovable property that have been registered in the immovable property registry as against the rights of a secured creditor that has registered a notice of its security right in the attachment only in the general security rights registry; however, if the secured creditor achieves third-party effectiveness by registration in the immovable property registry, the *Secured Transactions Guide* recommends that priority should be determined by the order of registration in the immovable property registry (see *Secured Transactions Guide*, recs. 87 and 88).

### (c) Judgement creditors

39. One of the principal advantages of taking a security right is that it entitles the secured creditor to claim the value of encumbered assets in preference to the claims of a grantor's unsecured creditors. Accordingly, the *Secured Transactions Guide* recommends that a security right has priority over the rights of an unsecured creditor, provided that the security right is made effective against third parties by registration or other method before the unsecured creditor obtains a judgement or provisional court order against the grantor and takes the steps necessary under other law of the enacting State to acquire rights in the encumbered assets (see *Secured Transactions Guide*, rec. 84). This approach enables unsecured creditors to determine which of their debtors' assets may be encumbered in order to decide whether it is worthwhile to obtain a judgement and pursue judgement enforcement proceedings. This priority rule, however, is subject to an important caveat. Even if the security right is made effective against third parties after the unsecured creditor acquires rights in its debtor's encumbered assets, the security right will have priority to the extent that it secures credit that is advanced before the secured creditor has knowledge that the unsecured creditor has acquired rights in the encumbered assets or is advanced pursuant to a prior irrevocable commitment to extend credit to the grantor (see *Secured Transactions Guide*, chap. V, paras. 94-106, and rec. 84).

40. The *Secured Transactions Guide* discusses but does not make any recommendation with respect to the steps that a judgement creditor must

take to acquire rights in its debtor's assets so as to potentially prevail over a secured creditor that has failed to achieve third-party effectiveness either in time or at all (see *Secured Transactions Guide*, chap. V, paras. 94-106). This is left to the judgement enforcement law of the enacting State. In some States, an unsecured creditor acquires rights in its debtor's assets only once the judgement enforcement process has been completed by the seizure and sale of the assets and the creditor's rights have attached to the proceeds of the sale. In other States, an unsecured creditor, upon obtaining a judgement against a debtor, can obtain the equivalent of a general security right in the debtor's present and future movable assets simply by registering a notice of the judgement in the general security rights registry. Accordingly, States enacting the recommendations of the *Secured Transactions Guide* will need to take into account their existing law on this issue and decide on the most appropriate approach.

**(d) The insolvency representative**

41. Modern insolvency laws generally respect the priority to which secured creditors are entitled under other law in the event that insolvency proceedings are commenced with respect to the grantor. This is the approach recommended in the *Secured Transactions Guide* (see rec. 239), in line with the *UNCITRAL Legislative Guide on Insolvency Law* (the "*Insolvency Guide*"). It follows that a secured creditor generally will have priority over the claims of an insolvent grantor's unsecured creditors, provided that the secured creditor registered or otherwise satisfied the third-party effectiveness requirements of the Law before the commencement of the insolvency proceedings. (A secured creditor may, under insolvency law, take action to preserve the third-party effectiveness of a security right even after commencement of insolvency proceedings, however; see para. 43 below.) Conversely, the failure of the secured creditor to register a notice or otherwise make its security right effective against third parties before the commencement of the insolvency proceedings generally results in the secured creditor being effectively demoted to the status of an unsecured creditor.

42. Timely compliance with the third-party effectiveness requirements of the Law does not, however, protect a secured creditor from challenges on the basis of general insolvency law policies, such as rules prohibiting preferential or fraudulent transfers and rules giving priority to certain protected classes of creditors (see *Secured Transactions Guide*, chap. XII, and rec. 239; see also *Insolvency Guide*, recs. 88 and 188).

43. A security right that was effective against third parties at the time of the commencement of the insolvency proceedings might lapse thereafter,

for example, because it was made effective against third parties by registration and the period of effectiveness of the registration has expired. To address that risk, the *Secured Transactions Guide* recommends that a secured creditor should be entitled to take any action required by the Law to preserve the effectiveness of its security right against third parties even after the commencement of insolvency proceedings (see *Secured Transactions Guide*, rec. 238). This recommendation is designed to ensure that a secured creditor is not denied the ability to maintain its priority status as a result of the automatic stay typically imposed on enforcement action by creditors upon the commencement of insolvency proceedings.

44. When the insolvency proceedings take the form of a reorganization, modern insolvency laws generally authorize the insolvent grantor to create a security right in the assets of the insolvency estate to obtain post-commencement finance (see *Insolvency Guide*, rec. 65). Under the *Insolvency Guide*, such a security right does not have priority over the rights of any existing secured creditors unless agreed to by them or authorized by the court with the appropriate protections for them (see *Insolvency Guide*, recs. 66 and 67).

#### **(e) Preferential claims**

45. For various policy reasons, a State's Law or its insolvency law, or both, sometimes award preferential priority status to the claims of specified categories of unsecured creditor over the claims of secured creditors. Typical examples include the claims of the enacting State for taxes and of employees for unpaid wages or other employment benefits. In addition or alternatively, in the insolvency context some States set aside a specified portion of the value of encumbered assets, particularly business assets, in favour of unsecured creditors in preference to secured creditors. The *Secured Transactions Guide* discusses preferential claims and recommends that, to the extent an enacting State decides to maintain any, the claims should be limited in both type and amount and prescribed in the Law and insolvency law, as the case may be, in a clear and specific way (see *Secured Transactions Guide*, chap. V, paras. 90-93, and chap. XII, paras. 59-63, and recs. 83 and 239). The reason is twofold. On the one hand, the *Secured Transactions Guide* takes into account the social policies enacting States may wish to pursue through the use of preferential claims. On the other hand, the *Secured Transactions Guide* recognizes that preferential claims may have a negative impact on the cost and availability of credit.

46. The *Secured Transactions Guide* discusses but does not make any recommendation on whether notices with respect to preferential claims may or must be registered, or on the priority implications of such registration (see *Secured Transactions Guide*, chap. V, para. 90; and para. 51 below). Enacting States will need to determine their own policy. Some States require notices of preferential claims to be registered in the general security rights registry and subject them to the first-to-register priority rule to the same extent that security rights created by agreement are. In other States, registration of preferential claims is permitted or required, but a registered preferential claim nonetheless has priority over prior-registered security rights created by agreement. It should be noted that there is limited value in permitting or requiring registration of preferential claims in States that adopt the latter approach since third-party searchers must be assumed to understand that a subsequently registered preferential right will still have priority over any right they may acquire in the relevant assets in the interim. As already noted, the *Secured Transactions Guide* seeks to minimize the uncertainty that the lack of registration might create for third parties by recommending that the law of the enacting State limit, both in type and amount, preferential claims and describe them in a clear and specific way (see para. 45 above).

## 6. *Extended scope of the registry*

### (a) **Outright assignments**

47. As already explained (see paras. 12-14 above), the legal regime contemplated by the *Secured Transactions Guide* is comprehensive in scope, covering all consensual transactions that in substance function to secure an obligation, regardless of the formal character of the secured creditor's property right, the type of encumbered asset, the nature of the secured obligation or the status of the parties (see *Secured Transactions Guide*, chap. I, paras. 101-112, and recs. 2 and 10).

48. The *Secured Transactions Guide* recommends that the legal regime (with the exception of the rules governing enforcement upon default) should also apply to outright assignments of receivables. Bringing such outright assignments within the scope of the legal regime does not mean that outright assignments are recharacterized as secured transactions. Rather, it is intended to ensure that an assignee of such receivables is subject to the same rules relating to creation, third-party effectiveness and priority as the secured creditor with a security right in the receivables. It also ensures that the assignee has the same rights and obligations vis-à-vis the debtor of the receivables as a secured creditor does (see *Secured Transactions Guide*, chap. I, paras. 25-31, and recs. 3 and 167).

49. Under this approach, an assignee generally will have to register a notice of its right in the security rights registry for the assignment to be effective against third parties that have claims against the assignor; priority among the rights of successive competing assignees or secured creditors that have acquired rights in the same receivables from the same assignor/grantor will generally be determined by the order of registration (see *Secured Transactions Guide*, chap. III, para. 43). This approach recognizes that outright assignments of receivables not only perform a financing function but also create the same problem of information inadequacy for third parties as security rights in receivables do. Unless a notice is registered in the security rights registry, a potential secured creditor or assignee, or other third party, has no efficient means of verifying whether the receivables owed to a business have already been made subject to a security right or an assignment. While enquiries could be made of the debtors of the receivables, this is not practically feasible if the debtors of the receivables have not been notified of the assignment or if the transaction covers future receivables or all present and future receivables generally.

**(b) Other non-security transactions**

50. True leases and consignments do not operate to secure the acquisition price of the assets involved and consequently do not qualify as security rights so as to fall within the Law contemplated by the *Secured Transactions Guide*. However, they create the same transparency concerns for third parties as non-possessory security rights do, since they necessarily involve a separation of a property right (ownership by a lessor or consignor) from actual possession (by a lessee or consignee). To address this concern, some States expand the scope of their secured transactions regime (other than the enforcement rules), as it applies to acquisition security rights, to these types of transaction. In addition to ensuring that the lessor's or consignor's title is disclosed to third parties, this approach also diminishes the risk of litigation concerning whether a transaction in the form of a lease or a consignment is functionally a secured transaction. Under this approach, a long-term lease or a consignment sale is: (a) ineffective against third parties if a notice with respect to it is not registered; and (b) subordinate in priority if the lessor or consignor does not comply in time with the requirements for obtaining the special priority given to acquisition security rights. The *Secured Transactions Guide* discusses but makes no recommendation on this matter (see *Secured Transactions Guide*, chap. III, para. 44). In States that elect not to extend the scope of the Law to cover true long-term leases and consignments, it may be noted that a lessor or a consignor may nonetheless wish to take the precaution of complying with the requirements for achieving the special priority accorded to acquisition secured creditors if it is concerned that its ownership right might be recharacterized as a security right under the functional approach recommended in the *Secured Transactions Guide*.

### (c) Preferential claims

51. As already explained, the *Secured Transactions Guide* discusses but does not make any recommendation on whether notices with respect to preferential claims may or must be registered in the general security rights registry, or the priority implications of such registration (see para. 46 above).

## 7. Registration and enforcement of security rights

52. Some legal systems require secured creditors to register in the general security rights registry a notice that they intend to exercise a particular enforcement remedy. In States that adopt this approach, the security rights registry is then required to notify competing secured creditors that have registered a notice with respect to the same encumbered assets of the pending enforcement. The *Secured Transactions Guide* does not recommend this approach. Rather, it recommends that the enforcing secured creditor should be the person required to search the registry and send out the required notices to prior-registered secured creditors, as well as to other interested third parties with rights in the encumbered assets of which it is aware or has notice (such as a third-party debtor of the secured obligation, a co-owner of the encumbered asset or a secured creditor in possession of the encumbered asset (see *Secured Transactions Guide*, rec. 151)). Advance notification is intended to provide competing secured creditors and other interested third parties with an opportunity to take steps to protect any priority they may have as against the enforcing creditor, or, in the case of subordinate third parties, to monitor the enforcement proceedings, bid at any sale, or remedy the default that has given rise to the enforcement proceeding.

## 8. Conflict-of-laws considerations

53. When a secured transaction involves parties located in more than one State, secured creditors and third parties need clear guidance as to which State's law applies. Under the conflict-of-laws recommendations of the *Secured Transactions Guide*, the law applicable to the creation, third-party effectiveness and priority of a security right in tangible assets, as a general rule, is the law of the State in which the encumbered asset is located (see *Secured Transactions Guide*, rec. 203). This means that, if a secured creditor wishes to make its security right in a tangible asset effective against third parties by registration, it must register in the registry of the State in which the encumbered asset is located. It follows that, if encumbered tangible assets are located in multiple States, registrations in the registries of all of those States will be necessary. With respect to the creation, third-party

effectiveness and priority of security rights in intangible assets and in mobile tangible assets that are ordinarily used in multiple jurisdictions, the applicable law, as a general rule, is the law of the State in which the grantor is located (see *Secured Transactions Guide*, rec. 208). As a result, a secured creditor that wishes to achieve third-party effectiveness by registration must register in the registry of the State in which the grantor is located.

54. The rules outlined above are the general baseline rules. The *Secured Transactions Guide* recommends different specialized conflict-of-laws rules for security rights in certain types of asset, including: (a) assets that are subject to a specialized registration regime; (b) receivables arising from a transaction relating to immovable property; (c) rights to the payment of funds credited to bank accounts; (d) rights to receive the proceeds under an independent undertaking; and (e) intellectual property rights (see *Secured Transactions Guide*, recs. 204-207 and 209-215; and *Intellectual Property Supplement*, rec. 248). For example, if the encumbered asset is an intellectual property right, the applicable law is primarily the law of the State in which the intellectual property is protected, although a security right that is created and made effective against third parties only under the law of the State in which the grantor is located may still be effective against the grantor's insolvency representative and judgement creditors.

## 9. Notice registration

55. Most States have established registries for recording title to and encumbrances on immovable property. Many States have also established similar registries for a limited number of high-value movable assets, such as ships and aircraft. It is essential for the successful implementation of the general security rights registry contemplated by the *Secured Transactions Guide* that the distinct characteristics of this type of registry be well understood.

56. First, unlike the typical land, ship or aircraft registry, the general security rights registry contemplated by the *Secured Transactions Guide* does not purport to record the existence of or transfer of title to an encumbered asset described in a notice or to guarantee that the person named as grantor in the notice is the true owner. It only provides a record of potentially existing security rights in whatever property right the grantor has or may acquire in the assets described in the notice as a result of off-record transactions or events (see *Secured Transactions Guide*, chap. IV, paras. 10-14).

57. Second, title registries typically require registrants to file or tender for scrutiny the underlying documentation. This is because registration generally is considered to constitute at least presumptive evidence of title and any



property rights affecting title. While the security rights registries in some States also require submission of the underlying documentation, the *Secured Transactions Guide* recommends that States adopt a notice registration rather than a document registration system (see *Secured Transactions Guide*, recs. 54, subpara. (b), and 57)). A notice registration system does not require the underlying documentation to be registered or even tendered for scrutiny by registry staff. All that need be registered is a notice that provides the basic information necessary to alert a searcher that a security right may exist in the assets described in the notice. It follows that registration does not mean that the security right to which the notice refers necessarily exists, only that one may exist at the time of registration or may come into existence later.

58. Third, in States that adopt a document registration system, registration is sometimes treated as a precondition to the creation of a security right. As already explained (see paras. 16 and 20 above), registration of a notice is irrelevant to the creation of a security right; rather, a security right is created by the private agreement of the parties and is effective between the parties as soon as it comes into existence. The function of registration is to make any security right created by an off-record security agreement between the parties effective against third parties (see *Secured Transactions Guide*, recs. 32 and 33).

59. Compared with document registration, the notice registration system recommended by the *Secured Transactions Guide* offers the following advantages:

(a) It reduces transaction costs for registrants (as they do not need to submit evidence of their off-record security agreement in order to register) and third-party searchers (as they do not need to peruse what may be voluminous security documentation to determine whether an effective security agreement has been entered into between the parties and, if so, what the scope of the assets covered by such an agreement is);

(b) It reduces the administrative and archival burden on registry system operators;

(c) It reduces the risk of registration error (since the less information that must be submitted, the lower the risk of error); and

(d) It enhances privacy and confidentiality for secured creditors and grantors (since the only information about a secured transaction that is publicly available is that which is necessary to alert a searcher that a security right may exist in the assets described in the registered notice).

60. As registration in a notice registration system does not necessarily mean that a security right actually exists, third parties with a competing

property right in the encumbered assets will normally wish to obtain proof of the existence of an effective security agreement between the parties and the scope of the assets covered by it. The same is true even if the alleged security right has been made effective against third parties by some other method, such as a transfer of possession, since possession by the putative secured creditor may be for a purpose other than security.

61. Some States provide a procedure whereby a third party with a property right in an encumbered asset may demand this information directly from the person who is named as a secured creditor in a registered notice or is otherwise claiming that status. The same right is extended to existing unsecured creditors of the grantor so as to enable them to assess, in the event the grantor has defaulted, whether they should extend unsecured credit and whether it is worthwhile to undertake the expense of obtaining a judgement and pursuing enforcement against the grantor's assets. While the *Secured Transactions Guide* does not make a recommendation on this matter, the grantor always has the possibility of requesting the secured creditor to send the relevant information directly to a third party. However, the grantor or the secured creditor may not be cooperative, in which event the third party will need to seek a judicial order under other law.

62. States that allow third parties to demand verification of the existence of a security right and its scope directly from the secured creditor typically do not extend that right to potential buyers or potential secured creditors. These persons can protect themselves by simply refusing to buy or extend secured credit unless the registration relating to the security right is cancelled or the putative secured creditor is willing to undertake to them that it is not asserting, and will not assert in the future, a security right in the asset in which they are interested.

63. The grantor may also need to obtain up-to-date information about the current scope and value of the security right claimed by its secured creditor. In some States, the grantor is entitled to demand this information free of charge, although limits are usually placed on the frequency with which such requests may be made so as to keep costs for the secured creditor at a reasonable level and discourage demands that are unjustified or intended as a form of harassment.

### *10. Coordination with specialized movable property registries*

64. The *Secured Transactions Guide* and the *Intellectual Property Supplement* discuss in detail coordination of the general security rights registry

with any other registries operated by the enacting State for registering security rights or other rights in particular types of movable asset, for example, ships, motor vehicles, aircraft or intellectual property (see *Secured Transactions Guide*, chap. III, paras. 75-82, chap. IV, para. 117; and *Intellectual Property Supplement*, paras. 135-140).

65. At a minimum, the enacting State should ensure coordination of the applicable rules regarding third-party effectiveness and priority. As already mentioned, the *Secured Transactions Guide* recommends that, while a security right in an asset subject to a specialized registry may be made effective against third parties by registration in the general security rights registry, it is subordinate in priority to a security right or other right which was made effective against third parties by registration in the relevant specialized registry, irrespective of the temporal order of registration (see paras. 23 and 30 above, and *Secured Transactions Guide*, recs. 43 and 77, subpara. (a)).

66. The *Secured Transactions Guide* also discusses other ways of coordinating the general security rights registry with any other registry that covers the same type of encumbered asset, including the automatic forwarding of information registered in one registry to the other registry or the implementation of common gateways to enable registration in both registries simultaneously. However, the *Secured Transactions Guide* does not make any formal recommendations as to how States should ensure the most efficient coordination of registries. This approach takes into account the fact that specialized registries are typically subject to other law, and that the purposes, organization and administration of such registries vary from State to State and often from registry to registry. Coordination raises complex issues, for example, if the specialized registry organizes registrations by reference to the asset as opposed to using the grantor-based indexing system of the general security rights registry recommended in the *Secured Transactions Guide* (see *Secured Transactions Guide*, chap. III, paras. 77-81; see also paras. 131-134 below). Still, the *Secured Transactions Guide* suggests that an enacting State may decide to use the reform of its secured transaction law or the establishment of a general security rights registry as an opportunity to reform its specialized registry regimes to ensure an equivalent level of modern and efficient operation. An enacting State might consider, for example, introducing notice registration of security rights in its specialized registries, or establishing supplementary debtor-based indices to enable cross-registration and cross-searching (see *Secured Transactions Guide*, chap. IV, para. 117).

## 11. Coordination with immovable property registries

67. Immovable property registries exist in most, although not in all, States. Typically, a State's general security rights registry is separate from its immovable property registry owing to differences as to: (a) what transactions must be registered (the immovable property registry usually covers ownership rights, as well as any encumbrances on ownership, whereas the security rights registry covers only security rights); (b) the modalities of registration (the documents giving rise to the registered right typically must be submitted to the immovable property registry, in contrast to the notice registration approach used by the general security rights registry; see paras 55-63 above); (c) the requirements for a sufficient description of the encumbered asset (registrations in the immovable property registry usually require a specific description of the relevant parcel of land, whereas the general security rights registry contemplates the entry of either specific or generic descriptions; see paras 190-198 below); (d) organizing norms (registrations in the immovable property registry are typically organized and retrieved by reference to the particular parcel of land, whereas registrations in the general security rights registry are generally indexed according to the identifier of the grantor; see paras. 128-134 below); and (e) the legal consequences of registration or failure to register (registration in the general security rights registry functions only to achieve the third-party effectiveness of the security right, whereas registration in the immovable property registry may also be required for the creation of the security right; see paras. 15 and 20 above).

68. Even though security rights in movable and immovable assets typically are subject to separate and distinct registration regimes, a State implementing a general security rights registry will need to provide guidance on the rules governing the third-party effectiveness and priority of security rights in movable assets that are attachments to immovable property at the time when the security right is created or that subsequently become attachments to immovable property. As already discussed, the *Secured Transactions Guide* recommends that, while registration in either the general security rights registry or the immovable property registry is sufficient to achieve the third-party effectiveness of a security right in an attachment to immovable property, the security right will be subordinate in priority to an encumbrance registered in the immovable property registry (see paras. 25 and 32 above, and *Secured Transactions Guide*, recs. 43, 87 and 88).

69. The asset-description requirements for attachments to immovable property may differ depending on whether the registration is made in the security rights registry or in the immovable property registry. The *Secured Transactions Guide* recommends that, for the purposes of registration in the security rights registry, an attachment to immovable property, just like any other

encumbered asset, need only be described in a manner that reasonably allows its identification (see *Secured Transactions Guide*, rec. 57, subpara. (b)). Thus, a description of a movable asset that is or will become an attachment to immovable property may be sufficient, even though the notice submitted for registration does not specifically describe the relevant immovable property. In contrast, registration in the immovable property registry typically will require the registrant to specifically identify the relevant parcel of land, since registrations in that system are usually organized and retrieved by reference to that criterion.

### 12. *International coordination among national security rights registries*

70. As noted earlier, when the encumbered assets are located in more than one State or the grantor and the encumbered asset are located in different States, a secured creditor may be required to register in the security rights registries of multiple States in order to achieve the third-party effectiveness of its security right. (For a discussion of conflict-of-laws considerations, see paras. 53 and 54 above.) In order to reduce transaction costs for registrants and searchers under this scenario, States would benefit from coordinating and harmonizing their registry rules and procedures to the greatest extent possible. Accordingly, States implementing a general security rights registry would be well advised to consult with States that have already implemented a general security rights registry and take into consideration the registry rules and procedures in those States.

### 13. *Transitional considerations: applicability of the new Law to prior security rights*

71. The *Secured Transactions Guide* recommends that an enacting State apply its new legal regime on secured transactions to all security rights within its scope, including those already in existence on the date that it takes effect (see *Secured Transactions Guide*, rec. 228). However, it recognizes a number of qualifications to this general rule (see *Secured Transactions Guide*, recs. 229-233). Most notably, a prior security right that was effective against third parties under prior law at the time the new regime comes into effect continues to be effective against third parties, provided that the secured creditor registers or otherwise makes its security right effective against third parties in accordance with the new legal regime before the expiration of the transition period (for example, one year) specified in the new legal regime (see *Secured Transactions Guide*, rec. 231). Providing a transition period for secured creditors to register in the new security rights registry or otherwise

take steps to preserve the third-party effectiveness of prior security rights in accordance with the new legal regime relieves the enacting State of the burden of migrating registration information contained in the records of any registries established under prior law that were replaced by the security rights registry established under the new Law. This approach has been used with considerable success in a number of States (especially when “transitional registrations” are free of charge). Since the priority of a prior security right to which a transitional registration refers generally dates from the time it became effective against third parties under prior law (see *Secured Transactions Guide*, rec. 232), the enacting State’s prescribed form of registration notice should be designed to enable a registrant to indicate that the registration relates to a security right that was made effective against third parties under prior law. (For a more detailed discussion of transition issues, see *Secured Transactions Guide*, chap. XI).

#### *14. Legislative drafting considerations*

72. States implementing the recommendations of the present guide will need to consider whether to place the various rules reflected in the recommendations in the Law, in a subordinate Regulation, in administrative guidelines or in more than one of these texts. This is left to the enacting State to decide in accordance with its own legislative drafting conventions.

# **I. Establishment and functions of the security rights registry**

## **A. General remarks**

### *1. Establishment of the registry*

73. The opening provisions of the Regulation provide for the establishment of the registry and reiterate briefly that, as set out in the Law, the purpose of the registry is to receive, store and make available to the public information relating to security rights in movable assets (see rec. 1 below).

### *2. Appointment of the registrar*

74. The Regulation should identify, either directly or by reference to the relevant law, the authority that is empowered to appoint a natural or legal person as the registrar, determine the registrar's duties and generally supervise the registrar in the performance of those duties (see rec. 2, below). To ensure flexibility in the administration of the registry, the term "registrar" should be understood as referring to a natural or legal person, and includes a group of persons appointed to perform the registrar's duties under the registrar's supervision.

### *3. Functions of the registry*

75. The opening provisions of the Regulation should also include a provision that lists the various functions of the registry, with cross references to the relevant provisions of the Regulation in which those functions are addressed in detail (see rec. 3, below). The advantage of this approach is clarity and transparency as to the nature and scope of the issues that are dealt with in detail later in the Regulation. The possible disadvantage is that the list may not be comprehensive or may be read as implying unintended limitations on the detailed provisions of the Regulation to which cross reference is made. Accordingly, implementation of this approach requires special care to avoid any omissions or inconsistencies.

#### 4. Additional implementation considerations

76. It is critical that the persons responsible for the design and implementation of the registry be familiar with the legal context in which the registry is designed to operate, as well as with the practical needs of registry personnel and potential registry users. Consequently, it is necessary at the very outset of the design and implementation process to constitute a team whose members have technological, legal and administrative expertise, and who also represent user perspectives.

77. It will be necessary at an early stage to determine whether the registry is to be operated in-house by a governmental agency or in partnership with a private-sector firm with demonstrated technical experience and a proven record of financial accountability. While the day-to-day operation of the registry may be delegated to a private-sector firm, the enacting State should always retain the responsibility to ensure that the registry is operated in accordance with the Law (see *Secured Transactions Guide*, chap. IV, para. 47, and rec. 55, subpara. (a)). In addition, for the purposes of establishing public trust in the registry and preventing the commercialization or fraudulent use of information in the registry record, the enacting State should retain ownership of the registry record and, when necessary, the registry infrastructure.

78. The registry implementation team will need to decide how large the storage capacity of the registry record needs to be. This assessment will depend in part on whether the registry is intended to cover both consumer and business secured transactions and whether it will extend to preferential claims or non-security transactions, such as true leases. (The *Secured Transactions Guide* recommends that the Law should cover consumer transactions, subject to consumer protection law, but does not make any recommendation as to the inclusion of non-security transactions or preferential claims except to the extent the latter may compete with a security right; see *Secured Transactions Guide*, recs. 2, subparas. (a) and (b), and 81; and paras. 46, 50 and 51 above). If so, a much greater volume of registrations can be anticipated and thus the storage capacity should be increased. Capacity planning will also need to take into account the potential for additional applications and features to be added to the system. For example, designers may wish to provide sufficient capacity to permit expansion of the registry database at a later point to accommodate the registration of judgements or non-consensual security rights or the addition of linkages to other governmental records such as the State's corporate registry or its other movable or immovable property registries. Capacity planning will depend as well on whether registered information is stored in a computer database or as a paper record. Ensuring sufficient storage capacity is less of an issue if the record is in electronic form since recent technological developments have greatly



decreased storage costs. (The *Secured Transactions Guide* recommends that the registry be electronic “if possible” (see rec. 54, subpara. (j); and paras. 91-98 below)).

79. Enacting States will also need to consider issues of post-enactment acculturation and a programme aimed at familiarizing potential registry users with the operation of the registry and the legal and economic significance of registration. More specifically, to ensure the smooth implementation of the registry and its active take-up by potential users, enacting States should consider entrusting an implementation team with the task of developing public education and awareness programmes, disseminating promotional and explanatory materials, conducting training sessions and preparing detailed instructions on completing and submitting registration notices and conducting searches.

### 5. Registry terms and conditions of use

80. The rules relating to access to registry services are typically set out either in the Law or the Regulation, or both. They may also be addressed in the “terms and conditions of use” established by the registry in standard form agreements entered into with registry users. For example, the terms and conditions of access to registry services may include offering users the opportunity to open an account with the registry to facilitate quick access to registry services and the payment of any associated fees. In addition, the registry’s terms and conditions of use may address user concerns regarding the security and confidentiality of their financial and other data or the risk of changes being made to registration information without the authority of the secured creditor (for example, by assigning a unique user name and password, or employing other modern security techniques).

81. Some registries provide additional services upon request, including the following: (a) transaction reports to allow users to track their registry transactions over a specified period of time; (b) copies of registered notices and search results; and (c) statistical reports relating to the operation of the registry that may provide registry designers, policymakers and academic researchers with useful data (for example, on the volume of registrations and searches, operating costs, or registration and search fees collected over a given period).

### 6. Electronic or paper-based registry

82. The *Secured Transactions Guide* recommends that, if possible, the registry record (defined as the information in all registered notices; see para. 9

above), should be electronic in the sense that information in notices is stored in electronic form in a computer database, that is, a computer database is the container of the information (see *Secured Transactions Guide*, chap. IV, paras. 38-41 and 43, and rec. 54, subpara. (j) (i)). An electronic registry record is the most efficient and practical means of enabling enacting States to implement the recommendation of the *Secured Transactions Guide* that the registry record should be centralized and consolidated (see *Secured Transactions Guide*, chap. IV, paras. 21-24, and rec. 54, subpara. (e)).

83. The *Secured Transactions Guide* further recommends that, if possible, user 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*, chap. IV, paras. 23-26 and 43, and rec. 54, subpara. (j) (ii)). This approach is the most effective means of implementing the recommendation of the *Secured Transactions Guide* that the system should be designed to minimize the risk of human error (see *Secured Transactions Guide*, chap. IV, rec. 54, subpara. (j) (iii)-(iv)) since it eliminates the need for registry staff to enter the information contained in a paper notice into the registry record and the risk of error associated with the transcription task.

84. Direct electronic registration and searching also contributes to a speedier registration and search process. When information is submitted to the registry in paper form, registrants must wait until a member of the registry staff has entered the information into the registry record and the information becomes searchable by third parties before the registration becomes legally effective. Search requests transmitted by paper, fax or telephone also give rise to delays, since searchers must wait until registry staff carry out the search on their behalf and report the results.

85. In addition to eliminating delay and reducing the risk of human error, direct electronic registration and searching offers the following other advantages:

(a) A very significant reduction in the staffing and other day-to-day costs of operating the registry;

(b) Reduced opportunity for fraudulent or corrupt conduct on the part of registry staff;

(c) A corresponding reduction in the potential liability of the registry to users who otherwise might suffer loss as a result of the failure of registry staff to enter registration information or search criteria at all, or to enter it accurately; and

(d) User access to registration and searching services outside normal business hours.

86. If this approach is implemented, the registry should be designed to permit registry users to submit registrations and conduct searches from any private computer, as well as from computer facilities made available to the public at branch offices of the registry or other locations. To further facilitate access to registry services, the registry conditions of use should permit private-sector third-party service providers to carry out registrations and searches on behalf of their clients.

87. If the registry record is computerized, the hardware and software specifications should be robust and employ features that minimize the risk of data corruption, technical error and security breach. Even in a paper-based registry, measures should be taken to ensure the security and integrity of the registry record, but this is more efficiently and easily accomplished if the registry record is electronic. In addition to database control programmes, software will also need to be developed to manage user communications, user accounts, payment of fees, financial accounting, computer-to-computer communication and the gathering of statistical data.

88. The registry implementation team will need to evaluate the hardware and software needs of the registry and decide whether it is feasible to develop the necessary hardware and software in-house or purchase it from private suppliers. In making that determination, the team will need to investigate whether an off-the-shelf product is available that can easily be adapted to the needs of the implementing State. If different suppliers are used for the hardware and software, it is important that the software developer/provider is aware of the specifications for the hardware to be supplied, and vice versa.

89. Consideration should also be given to whether the registry should be designed to provide an electronic interface with other specialized registries in the enacting State (see para. 66 above) or with other governmental registries. For example, in some States registrants, in the course of effecting a registration, can search the company or commercial registry to verify and automatically input grantor or secured creditor identifier information. (For a further discussion of electronic matching of names, see para. 166 below.)

## **B. Recommendations 1-3**

### *Recommendation 1. Establishment of the registry*

The Regulation should provide that the registry is established for the purposes of receiving, storing and making accessible to the public information in registered notices with respect to security rights in movable assets.

### *Recommendation 2. Appointment of the registrar*

The Regulation should provide that [the person authorized by the enacting State or by the law of the enacting State] appoints the registrar, determines the registrar's duties and monitors the registrar's performance.

### *Recommendation 3. Functions of the registry*

The Regulation should provide that the functions of the registry include:

(a) Providing access to the services of the registry and, if such access is refused, the reason for refusing access in accordance with recommendations 4, 6, 7 and 9;

(b) Publicizing the means of access to the services of the registry, and the opening days and hours of any office of the registry in accordance with recommendation 5;

(c) Providing the reason for the rejection of the registration of a notice or a search request in accordance with recommendations 8 and 10;

(d) Entering the information contained in a notice submitted to the registry into the registry record, and indicating the date and time of each registration, in accordance with recommendation 11;

(e) Assigning a registration number to the initial notice in accordance with recommendation 15;

(f) Indexing or otherwise organizing the information in the registry record so as to make it searchable in accordance with recommendation 16;

(g) Protecting the integrity of the information in the registry record in accordance with recommendation 17

(h) Providing the person identified in the notice as the secured creditor with a copy of the registered notice in accordance with recommendation 18;

(i) Entering the information contained in an amendment notice into the registry record in accordance with recommendation 19;

(j) Removing the information contained in a registered notice from the public registry record upon the expiry of its period of effectiveness or registration of a cancellation notice in accordance with recommendation 20; and

(k) Archiving information removed from the public registry record in accordance with recommendation 21.

## II. Access to registry services

### A. General remarks

#### 1. Public access

90. The *Secured Transactions Guide* recommends that any person may register a notice of an existing or potential security right or search the public registry record (see *Secured Transactions Guide*, chap. IV, paras. 25-30 and rec. 54, subparas. (f) and (g)). Ensuring public access to registry services is in line with one of the key objectives of the *Secured Transactions Guide*, which is to enhance certainty and transparency with respect to security rights in movable assets (see *Secured Transactions Guide*, chap. IV, para. 25, and rec. 1, subpara. (f)). Because of its importance, this principle should be stated in the Regulation (see rec. 4 below).

91. Public access is facilitated if the registry is designed to enable users to submit notices and conduct searches electronically without the need for the assistance or intervention of registry staff. As already discussed (see paras. 82-85 above), the use of paper forms for submitting notices and conducting searches is associated with cost, delay and the potential for error and liability for the registry.

#### 2. Operating days and hours of the registry

92. The approach to the operating days and hours of the registry depends on whether the registry is designed to permit direct electronic registration and searching by users or requires their physical presence at an office of the registry. In the former case, the *Secured Transactions Guide* recommends that electronic access should be available continuously except for brief periods to undertake scheduled maintenance; in the latter case, the registry offices should operate during reliable and consistent hours that are compatible with the needs of potential registry users (see *Secured Transactions Guide*, chap. IV, para. 42, and rec. 54, subpara. (l)). In view of the importance of ensuring ease of access to registry services for users, the substance of these recommendations should be incorporated in the Regulation or in administrative guidelines published by the registry, and the registry should ensure that its operating days and hours are widely publicized (see rec. 5 above).

93. If the registry provides services through a physical office, the minimum operating days and hours should be the normal business days and hours in the enacting State. To the extent that the registry requires or permits the registration of paper notices, the registry should be aimed at ensuring that the information on the paper notice is entered into the registry record and made available to searchers on the same business day that the paper notice is received by the registry. Search requests submitted in paper form should likewise be processed on the same day they are received. To achieve this goal, the deadline for submitting paper notices or search requests may be set independently from the business hours. For example, the Regulation or administrative guidelines of the registry could stipulate that, while the registry office is open between, for example, 9 a.m. and 5 p.m., all notices and search requests must be received by an earlier time (e.g. 4 p.m.) so as to ensure that the registry staff has sufficient time to enter the information in notices into the registry record or conduct the searches. Alternatively, the registry office could continue to receive paper notices and search requests throughout its business hours, but set a “cut off” time after which information in notices received may not be entered into the registry record, or searches performed, until the next business day. A third approach would be for the registry to undertake that information will be entered into the registry record and a search will be performed within a stated number of business hours after receipt of the notice or search request.

94. The Regulation or administrative guidelines of the registry could also enumerate, in either an exhaustive or an indicative way, the circumstances under which access to the registry services may temporarily be suspended. An exhaustive list would provide more certainty, but there is a risk that it might not cover all possible circumstances. An indicative list would provide more flexibility but less certainty. Circumstances justifying a suspension of registry services would include any event that makes it impossible or impractical to provide those services (such as force majeure, for example, fire, flood, earthquake or war, or if the registry provides users with direct electronic access, a breakdown in the Internet or network connection).

### 3. Access to registration services

95. The *Secured Transactions Guide* recommends that the registry must accept an initial notice of a security right submitted to it for registration if the notice: (a) is presented via an authorized medium of communication (that is, in the prescribed paper or electronic form); (b) is accompanied by the required fee, if any; and (c) provides the grantor identifier and the other information required to be included in the notice (see *Secured Transactions Guide*, rec. 54, subpara. (c); and paras. 157 and 158 below). While the

obligation of the registry to accept an amendment or cancellation notice submitted to it for registration is subject to the same requirements, additional considerations come into play (see paras. 249-259 below).

96. The *Secured Transactions Guide* also recommends that the registry should request and maintain a record of the identity of the registrant (see *Secured Transactions Guide*, rec. 55, subpara. (b); and para. 100 below). This requirement is aimed at assisting the person identified as the grantor in a registered notice to determine the identity of the registrant in the event that the grantor did not authorize the registration. (Regarding the requirement for the grantor named in a notice to authorize registration, see para. 100 below). 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). In addition, the registry should have no right or duty to confirm the evidence of identity submitted by a registrant (see para. 101 below). To enable efficient compliance with this precondition for registration, potential registrants should be given the option of setting up a user account with the registry that provides them with special secure access codes for transmitting notices to the registry. This would facilitate access by frequent users of its registration services (such as financial institutions, automobile dealers, lawyers and other intermediaries), since they would need to provide the required evidence of their identity only once when initially setting up the account.

97. To implement these recommendations, the Regulation should provide that a person is entitled to have access to the registration services of the registry if that person: (a) uses the prescribed form of notice; (b) provides its identity in the manner prescribed by the registry; and (c) has paid, or made arrangements to pay, any applicable fees (see rec. 6, subpara. (a), below). If access to registration services is denied because the registrant did not meet these requirements, the registry should be obliged to give the specific reason (for example, the registrant failed to use the prescribed registry notice form, to provide the number of a valid identity card when filling out the form, or to pay the prescribed fee, for example, because the registrant's credit card limit was exceeded) in order to enable the registrant to address the problem and gain access. (Denial of access may also be the result of law dealing, for example, with access to public services.) Reasons should be given by the registry "as soon as practicable" (see rec. 6, subpara. (b), below). In the case of a notice submitted by the registrant in electronic form directly to the registry, "as soon as practicable" means in practice immediately since the system can be programmed to automatically communicate the reason to the registrant. In the case of a notice submitted in paper form,

“as soon as practicable” should be read to mean within a reasonable period of time, such as a few hours.

98. The Regulation should further provide that the registry may reject the registration of a notice if no information has been entered in one or more of the designated fields for entering required information or if the information entered is illegible (see rec. 8 below; for the information required in an initial amendment or cancellation notice, see paras. 157, 224 and 244 and recs. 23, 30 and 32 below).

99. The registry must provide the reason for the rejection of registration of a notice as soon as practicable (see rec. 8 below). When incomplete or illegible notices are submitted in paper form, there will necessarily be some delay between the time of receipt of the form by the registry and the time of communication of its rejection and the reasons for the rejection to the registrant. However, in a registry system that allows registrants and searchers to electronically submit notices or search requests directly to the registry, the system should be designed so as to automatically reject the submission of incomplete or illegible notices and display the reasons on the registrant’s screen.

#### *4. Verification of registrant’s identity, evidence of grantor authorization and scrutiny of the content of the notice not required*

100. As already mentioned (see para. 96 above), the *Secured Transactions Guide* recommends that the registry should request and maintain a record of the identity of the registrant (see *Secured Transactions Guide*, chap. IV, para. 48, and rec. 55, subpara. (b)). To facilitate the registration process, however, the *Secured Transactions Guide* further recommends that the registry may not verify the evidence of identity offered by the registrant (see *Secured Transactions Guide*, rec. 54, subpara. (d)). This recommendation should be incorporated into the Regulation (see rec. 7, subpara. (a), below). The registrant is the person who submits the prescribed registry notice form to the registry (rather than the person who completes it, as, unless the form is completed in the presence of a member of the registry staff, the registry has no way of obtaining information about the identity of the person who actually completed the form and, in any case, it is the identity of the person who is responsible for the registration that is relevant). The registry requires the identity of the registrant (regardless of whether the registrant is the secured creditor or a person acting on behalf of the secured creditor) as a precaution against registrations that may not be authorized by the grantor.



101. In addition, the *Secured Transactions Guide* recommends that registration of a notice should be ineffective unless authorized by the grantor in writing. To avoid delay and costs for registrants, evidence of the grantor's authorization is not a precondition to the registration of a notice. Rather, the grantor's authorization may be given before or after registration, and the conclusion of a security agreement in writing with the grantor named in the notice automatically constitutes authorization (see *Secured Transactions Guide*, chap. IV, para. 106, and rec. 71; with respect to the types of amendment notice that require the grantor's off-record authorization, see para. 223 below). This recommendation should be incorporated into the Regulation (see rec. 7, subpara. (b), below).

102. Once a registrant satisfies the requirements outlined above for obtaining access to the registry services, the registry has no right to reject the notice. The only scrutiny that the registry may conduct (automatically in an electronic registry), in accordance with recommendations 8 and 10 below, is to ensure that legible information (even if incomplete or incorrect) is entered in all the designated fields in a notice for entering the required registration information. Accordingly, the Regulation should confirm that the registry may not conduct any other scrutiny of the content of the notice (see rec. 7, subpara. (c), below). Registration does not mean that the registered notice will necessarily be legally effective. The registrant is responsible for any errors or omissions in the registration information submitted by the registrant to the registry (regarding the types of error or omission that may render a registered notice ineffective, see paras. 205-220 below). If the registry had to scrutinize the notice and confirm its effectiveness, the result would be delay, cost and potential for error, a result that would run counter to the kind of efficient registry envisaged in the *Secured Transactions Guide*. Accordingly, the Regulation should also confirm that it is not the responsibility of the registry to ensure that the information in a notice is entered in the field designated for that type of information and is complete, accurate or legally sufficient (see rec. 7, subpara. (c), below).

## 5. Access to search services

103. Citing privacy concerns, some States require searchers to provide justifiable reasons for conducting a search. To facilitate public access to the registry's search services and to avoid delaying potential transactions, the *Secured Transactions Guide* recommends that a searcher should not be required to give reasons for the search (see *Secured Transactions Guide*, rec. 54, subpara. (g)). To require searchers to justify a search would undermine the efficiency of the search process, since the registry would have to train its employees to perform this function and would have to scrutinize

the reasons given and determine whether they were sufficient to justify a search. Depending on the reasons required to justify a search, equal public access to information in the registry might be impeded, since some potential searchers might not have information that was available to others. Privacy concerns relating to the grantor are more effectively dealt with by requiring grantor authorization for a registration (see para. 101 above) and by establishing a summary judicial or administrative procedure to enable grantors to procure the cancellation or amendment of unauthorized or erroneous notices quickly and inexpensively (see paras. 260-263 below). Privacy concerns relating to the identity of the secured creditor can be addressed by enabling registrations to be effected by and in the name of the secured creditor's representative. In any event, privacy is less of a concern under the notice registration approach recommended by the *Secured Transaction Guide*, since registered notices provide only the minimal information needed to alert a searcher that a security right may exist in the asset described in a registered notice (see para. 57 above).

104. Accordingly, the Regulation should provide that any person is entitled to search the publicly accessible registry record, provided that the person submits the search request in the prescribed form and has paid, or made arrangements to pay, any prescribed fee (see rec. 9 below). If a searcher does not use the prescribed registry notice form or pay, or make arrangements to pay, any fee required, the searcher may be refused access to the searching services of the registry in the sense that its search request will not be executed by the registry. As in the case for refusing access to registration services, the registry should be obliged to give the specific reason for refusing access to searching services as soon as practicable so that the searcher can remedy the problem (see rec. 9, subpara. (b), below).

105. Unlike the approach adopted for registrants (see paras. 95-99 above), the *Secured Transactions Guide* does not require the registry to request and maintain evidence of the identity of a searcher as a precondition to obtaining access to the searching services of the registry (see *Secured Transactions Guide*, rec. 55, subpara. (b)). Since a searcher is merely retrieving information contained in registered notices from the public registry record, there is no equivalent concern about protecting the grantor from unauthorized registrations. Accordingly, identification evidence should be requested of searchers only if it is necessary for the purposes of collecting search fees, if any.

106. The Regulation should also provide that the registry may reject a search request if the searcher does not enter a search criterion in a legible manner in the designated field and must provide the grounds for a rejection as soon as practicable (see rec. 10 below). In registry systems that permit

registrants to electronically submit search requests to the registry, the software should be designed to automatically prevent the submission of search requests that do not include a legible search criterion in the designated field and display the reason on the electronic screen.

## **B. Recommendations 4-10**

### *Recommendation 4. Public access*

The Regulation should provide that any person may submit a notice or a search request to the registry in accordance with recommendations 6 and 9.

### *Recommendation 5. Operating days and hours*

The Regulation should provide that:

(a) If access to the services of the registry is provided through a physical office:

- (i) Each office of the registry is open to the public during [the days and hours to be specified by the enacting State]; and
- (ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely publicized, and the opening days and hours of registry offices are posted at each office;

(b) If access to the services of the registry is provided through electronic means of communication, electronic access is available at all times; and

(c) Notwithstanding subparagraphs (a) and (b) of this recommendation:

- (i) The registry may suspend access to the services of the registry in whole or in part for a period of time that is as short as practicable; and
- (ii) Notification of the suspension and its expected duration is published on the registry's website, if any, or otherwise widely publicized, in advance when feasible and, if not feasible, as soon thereafter as reasonably practicable, and, if the registry provides access to its services through physical offices, the notification is posted at each office.

*Recommendation 6. Access to registration services*

The Regulation should provide that:

- (a) Any person may submit a notice for registration if that person:
  - (i) Uses the applicable notice form prescribed by the registry;
  - (ii) Identifies itself in the manner prescribed by the registry; and
  - (iii) Has paid, or made arrangements to pay to the satisfaction of the registry, any fee prescribed by the registry.

(b) If access to registration services is refused, the registry provides the reason as soon as practicable.

*Recommendation 7. Verification of registrant's identity, evidence of grantor authorization and scrutiny of the contents of the notice not required*

The Regulation should provide that:

(a) The registry maintains information about the identity of the registrant but does not require verification of the information;

(b) The registry does not require evidence of the existence of the grantor's authorization for the registration of a notice; and

(c) Except as provided in recommendations 8, subparagraph (a), and 10, subparagraph (a), the registry does not conduct other scrutiny of the content of the notice and, in particular, it is not the responsibility of the registry to ensure that information provided in the notice is entered in a field designated for that type of information or is complete, accurate or legally sufficient.

*Recommendation 8. Rejection of the registration of a notice*

The Regulation should provide that:

(a) The registry rejects the registration of a notice if no information is entered in one or more of the required designated fields or if the information entered is not legible; and

(b) The registry provides the reason for the rejection as soon as practicable.

*Recommendation 9. Access to searching services*

The Regulation should provide that:

- (a) Any person may submit a search request if that person:
  - (i) Uses the applicable search request form prescribed by the registry; and
  - (ii) Has paid, or made arrangements to pay to the satisfaction of the registry, any fee prescribed by the registry.
- (b) If access to searching services is refused, the registry provides the reason as soon as practicable.

*Recommendation 10. Rejection of a search request*

The Regulation should provide that:

- (a) The registry rejects a search request if the request does not provide a search criterion in a legible manner; and
- (b) The registry provides the reason for the rejection as soon as practicable.



### III. Registration

#### A. General remarks

##### 1. *Time of effectiveness of the registration of a notice*

107. The *Secured Transactions Guide* recommends that the registration of an initial or amendment notice should become effective only when the information contained in the notice is entered into the registry record so as to be available to searchers, rather than when the information contained in the notice is received by the registry (see *Secured Transactions Guide*, chap. IV, paras. 102-105, and rec. 70).

108. Typically, this rule would be included in the Law. However, depending on its particular legislative method, an enacting State may decide to place it or reiterate it in the Regulation (see rec. 11, subpara. (a), below). In addition, the Regulation should provide that the effective time of registration of an initial or amendment notice (that is, the date and time when the information in the notice becomes searchable) should be indicated in the registry record relating to that notice (see rec. 11, subpara. (b), below).

109. As already mentioned, the *Secured Transactions Guide* recommends that the registry record should be computerized if possible. If the registry is designed to enable users to electronically submit information in an initial or amendment notice to the registry without the intervention of registry staff, the registry software should be designed to ensure that the information becomes publicly searchable immediately or nearly immediately after it is transmitted. With modern advances in technology, this should not be a problem. As a result, any delay between the electronic transmission of the information in a notice and the effective time of registration will be all but eliminated.

110. In registry systems that permit or require registration information to be submitted to the registry using a paper form, registry staff must enter the information on the paper form into the registry record on behalf of registrants. In these systems, there will inevitably be some delay between the time when the paper form is received in the registry office and the time when the information set out on the form is entered into the registry record so as to be publicly searchable. In view of the importance of the timing and

order of registration to the third-party effectiveness and priority of a security right, the Regulation should provide that the registry must enter the information in paper notices into the registry record as soon as practicable and in the order in which the notices were submitted to the (see rec. 11, subpara. (c), below).

111. In a hybrid registry system which permits notices to be submitted in both paper and electronic form, this recommendation would not necessarily ensure the priority of a secured creditor that submitted a paper notice to the registry before a competing secured creditor submitted a notice electronically. For example, a paper notice might be submitted at 8 a.m., and entered into the registry record by the registry staff so as to become searchable at 12.30 p.m., while the competing secured creditor might enter its registration information electronically at 8.05 a.m. and the registration become searchable at 8.10 a.m. Assuming priority between them is determined by the general first-to-register rule, the competing secured creditor would have priority, since its notice was the first to become searchable and therefore the first to be registered. In systems that adopt a hybrid approach, registrants who elect to use paper notices should be alerted to this potential disadvantage.

112. While the *Secured Transactions Guide* deals with the time of effectiveness of the registration of an initial notice or an amendment notice, it does not specifically deal with the time of effectiveness of the registration of a cancellation notice. However, it does recommend that, promptly upon the registration of a cancellation notice, the information in previously registered notices to which the cancellation notice relates should be placed in the registry archives so as to be no longer accessible to searchers of the public registry record (see *Secured Transactions Guide*, rec. 74). As a practical matter, it follows that, when the registry accepts a cancellation notice submitted to it, the first step will be to remove the information in the related notices from the public registry record. Accordingly, the time of effectiveness of the registration of a cancellation notice should be the time when the information in previously registered notices to which the cancellation notice relates is no longer accessible to searchers of the public registry record (see rec. 11, subpara. (d), below). As in the case of an initial or amendment notice, the effective date and time of registration of a cancellation notice should also be indicated on the registry record relating to that notice (see rec. 11, subpara. (e), below). If the cancellation notice is submitted electronically, the time between receipt of the cancellation notice and removal of the information from the public registry record will be very short. If a paper cancellation notice is submitted, there will be a greater time lag.



## 2. *Period of effectiveness of the registration of a notice*

113. The *Secured Transactions Guide* recommends that an enacting State may adopt one of two approaches to the period of effectiveness (or duration) of the registration of a notice (see *Secured Transactions Guide*, chap. IV, paras. 87-91, and rec. 69).

114. Under the first approach (see rec. 12, option A, below), all registered notices are subject to a uniform statutory period of effectiveness which reflects typical financing practices in the enacting State. It follows that, if a secured transaction to which the registered notice relates has a longer duration, the secured creditor must ensure that the period of effectiveness is renewed before the expiry of the statutory period. This approach provides certainty as to the period of effectiveness of a registered notice, avoids the need to specify a duration in the initial notice, simplifies the intake process by making automatic the scheduling of the expiry date by the registry and provides a self-cleansing registry record in cases in which the secured party fails to submit a cancellation notice when obligated to do so but cannot be found, e.g. has gone out of business. However, this approach limits the flexibility of the registrant to match the period of effectiveness of the registered notice to the likely duration of the secured financing relationship and pay the relevant fee (which may be based on a sliding scale related to the period chosen).

115. Under the second approach (see rec. 12, option B, below), registrants are permitted to choose the desired period of effectiveness themselves, with the option to renew for an additional period of their own choosing by registering an amendment notice. In legal systems that adopt this approach, it may be desirable to base registration fees on a sliding scale related to the duration selected by the registrant in order to discourage the selection of excessive terms that do not correspond to the expected duration of the underlying security agreements (with a cushion of extra time to allow for negotiated delays in payment of the secured obligation).

116. Enacting States should incorporate one of these approaches in their Law and, depending on their particular legislative method, in the Regulation (see rec. 12, options A and B, below). Alternatively, enacting States could follow a third approach, which is a variant of option B. Under this third approach, the registrant would be entitled to select the period of effectiveness of the registered notice, subject to a maximum limit, so as to discourage the selection of excessive terms (see *Secured Transactions Guide*, chap. IV, para. 88; and rec. 12, option C, below).

117. If an enacting State adopts the first approach, it is not necessary for the registry system to be designed to allow the secured creditor to reduce

the statutory period of effectiveness. This is because a registrant is obligated, in any event, to register a cancellation notice if no security agreement has been concluded, the security right has been extinguished by full payment or otherwise or the registration of a notice is not authorized by the grantor (see paras. 260-263 below).

118. In enacting States that implement the second or the third approach, the period of effectiveness of a registered notice is a mandatory component of the information required to be included in a notice, with the result that a notice would be rejected if it did not indicate its period of effectiveness in the designated field (see paras. 98 and 99 above and 199 below).

119. If the second or the third approach is selected by an enacting State, it may be desirable to design the prescribed notice form in a way that permits the registrant to easily indicate the desired period without the risk of inadvertent error, for example, by limiting the choice to a period expressed in whole years from the date of registration.

120. Regardless of the approach an enacting State may take to determining the period of effectiveness of a registration, the general law of the enacting State for calculating time periods will apply to the calculation of the period of effectiveness, unless the Law provides otherwise. For example, the general law of the enacting State may provide that, if the applicable period is expressed in whole years from the day of registration, a year runs from the beginning of that day.

121. Typically, the third-party effectiveness of a security right is lost once the period of effectiveness of a registration expires unless: (a) the security right is made effective against third parties prior to the expiration by some other method permitted for that type of encumbered asset (see *Secured Transactions Guide*, rec. 46); or (b) an amendment notice extending the period of effectiveness is registered prior to the expiration date. While the third-party effectiveness of that security right could be re-established by registering a new initial notice, the security right would take effect against third parties only from the time of the new registration. Consequently, it would as a general rule be subordinate to security rights that were made effective against third parties prior to that new registration, and vulnerable to the avoidance powers of an insolvency representative based on the applicable periods of time prior to commencement of the insolvency proceedings, i.e. suspect periods (see *Secured Transactions Guide*, recs. 47 and 96 and paras. 254-256 below).

### 3. Time when a notice may be registered

122. The *Secured Transactions Guide* recommends that it should be permissible for a notice to be registered before the creation of a security right or the conclusion of a security agreement to which the notice relates; this is often referred to as “advance registration” (see *Secured Transactions Guide*, chap. IV, paras. 98-101, and rec. 67). This recommendation is meant to apply only to an initial or subsequent related amendment notice, as normally a cancellation notice would presuppose the registration of an initial notice in anticipation of the future creation of a security right and the unsuccessful conclusion of the negotiations of the parties. This rule typically would be stated in the Law. However, depending on the particular legislative method of the enacting State, it might be included or reiterated in the Regulation (see rec. 13, below).

123. As already explained (see para. 20 above), registration does not create and is not necessary for the creation of a security right (see also *Secured Transactions Guide*, rec. 33). Consequently, until the security agreement is actually entered into and the other requirements for the creation of a security right are satisfied (for example, the grantor has acquired rights in, or the power to dispose of, the asset; see *Secured Transactions Guide*, recs. 13 and 14), a security right may not be effective against third parties and thus be subordinate to the right of a competing claimant, such as a buyer that acquires rights in the encumbered assets in the period between advance registration and the creation of the security right (see *Secured Transactions Guide*, rec. 79). However, registration will generally ensure that, once created, the security right has priority over the rights of another secured creditor that registers subsequently, regardless of the order of creation of the competing security rights (see para. 26 above).

124. If the negotiations are aborted after the registration of a notice is effected or, for some other reason, no security agreement is ever entered into between the parties, the creditworthiness of the person named as grantor in the registration may be adversely affected by the existence of the registration unless a cancellation notice is registered. To address this concern, the *Secured Transactions Guide* recommends that the enacting State should establish a summary judicial or administrative procedure to enable the grantor to have the registration cancelled in the event that the registrant fails or refuses to do so (see *Secured Transactions Guide*, rec. 72; and rec. 33 and paras. 260-263 below).

#### 4. *Sufficiency of a single notice*

125. In a notice registration system of the kind contemplated by the *Secured Transactions Guide* (see *Secured Transactions Guide*, chap. IV, paras. 10-14; and rec. 57 and paras. 55-63 above), there is no reason why a single notice should not be sufficient to give third-party effectiveness to present or future security rights arising under multiple security agreements between the same parties covering the assets described in the notice (see *Secured Transactions Guide*, rec. 68). Requiring a one-to-one relationship between each notice and each security agreement would generate unnecessary costs and undermine the ability of the secured creditor to flexibly respond to the grantor's evolving financing needs without having to fear a loss of the priority position it holds under the initial registration. Accordingly, the *Secured Transactions Guide* recommends that the registration of a single notice should be sufficient to achieve the third-party effectiveness of one or more than one security right, whether such a right or rights exist at the time of registration or are created later and whether they arise from one or more than one security agreement between the same parties (see *Secured Transactions Guide*, rec. 68). Typically, this rule would be stated in the Law. However, depending on the particular legislative method of the enacting State, it might be included or reiterated in the Regulation (see rec. 14 below).

126. It should be emphasized that a registration achieves the third-party effectiveness of security rights arising under multiple security agreements only to the extent that the description of the encumbered assets in the notice encompasses the assets described in any new or amended security agreement (see *Secured Transactions Guide*, rec. 63). Otherwise, the registration would not serve the function of alerting third-party searchers to the potential existence of the security right. Accordingly, to the extent that any security agreement concluded between the parties covers additional assets that were not described in the initial notice, a new initial notice or an amendment notice would be needed and the third-party effectiveness and priority of the security right in these additional assets would date only from the time of registration of the new initial notice or the amendment notice.

#### 5. *Unique registration number to be assigned to initial notices*

127. The Regulation should require the registry to assign a unique registration number to an initial notice (see rec. 15 below). This is necessary to ensure that any subsequent amendment or cancellation notice that relates to the initial notice is associated with that initial notice in the registry record so that it can be retrieved and included in a search result that finds the initial notice. (For a discussion of the need for a registrant to provide the

registration number of the initial notice to which the amendment or cancellation relates, see paras. 224 and 244 below.)

### 6. *Grantor-based organization and retrieval of registered notices*

128. Registrations in an immovable property registry are typically organized and retrieved by reference to an alphanumeric or similar identifier for the particular parcel of land to which the registration relates (for example, its address). The same approach is usually taken for asset-specific movable property registries such as ship or aircraft registries. For example, the international registry established under the Convention on International Interests in Mobile Equipment and its Protocol on Matters Specific to Aircraft Equipment uses the serial number assigned by the manufacturer of the aircraft object as the principal indexing and search criterion.

129. In contrast to this approach, the *Secured Transactions Guide* recommends that the primary indexing criterion for the purposes of searching and retrieving registered notices should be the identifier of the grantor (see *Secured Transactions Guide*, chap. IV, paras. 31-36, and rec. 54. subpara. (h)). This recommendation is based on two considerations. First, most categories of movable asset do not have a sufficiently unique identifier to enable useful asset-based indexing. Second, grantor-based indexing enables a security right in the grantor's future assets and circulating pools of revolving assets, such as inventory and receivables, to be made effective against third parties by a single registration (see *Secured Transactions Guide*, rec. 68). Depending on its particular legislative method, an enacting State may choose to include this rule in its Law or Regulation or both (see rec. 16 below).

130. Although the *Secured Transactions Guide* refers to the indexing of information in the registry record, indexing as a technical matter is not the only mode of organizing information in a database so as to make it searchable. Accordingly, the Regulation should be drafted to allow flexibility in the design of the registry (see rec. 16 below).

### 7. *Organization and retrieval of registered notices by serial number*

131. Grantor-based indexing and searching has a drawback in a specific transactional context often referred to as the "A-B-C-D problem". If one supposes, for example, that B, after granting a security right in its automobile in favour of A, sells the automobile to C, who in turn proposes to sell or

grant security in it to D. Assuming D is unaware that C acquired the asset from the original grantor B, D will search the registry using C's identifier as the search criterion. Unless A amended its registration to add C as an additional grantor or registered a new notice naming C as the grantor, D's search will not retrieve the registered notice relating to the security right granted by B in favour of A (on the question of whether a secured creditor should be obligated to amend its registration to add a transferee from the original grantor as a new grantor, see paras. 229-232 below). Yet, under the Law recommended by the *Secured Transactions Guide*, the security right granted by B will generally follow the automobile into the hands of D (see *Secured Transactions Guide*, rec. 79).

132. In response to the "A-B-C-D problem", some secured transactions laws provide for supplementary asset-based indexing and searching. As a practical matter, this approach is feasible only for types of movable asset for which unique and reliable serial numbers or equivalent alphanumeric identifiers are available. For example, the automotive industry assigns a unique alphanumeric identifier, commonly referred to as a vehicle identification number, to individual motor vehicles according to a system based on standards issued by the International Organization for Standardization (ISO). In legal regimes that enable searchers to retrieve registered notices using a unique alphanumeric number of this kind, a prospective transferee in the position of D is protected, since a search by that number will disclose all security rights granted in the particular motor vehicle by any owner in the chain of title.

133. The *Secured Transactions Guide* discusses but makes no recommendation on the question of using the serial number or equivalent alphanumeric identifier of an asset as an indexing and search criterion (see *Secured Transactions Guide*, chap. IV, paras. 34-36). The disadvantage of this approach is that it may reduce the ability of the parties to create an effective security right in future assets, since the secured creditor must then continually register amendment notices to add the serial number or other identifier of assets that are acquired by the grantor after the registration of the initial notice. Accordingly, in States that have implemented this approach, it is limited to assets that, in addition to having a unique identifier, have a high resale value and a significant resale market (for example, in addition to motor vehicles, trailers, mobile homes, aircraft frames and engines, railway rolling stock, boats and boat motors).

134. In addition, under the Law of States that have adopted this approach, serial number registration is required only for the purposes of achieving third-party effectiveness and priority as against those classes of competing claimants that are most potentially prejudiced by the so-called "A-B-C-D problem" (notably, transferees of the encumbered assets). As against other

classes of competing claimants, for example the grantor's judgment creditors or insolvency administrator, the registration of a notice that does not include entry of the serial number in the designated field is still sufficient to achieve the third-party effectiveness of the security right against third parties so long as the notice otherwise sufficiently describes the encumbered asset. Furthermore, the entry of the serial number is not required at all if the relevant assets are held by the grantor as inventory. In the case of inventory, the entry of a generic description in the general field designated for entering a description of the encumbered assets is sufficient. This is because the "A-B-C-D problem" does not arise in the case of inventory, since buyers that acquire inventory from the original grantor in the ordinary course of the grantor's business take the inventory free of the security right in any event (see *Secured Transactions Guide*, rec. 81, subpara. (a)).

#### 8. *Preserving the integrity and security of the registry record*

135. As already mentioned (see para. 77 above), for the purposes of establishing public trust in the security of the registry record, the *Secured Transactions Guide* recommends that, while the day-to-day operation of the registry may be delegated to a private authority, the State should retain the responsibility of monitoring the operation of the registry, the ownership of the registry record and, if necessary, the registry infrastructure. Other steps to ensure the integrity and security of the registry record include: (a) obligating the registry to request and maintain the identity of the registrant (see paras. 96 and 97 above); (b) obligating the registry to send promptly copies of registered notices to the secured creditor (see paras. 145-147 below); (c) obligating the secured creditor to send promptly copies of registered notices to the person named as the grantor in a registered notice (see paras. 148 and 149 below); and (d) eliminating any discretion on the part of registry staff to reject users' access to registry services (see paras. 103-106 above). Additional measures to ensure that the integrity of the registry record is preserved are described in paragraphs 136 to 140 below.

136. First, the Regulation should make it clear that registry staff may not alter or remove information in registered notices, except as specified in the Law and the Regulation (see rec. 17 below) and that any change can be made only by registration of an amendment notice in accordance with the Regulation (see rec. 19 below). Nonetheless, in enacting States that permit secured creditors to submit registration information using paper notice forms, consideration may be given to whether the registry should be authorized to correct errors made by registry staff in entering the registration information on the paper forms into the registry record. If this approach is adopted, a notice of the correction should promptly be sent to the person identified in

the notice as the secured creditor (and a notification of the nature of the correction and the date it was effected should be added to the public registry record linked to the relevant notice). Alternatively, the enacting State could require the registry to notify the person identified in the notice as the secured creditor of its error and that person could then submit an amendment notice free of charge. (For a discussion of the liability of the enacting State for any intervening loss or damage caused by errors introduced by registry staff, see paras. 141-144 below).

137. Second, to protect the registry record against the risk of physical damage or destruction, the enacting State should maintain back-up copies of the registry record (see *Secured Transactions Guide*, chap. IV, paras. 54, and rec. 55, subparas. (f)). Any rules governing the security of other public records in the enacting State might be applicable in this context.

138. Third, the potential for registry staff corruption should be minimized by: (a) designing the registry system to make it impossible for registry staff to alter the time and date of registration or any registration information entered by a secured creditor; (b) instituting financial controls that strictly monitor staff access to cash payments of fees and to the financial information submitted by clients who use other modes of payment; and (c) designing the registry system so as to ensure that the archived record of cancelled notices preserves the original information contained in all registered notices to which the cancellation notices relate.

139. Fourth, it should be made clear to registry staff and registry users, inter alia, that registry staff are not allowed to give legal advice on the legal requirements for effective registration and searching or on the legal effects of registrations and searches. However, registry staff should be able to give practical advice with respect to the registration and search processes (see paras. 141-144 below).

140. Finally, as already discussed (see paras. 95-99 and 103-106 above), the registry should be designed, if possible, to enable secured creditors and searchers to directly submit information for registration and search requests electronically as an alternative to using paper forms and having registry staff enter the registration or conduct the search on their behalf (see *Secured Transactions Guide*, rec. 54, subpara. (j)). Under this approach, users bear sole responsibility for any errors or omissions they make in the registration or search process and carry the burden of making the necessary corrections or amendments (see para. 102 and rec. 7 above). Consequently, the potential for corruption or misconduct on the part of registry staff is greatly minimized, since their duties are essentially limited to managing and facilitating electronic access by users, processing fees, overseeing the operation and maintenance of the registry system and gathering statistical data.



### 9. *Liability of the registry*

141. The *Secured Transactions Guide* recommends that the Law should provide for the allocation of responsibility for loss or damage caused by an error in the administration or operation of the registration and searching system (see *Secured Transactions Guide*, rec. 56).

142. As noted earlier, users bear sole responsibility for any errors or omissions in the information contained in a notice or search request they submit to the registry and carry the burden of making the necessary corrections or amendments (see rec. 7, and para. 102 above). If notices and search requests are directly submitted by users electronically without the intervention of registry staff, the potential liability of the enacting State should, therefore, be limited to system malfunction, since any other error would be attributable to the secured creditor (see *Secured Transactions Guide*, rec. 56). However, if notices or search requests are submitted using a paper form, the enacting State will need to address the existence or the extent of its potential liability for the refusal or failure of the registry to correctly enter information contained in notices into the registry record or to correctly carry out search requests.

143. While it should be made clear that registry staff are not allowed to give legal advice (see para. 139 above), the enacting State will need to address whether and to what extent it should be liable if registry staff nonetheless provide incorrect or misleading information on the requirements for effective registration and searching or on the legal effects of registrations and searches.

144. Among States that accept legal responsibility for loss or damage caused by system malfunction or error or misconduct by registry staff, some allocate part of the registration and search fees collected by the registry to a compensation fund to cover possible claims, while in other States claims are paid out of general revenue. Some of the States that accept legal responsibility also set a maximum limit on the monetary compensation payable in respect of each claim.

### 10. *Registry's duty to send a copy of the registered notice to the secured creditor*

145. As noted earlier, the registration of a notice becomes effective when the information contained in the notice is entered into the registry record so as to be available to searchers. In view of the importance of the effective time of registration to the third-party effectiveness and priority of a security

right, the *Secured Transactions Guide* recommends that a secured creditor that submits a notice to the registry should be entitled to receive a copy of the registered notice as soon as the information contained in the notice is entered into the registry record so as to be searchable (see *Secured Transactions Guide*, chap. IV, paras. 49-52, and rec. 55, subparas. (d) and (e)). Accordingly, depending on the particular legislative method of the enacting State, the Law or the Regulation, or both, should provide that the registry must promptly transmit a copy of a registered notice (whether it is an initial, amendment or cancellation notice) to the secured creditor named in the notice, indicating the date and time when it became effective (see rec. 18 below).

146. If the registry needs to send a paper copy of a registered notice by ordinary mail to the secured creditor, this will delay the ability of the secured creditor to act with confidence on the third-party effectiveness and priority of its security right. Accordingly, the registry should be designed, if possible, to automatically generate an electronic copy of a registered notice. If the system permits notices to be submitted by the secured creditor electronically, the system should be designed to automatically transmit the electronic copy of the registered notice to the secured creditor using their common electronic interface. Even if the secured creditor submitted a paper notice, the registry system should be designed to permit electronic transmission of the copy, for example, by electronic mail attachment, to the secured creditor.

147. As already noted (see para. 145 above), the secured creditor should be entitled to receive a copy of all registered notices, not just an initial notice. A secured creditor would want to receive a copy of an amendment or cancellation notice, since it might affect the third-party effectiveness or priority of the security right to which the notice related. A copy of an amendment or cancellation notice is particularly important in the event that the registration was erroneous or unauthorized, since it would enable the secured creditor to take steps to protect its position. (For a discussion of the consequences of the inadvertently erroneous registration of a cancellation notice by a secured creditor, see paras 245-248 below; for a discussion of the effectiveness of registration of amendment or cancellation notices not authorized by the secured creditor, see paras. 249-259 below).

## *11. Secured creditor's duty to send a copy of the registered notice to the grantor*

148. As already noted (see para. 101 above), a secured creditor must obtain the written authorization of the grantor, either in the security agreement or in a separate agreement, before or after registration, in order for the registration of the notice to be effective. To enable the person named as grantor in

a registered notice to become aware that a notice has been registered naming that person as grantor, and that the registration information corresponds to the scope of the authorization given or intended to be given, the *Secured Transactions Guide* recommends that the secured creditor must send a copy of the registered notice to the grantor (see *Secured Transactions Guide*, rec. 55, subpara. (c)). When there are multiple secured creditors, it is sufficient if one of the secured creditors sends a copy of the registered notice to the grantor. Depending on the particular legislative method of the enacting State, this recommendation may be incorporated in its Law or Regulation or both (see rec. 18, subpara. (b), below).

149. Placing the obligation on the secured creditor, rather than the registry, to send a copy of the notice to the grantor is intended to avoid creating an additional burden for the registry which could negatively affect its efficiency. On the assumption that, in most cases, registrations will be made in good faith and will be authorized, the compliance of the secured creditor with this obligation is not a precondition to the effectiveness of the registration. Rather, any failure by the secured creditor to meet this obligation should result in only a nominal penalty and liability to compensate the grantor for any actual damage resulting from the failure (see *Secured Transactions Guide*, chap. IV, para. 51, and rec. 55, subpara. (c)).

## 12. Amendment of information in the public registry record

150. The *Secured Transactions Guide* recommends that a secured creditor may amend information in a registered notice by registering an amendment notice at any time (see *Secured Transactions Guide*, chap. IV, paras. 110-116, and rec. 73). Depending on the particular legislative method and drafting conventions of the enacting State, its Law or Regulation or both should incorporate this recommendation, with the clarification that the person authorized to amend the information contained in a registered notice is the person identified in the notice as the secured creditor (see rec. 19, subpara. (a), below; for a discussion of the effectiveness of the registration of an amendment notice when the registration has not been authorized by the secured creditor, see paras. 249-259 below). It should also be made clear that the registration of an amendment notice does not result in the deletion or modification of information in a registered notice to which the amendment notice relates (see para. 9 above and rec. 19, subpara. (b), below). The *Secured Transactions Guide* also recommends that a grantor may, in certain circumstances, seek an amendment through a judicial or administrative process (see *Secured Transactions Guide*, chap. IV, paras. 107 and 108, and rec. 72). This recommendation should also be included in the Regulation or the Law or both (see rec. 30 and para. 224 below).

### 13. *Removal and archiving of information from the public registry record*

151. The *Secured Transactions Guide* recommends that information contained in a registered notice (including information contained in an attachment which becomes part of the notice) should be removed promptly from the public registry record once the period of effectiveness of the notice expires or a cancellation notice is registered; the information must then be archived so as to be retrievable if necessary. (As to the archiving of information in expired or cancelled notices, see *Secured Transactions Guide*, chap. IV, para. 109, and rec. 74; as to whether archiving is required if the registration of the cancellation notice was not authorized by the secured creditor, see paras. 249-259 below). If 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. Archiving in a manner that permits retrieval is nonetheless required, since 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. Typically, these rules would be included in the Law. However, depending on its legislative method, an enacting State might decide to place them or reiterate them in the Regulation (see recs. 20 and 21 below).

152. The Regulation should also specify a minimum period of time for which archived notices must be preserved (for example, 20 years; see rec. 21 below). The length of the archival period may be influenced by the length of the prescription or limitation period under the law of the enacting State for initiating claims in relation to secured transactions. For example, if the law provides that no action may be brought later than 15 years from the date of extinguishment of the security right or termination of the security agreement, the Regulation could provide for a co-extensive archival period. In deciding the appropriate period, the enacting State should consider whether the law permits an extension of the prescription period and whether the registry should then be obligated to keep the information in its archives for a period equivalent to any permitted extension. Finally, the period may be far longer if the archives are maintained electronically, as the cost of maintenance is far less than for paper records.

### 14. *Language of notices and search requests*

153. While the *Secured Transactions Guide* does not make any specific recommendation with regard to the language to be used in submitting

registration information and search requests to the registry, it does emphasize the need for enacting States to address this issue (see *Secured Transactions Guide*, chap. IV, paras. 44-46). Accordingly, the issue should be addressed in the Regulation (see rec. 22 below).

154. Regardless of the language used in the underlying security documentation, the Regulation typically would require registration information and search requests to be expressed in the official language or languages of the State under whose authority the registry is maintained. While the State could also authorize the use of other languages, this would undermine the efficiency and transparency of the registry record unless the typical registry user in the enacting State could reasonably be expected to know that other language.

155. The only exception to this rule should be if the grantor's name, for example a business incorporated under foreign law, is expressed in a language that is different from that used by the registry. To address cases involving the expression of the grantor's name in a language which uses a set of characters different from the characters used in the language or languages of the registry, it will be necessary for the Regulation to provide guidance on how the characters are to be adjusted or transliterated to conform to the language of the registry. The same considerations apply to the secured creditor's name.

156. In the event that the law of the State under which a grantor that is a legal person is constituted permits the use of multiple official linguistic versions of the grantor's name, enacting States may adopt different approaches. One approach would be to require that all such official linguistic versions of the grantor's name be entered as separate grantor identifiers in the notice. This approach would have the advantage of protecting third-party searchers that deal or have dealt with the grantor under any one of the linguistic versions of its name and would therefore search the registry using that version. This approach, however, would expose the secured creditor to the risk of having its registration treated as ineffective if it failed to indicate correctly all of the official linguistic versions of the grantor's name. If an enacting State follows this approach, its Regulation should specify that the obligation of the secured creditor to enter all official linguistic versions of the grantor's name in the notice as separate grantor identifiers is subject to the rules prescribed by the Regulation regarding how names expressed in a foreign set of characters are to be adjusted or transcribed to conform to the language or languages of the registry. Another approach would be to require that only one of the official linguistic versions of the grantor's name must be listed in the notice. This approach would reduce the risk of error for the secured creditor, but would expose third-party searchers to the risk of not

finding the registered notice if they dealt with the grantor using a different linguistic version of the grantor's name and therefore conducted a search according to that other name.

## **B. Recommendations 11-22**

### *Recommendation 11. Time of effectiveness of the registration of a notice*

The Regulation should provide that:

(a) The registration of an initial or amendment notice is effective from the date and time when the information in the notice is entered into the registry record so as to be accessible to searchers of the public registry record;

(b) The registry maintains a record of the date and time when the information in an initial or amendment notice is entered into the registry record so as to be accessible to searchers of the public registry record;

(c) The registry enters into the registry record and indexes or otherwise organizes information in an initial or amendment notice so as to make it accessible to searchers of the public registry record as soon as practicable and in the order in which the initial or amendment notice was submitted to the registry;

(d) The registration of a cancellation notice is effective from the date and time when the previously registered notice to which it relates is no longer accessible to searchers of the public registry record; and

(e) The registry maintains a record of the date and time when the previously registered notice to which a cancellation notice relates is no longer accessible to searchers of the public registry record.

### *Recommendation 12. Period of effectiveness of the registration of a notice*

The Regulation should provide that:

#### **Option A**

(a) The registration of an initial notice is effective for [a relatively short period of time, such as five years, specified in the law of the enacting State];

(b) The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry; and

(c) The registration of an amendment notice extending the period of effectiveness extends the period for [the period of time specified in subparagraph (a)], beginning from the time the current period would have expired if it had not been extended.

### ***Option B***

(a) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice;

(b) The period of effectiveness of the registration may be extended at any time before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness; and

(c) The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice, beginning from the time the current period would have expired if it had not been extended.

### ***Option C***

(a) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice, not exceeding [a long period of time, such as 20 years, specified in the law of the enacting State];

(b) The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness not exceeding [the period of time specified in subparagraph (a)]; and

(c) The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice, beginning from the time the current period would have expired if it had not been extended.

### ***Recommendation 13. Time when a notice may be registered***

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

### ***Recommendation 14. Sufficiency of a single notice***

The Regulation should provide that the registration of a single notice is sufficient to achieve the third-party effectiveness of one or more than one security right created by the grantor in favour of the same secured creditor in the

encumbered asset described in the notice, whether the security right or rights exist at the time of registration or are created thereafter, and whether they arise from one or more than one security agreement between the same parties.

#### *Recommendation 15. Registration number*

For the purposes of recommendations 16, 18, 30, 32 and 34, the Regulation should provide that the registry assigns a unique registration number to an initial notice and associates all notices that contain that number with the initial notice.

#### *Recommendation 16. Indexing or other organization of information in the registry record*

The Regulation should provide that:

(a) The registry indexes or otherwise organizes the information in an initial or amendment notice in the public registry record so as to make the information accessible to a searcher in accordance with recommendation 34, together with all information provided in notices that contain the same registration number; and

(b) The registry indexes or otherwise organizes information in a cancellation notice in the registry archives so as to make the information retrievable by the registry together with all information provided in notices that contain the same registration number.

#### *Recommendation 17. Integrity of the registry record*

The Regulation should provide that:

(a) Except as provided in recommendations 19 and 20, the registry does not amend information in or remove information from the registry record; and

(b) The registry protects the registry record from loss or damage, and provides for back-up mechanisms to allow reconstruction of the registry record.

#### *Recommendation 18. Copy of registered notice*

The Regulation should provide that:

(a) The registry sends as soon as practicable a copy of a registered notice to each person identified in the notice as the secured creditor at the



address set forth in the notice, indicating the date and time when the registration of the notice became effective and the registration number;

(b) Within [a short period of time, such as 10 days, to be specified by the enacting State] after the person identified in a registered notice as the secured creditor has received a copy of the registered notice in accordance with subparagraph (a) of this recommendation, that person must send:

- (i) A copy of an initial notice to each person identified in the notice as the grantor at the address set forth in the notice; and
- (ii) A copy of an amendment or cancellation notice to each person identified in the notice as the grantor at the most recent address set forth in the public registry record or, if the person identified in the notice as the secured creditor knows that the grantor's address has changed, at the grantor's most recent address known to that person or an address reasonably available to that person, even if the person identified in the notice as the grantor has multiple addresses or no address in the State in which the registry is located.

*Recommendation 19. Amendment of information in  
the public registry record*

The Regulation should provide that:

(a) Information in a registered notice may be amended by the person identified in the notice as the secured creditor through the registration of an amendment notice in accordance with recommendation 30, 31 or 33; and

(b) The registration of an amendment notice does not result in the deletion or modification of information in the registered notice to which the amendment notice relates.

*Recommendation 20. Removal of information from  
the public registry record*

The Regulation should provide that information in a registered notice is removed from the public registry record upon the expiry of the period of effectiveness of the notice in accordance with recommendation 12 or upon registration of a cancellation notice in accordance with recommendation 32 or 33.

*Recommendation 21. Archiving of information removed  
from the public registry record*

The Regulation should provide that information removed from the public registry record in accordance with recommendation 20 is archived for a period of at least [a long period of time, such as 20 years, to be specified by the enacting State] in a manner that enables the information to be retrieved by the registry in accordance with recommendation 16, subparagraph (b).

*Recommendation 22. Language of a notice*

The Regulation should provide that the information in a notice must be expressed in [the language or languages to be specified by the enacting State], and in the character set determined and publicized by the registry.

## IV. Registration of initial notices

### A. General remarks

#### 1. Introduction

157. The *Secured Transactions Guide* recommends (see *Secured Transactions Guide*, chap. IV, paras. 65-97, and rec. 57) that an initial notice must contain the following information for the registration to be accepted by the registry: (a) the identifier and address of the grantor; (b) the identifier and address of the secured creditor or its representative; (c) a description of the encumbered asset; (d) the period of effectiveness of the registration, if the enacting State allows registrants to select the period of effectiveness of the notice (see rec. 12, option B or C, and paras. 113-121 above); and (e) the maximum monetary amount for which the secured creditor may enforce the security right, if the enacting State chooses to require this information (see paras. 200-204 below). The Regulation should restate and supplement this recommendation (see rec. 23 below).

158. As already discussed (see paras. 97 and 98 above), the registrant must enter the required information in the field designated in the prescribed form of notice for entering that kind of information (see rec. 6 above and rec. 23 below). Nevertheless, if the registrant enters, for example, the identifier of the grantor in the field designated for entering secured creditor information, this would not be a ground for the registry to reject the notice, since it would not know that the wrong information had been entered and because a notice submitted for registration must be accepted by the registry as long as some legible information is entered in the designated field (see rec. 8 above). However, since a search of the registry using the grantor's name as the search criterion would not retrieve the registration of the notice, the registration would be ineffective, with the result that the security right to which it related would not be effective against third parties.

#### 2. Grantor information

##### (a) General

159. As already explained (see para. 129 above), the *Secured Transactions Guide* recommends that registered notices should be indexed or otherwise

organized in the registry record so as to be retrievable by a searcher using the grantor's identifier as the search criterion. In line with recommendations 58 to 60 of the *Secured Transactions Guide*, the Regulation should provide detailed guidance on what constitutes the correct identifier of the grantor so as to ensure that a registrant can be confident that its registration will be effective and that searchers can confidently rely on a search result (see paras. 161-179 and recs. 24-26 below). The Regulation should also provide guidance on the consequences of incorrect or insufficient statements with respect to the grantor identifier (see paras. 205-208 and rec. 29, subpara. (a), below).

160. It is not uncommon for a person to create a security right in its assets to secure an obligation owed by a third-party debtor (including a guarantor of the obligation owed by the debtor). Since the function of registration is to disclose the possible existence of a security right in the assets described in the notice, registrants should understand that the grantor information required is the identifier and address of the grantor that owns, or has rights in, the encumbered assets, and not that of a third-party debtor of the secured obligation (or a guarantor of the obligation owed by the debtor).

#### **(b) Grantor identifier**

161. The *Secured Transactions Guide* provides separate recommendations with respect to determining the identifier of the grantor depending on whether the grantor is a natural or a legal person, or other entity (see *Secured Transactions Guide*, recs. 59-60). It follows that registered notices will need to be indexed or otherwise organized in the registry record according to distinct criteria, depending on the category of grantor. This approach has implications for the registration and search process. In order to ensure that the information in a notice is entered in the registry record so as to be retrievable by a searcher, the Regulation should make it clear that a registrant must enter the identifier and address of the grantor in the fields designated for entering information relating to that category of grantor.

162. When there is more than one grantor, the Regulation should specify that their identifiers and addresses must be entered in the

designated fields or spaces on the notice separately for each grantor. This is necessary to ensure that a search of the registry record using the identifier of any one of the grantors will retrieve all registered notices with regard to that grantor (see para. 208 below). To facilitate the registration process, the prescribed form of notice should be designed so as to enable the identifiers and addresses of multiple grantors to be entered in distinct and separate fields of the same notice (see the examples of registry forms in annex II below). While the registrant could achieve the same result by registering separate notices for each grantor, this is a more cumbersome process, since the registrant would need to re-enter in each separate notice all the other information about that grantor that is required to be included in an initial notice. If there is more than one grantor (or secured creditor), the required information must be entered in the designated field separately for each grantor (or secured creditor), either in the same notice or in separate notices (see rec. 23, subpara. (b), below).

**(i) Grantor identifier for natural persons**

163. The *Secured Transactions Guide* recommends that, if the grantor is a natural person, the identifier of the grantor for the purposes of an effective registration should be the name of the grantor as it appears in a specified official document (see *Secured Transactions Guide*, rec. 59). In order to implement this recommendation, each enacting State should specify that the grantor identifier is the name of the grantor and, if the grantor's name includes a family name (i.e. a surname, which may have one or more than one component) and one or more than one given name, the components of the grantor's name that are required to be entered and the separate designated fields in the prescribed registry notice form for entering each component. In deciding which components are required, the enacting State should take into account local naming conventions, as well as the extent to which locally issued official documents specify the different components of a name. In addition, each enacting State should specify in its Regulation the types of official document that will be regarded as authoritative sources of a grantor's name, as well as the hierarchy of authoritativeness among those types of official document. The following table and paragraphs offer an example of the approach that might be taken. Each enacting State will need to determine in accordance with its own naming conventions which types of official document will be most appropriate in each case (see rec. 24 below).

<i>Grantor status</i>	<i>Grantor identifier</i>
Born in enacting State and birth registered in enacting State	Name on birth certificate or equivalent official document
Born in enacting State but birth not registered in enacting State	(1) Name on valid passport (2) If no valid passport, name on equivalent valid official document such as an identification card or driver's licence
Not born in enacting State but naturalized citizen of enacting State	(1) Name on citizenship certificate or valid passport (2) If no citizenship certificate or valid passport, name on equivalent valid official document such as an identification card or driver's licence
Not born in enacting State and not a citizen of enacting State	(1) Name on valid passport issued by the State of which the grantor is a citizen (2) If no valid passport, name on birth certificate or equivalent valid official document issued at grantor's birthplace
None of the above	Name on any two valid official documents issued by the enacting State, if those names are the same (for example, a social security, health insurance or tax card)

164. More specifically, the Regulation could specify, for example, that:

(a) If the grantor was born in the enacting State and the grantor's birth was registered in the enacting State with a government agency responsible for the registration of births, the name of the grantor is the name as stated in the grantor's birth certificate or equivalent document issued by the relevant government agency (such as an identification card or driver's licence);

(b) If the grantor was born in the enacting State but the grantor's birth was not registered in the enacting State, the name of the grantor is the name as stated in a valid passport issued to the grantor by the enacting State or, if no passport has been issued, the name as stated in [an identification card or driver's licence issued to the grantor by the enacting State];

(c) If the grantor was not born in the enacting State but is a citizen of the enacting State, the name of the grantor is the name as stated in the

grantor's certificate of citizenship or a valid passport issued to the grantor by the enacting State or, if no certificate of citizenship or passport has been issued, the name of the grantor is the name as stated in [an identification card or driver's licence issued to the grantor by the enacting State];

(d) If the grantor was not born in the enacting State and is not a citizen of the enacting State, the name of the grantor is the name as stated in a valid passport issued by the State of which the grantor is a citizen or, if the grantor does not have a valid passport, the name of the grantor is the name as stated in the birth certificate or equivalent valid official document issued to the grantor by the relevant government agency in the State in which the grantor was born;

(e) In a case not falling within subparagraphs (a) to (d), the name of the grantor is the name as stated in any two of the following valid official documents: [a social security, health insurance or tax card issued to the grantor by the enacting State], and their hierarchical order of authoritativeness; and

(f) Notwithstanding subparagraphs (a) to (e), if the name of the grantor changes in accordance with change-of-name law applicable by virtue of the private international law rules of the relevant forum, from and after the effective date of the change the identifier of the grantor as of the effective date of the change is the name of the grantor as changed.

165. Moreover, each enacting State should deal in its Regulation with exceptional situations. For example, when a grantor's given name and family name consist of more than one word, the Regulation may provide that the given name and the family name of the grantor consist of those words and they should be entered in the separate designated fields for the relevant component of the name; when the grantor's name consists of a single word, the Regulation may provide that that word should be entered in the family name field and the registry system should be designed so as not to reject notices that have nothing entered in the given name field.

166. Each enacting State may also wish to consider whether, during the registration process, the registry should provide electronic verification of names entered in notice forms against names in other registries maintained by the enacting State. In this regard, two issues should be considered. The first issue is that the registry should not attempt to provide this service unless it is confident that the registry to which it is connected is current, complete and accurate. Otherwise, it would be providing a disservice and possibly exposing itself to potential liability. The second issue is the legal effect of offering matching services. One option would be for the Regulation to

provide that a matched record is legally sufficient to identify the grantor. Under this approach, electronic matching would shift the responsibility for correctly identifying the grantor's name from the registrant to the registry, thereby exposing the registry to potential liability. The other option would be to provide that this is just a service without any legal effect and that it is the responsibility of the registrant who relies on electronic matching to ensure that the grantor identifier in the external registry is correct. The latter approach more closely accords with the recommendations of the *Secured Transactions Guide* (for example, rec. 54, subpara. (d), according to which the registry does not conduct any scrutiny of the content of a notice).

167. In some States, many persons may have the same name, with the result that a search may disclose notices relating to many different grantors who have the same name as the grantor who is the intended object of the search. To accommodate this scenario, the *Secured Transactions Guide* recommends that, when necessary, information in addition to the name of the grantor (such as the grantor's birth date or personal identification or other official number issued by the enacting State) must be included in the notice to uniquely identify the grantor (see *Secured Transactions Guide*, rec. 59). The *Secured Transactions Guide* does not, however, recommend that this additional information be used as search criteria. A State wishing to implement this approach should specify in the Regulation the type of additional information to be included in a notice, as well as whether it must be included for a notice to be accepted by the registry or whether inclusion is at the discretion of the registrant (see rec. 23, subpara. (a) (i), below).

168. Whether an enacting State should require that an identification or other official number issued by that State be included in the notice as additional information depends on three principal considerations: first, whether the system under which the identification numbers are issued is sufficiently universal and reliable to ensure that each natural person who is a citizen or resident of that State is assigned a permanent unique number; second, whether the public policy of the enacting State permits the public disclosure of the identity or other official number that it assigns to its citizens and/or residents; and third, whether there is a reliable documentary record or other source by which third-party searchers can objectively verify whether a particular number relates to the particular grantor. If these three conditions are met, the use of a State-issued identity or other official number would be an ideal way to uniquely identify grantors. However, as mentioned above, the approach recommended in the *Secured Transactions Guide* is that additional information (whether in the form of an identity card number or in another form), may be



required only when necessary to uniquely identify a grantor (see *Secured Transactions Guide*, rec. 59) and only as an additional requirement (see rec. 23, subpara. (a) (i), below) and, in any case, not as a search criterion (see rec. 34 below).

169. In view of the conflict-of-laws recommendations of the *Secured Transactions Guide* (for example, recommendation 203, which provides that the law applicable to the creation, third-party effectiveness and priority of a security right in a tangible asset is the law of the State in which the tangible asset is located), the law of the enacting State (including its regulation) 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 Regulation 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 in the Regulation that the number of the grantor's foreign passport or the number in some other foreign official document is a sufficient substitute.

**(ii) Grantor identifier for legal persons**

170. For grantors that are legal persons, the *Secured Transactions Guide* recommends that the correct identifier for the purposes of effective registration is the name that appears in the document constituting the legal person (see *Secured Transactions Guide*, rec. 60). Each enacting State should restate this rule in its Regulation and supplement it in line with its own naming conventions. For example, the Regulation should make it clear that the grantor identifier is the name of the grantor and that the relevant constitutive document, on the basis of which the grantor name should be determined, would include any type of instrument (whether it be a private contract, a statute or a decree) that is the legal source of the grantor's status as a legal person according to the law under which it was constituted (see rec. 25 below).

171. Virtually all States maintain a public commercial or corporate register for recording information about legal persons constituted under the law of that State, including their names. In some States, upon registration in that record, a unique and reliable registration number is assigned to the legal person. If the enacting State is concerned that multiple legal persons may share a common name, the Regulation could specify the inclusion of that number in the notice as additional information to be used to uniquely identify the grantor. In States that require this additional information, the Regulation should provide guidance for cases in which the grantor is a legal person

constituted under the law of a foreign State, since the commercial or corporate register of the foreign State may not have an equivalent registration number system.

172. The name of a grantor that is a legal person typically includes generic abbreviations (such as “S.A.”, “Ltd”, “Inc”, “Incorp”, “Corp” or “Co”) or terms (such as Société Anonyme, “Limited”, “Incorporated”, “Corporation” or “Company”) indicative of the type of body corporate or other legal person. The Regulation should disclose the search programme used by the registry and the effect of that search programme when such abbreviations are used. For example, the Regulation should make it clear whether a search with or without such abbreviations or terms, or with an erroneous version of them, would still retrieve the relevant registration and thus make the registration effective (see *Secured Transactions Guide*, rec. 58). This approach would benefit registrants that do not enter the correct generic abbreviation or term, or fail to enter it altogether. However, it might result in an undue burden on third-party searchers, since a search result might present many registrations that do not relate to the relevant grantor, as it would disclose all registrations that relate to grantors that are legal persons, regardless of their type, that share the same specific name as the relevant grantor.

173. Depending on the law applicable to the constitution of legal persons, the document or other instrument constituting the grantor as a legal person may contain variations of the same name (for example, referring to it in different places as “The ABC Inc.” or “ABC Inc.” or “ABC”). Ideally, the Regulation would provide guidance on which part of the constituting document is to be treated as the authoritative source of the grantor’s name for registration purposes.

### (iii) *Special cases*

174. Each enacting State will also need to set out in its Regulation additional guidelines with respect to the required grantor identifier in special cases (see rec. 26 below). The issue here is not what the legal nature of the grantor is or whether the grantor has the legal capacity to create a security right, but rather which identifier should be entered in a notice. The following table and paragraphs set out some examples of the types of situation that will need to be addressed, together with examples of possible identifiers. Enacting States will need to consider whether and how to adapt these examples to their context.

<i>Grantor status</i>	<i>Grantor identifier</i>
A person that is subject to insolvency proceedings	Name of the person that is subject to insolvency proceedings, determined in accordance with the rules applicable for grantors who are natural or legal persons, as the case may be, with the specification in a separate designated field that that person is subject to insolvency proceedings and the name of the insolvency representative, if any
Estate of a deceased person	Name of the representative of the estate, determined in accordance with the rules applicable to grantors who are natural or legal persons, as the case may be, with the specification in a separate field that the grantor is a representative of the estate
Named trust	Name of the trust, followed by the word “trust”, unless the name of the trust already contains the word “trust”, determined in accordance with the rules applicable to grantors who are legal persons
Unnamed trust	<p>(1) Name of at least one of the trustees, determined in accordance with the rules applicable to grantors who are natural persons, if the trustee is a natural person, or in accordance with the rules applicable to grantors who are legal persons, if the trustee is a legal person, with the specification in a separate designated field that the grantor is a trustee, or</p> <p>(2) Name of at least one of the persons that constituted the trust.</p>

175. In the case of a person that is subject to insolvency proceedings, the grantor (in the sense of the person entitled to encumber the assets of the insolvency estate) may be either the person that is subject to insolvency proceedings or its insolvency representative, depending on the relevant insolvency law. Thus, an enacting State will have to determine whether the Regulation should require that the secured creditor, in addition to entering in the appropriate grantor field the name of the person that is subject to insolvency proceedings, should also specify in a separate field that the grantor is subject to insolvency proceedings and the name of the insolvency representative, if any. The advantage of this approach is that a search of the registry according

to the name of the person that is subject to insolvency proceedings will disclose all notices registered in respect of the assets of that person, whether they relate to security rights granted before or after the commencement of insolvency proceedings and whether the person granting the security right was that person or the insolvency representative, if any.

176. The same approach might be followed when a security right is created in assets that are part of the estate of a deceased natural person by the representative of the estate. Accordingly, in such a case, the grantor identifier would be the name of the deceased person determined in accordance with the rules applicable to natural persons, with the specification in a separate designated field that the encumbered assets are part of the estate of the grantor and the name of the representative of the estate. This approach would ensure that a search under the name of the deceased person will retrieve notices registered against the name of the deceased person prior to his or her death relating to security rights in assets that may at the time of the search form part of the deceased person's estate.

177. When the assets of a named trust are encumbered, an enacting State may wish to consider providing in its Regulation that, if a security right is created in the assets of a trust by the trustee and the instrument creating the trust designates the name of the trust, the grantor identifier should be that name, followed by the word "trust", unless the name of the trust already contains the word "trust", determined in accordance the rules applicable to legal persons.

178. If, however, a security right is created in the assets of a trust by the trustee, and the instrument creating the trust does not designate the name of the trust, the grantor identifier should be the name of at least one of the trustees, to be determined in accordance with the rules applicable to the identifier of a natural person, if the trustee is a natural person, or in accordance with the rules applicable to the identifier of a legal person, if the trustee is a legal person, with the specification in a separate designated field that the grantor is a trustee. Alternatively, each enacting State may wish to provide that the grantor identifier in the case of an unnamed trust should be the name of at least one of the persons that constituted the trust.

179. Enacting States may wish to address other types of special cases in which guidance on how to enter the grantor identifier in a notice may be needed, such as cases in which a security right is granted on the combined assets of a syndicate or joint venture which is operating under a combined name but which has not been constituted as a separate legal person.

180. In the case of a sole proprietorship, even though the business may be operated under a different business name and style than the name of the

proprietor, the Regulation should provide that the grantor identifier to be used in a notice to be registered is the name of the proprietor entered in accordance with the rules applicable for grantors who are natural persons. The name of the sole proprietorship is unreliable and usually may be changed at will by the proprietor. While a registrant may enter the name of the sole proprietorship in the notice as an additional grantor, the name of the proprietor should be the required identifier.

**(c) Address of the grantor**

181. Under the *Secured Transactions Guide*, the address of the grantor is part of the required content of the notice (see *Secured Transactions Guide*, rec. 57, subpara. (a)). It may also be used as additional information to uniquely identify a grantor if the name of the grantor is a very common name (along with other information, such as a birth date or official identity card number; see paras. 167 and 168 above). However, the address is not part of the grantor identifier (see *Secured Transactions Guide*, rec. 59, as well as recs. 23, subpara. (a)(i); 24, subpara. (a); and 25, subpara. (a), below) and thus is not a search criterion (see rec. 34, subpara. (a), below). Accordingly, the prescribed registry notice form should designate a field for entering the grantor's address that is separate from the field designated for entering the grantor's identifier (see the examples of registry forms contained in annex II below).

182. In view of the variety of types of address used in communications, the present guide takes the approach that any address should qualify as an "address" of the grantor for the purpose of completing a registered notice, including a physical, street or post office box address, an electronic address or any other address that would be effective for communicating information to the grantor. However, when personal security concerns necessitate that an individual's address details not be disclosed in a public registry record, the Regulation may specify the entry of a post office box or similar non-residential mailing address (see the term "address" in para. 9 above).

183. The address of the grantor (in the sense of a person identified in the notice as the grantor) is also particularly relevant for the purpose of the obligation of the secured creditor (in the sense of a person identified in the notice as the secured creditor) to send a copy of a registered notice to the grantor (see *Secured Transactions Guide*, rec. 55, subparas. (c); and rec. 18 above). This raises the question of what constitutes the "correct" address of the grantor for this purpose. It would seem that the grantor's "correct" address should be, for the purpose of sending the initial notice, the address indicated in the initial notice and, for the purpose of sending an amendment notice, the most recent address set forth in the public registry record or, if the person identified in the notice as the secured creditor knows

that the grantor's address has changed, at the grantor's most recent address known to that person or an address reasonably available to that person, even if the grantor has multiple addresses or no address in the State in which the registry is located (see rec. 18, subpara. (b), above).

### 3. Secured creditor information

184. The *Secured Transactions Guide* recommends that the identifier of the secured creditor or the secured creditor's representative, along with its address, be included in the notice submitted to the registry (see *Secured Transactions Guide*, rec. 57, subpara. (a)). The Regulation should restate and, if necessary, supplement this recommendation (see rec. 27 below).

185. The Regulation should specify that the same identifier rules that apply to the grantor should also apply to the secured creditor. The name entered in the "secured creditor" field may be either the name of the actual secured creditor or the name of its representative.

186. Permitting the entry of the identifier of the representative of the actual secured creditor is intended to protect the privacy of the secured creditor. The rights of the grantor are not affected, since the grantor is in a direct relationship with the secured creditor and already knows the secured creditor's identity. The rights of third parties are also not affected, as long as the representative identified in the notice as the secured creditor is authorized to act on behalf of the actual secured creditor in any communication or dispute connected to the security right to which the notice relates. The secured creditor's entry of the name of a representative in the notice automatically operates as the secured creditor's authorization of the representative to act for the secured creditor in this respect.

187. This approach is also intended to facilitate, for example, syndicated lending, since only the identifier of the trustee or agent for the syndicate of lenders would need to be entered in a notice. In this connection, it should be noted that an agent or trustee of a syndicate of lenders would be a "representative" of the secured creditor if the security right was granted to the syndicate of lenders, but a "secured creditor" if the security right was "granted" (even nominally) to the agent. A third-party service provider who submits a notice on behalf of the secured creditor is neither the secured creditor nor its representative in the sense of the *Secured Transactions Guide*, or the present guide, unless the service provider's name is inserted in the secured creditor field in the registered notice. (A third-party service provider who submits a notice on behalf of the secured creditor is the registrant; see the term "registrant" in para. 9 above).

188. As already discussed in the context of grantor information (see paras. 174-180 above), there may be types of secured creditor that may fit into the category of natural or legal person. While each enacting State will need to decide to what extent special identifier rules are needed for particular cases, possible examples include a secured creditor that is subject to insolvency proceedings, a trustee and a representative of a deceased person. While it may be rather rare that a representative of a deceased person would be a secured creditor, the Regulation should deal with this matter (see rec. 27, subpara. (c), below).

189. The identifier of the secured creditor or its representative is not an indexing or search criterion (see paras. 128-130 above and paras. 264-267 below). Accordingly, the consequences of an incorrect or insufficient statement of the secured creditor identifier are different from those of an incorrect or insufficient statement of the grantor identifier (see paras. 205-210 below); even if the Regulation requires additional information to be entered in order to uniquely identify the grantor (for example, birth date or a personal identification number), there is no need to extend this requirement to the secured creditor.

#### 4. Description of encumbered assets

##### (a) General

190. The *Secured Transactions Guide* recommends that a description of the encumbered assets covered by the security right to which a registration relates be a required component of an effective notice, as a registered notice can serve to make a security right effective with respect to assets sufficiently described in the notice and in the security agreement (see *Secured Transactions Guide*, recs. 14, subpara. (d), 32 and 57, subpara. (b)). This approach enables third parties dealing with a person's assets (such as prospective secured creditors, buyers, judgement creditors and the insolvency representative of that person) to determine which assets of that person may have been encumbered by a security right that is effective against third parties and may have priority over the rights of third parties. The *Secured Transactions Guide* also recommends that a description of the encumbered assets should be considered sufficient, for the purposes of both an effective security agreement and an effective registration, if it reasonably allows identification of the encumbered assets (see *Secured Transactions Guide*, recs. 14, subpara. (d), and 63). Depending on the nature of a particular encumbered asset, the description may be specific or generic. For example, if an asset is one of many paintings owned by the grantor, the description in the notice may specify the title of the painting and the name of the painter in order to sufficiently identify the painting that is intended to be encumbered. On the

other hand, if the encumbered assets are generic categories of assets, such as all the inventory of an art gallery, it would be sufficient to describe them generically, for example, as “all of the grantor’s paintings”, “all of the grantor’s works of art” or “all of the grantor’s inventory”.

191. The Regulation should restate and, if necessary, supplement these recommendations (see rec. 28 below). In particular, the Regulation should explicitly state that the description of encumbered assets in a notice is sufficient as long as it reasonably allows their identification (in other words, it may be specific or generic). The Regulation should also clarify that a description that refers to all assets within a generic category or to all assets of a grantor is assumed to cover future assets within the specified category to which the grantor acquires rights during the duration of effectiveness of the notice, unless otherwise indicated in the notice.

192. If the prescribed form of notice limits the number of characters that may be entered in the space for describing the encumbered assets and additional space is needed (for example, to identify the encumbered assets in more detail), the registry form should be designed to allow additional information to be provided in an attachment or schedule to the notice. This is generally necessary only when the notice is in paper, as opposed to electronic, form since the provision of sufficient space does not pose a practical problem in the latter case.

### **(b) Description of “serial number” assets**

193. As already mentioned (see paras. 131-134 above), the secured transactions laws of some States adopt supplementary asset-based indexing and searching 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 third-party effectiveness and priority as against specified classes of third parties that acquire rights in the asset.

194. The *Secured Transactions Guide* discusses but makes no recommendation on this matter (see *Secured Transactions Guide*, chap. IV, paras. 34-36). Nonetheless, even in legal systems that do not provide for asset-based indexing and searching, if an encumbered asset has a serial number, a registrant may wish to include the serial number in the description it enters in the notice as a convenient method of describing the encumbered asset in a manner that reasonably allows its identification (see *Secured Transactions Guide*, recs. 14, subpara. (d), and 63). For that purpose, the notice form could be designed to allow a registrant to enter the serial number on the form, if the registrant so wishes. However, it should be made clear that entry



of the serial number is optional and not a mandatory component of an effective description, as long as the description that is entered otherwise sufficiently identifies the asset. In addition, the serial number should not be an official search criterion. Consequently, even if the registry is designed to permit serial number indexing and searches by serial number, use of that criterion should be optional and thus a negative search result could not be relied upon.

**(c) Description of proceeds**

195. The *Secured Transactions Guide* recommends that a security right should automatically extend to any identifiable assets received in respect of the encumbered assets, unless otherwise agreed by the parties to the security agreement (see *Secured Transactions Guide*, Introduction, para. 20, entry on “proceeds”, and rec. 19). If the security right in the original encumbered assets was made effective against third parties by registration, the question arises as to whether the secured creditor needs to amend the description of the encumbered assets in the initial notice to include a description of the proceeds in order to ensure that its security right in the proceeds is also effective against third parties. In this connection, it should be noted that, if the assets constituting proceeds of an encumbered asset are included in the descriptions of the assets in the security agreement and in an initial or amendment notice, they would be covered as part of the original encumbered asset.

196. If the proceeds are assets of a type not included within the description of the encumbered assets in a previously registered notice with respect to a security right and consist of cash or other equivalent assets (for example, a right to payment), the *Secured Transactions Guide* recommends the automatic continuation into the proceeds of the third-party effectiveness of the security right in the original encumbered assets. The same is true if the proceeds are such that they are included within the description of the original encumbered assets in the previously registered notice (for example, the description covers “all tangible assets” and the grantor exchanges one item of equipment for another; see *Secured Transactions Guide*, rec. 39).

197. However, if the proceeds are not cash or other equivalent proceeds and are not otherwise encompassed by the description of the encumbered assets in the existing 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 *Secured Transactions Guide*, rec. 40). An amendment is necessary because otherwise there would not be a registered notice that would provide a description of the assets constituting the proceeds.

**(d) Description of encumbered attachments to immovable property**

198. As already discussed (see paras. 67-69 above), like any other type of encumbered asset, a tangible asset that is or will become an attachment to immovable property needs to be described in a notice registered in the general security rights registry in a manner that reasonably allows its identification (see *Secured Transactions Guide*, recs. 14, subpara. (d), and 63). While a generic description of the asset may be sufficient for this purpose, the registrant may also need to register in the immovable property registry in order to ensure that its security right is effective against third parties that acquire and register a right in the relevant immovable property. In an immovable property registry, registrations are normally indexed or otherwise organized by reference to the specific immovable property as opposed to the identifier of the grantor. Thus, if it is to be possible for a notice to also be registered in the immovable property registry, the description of the asset in the notice must describe the specific immovable property. In addition, the rules governing registration in the immovable property registry may need to be revised to permit the registration of notices and the generic description of encumbered assets in notices (see *Secured Transactions Guide*, chap. III, para. 104). Moreover, if the grantor of the security right in the asset is not the owner of the related immovable property, the notice may also need to identify the owner of the asset if this information is necessary for the indexing of the notice in the immovable property registry.

*5. Period of effectiveness of the registration of a notice*

199. As already discussed (paras. 113-121 above), the law of an enacting State may provide for a uniform statutory period of effectiveness for all registrations (see rec. 12, option A, above) or may give registrants the option to choose the period of effectiveness (see rec. 12, option B, above). In enacting States that adopt this approach, the Regulation should specify that an indication of the period of effectiveness of a registration in the designated field is a mandatory component of the information that must be entered in a notice (see *Secured Transactions Guide*, recs. 57 and 69; and rec. 12 above and rec. 23, subpara. (a) (iv), below). If the enacting State imposes a maximum limit on the registrant's right to choose the period of effectiveness of the notice (rec. 12, option C, above), the registry should, in addition, be designed so as to prevent a registrant from entering a period that exceeds the maximum limit.

## 6. *Maximum amount for which the security right may be enforced*

200. The *Secured Transactions Guide* recognizes that some States may require the maximum monetary amount for which a security right may be enforced to be specified in the security agreement and in any registered notice to which the security right relates (see *Secured Transactions Guide*, chap. IV, paras. 92-97, and rec. 57, subpara. (d); and rec. 14, subpara. (d), above).

201. The aim of this first approach is illustrated by the following example. An enterprise has an asset with an estimated market value of \$100,000. The enterprise applies for a line-of-credit facility up to a maximum amount of \$50,000 (including capital, interest and costs). The creditor is willing to extend the loan on the condition that it obtains a security right in the asset. The grantor is agreeable to these terms but, since the maximum loan amount specified in the security agreement and in the notice is \$50,000 and the asset has a value of \$100,000, the grantor wishes to preserve the ability to obtain another secured loan from a subsequent creditor, relying on the residual value of the asset. The generally applicable first-to-register priority rule (see para. 26 above) would ordinarily deter the subsequent creditor from giving a loan out of fear that the first secured creditor might later extend loans beyond the initial \$50,000 for which it would have priority under the general first-to-register rule. By imposing a requirement to specify the maximum value for which the security right may be enforced, the subsequent creditor can be assured that the first-registered secured creditor cannot enforce its security right for an amount greater than \$50,000, leaving the residual value of the encumbered asset available to satisfy its own claim should the grantor default.

202. The *Secured Transactions Guide* recognizes that an equally valid approach is to not require the maximum amount to be included in the security agreement and the registered notice. This second approach is based on the assumptions that: (a) the first-registered secured creditor is either the optimal long-term financing source or will be more likely to extend financing, especially to small start-up businesses, if it knows that it will retain its priority with respect to any financing it may provide to the grantor in the future; (b) in any event, the grantor will not have sufficient bargaining power to require the first-registered secured creditor to enter a realistic maximum amount in the notice (instead the secured creditor will insist that an inflated amount be included to cover all possible future extensions of credit, and the grantor will usually not be in a position to refuse); and (c) a subsequent creditor to whom the grantor applies for financing may be able to negotiate a subordination agreement with the first-registered security creditor for credit

extended on the basis of the then-current residual value of the encumbered asset (see *Secured Transactions Guide*, rec. 94).

203. Thus, the *Secured Transactions Guide* acknowledges that both approaches have merit and recommends that the law of an enacting State should adopt the policy that is most consistent with efficient financing and credit market practices in that State. In States that adopt the first approach, the Regulation would need to include a rule requiring the registrant to enter the maximum amount and the relevant currency in the designated field in the registered notice (see rec. 23, subpara. (a) (v), below; for the consequences of entering a different maximum amount in the registered notice than the maximum amount actually agreed to in the security agreement, see paras. 217-220 below). In States that adopt the second approach, there is no need to address the issue further in the Regulation.

204. It should be emphasized that, in States that adopt the first approach, the *Secured Transactions Guide* does not leave room for an enacting State to base its registration fees on an ascending scale linked to the maximum amount set out in the notice. Registry fees must be set at a level no higher than necessary to permit cost recovery and should in no way be based on the amount of the secured obligation (see *Secured Transactions Guide*, rec. 54, subpara. (i); and rec. 36 below).

## 7. *Effect of errors or omissions on the effectiveness of the registration of a notice*

### (a) **Grantor information**

205. The *Secured Transactions Guide* recommends that registration of a notice should be effective only if the notice would be retrieved by a searcher of the registry record using the correct identifier of the grantor as the search criterion (see *Secured Transactions Guide*, chap. IV, paras. 66-77, and rec. 58). The reference to ineffectiveness of a registration here does not mean that the information in the notice would not be entered in the public registry record but rather that the registration would not achieve the third-party effectiveness of the security right to which it relates. Typically, this rule would be included in the Law. However, depending on its legislative method, an enacting State might decide to include it or reiterate it in the Regulation (see rec. 29, subpara. (a), below). Under this test, an error that might seem minor or trivial in the abstract might nonetheless mean that the registration would not be effective to achieve third-party effectiveness if the error would cause the information in the registry record not to be retrieved by a searcher using the grantor's correct identifier as the search criterion. On the other hand, if the registry is designed to retrieve close matches (see

para. 270 below), a minor error in the grantor's identifier as provided in the notice might not render the notice ineffective if, under the registry's search programme, the notice would be retrieved as a close match on a search using the correct identifier.

206. The test is an objective one in the sense that the registration of an erroneous notice would not achieve third-party effectiveness even if a competing claimant that challenged the effectiveness of the registration of the notice: (a) knew that a security right existed and the notice that related to it contained errors; and (b) did not suffer any prejudice as a result of the notice not being retrievable (for example, if the third-party searcher is the grantor's insolvency representative).

207. The *Secured Transactions Guide* does not include a recommendation as to the impact on the effectiveness of a registration of an error in the address of the grantor or in any additional grantor information (for example, the grantor's birth date or identification number) that the enacting State permits or requires to be included in the notice to uniquely identify the grantor (for a discussion on additional grantor information, see paras. 167-168 and 181-183 above). Like the identifier and address of the secured creditor, this type of information does not constitute a search criterion. Accordingly, by analogy to the test recommended in the *Secured Transactions Guide* for errors in the entry of secured creditor information (see *Secured Transactions Guide*, rec. 64), the Regulation should specify that an error in the grantor's address or any other required additional grantor information does not render the registration of a notice ineffective unless it would seriously mislead a reasonable searcher (see rec. 29, subpara. (b), below). For example, if the search result discloses numerous notices, all having the same name as the person whose name is being searched, and the error in the grantor's address or in any other required additional grantor information is so grave as to cause a reasonable searcher to believe that none of the notices refers to the relevant grantor, the registration would be found to be ineffective.

208. In addition, the *Secured Transactions Guide* does not deal explicitly with the situation in which a notice lists more than one grantor but an error occurs in the identifier of only one of the grantors listed in the notice. In this case, by analogy to the recommendation of the *Secured Transactions Guide* with respect to an error in the description of some of the encumbered assets (see *Secured Transactions Guide*, rec. 65), the Regulation should provide that the error does not render the registered notice ineffective with respect to the security right granted by the other grantors that were sufficiently identified. Subparagraph (d) of recommendation 29, which deals with a notice that identifies multiple grantors, refers to an "incorrect" (rather than

an “insufficient”) identifier, because under subparagraph (a) of that recommendation the registration of a notice might be effective even if the grantor’s identifier in the notice were incorrect, provided that the notice would be retrieved by a search using the correct grantor identifier as the search criterion (because the registry was designed to retrieve close matches; see para. 205 above and para. 270 below).

#### **(b) Secured creditor information**

209. As the identifier of the secured creditor is not an indexing or search criterion (see paras. 128 and 129 above), the *Secured Transactions Guide* recommends that an error by the registrant with regard to the identifier or address of the secured creditor or its representative renders the registration ineffective only if it would seriously mislead a reasonable searcher (see *Secured Transactions Guide*, rec. 64). The reference to the registration of a notice being “ineffective” in that recommendation does not mean that the entry into the registry record of the information contained in the notice would be refused, but rather that the registration would not achieve the third-party effectiveness of the security right to which it relates. Reference to a “reasonable” searcher indicates that the test is an objective one. This means that a competing claimant would not need to establish that it was actually seriously misled by the error (see *Secured Transactions Guide*, chap. IV, para. 84). The same objective test applies with respect to an error in the address of the grantor or in any additional grantor information (see para. 207 above) and the description of the encumbered assets (see para. 211 below), but not with respect to an error in the period of effectiveness or the maximum amount for which the security right may be enforced, if the test is a subjective one (see paras. 214 and 218 below).

210. In general, an error in the name or address of the secured creditor would not be treated as seriously misleading so as to render the registration ineffective to achieve third-party effectiveness even under the objective approach. For example, if the actual secured creditor is Bank A, and a search of the registry record according to the identifier of the grantor returns a result that names Bank B as the secured creditor, the registered notice would generally still be effective, since the search result would still disclose the potential existence of a security right given by the named grantor. However, searchers (including persons with rights in the encumbered asset) rely on the identifier and address information of the secured creditor in the registry record for the purposes of sending communications under the Law. Consequently, a secured creditor may find itself disadvantaged if the secured creditor information that it entered is inaccurate. For example, the *Secured Transactions Guide* recommends that a notice of an extrajudicial disposition of an encumbered asset must be sent to all other secured creditors that have

registered notices relating to the same grantor and the same encumbered asset (see *Secured Transactions Guide*, rec. 147). A secured creditor whose information is inaccurate risks not receiving the notice of extrajudicial disposition. In addition, the person identified in the registered notice as the grantor needs to be able to rely on this information to submit a written request to the secured creditor for the cancellation or the amendment of a notice the registration of which was not authorized by the grantor (see *Secured Transactions Guide*, rec. 72, subpara. (a); and paras. 260-263 below).

### **(c) Description of encumbered assets**

#### **(i) General**

211. Under the *Secured Transactions Guide*, if a registrant fails altogether to describe an encumbered asset (whether present or future) in a registered notice in a manner that reasonably allows its identification (see *Secured Transactions Guide*, rec. 14, subpara. (d)), the third-party effectiveness of the security right in the omitted asset will not be achieved (see *Secured Transactions Guide*, rec. 63). If the description is merely erroneous, the error renders the registration of the notice ineffective only if the error would seriously mislead a reasonable searcher (see *Secured Transactions Guide*, rec. 64). Even if encumbered assets are omitted or the description is seriously misleading, the registration is ineffective only with respect to the omitted or erroneously described assets and not with respect to other assets that were sufficiently described (see *Secured Transactions Guide*, rec. 65). The Regulation should include provisions corresponding to these recommendations (see rec. 29, subpara. (b), below).

#### **(ii) Serial number assets**

212. As already mentioned (see paras. 190 and 191 above), an encumbered asset that is a serial number asset is sufficiently described if a notice describes it by reference to the serial number and the type of asset (see *Secured Transactions Guide*, recs. 14, subpara. (d), and 63). An error in the serial number or type of asset should be treated in the same way as any other error in a description. Accordingly, a minor error should not render the registration ineffective unless the error would seriously mislead a reasonable searcher (see *Secured Transactions Guide*, rec. 64; and rec. 29, subpara. (b), below).

213. Also, as already mentioned (see paras. 193 and 194 above), the existing secured transactions laws of some States adopt supplementary asset-based indexing and searching for specific types of high-value asset that have

a significant resale market. In States that adopt this approach, entry of the serial number in its own designated field is required to achieve third-party effectiveness and priority as against specified classes of third parties that acquire rights in the asset. In addition, a notice that contains an incorrect serial number would be effective as against the specified classes of third parties only if it would be retrieved by a search of the registry record using the correct serial number as the search criterion. (*Secured Transactions Guide*, recommendation 58, would apply by analogy if a serial number were used as an indexing and search criterion). In States that adopt this approach, the Regulation will also need to address the consequences of the incorrect entry of either the grantor identifier or the serial number, but not both. The Regulation should provide that both would need to be entered correctly.

### (iii) *Period of effectiveness of registration*

214. As already discussed (see para. 199 above), the law of an enacting State may allow registrants to decide for themselves the period of effectiveness of a registration (see options B and C discussed in paras. 116-120 above). If an enacting State adopts this approach, the *Secured Transactions Guide* recommends that an incorrect statement (in the sense of a statement other than the one intended) in a registered notice as to the period of effectiveness should not render the registration ineffective, but that third parties that relied on the registered notice should be protected. This means that, if the incorrect statement in the registered notice seriously misled third parties, the registration of the notice would be ineffective (see *Secured Transactions Guide*, recs. 64 and 66). The Regulation should include a corresponding provision (see rec. 29, subpara. (c), below).

215. In addressing how third-party reliance may arise with respect to an error in entering the period of effectiveness of a registration, it is necessary to distinguish between two situations (see *Secured Transactions Guide*, chap. IV, paras. 89-91). The first situation is when the error consists in entering a period that is too long. In this case, third-party searchers would not be prejudiced, as they still would have been alerted to the fact that a security right might exist (although the grantor would have a right to have the record corrected (see rec. 33 below) or even claim damages). The second situation is when the error consists in entering a period that is too short. In this case, the registration will lapse at the end of the specified period and the security right will no longer be effective against third parties, unless it was made effective prior to the lapse by some other method (see *Secured Transactions Guide*, rec. 46). As already mentioned, while the secured creditor can re-establish third-party effectiveness by registering a new notice, its security right will take effect against third parties only from the time when the new registration becomes effective (see *Secured Transactions Guide*, recs. 47 and 96).



216. Unlike an error with regard to information required in a notice other than the grantor's identifier, for which the test has to be objective (see paras. 207, 209 and 211 above and rec. 29, subpara. (b), below), the test for whether the address of the grantor, the secured creditor information or the description of the encumbered assets can be considered seriously misleading is an objective one. However, with respect to the period of effectiveness—and the maximum amount (see para. 218 below)—the test for whether such information can be considered seriously misleading is subjective in the sense that a competing claimant that challenges the effectiveness of a registration on the basis of an error in the period of effectiveness indicated in the notice needs to establish that it was actually seriously misled by the error.

**(iv) *Maximum monetary amount and impact of error***

217. For States that elect to require that the maximum amount for which the security right may be enforced be entered in a registered notice, the *Secured Transactions Guide* recommends that an incorrect statement of the maximum amount should not render a notice ineffective except to the extent it seriously misleads third parties that have relied on the notice (see *Secured Transactions Guide*, recs. 64 and 66). The Regulation should include a corresponding provision (see rec. 27, subpara. (c), below).

218. As in the case of an error in the entry of the period of effectiveness of a registration (see para. 214 above), the test for whether the error is seriously misleading is subjective. A third party that challenges the notice on the basis of the error must show that it was actually seriously misled by the error. A subjective test is appropriate here since the purpose of requiring the maximum amount to be inserted is to ensure that the grantor can seek additional financing on the basis of the residual value of assets already encumbered by a security right without the third-party financier having to worry about a loss of priority to the first secured creditor (see *Secured Transactions Guide*, chap. IV, para. 96).

219. Thus, when the maximum amount indicated in the notice is greater than the maximum amount agreed to in the security agreement, a subsequent secured creditor generally would not be prejudiced since its decision to advance funds would normally be based on the amount indicated in the notice. The grantor would also be protected in this situation since it could request the secured creditor or, if the secured creditor fails to act in a timely manner, a judicial or administrative body through a summary proceeding, to amend the notice to correct the amount so that the grantor can obtain financing against the residual value of the encumbered asset (see *Secured Transactions Guide*, rec. 72).

220. However, when the maximum amount indicated in a notice is less than the maximum amount agreed to in the security agreement, a subsequent secured creditor might advance credit on the assumption that it could enforce its security right against any residual value in the asset in excess of the amount indicated in the notice. Similarly, a buyer might purchase the encumbered asset on the understanding that the secured creditor's right in it is limited to the value indicated in the notice. In addition, a judgement creditor might initiate enforcement action in the belief that the excess value of the asset above that stated in the notice would be available to satisfy its judgement claim. Accordingly, the secured creditor in all these cases should be entitled to enforce its security right as against the third party only up to the maximum amount erroneously stated in the registered notice. It should be noted that, in any event, the secured creditor can never enforce its security right for an amount greater than that which is actually owed to it.

## B. Recommendations 23-29

### *Recommendation 23. Information required in an initial notice*

The Regulation should provide that:

(a) An initial notice must contain the following information in the designated field for each item:

- (i) The identifier of the grantor determined in accordance with recommendations 24-26, [and] the address of the grantor [and any other information to be specified by the enacting State to assist in uniquely identifying the grantor];
- (ii) The identifier of the secured creditor determined in accordance with recommendation 27, and the address of the secured creditor;
- (iii) A description of the encumbered assets in accordance with recommendation 28;
- [(iv) The period of effectiveness of the registration in accordance with recommendation 12;<sup>2</sup> and
- (v) The maximum monetary amount for which the security right may be enforced];<sup>3</sup> and

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<sup>2</sup>If the law of the enacting State allows a registrant to choose the period of effectiveness of a notice (see option B or C of recommendation 12, and *Secured Transactions Guide*, rec. 69).

<sup>3</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d)).

(b) If there is more than one grantor or secured creditor, the required information must be entered in the designated field separately for each grantor or secured creditor.

*Recommendation 24. Grantor identifier (natural person)*<sup>4</sup>

The Regulation should provide that, if the grantor is a natural person:

- (a) The grantor identifier is the name of the grantor;
- (b) [The enacting State should specify the various components of the grantor's name and the designated field for each component];
- (c) [The enacting State should specify the official documents on the basis of which the grantor's name should be determined and the hierarchy of authoritativeness among those official documents]; and
- (d) [The enacting State should specify the way in which the grantor's name should be determined in the case of a name change after the issuance of an official document].

*Recommendation 25. Grantor identifier (legal person)*

The Regulation should provide that, if the grantor is a legal person:

- (a) The grantor identifier is the name of the grantor; and
- (b) The name of the grantor is the name specified in a current [document, law or decree to be specified by the enacting State] constituting the legal person.

*[Recommendation 26. Grantor identifier (special cases)]*<sup>5</sup>

The Regulation should provide that [the enacting State should specify the grantor identifier in special cases, such as those involving a person that is subject to insolvency proceedings, a trustee or a representative of the estate of a deceased person].

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<sup>4</sup>With the exception of its subparagraph (a), which reflects essential recommendations of the *Secured Transactions Guide* (recs. 59 and 60), recommendation 24 is illustrative; the enacting State will have to adjust its wording based on the naming conventions in the enacting State.

<sup>5</sup>Recommendations 26 is illustrative; the enacting State may wish to adjust the wording based on its law and to add other special cases.

### *Recommendation 27. Secured creditor identifier*

The Regulation should provide that:

(a) If the secured creditor is a natural person, the secured creditor identifier is the name of the secured creditor determined in accordance with recommendation 24;

(b) If the secured creditor is a legal person, the secured creditor identifier is the name of the secured creditor determined in accordance with recommendation 25; and

(c) If the secured creditor falls within the special cases referred to in recommendation 26, the secured creditor identifier is the name as determined in accordance with recommendation 26.

### *Recommendation 28. Description of encumbered assets*

*The Regulation should provide that:*

(a) The encumbered assets must be described in the designated field of the notice in a manner that reasonably allows their identification;

(b) A generic description that refers to all assets within a category of movable assets includes all of the grantor's present and future assets within the specified category; and

(c) A generic description that refers to all of the grantor's movable assets includes all of the grantor's present and future movable assets.

### *Recommendation 29. Incorrect or insufficient information*

The Regulation should provide that:

(a) The registration of an initial notice, or an amendment notice that changes the grantor's identifier or adds a grantor, is effective only if the notice provides the grantor's correct identifier as set forth in recommendations 24-26 or, in the case of an incorrect identifier, if the notice would be retrieved by a search of the public registry record using the grantor's correct identifier;

(b) Except as provided in subparagraph (c) of this recommendation, an incorrect or insufficient statement of the information required in a notice other than the grantor's identifier does not render the registration of a notice ineffective, unless the incorrect or insufficient statement would seriously mislead a reasonable searcher;

[(c) An incorrect statement in a notice with respect to the period of effectiveness of the registration of a notice<sup>6</sup> or the maximum amount for which the security right may be enforced<sup>7</sup> does not render the registration of the notice ineffective, except to the extent that it seriously misled third parties that relied on the registered notice;]

(d) An incorrect statement of the identifier of a grantor in a notice in accordance with subparagraph (a) of this recommendation does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice; and

(e) An insufficient description of some encumbered assets in a notice does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described in the notice.

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<sup>6</sup>If the law of the enacting State allows a registrant to choose the period of effectiveness of a notice (see option B or C of recommendation 12, and *Secured Transactions Guide*, rec. 69).

<sup>7</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d)).



## V. Registration of amendment and cancellation notices

### A. General remarks

#### 1. Amendment notices

##### (a) General

221. A secured creditor may wish to amend the information in a registered notice for a variety of reasons, for example, to correct an error in a previous registered notice or to update the registration information as a result of subsequent events. This is done by submitting an amendment notice to the registry. The Regulation should make it clear that the secured creditor is responsible for entering the information relating to the amendment in the same manner as required by the Regulation for entering information of that kind in an initial notice (see rec. 19 above and rec. 30 below).

222. The registry system should be designed to ensure that the registration of an amendment notice does not have the effect of deleting or replacing registration information contained in an initial notice or any previously registered amendment notices. Instead, the information in the amendment notice should be added to the existing registration information so that a search result will show the initial notice and all subsequently registered amendment notices.

223. A secured creditor should be able to register an amendment notice, to the extent appropriate, at any time (see *Secured Transactions Guide*, rec. 73). Some amendments require the grantor's authorization. Examples include an amendment to reflect the addition of encumbered assets or, if required by the law of the enacting State, to reflect an increase in the maximum amount for which a security right to which the registration relates may be enforced. Other amendments do not require the grantor's authorization, for example, registration of an amendment notice to reflect a subsequent change in the grantor's identifier, an assignment of the secured obligation, a voluntary subordination of the priority of the security right to which the registration relates (registration of an amendment notice with respect to a subordination agreement is optional; see para. 233 below), a change of address of the secured creditor or its representative, or an amendment to

add a transferee of an encumbered asset from the grantor as an additional grantor. In any event, as noted earlier (see para. 101 above), to the extent that the grantor's authorization is needed, evidence of such an authorization is not a precondition to the registration of a notice. Rather, the grantor's authorization may be given before or after the registration of a notice, and a written security agreement constitutes sufficient authorization (see *Secured Transactions Guide*, rec. 71). Accordingly, when the amendment relates, for example, to the addition of encumbered assets, the completion of a written security agreement covering the additional assets or with the new grantor will itself constitute authorization.

224. To effect an amendment, a secured creditor must provide in the designated fields in the amendment notice the registration number of the initial notice to which the amendment relates, and the relevant amendment information (see rec. 30, subpara. (a), below). As in the case of an initial notice, the effective time of registration of an amendment notice (that is, the date and time when the information in the notice became searchable) should be indicated in the registry record relating to that notice (see rec. 11, subpara. (b), and paras. 107-113 above). The enacting State may wish to consider whether the registry system and the prescribed form of amendment notice should be designed to allow the secured creditor to amend only a single item of information in an amendment notice (for example, change the grantor's identifier) or to allow multiple items to be amended with a single amendment notice (for example, add a new grantor and delete some encumbered assets). The latter approach is recommended, as it is simpler and more cost-efficient (see rec. 30, subpara. (b), below).

225. The following paragraphs discuss some of the reasons why a secured creditor may wish to register an amendment notice and the legal implications of registration or failure to register.

### **(b) Subsequent change of the grantor's name**

226. A change in the name of the grantor that was indicated in a registered notice (for example, for marketing purposes) may undermine the publicity function of registration from the perspective of third parties that deal with the grantor after its name has changed. As the grantor's name is the principal indexing and search criterion, a search using the grantor's new name will typically not retrieve the notice. In a registry system that uses a State-issued unique identity or other official number as the grantor's identifier for the purposes of indexing and searching registered notices, it is less likely that this problem will arise, since the number is typically permanent and not subject to change. However, under the approach recommended in the *Secured*



*Transactions Guide*, the name of the grantor is the grantor's identifier; an identity or other official number issued by a State to a grantor may be required to be included in the notice as additional information, if necessary, to uniquely identify the grantor, but it is not an indexing or search criterion (see *Secured Transactions Guide*, recs. 58-60; and paras. 167 and 168 above, and paras. 264-267 below).

227. To address the problem of a subsequent change in the grantor's name, the Regulation and the prescribed form of amendment notice should make it possible for the secured creditor to add the grantor's new name by registering an amendment notice. While failure to submit an amendment notice should not make the security right generally or retroactively ineffective against third parties, third parties that deal with the grantor after the change in its name and before the amendment notice is registered should be protected. Accordingly, the *Secured Transactions Guide* recommends that, if the secured creditor does not register the amendment notice within a specified short "grace period" (for example, 15 days) after the name has changed, its security right is ineffective against buyers, lessees, licensees and other secured creditors that acquire rights in the encumbered asset after the change in the grantor's name and before the amendment notice is registered (see *Secured Transactions Guide*, rec. 61). The *Secured Transactions Guide* also recommends that the grace period should begin to run from the date of the name change (in some States, the grace period begins only from the date when the secured creditor acquired knowledge of the change). The law of the enacting State should also provide guidance on what constitutes a change of name in the context, in particular, of corporate amalgamations and the effect of not making an amendment in the wake of the amalgamation.

228. As already noted (see para. 222 above), the registry system should be designed to ensure that the registration of an amendment notice does not have the effect of deleting or replacing registration information contained in the initial notice or any previously registered amendment notices. In order to ensure that a search using either the old or the new name of the grantor as the search criterion would retrieve the registration, it is important for the secured creditor to understand that it should enter the grantor's new name in the field designated in the amendment notice for adding the identifier and address of a new grantor, without deleting the old grantor information. Otherwise, a search of the registry record according to the grantor's previous name would not retrieve the registration, potentially prejudicing the effectiveness of the security right against third parties that dealt with the grantor prior to the change of name and that therefore would likely conduct their search using the grantor's name at that time.

### (c) Transfer of an encumbered asset

229. When the grantor transfers, leases or licenses an encumbered asset, the transferee, lessee or licensee will ordinarily acquire its right in the asset subject to the security right, assuming the security right has been made effective against third parties (see *Secured Transactions Guide*, rec. 79). If the security right was made effective against third parties by registration, this creates a problem analogous to a post-registration change in the name of the grantor, as discussed above. Third parties that deal with the encumbered asset in the hands of the transferee, lessee or licensee typically will search the registry record using the name of the transferee, lessee or licensee as the search criterion. That search will not retrieve the registered notice since it was registered and indexed according to the name of the grantor (the transferor, lessor or licensor). To protect third parties that deal with the encumbered asset in the hands of the transferee, lessee or licensee, the registry system and the Regulation should enable the secured creditor to submit an amendment notice to record the name and address of the transferee, lessee or licensee as a new additional grantor.

230. The *Secured Transactions Guide* recommends that an enacting State should address the legal implications of the failure of a secured creditor to register an amendment notice in this scenario, but leaves it to each enacting State to decide which of the three approaches discussed in the commentary it should adopt (see *Secured Transactions Guide* chap. IV, paras. 78-80, and rec. 62). With respect to security rights in intellectual property, however, the *Intellectual Property Supplement* recommends a specific approach (see *Intellectual Property Supplement*, rec. 244; and para. 231 below).

231. The first approach is analogous to that recommended by the *Secured Transactions Guide* to a change in the name of the grantor (see *Secured Transactions Guide*, rec. 61; and paras. 226-228 above). Under this approach, failure to amend the registration to add the transferee, lessee or licensee as a new additional grantor does not make the security right ineffective against third parties generally. (This is the approach recommended in the *Intellectual Property Supplement* for registrations that relate to security rights in intellectual property specifically.) However, if the secured creditor does not register the amendment notice within a short “grace period” (for example, 15 days), its security right is ineffective against transferees, lessees, licensees and secured creditors that acquire rights in the encumbered asset from the transferee, lessee or licensee after it was transferred, leased or licensed but before the amendment notice was registered. The second approach is similar, subject to the important caveat that the grace period to register the amendment notice begins only when the secured

creditor acquires knowledge that the grantor has transferred, leased or licensed the encumbered asset. The third approach is different: registration of the amendment notice is purely optional, in the sense that failure to register does not affect the third-party effectiveness or priority of the security right to which the registration relates (see *Secured Transactions Guide*, chap. IV, paras. 78-80).

232. Regardless of the approach an enacting State decides to adopt, it should include in its Regulation a provision enabling a secured creditor to register an amendment notice to add a transferee, lessee or licensee of the grantor as an additional grantor (see rec. 30, subpara. (a) (ii), below). That is to say, even if the enacting State adopts the third approach described in paragraph 231 above, a secured creditor should be allowed to register an amendment notice of this kind if it wishes to do so. The registration of such an amendment notice would: (a) provide a measure of practical protection against the risk that the transferee, lessee or licensee would dispose of the encumbered asset to a new transferee whose whereabouts might not be traceable; and (b) reduce the risk of disputes, as lenders to the transferee, lessee or licensee would be on notice. In addition, the secured creditor should understand that it should enter the name and address of the transferee, lessee or licensee in the field designated in the amendment notice for adding a new grantor without deleting the original grantor information. Otherwise, a search of the registry record using the grantor's name would not retrieve the registration, potentially prejudicing the effectiveness of the security right against third parties that dealt with the grantor before the encumbered asset was transferred, leased or licensed and that would therefore likely conduct their search using the grantor's name.

#### **(d) Subordination of priority**

233. Under the *Secured Transactions Guide*, a secured creditor with priority may at any time subordinate its priority unilaterally or by agreement in favour of any other existing or future competing claimant (see *Secured Transactions Guide*, rec. 94). Subordination affects only the rights of the subordinating secured creditor and the beneficiary of the subordination. The registry may be designed to accommodate the registration of an amendment notice to disclose a subordination, but adding new features to the registry could increase the design and operational cost of the registry. In any case, registration of such a notice should be purely optional in the sense that an amendment would not be needed to preserve the third-party effectiveness or priority (or subordination of priority) of the security right to which the subordination relates.

**(e) Assignment of the secured obligation and transfer of the security right**

234. A secured creditor may assign the secured obligation. As in most legal systems, the *Secured Transactions Guide* recommends that, as an accessory right, the security right follows the secured obligation, with the result that the assignee of the obligation will in effect be the new secured creditor (see *Secured Transactions Guide*, recs. 25, which is based on article 10 of the United Nations Convention on the Assignment of Receivables in International Trade (2001). Under the approach recommended in the *Secured Transactions Guide*, an amendment to the initial notice to add the assignee as a new secured creditor is not required in the sense of being necessary to preserve the effectiveness of the registration (see *Secured Transactions Guide*, rec. 75). As the identifier of the secured creditor is not an indexing and search criterion, searchers will not be seriously misled by the change.

235. While registration of such an amendment notice is optional, failure to register the notice may be disadvantageous for the new secured creditor (assignee). As noted earlier, searchers rely on the secured creditor information in registered notices for the purposes of sending various communications under the Law (such as the notice of an extrajudicial disposition of an encumbered asset, which a secured creditor is required to send to other secured creditors that have registered a notice relating to the same grantor and the same encumbered assets; see *Secured Transactions Guide*, recs. 149-151). If the assignee is not added as a new secured creditor, it will not receive communications of this kind directly and will be dependent on the original secured creditor (assignor) to forward such communications to it.

**(f) Addition of new encumbered assets**

236. A secured creditor may wish to register an amendment notice to add encumbered assets to the description contained in a previously registered notice for a variety of reasons. For example, the grantor may have agreed to grant a security right in additional assets after the notice was registered, or the secured creditor may have inadvertently failed to include an encumbered asset in a previously registered notice. To accommodate this possibility, the registry system should enable the secured creditor to amend the description of encumbered assets in a previously registered notice to add assets. While the secured creditor could achieve the same result by registering a new notice with respect to such assets, the registration of an amendment notice would typically be more efficient and would ensure that the termination date of the effectiveness of the registration is the same for both the original and the additional assets. Regardless of which method is chosen, the security right in the new encumbered assets becomes effective against

third parties only as of the time the amendment notice or the new notice, as the case may be, is entered into the registry record so as to be available to searchers (see *Secured Transactions Guide*, rec. 70). The reason for this approach is that a search of the registry record by third parties prior to registration of the amendment notice or the new initial notice would not disclose that the additional assets were subject to a security right.

**(g) Deletion of encumbered assets**

237. The secured creditor may wish or be required to register an amendment notice to delete encumbered assets from the description in a previously registered notice for a variety of reasons. For example, the grantor may have paid a portion of the obligation secured by the related security right on condition that the security right be extinguished against specified assets, or the description in the initial notice may have been overly broad and the grantor may have issued a demand to the secured creditor to amend the initial notice to reflect the true scope of the encumbered assets. (As to the obligation of the secured creditor to amend a registered notice in the latter scenario, see paras. 260-263 below). Accordingly, the registry system should be designed to accommodate the registration of an amendment notice to delete assets that were included in the description of encumbered assets in a previously registered notice. To accomplish this result, the secured creditor should include a description of the assets to be deleted in the designated field in the amendment notice.

**(h) Other changes to the description of encumbered assets**

238. A secured creditor may wish to register an amendment notice to correct an error in the description of the encumbered assets contained in a previously registered notice. The amendment notice would normally take effect with respect to the assets to which it relates only as of the date it is entered into the registry record so as to be available to searchers, unless the error is minor and the original description would have allowed the reasonable identification of the encumbered assets even if the amendment notice had not been registered (see *Secured Transactions Guide*, rec. 63).

239. A secured creditor may also wish to amend the description of encumbered assets contained in a previously registered notice as a result of subsequent changes to those assets. For instance, the previously registered notice may have described the encumbered assets as “all cherry wood furniture” but, subsequent to its registration, the grantor may have painted the furniture green; or in the previously registered notice the encumbered assets may have been described as all inventory located at a specified address, and the inventory may have since been relocated to a new address. Since the description

in the previously registered notice no longer corresponds to the reality, the secured creditor may wish to submit an amendment notice to update the description. Generally, an amendment is not required in the sense of being necessary to preserve the third-party effectiveness of the security right to which the registration relates. Searchers are expected to understand that aspects of the description of an encumbered asset in a previously registered notice may change as a result of post-registration events and that they may, therefore, need to make further enquiries. Accordingly, when an amendment notice of this kind is registered, the effective date of registration with respect to the encumbered assets to which it relates generally remains the date of registration of the previously registered notice containing the original description, provided that the description was current as of that time.

**(i) Extension of the period of effectiveness of a registration**

240. The *Secured Transactions Guide* recommends that a secured creditor should be able to extend the period of effectiveness of a registered notice by submitting an amendment notice at any time before the expiry of the period of effectiveness of the registered notice (see *Secured Transactions Guide*, rec. 69). If the registration of a new notice were required instead, this would undermine the secured creditor's priority status and the continuity of the third-party effectiveness of its security right, since the new notice would take effect against third parties only from the time of its registration.

241. As already discussed (see paras. 113-121 above), there are several approaches that States can take with respect to the period of effectiveness of the registration of a notice. In States in which the period of effectiveness is established by law (see rec. 12, option A, above), the registry system should be designed so that the registration of an amendment notice intended to extend the period of effectiveness of the registration would automatically extend the period of effectiveness for an amount of time equivalent to the original period. In States that permit the secured creditor to choose the period of effectiveness (rec. 12, option B), the prescribed form of amendment notice should permit the secured creditor to likewise choose the length of the extension period. Thus, a secured creditor who, for example, selected a five-year term for the initial notice should be allowed to select a different period for the extension. In States that permit the secured creditor to choose the period of effectiveness, subject to a maximum limit (rec. 12, option C), the registry system should be designed to prevent a secured creditor from entering an additional period that exceeds the maximum limit.

**(j) Global amendment of secured creditor information**

242. The identifier or address, or both, of a secured creditor may change as a result of a merger, sale or other post-registration event. To enable the secured creditor information in all notices associated with that secured creditor to be efficiently amended, the registry system should be designed to allow a global amendment to be made either by registry staff at the request of the secured creditor or by the secured creditor directly (see rec. 31 below). Depending on the approach they choose to take, enacting States would need to design either a special form of amendment notice for a secured creditor to implement the global amendment directly or an application form for the secured creditor to request the registry to make the global amendment. In any case, when there are multiple secured creditors in previously registered notices that are intended to be included in the global amendment, a secured creditor should be able to globally amend only its own information, unless otherwise agreed among the secured creditors (an agreement that could be implemented, for example, if one secured creditor had the user names and passwords of the others). Thus, the registry system should be designed to prevent a global amendment by one secured creditor seeking to amend the information of other secured creditors without their authorization (for example, by assigning a different name and password to each secured creditor).

**2. Cancellation notices**

243. As in the case of an amendment, the *Secured Transactions Guide* recommends that a secured creditor should be able to register a cancellation notice at any time (*Secured Transactions Guide*, rec. 73). A cancellation should not require authorization by the grantor, as it has no effect or only a beneficial effect on the grantor. As already mentioned (see para. 222 above), registration of a cancellation notice, unlike an amendment notice, results in the removal of all registered notices to which it relates from the public registry record. Information thus removed is archived for a long period of time in a manner that enables it to be retrieved only by the registry staff (see para. 151 and rec. 21 above).

244. To facilitate the registration process, the only information that the secured creditor should be required to enter in the designated field on the cancellation notice is the registration number assigned to the initial notice by the registry and permanently associated with that notice and any related subsequent notices (see rec. 32 below; for the effect of amendment or cancellation notices that were not authorized by the secured creditor, see paras. 249-259 below).

### 3. *Effect of inadvertent expiration or cancellation of a registered notice*

245. In the event that a secured creditor inadvertently fails to extend the period of effectiveness of a registration before it expires, or inadvertently registers a cancellation notice, the secured creditor may register a new initial notice. However, the *Secured Transactions Guide* recommends that the third-party effectiveness and priority status of the security right to which the new notice relates should date only from the time of the registration of the new notice (see *Secured Transactions Guide*, rec. 47). Accordingly, the secured creditor will suffer a loss of priority as against competing claimants whose rights became effective against third parties prior to the expiration or cancellation, including competing secured creditors against whom it previously had priority under the first-to-register rule (see *Secured Transactions Guide*, chap. V, paras. 132-134, and rec. 96). The policy underlying this approach is to avoid requiring a third-party searcher to go beyond the registry record in order to determine if a security right ever existed (see *Secured Transactions Guide*, chap. III, para. 123).

246. Some States adopt a more lenient approach, in which the secured creditor is given a short grace period after the lapse or cancellation to revive its registration so as to restore the third-party effectiveness and priority status of its security right as of the date of the initial registration. However, to protect competing claimants that acquired rights in the encumbered assets or advanced funds to the grantor during the intervening period, the Law in States that adopt this approach provides that the security right of the secured creditor is ineffective against or subordinate to the rights of those competing claimants. A third approach is the same, except that there is no limitation on the time when a lapsed or expired registration may be revived subject to the rights of competing claimants that acquired rights during the intervening period (see *Secured Transactions Guide*, chap. III, para. 123).

247. While the *Secured Transactions Guide* recognizes that all three of the above-mentioned approaches protect third-party searchers, it also recognizes that the reinstatement of a registration may give rise to a complicated “circular priority” dispute in which the secured creditor that reinstates a registration thereby regains a priority over a competing secured creditor that existed before the lapse or cancellation, but not over a third competing secured creditor that entered the picture in the period between the lapse or cancellation and the reinstatement. In addition, adoption of either of these two approaches requires the registry system to be configured to enable revival of the original registration of the reinstatement notice. To avoid these complications and in the interest of providing a clear and efficient registration and priority regime, the *Secured Transactions Guide* recommends



allowing a lapsed or cancelled registration to be re-established only by registration of a new notice, with the result that the related security right takes effect against third parties only from the date of registration of the new notice (see *Secured Transactions Guide*, chap. III, paras. 124-127, and rec. 47).

248. To minimize the risk of inadvertent cancellations, the prescribed registry notice form could be designed to include a note alerting the secured creditor to the legal consequences of a cancellation (see annex II, Form C, below). The risk of inadvertent cancellations by secured creditors may also be reduced, for example, by: (a) requiring additional information, such as the grantor identifier, to be included in a cancellation notice and designing the registry system so as to reject the cancellation notice if the registration number does not match the grantor identifier; or (b) if the system permits the secured creditor to directly submit its cancellation notice electronically, designing the registry system so that the entire record relating to the notice to be cancelled appears on the screen upon entry of the registration number.

#### 4. *Effectiveness of amendment or cancellation notices not authorized by the secured creditor*

249. As already discussed (see paras. 101 and 223 above), while the registration of an initial notice and certain amendment notices by the secured creditor must be authorized by the grantor in writing, the grantor's authorization may be obtained before or after the registration. In the absence of authorization, the registration is not effective (see *Secured Transactions Guide*, rec. 71). The reason for this approach lies in the negative effect that unauthorized registrations have on the ability of the grantor to sell, grant security in or otherwise deal with the assets described in a registered notice.

250. Different policy considerations arise when the registration of an amendment or cancellation notice is not authorized by the secured creditor. An unauthorized registration of this type may occur, for example, as a result of fraud or error by a third party, or even the negligence or fraud of a member of the registry staff. The issue in this case is whether conclusive effect should nonetheless be given to the registry record in a priority contest with a competing claimant or third parties should be required to conduct off-record enquiries to verify that the secured creditor authorized the registration of the amendment or the cancellation notice.

251. The *Secured Transactions Guide* does not deal with this issue explicitly. As already noted (see paras. 245-248 above), recommendation 47 of

the *Secured Transactions Guide* provides that, if a secured creditor inadvertently registers a cancellation notice, the third-party effectiveness and priority of its security right is lost and can be re-established only with effect from the time a new initial notice is registered. However, recommendation 47 does not deal with the issue of whether the outcome is the same if the registration of the cancellation notice was not authorized by the secured creditor. The *Secured Transactions Guide* also does not address the effectiveness of an unauthorized amendment notice the purported effect of which is equivalent to a cancellation (for example, if the amendment purports to delete an encumbered asset). In addition, recommendation 55, subparagraph (d), of the *Secured Transactions Guide* obligates the registry to send promptly a copy of a registered amendment or cancellation notice to the secured creditor, which would enable the secured creditor to check the legitimacy of the amendment or cancellation. However, the *Secured Transactions Guide* does not go on to address the issue of whether an unauthorized amendment or cancellation is nonetheless effective in the event of a priority competition between the secured creditor and a competing claimant. Moreover, recommendation 74 of the *Secured Transactions Guide* provides that the registry should “remove” information contained in a registered notice from the public registry record if the registered notice has expired or been cancelled, but recommendation 74 does not explicitly require removal and archiving when the registration of a cancellation notice was not authorized by the secured creditor, leaving open the question of whether unauthorized cancellation notices must be removed from the public registry record and archived. Nevertheless, under recommendation 74, the registry would have to remove the relevant notice from the public registry record, irrespective of whether registration of the cancellation notice was in fact authorized by the secured creditor, as the registry would have no way of verifying whether the secured creditor had authorized such a registration.

252. To fully address the effectiveness of amendment or cancellation notices not authorized by the secured creditor, enacting States will need to examine and make a decision on the following issues: (a) what administrative or technological security processes (if any) should be put in place concerning access to the registry for the purposes of registering an amendment or cancellation notice; (b) what processes (if any) should be put in place to inform registrants and secured creditors that an amendment or cancellation notice has been registered; (c) what processes (if any) should be put in place to enable secured creditors whose registrations have been amended or cancelled without authorization to reinstate their registrations; (d) whether there should be some protection for secured creditors whose registration has been amended or cancelled without their authorization; and (e) if so, whether the secured creditor should nonetheless be subordinated to competing claimants that acquired rights in the grantor’s assets after the unauthorized amendment

or cancellation notice was registered or only to competing claimants that relied on the registry record in the sense of entering into a particular transaction on the assumption that, because a cancellation or amendment notice had been registered, the relevant asset was unencumbered. Once an enacting State has made a decision as to how to address these policy issues in its Law, it will have to craft the Regulation so as to provide for the technical regime necessary to make these policy choices effective.

253. Currently, States that have established security rights registries to support secured transactions laws of the type recommended by the *Secured Transactions Guide* have taken different approaches to resolving these policy issues. The various interests in play have obliged States to develop relatively complex rules in their secured transactions laws to achieve what they consider to be a fair balancing of these interests. Given the significant impact that these secured transactions law policy choices will have on the Regulation, the present guide does not make any recommendation as to how these policy issues should be addressed, leaving it to each enacting State to determine for itself how to proceed.

254. Some States place paramount importance on the conclusiveness of the registry record in resolving priority competitions. In those States, a secured creditor may reinstate its registration, but the reinstatement takes effect only from the time of the new registration. Third-party effectiveness is lost against competing claimants whose rights became effective against third parties prior to the reinstatement regardless of whether: (a) they actually searched the registry; (b) the secured creditor authorized the registration of the amendment or cancellation; or (c) the claim of the competing claimant's arose before the amendment or cancellation. At the other end of the spectrum are States that place paramount importance on the protection of the secured creditor. In those States, an amendment or cancellation is legally effective only if it was authorized by the secured creditor; thus the registry record is not conclusive for the purposes of resolving priority competitions. Even if, as a result of the registration of an unauthorized amendment or cancellation, an asset appears to be no longer encumbered, the secured creditor can challenge the priority of a competing claimant, including a competing claimant that relied on the registry record, on the basis of off-record evidence that the secured creditor did not authorize the change to the registry record.

255. States that place paramount importance on the conclusiveness of the registry record may nonetheless permit a secured creditor to reinstate its registration with effect from the time of the original registration for the limited purpose of a priority competition with a competing claimant over whom the reinstating secured creditor had priority prior to the registration of the amendment or cancellation notice. At the same time, an exception

along these lines creates the potential for circular priority problems to arise. The issue is illustrated by the following scenario: prior to the unauthorized cancellation of the notice relating to the security right of SC1, the security right of SC1 had priority over the security right of SC2 under the first-to-register priority rule. After the cancellation (but before SC1 reinstates its registration), SC3 acquires and registers a notice with respect to a security right in reliance on a search result that shows that the grantor's assets are now encumbered only by the security right of SC2. The security right of SC1 therefore retains its priority over the security right of SC2 but is subordinate to the security right of SC3, while the security right of SC3 has priority over the security right of SC1 but is subordinate to the security right of SC2. An additional question arises if SC2 makes further advances to the grantor after the registration of the cancellation notice but before reinstatement, namely whether the security right of SC2 should have priority over the security right of SC1 with respect to these further advances. Accordingly, an enacting State that adopts this approach will need to provide guidance in its Law on how to resolve these potential circular priority problems. In addition, it will need to consider whether it should reduce the potential for circular priority contests to arise by limiting the period of time available to a secured creditor to register a reinstatement notice. Provided that secured creditors are promptly notified of the registration of an amendment or cancellation notice (see *Secured Transactions Guide*, rec. 55, subpara. (d)), the imposition of a temporal limit on reinstatement may be an appropriate compromise.

256. States that place paramount importance on the protection of the secured creditor may also elect to create exceptions to their policy of treating the registration of an amendment or cancellation notice as legally effective only if the registration was authorized by the secured creditor. For example, a State may elect to protect competing claimants that can show that they factually relied on a clean search result following the registration of an unauthorized amendment or cancellation. Under this approach, the secured creditor, despite not having authorized the amendment or cancellation, would be subordinated to a purchaser or competing secured creditor that is able to prove that it entered into a transaction with the grantor in reliance on a search result that showed, as a result of the registration of the unauthorized amendment or cancellation notice, that the relevant asset was no longer encumbered. The same protection could in principle be extended to a judgement creditor that obtained a judgement during the intervening period if a State decided to enable judgement creditors to register their judgements in the security rights registry for the purposes of obtaining priority over subsequent competing claimants. As against other categories of competing claimants, the secured creditor would retain whatever priority it had prior to the registration of the unauthorized amendment or cancellation notice,

regardless of whether the registry record is ever corrected. It should be noted that this type of limited protection would also give rise to the risk of all of the types of circular priority problems addressed in the preceding paragraph, an issue which will need to be addressed by the enacting State.

257. A State's underlying paramount policy (that is, to protect the conclusiveness of the registry record for third-party searchers or to protect secured creditors against unauthorized registrations) is also relevant to the issue of access to registry services for the purposes of making changes to an initial notice. States that favour the first policy will need to provide secured creditors with the ability to control the risk of unauthorized registrations in order to make that policy more palatable. This result could be accomplished by adopting secure access procedures for registering amendment and cancellation notices. For example, the registry system could assign unique access codes to secured creditors when they apply for access to the registry's registration services for the first time and then require that access code to be entered on any amendment or cancellation notice submitted for registration that relates to an initial notice registered by that secured creditor.

258. A similar secure access code system could also be introduced in enacting States that place paramount importance on protecting secured creditors against unauthorized registrations. However, the introduction of such a system may have an impact on the question of what constitutes an unauthorized registration. For a secured access code system to provide real added value, the secured creditor would typically bear the risk of errors made by agents employed by the secured creditor to make registrations on its behalf, and with whom the secured creditor shares its confidential access code for that purpose. Otherwise, there is little point in implementing this system, since the entry of the secured creditor code would not by itself imply authorization by the secured creditor. Third parties would still need to conduct an off-record investigation to verify whether the registration was effected by the secured creditor itself or by an agent acting outside the scope of the secured creditor's authority, whether through negligence or outright mischief. That said, if there is a secure access code, third parties might conclude that the risk of unauthorized registrations is so low that off-record investigations are not always necessary.

259. A State's policy also has an impact on the question of whether cancelled notices can and should be removed from the public registry record and archived. In enacting States that elect to make the conclusiveness of the registry record paramount, cancelled notices can be removed from the public registry record and archived, since search results are conclusive regardless of whether the registration of a cancellation notice was authorized. In these States, the registry nonetheless would be subject to the duty recommended

by the *Secured Transactions Guide* to inform the secured creditor of the registration of a cancellation notice so that, if the registration were unauthorized, the secured creditor could re-register so as to at least protect its rights as against third parties that subsequently acquired rights in the encumbered assets. In States that elect to make protection of the secured creditor paramount, cancelled notices must remain searchable at least until the date they would have lapsed in the absence of a cancellation in order to enable searchers to conduct off-record enquiries with respect to whether the secured creditor authorized the cancellation. As already noted (see para. 251 above), the *Secured Transactions Guide* recommends the archiving of cancelled notices, but it does not explicitly require this if the cancelled notice was not authorized by the secured creditor. Accordingly, States that elect to make unauthorized cancellations ineffective will need to design the registry system so as to enable the registry to verify whether a secured creditor has authorized the registration of a cancellation notice in order to reconcile this recommendation with that policy.

### 5. *Compulsory amendment or cancellation*

260. As already discussed (see paras. 123-125), the *Secured Transactions Guide* permits a registration to be made before the security right to which it relates is created or any security agreement is concluded between the parties (see *Secured Transactions Guide*, rec. 67). If the negotiations are aborted after the notice is registered, or for some other reason no security agreement is ever entered into between the parties, the creditworthiness of the person named as the grantor in a registered notice may be adversely affected. The same is true if a security agreement has been entered into between the secured creditor and grantor named in a registered notice, but their secured financing arrangement has come to a final end or some of the information in the registered notice exceeds the scope of the grantor's authorization for registration (for example, the description of the encumbered assets in the registered notice is broader than that authorized by the grantor in the security agreement). Accordingly, the *Secured Transactions Guide* recommends that the secured creditor should be legally obligated to register the necessary cancellation or amendment notice, as the case may be. In the event that the secured creditor fails to do so, the *Secured Transactions Guide* further recommends that the grantor should be entitled to send a formal demand to the secured creditor and that the enacting State should establish a summary judicial or administrative procedure to compel the registration of a cancellation or amendment notice if the secured creditor fails to act on the request (see *Secured Transactions Guide*, rec. 72).

261. To implement these recommendations, the law or the regulation of the enacting State should provide that the actual secured creditor is obliged to register an amendment or cancellation notice, as the case may be, when: (a) the registration of an initial or amendment notice has either not been authorized by the grantor at all or not to the extent described in the notice; (b) authorization has been withdrawn and no security agreement has been concluded; (c) the security agreement has been revised in a way that makes the information contained in the registered notice inaccurate; or (d) the security right to which the registered notice relates has been extinguished by full payment or otherwise and there is no commitment to extend further credit (see rec. 33, subpara. (a), below). A secured creditor cannot be considered as having discharged its obligation by merely submitting a notice to the registry without ensuring that the notice is actually registered in the sense that the information in the notice has been entered into the registry record so as to be searchable. If instead the notice submitted to the registry is rejected (see rec. 8 above), the secured creditor will not have complied with its obligation.

262. If the secured creditor does not comply with its obligation to register an amendment or cancellation notice under the circumstances outlined above, the Law or the Regulation should entitle the grantor to send a formal request in writing to the secured creditor within a short period of time after the receipt of the grantor's request (see *Secured Transactions Guide*, rec. 72, subpara. (a); and rec. 33, subpara. (c), below). To address the possibility that the secured creditor might neglect or refuse to respond to the grantor's request, the grantor should be entitled to seek an order compelling registration of the cancellation or amendment notice through a speedy and inexpensive judicial or administrative procedure, which should include appropriate safeguards for the secured creditor in the case of an unwarranted demand by the grantor (see *Secured Transactions Guide*, rec. 72, subpara. (b); and rec. 33, subpara. (e), below).

263. Depending on the option chosen by an enacting State in its Law or Regulation, a compulsory amendment or cancellation notice could be registered by registry staff at the request of either the grantor or a judicial or administrative officer specified by the enacting State. In either case, the relevant judicial or administrative order should have to be attached to the amendment or cancellation notice presented to the registry (see rec. 33, subpara. (g), below). Enacting States would need to decide how to deal with a number of matters in this regard, including: (a) whether a copy of the entire order (including the factual findings, the reasoning and the actual decision) or only the actual decision would need to be attached; and (b) whether a certified copy should be attached, and, if so, what would constitute a certified copy under the law of the enacting State

## **B. Recommendations 30-33**

### *Recommendation 30. Information required in an amendment notice*

The Regulation should provide that:

(a) An amendment notice must contain the following information in the designated field for each item:

- (i) The registration number of the initial notice to which the amendment relates; and
- (ii) If information is to be added, deleted or changed, the information to be added, deleted or changed in the manner for entering the relevant kind of information in an initial notice in accordance with recommendation 23; and

(b) An amendment notice may relate to one or multiple items of information in a notice.

### *Recommendation 31. Global amendment of secured creditor information in multiple notices*

#### **Option A**

The Regulation should provide that the person identified in multiple registered notices as the secured creditor may amend its information in all these notices with a single global amendment.

#### **Option B**

The Regulation should provide that the person identified in multiple registered notices as the secured creditor may request the registry to amend its information in all these notices with a single global amendment.

### *Recommendation 32. Information required in a cancellation notice*

The Regulation should provide that a cancellation notice must contain in the designated field the registration number of the initial notice to which the cancellation relates.



*Recommendation 33. Compulsory amendment or cancellation*

The Regulation should provide that:

(a) The secured creditor must register an amendment or cancellation notice, as the case may be, if:

- (i) The registration of an initial or amendment notice has not been authorized by the grantor at all or to the extent described in the notice;
- (ii) The registration of an initial or amendment notice has been authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded;
- (iii) The security agreement has been revised in a way that makes the information contained in the notice incorrect or insufficient; or
- (iv) The security right to which the notice relates has been extinguished by full payment or otherwise and there is no further commitment by the secured creditor to extend credit;

(b) In the case of subparagraphs (a) (ii) to (a) (iv) of this recommendation, the secured creditor may charge any fee agreed upon with the grantor;

(c) Not later than [a short period of time, such as 15 days, to be specified by the enacting State] after receipt of a written request from the grantor, the secured creditor is obliged to comply with its obligation under subparagraph (a) of this recommendation;

(d) Notwithstanding subparagraph (b) of this recommendation, no further fee or expense may be charged or accepted by the secured creditor if it complies with the written request from the grantor in accordance with subparagraph (c) of this recommendation;

(e) If the secured creditor does not comply within the time period provided in subparagraph (c) of this recommendation, the grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through a summary judicial or administrative procedure;

(f) The grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through a summary judicial or administrative procedure even before expiry of the time period provided in subparagraph (c) of this recommendation, provided that there are appropriate mechanisms to protect the secured creditor; and

(g) The amendment or cancellation notice, as the case may be, in accordance with subparagraphs (e) and (f) of this recommendation is registered by:

***Option A***

The registry as soon as practicable upon receipt of the notice with a copy of the relevant judicial or administrative order attached.

***Option B***

A judicial or administrative officer as soon as practicable upon issuance of the relevant judicial or administrative order with a copy thereof attached.

## VI. Search criteria and search results

### A. General remarks

#### 1. Search criteria

264. As already explained (see paras. 128-130 above), under the approach recommended in the *Secured Transactions Guide*, information in the registry record must be indexed or otherwise organized so as to be searchable by reference to the identifier of the grantor. Accordingly, the Regulation should provide that the identifier of the grantor is the principal criterion by which registration information may be searched and retrieved (see rec. 34, subpara (a), below).

265. The registry should be designed to also allow notices to be searched and retrieved by reference to the unique registration number assigned by the registry to the initial notice and permanently associated with that notice and any related subsequent notices (see rec. 34, subpara. (b), below). This approach would give secured creditors an alternative search criterion to quickly and efficiently retrieve a registration for the purposes of registering an amendment or cancellation notice.

266. As already discussed (see paras. 131-134, 193 and 194 above), some States require the serial number of specified kinds of high-value encumbered assets to be entered in an initial notice in order for the related security right to be effective against or have priority over certain types of competing claimant. The *Secured Transactions Guide* discusses but makes no recommendation with respect to this approach (see *Secured Transactions Guide*, chap. IV, paras. 34-36). If an enacting State decides to implement this approach, the Regulation should provide guidance on what constitutes the correct serial number for the specified categories of serial numbered assets, and design its registry so that registered notices can be searched and retrieved by reference to that number.

267. As already mentioned (see para. 242 above), a secured creditor should be able, either directly or through registry staff, to efficiently amend its identifier or address information in all registrations associated with that secured creditor through a single global amendment. However, the identifier of the secured creditor should not be a search criterion for searching done

by the public generally. The identifier of the secured creditor has limited relevance to the legal objectives of the registry system. Moreover, to allow public searching may violate the reasonable expectations of confidentiality of secured creditors, for example, because of the risk that a credit provider may undertake a search based on the secured creditor identifier to obtain the client lists of its competitors (see *Secured Transactions Guide*, chap. IV, para. 81).

## 2. Search results

268. The Regulation should provide that a search result should either indicate that no registered notice matching the search criterion entered in the search request was retrieved or include the registration information in all registered notices matching that criterion (see rec. 35, subpara. (a), below). If no search criterion is entered by a searcher on a search request form submitted electronically to the registry, the registry system will typically be designed to reject the search request and the searcher will be alerted by a notice on the screen indicating the reason for the rejection. If a search request is submitted on a paper form, the registry will issue a rejection form indicating that the search could not be conducted because no criterion was entered on the search request form (see annex II, Form F, below). Enacting States also will need to consider the extent and format of information to be provided to a searcher in a search result. For example, a summary of the information in registered notices that matched the search criterion could be presented in a tabular format, with the complete information included as an attachment (see annex II, Form G, below).

269. As already noted (see paras. 205-208 above), registration of a notice is effective only if the notice would be retrieved by a search of the registry record by a searcher using the correct identifier of the grantor as the search criterion. Some registry systems are designed to retrieve registrations only if the grantor identifier that has been entered in a registered notice exactly matches the grantor identifier that is submitted by the searcher. When registered notices are stored in an electronic database, some systems are programmed so as to also retrieve registered notices that contain a grantor identifier that closely matches the grantor identifier entered by the searcher in the search request.<sup>8</sup>

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<sup>8</sup>The issue of whether the registry system should be designed to return close matches to the search criterion submitted by a searcher arises only when the search criterion is the grantor identifier and not the registration number, since as a practical matter the only categories of searchers that will use the registration number for searching are those which are familiar with the registration of the initial notice, and they will know that the registration number is wrong when the search result discloses a notice relating to a different grantor. Moreover, if notices whose numbers closely match the registration number had to be disclosed in a search result, this would yield very lengthy search results containing information in unrelated notices..

270. In a registry system that is designed to retrieve both exact and close matches, a registration may be considered effective even though the secured creditor made a minor error in entering the grantor identifier (see paras. 205 and 206 above). This is because a search according to the correct grantor identifier may (depending on how the software has been programmed to handle close matches) still retrieve the registration as an inexact but close match. Whether the error would nonetheless make the registration ineffective (see paras. 205 and 206 above) depends on such factors as whether: (a) a searcher would be able to readily identify the notice that was retrieved as a close match as referring to the correct grantor by looking at other information in the notice, for example, the grantor's address or any other information that the enacting State may require to be entered, such as the grantor's birth date or identification number; and (b) the list of close matches is not so lengthy as to prevent the searcher from reasonably determining whether a notice relating to the grantor in which it is interested is included in the list.

271. In deciding whether search results should also disclose close matches, enacting States should take into account that, while a system designed to retrieve close matches may protect the secured creditor against some minor errors in entering the grantor identifier, it creates greater uncertainty for searchers. As a result, recourse to the courts may be needed in particular circumstances to determine whether a reasonable searcher should have realized that the relevant grantor was included in the list of registered notices identified as close matches in the search result. Accordingly, the Regulation should provide that search results should set forth the information in registered notices, if any, that contain a grantor identifier that matches exactly the grantor identifier used by the searcher. If the registry system is designed to also include in a search result information in registered notices that contain a grantor identifier that closely matches the grantor identifier submitted in the search request, the search result should set forth this information separately, and the rules used by the registry for determining what constitutes a sufficiently close match should be clearly stated (see rec. 35, subpara. (b), below).

272. The Regulation should also provide that, upon request by a searcher and payment of the relevant fee, if any, the registry must issue an official search certificate that reflects the information set forth in the search result (see rec. 33, subpara. (c), below). In the case of an electronic search, a search certificate may be a printed version of the search result. Whether a search certificate is admissible in a court of the enacting State and, if so, its evidentiary value are matters for the procedural law of the enacting State. However, a search certificate should in principle be admissible as presumptive proof of its contents. It would then be up to the party challenging the

certificate to provide evidence to the contrary (for example, by showing that the search certificate is a forgery or is an inaccurate or incomplete record of the search result to which it relates).

273. In some registry systems, search results include 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). “Currency dates” are included in search results in registry systems in which the registration of a notice becomes legally effective at the date and time when the notice is submitted to the registry and not when it becomes available to searchers of the public registry record. The “currency date” is meant to alert searchers to the possibility that a legally effective registration may have been submitted to the registry in the period between the “currency date” and the actual date of the search. As already mentioned (see paras. 107-113 above), the *Secured Transactions Guide* recommends that a registration should become legally effective only when the information in a notice submitted to the registry has been entered into the registry record so as to be available to searchers (see *Secured Transactions Guide*, chap. IV, paras. 102-105, and rec. 70). Accordingly, under the registry system contemplated by the *Secured Transactions Guide*, there is no need to include a “currency date” in a search result; the “currency date” is the actual date of the search.

## **B. Recommendations 34 and 35**

### *Recommendation 34. Search criteria*

The Regulation should provide that the criterion by which a search of the public registry record may be conducted is:

- (a) The grantor identifier; or
- (b) The registration number.

### *Recommendation 35. Search results*

The Regulation should provide that:

- (a) The registry provides a search result that indicates the date and time when the search was performed and either sets forth all information in each registered notice that contains information matching the search criterion used by the searcher or indicates that no registered notice contained information matching that search criterion;

(b) A search result sets forth the information in each registered notice that contains information matching exactly the search criterion used by the searcher except [the enacting State to specify the cases in which a search result may set forth the information in each registered notice that contains information matching closely the search criterion and the rules used by the registry to determine what constitutes a close match];

(c) Upon a request submitted by a searcher, the registry issues an official search certificate indicating the search result.





## VII. Registration and search fees

### A. General remarks

274. The *Secured Transactions Guide* recommends that registration and search fees should not be used to raise revenue for the enacting State but rather be set purely on a cost-recovery basis (see *Secured Transactions Guide*, chap. IV, para. 37, and rec. 54, subpara. (i)). The reason for this approach is that excessive fees and transaction taxes will significantly deter utilization of the registry, thereby undermining the overall success of the enacting State's Law. In assessing the level of revenue from registry fees needed to achieve cost recovery, account should be taken not only of the initial start-up costs related to the establishment of a registry but also of the costs necessary to fund its operation, including the costs of: (a) the salaries of registry staff; (b) upgrading and replacing hardware and software; (c) ongoing staff training; and (d) promotional activities and training for registry users.

275. Advances in information technology have reduced the difference between the relative start-up costs of establishing an electronic versus a paper-based registry system. In addition, the operational costs associated with an electronic registry record are lower, especially if the registry system permits secured creditors and searchers to electronically submit notices and search requests directly without the intervention of registry staff. If the electronic registry record is developed in partnership with a private entity, it may be possible for the private entity to make the initial capital investment in the registry infrastructure and recoup its investment by taking a percentage of the service fees charged to registry users once the registry is up and running.

276. Some States, in the interest of encouraging use of the registry by creditors, charge no fees, or very low fees that are below the cost-recovery level, for registration. While this approach may encourage creditors to take and register security rights in low-value and other transactions that might have otherwise been entered into on an unsecured basis, it means that the registry and the benefits it provides to creditors is being subsidized with general taxpayer revenue. In other States, only the registration of a cancellation notice is free of charge so as to encourage secured creditors to promptly register cancellation notices once a secured financing relationship

with a grantor has come to an end. In still other States, electronic registrations are cheaper than paper-based registrations, and electronic searches (as opposed to registrations) are free of charge.

277. As already discussed (see paras. 116 and 117 above), an enacting State may decide to permit secured creditors to decide for themselves the period of effectiveness of a registered notice. Enacting States that adopt this approach may wish to consider whether registration fees should be based on a sliding scale related to the period of effectiveness selected by the secured creditor. This approach has the advantage of discouraging secured creditors from entering an inflated period in the notice out of an excess of caution.

278. As also already mentioned (see paras. 200-204 above), an enacting State may choose to require a registered notice to specify the maximum amount for which a security right may be enforced. In enacting States that adopt this approach, the fees charged by the registry for registration should not be related to the maximum amount specified in the notice since this approach would be contrary to the cost-recovery approach recommended by the *Secured Transactions Guide* (see para. 272 above).

279. Any registration and search fees established by the enacting State should be set out in the Regulation (see rec. 36, option A, below). It is for each enacting State to decide whether “the Regulation” in this context means a formal regulation or more informal administrative guidelines that the registry can revise. The latter approach would provide greater flexibility to adjust the fees in response to subsequent events, such as the need to reduce the fees once the capital cost of establishing the registry has been recouped. The disadvantage to this approach, however, is that the lack of a formal arrangement may be abused by the registry to unjustifiably adjust the fees upwards. Alternatively, an enacting State may choose not to specify the registry fees in the Law or the Regulation, but rather to designate the administrative authority that is authorized to set the registry fees (see rec. 36, option B, below). The enacting State may also wish to consider specifying in the Law or the Regulation the types of service that the registry may provide free of charge (see rec. option C, below).

280. In setting fees in a hybrid (paper and electronic) registry system, it may be reasonable for the enacting State to decide to charge higher fees to process notices and search requests submitted in paper form because they must be processed by registry staff, as opposed to electronic notices and search requests that are directly submitted to the registry, which do not require attention from registry staff. Charging higher fees will also encourage the user community to eventually transition to using the direct electronic registration and search functionalities.

## B. Recommendation 36

### *Recommendation 36. Fees for the services of the registry*

The Regulation should provide that:

#### ***Option A***

(a) The following fees are payable for the services of the registry:

- (i) Registration of a notice:
  - a. Paper: [...];
  - b. Electronic: [...];
- (ii) Searches:
  - a. Paper: [...];
  - b. Electronic: [...];
- (iii) Certificates:
  - a. Paper: [...];
  - b. Electronic: [[...]];

(b) The registry may enter into an agreement with a person to establish a registry user account to facilitate the payment of fees.

#### ***Option B***

The [administrative authority to be specified by the enacting State] may determine the fees and methods of payment for the services of the registry by decree.

#### ***Option C***

The following services of the registry are free of charge: [types of service to be specified by the enacting State.]



# Annex I

## Terminology and recommendations

### Terminology<sup>1</sup>

(a) “Address” means: (i) a physical address or a post office box number, city, postal code and State; or (ii) an electronic address;

(b) “Amendment” means a modification with respect to information contained in a previously registered notice to which the amendment relates;

(c) “Cancellation” means the removal from the public registry record of all information contained in a previously registered notice to which the cancellation relates;

(d) “Designated field” means the space on the prescribed registry notice form designated for entering the specified type of information;

(e) “Law” means the law of the enacting State governing security rights in movable assets;

(f) “Notice” means a communication in writing (paper or electronic) to the registry of information with respect to a security right; a notice may be an initial notice, an amendment notice or a cancellation notice;

(g) “Registrant” means the person who submits the prescribed registry notice form to the registry;

(h) “Registrar” means the person appointed pursuant to the Law and the Regulation to supervise and administer the operation of the registry;

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

(j) “Registration number” means a unique number assigned to an initial notice by the registry and permanently associated with that notice and any related notice;

(k) “Registry” means [the enacting State’s] system for receiving, storing and making accessible to the public certain information about security rights in movable assets;

(l) “Registry record” means the information in all registered notices stored by the registry; it consists of the record that is publicly accessible (public registry record) and the record that has been removed from the public registry record (registry archives); and

(m) “Regulation” means the body of rules adopted by the enacting State with respect to the registry, whether these rules are found in administrative guidelines or the Law.

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<sup>1</sup>Section B of the Introduction to the *Secured Transactions Guide* on terminology and interpretation applies also to the *Registry Guide*, except to the extent modified by section B of the Introduction to the *Registry Guide*, on terminology and interpretation.

## Recommendations

### *I. Establishment and functions of the security rights registry*

#### **Recommendation 1. Establishment of the registry**

The Regulation should provide that the registry is established for the purposes of receiving, storing and making accessible to the public information in registered notices with respect to security rights in movable assets.

#### **Recommendation 2. Appointment of the registrar**

The Regulation should provide that [the person authorized by the enacting State or by the law of the enacting State] appoints the registrar, determines the registrar's duties and monitors the registrar's performance.

#### **Recommendation 3. Functions of the registry**

The Regulation should provide that the functions of the registry include:

(a) Providing access to the services of the registry and, if such access is refused, the reason for refusing access in accordance with recommendations 4, 6, 7 and 9;

(b) Publicizing the means of access to the services of the registry, and the opening days and hours of any office of the registry in accordance with recommendation 5;

(c) Providing the reason for the rejection of the registration of a notice or a search request in accordance with recommendations 8 and 10;

(d) Entering the information contained in a notice submitted to the registry into the registry record, and indicating the date and time of each registration, in accordance with recommendation 11;

(e) Assigning a registration number to the initial notice in accordance with recommendation 15;

(f) Indexing or otherwise organizing the information in the registry record so as to make it searchable in accordance with recommendation 16;

(g) Protecting the integrity of the information in the registry record in accordance with recommendation 17

(h) Providing the person identified in the notice as the secured creditor with a copy of the registered notice in accordance with recommendation 18;

(i) Entering the information contained in an amendment notice into the registry record in accordance with recommendation 19;

(j) Removing the information contained in a registered notice from the public registry record upon the expiry of its period of effectiveness or registration of a cancellation notice in accordance with recommendation 20; and

(k) Archiving information removed from the public registry record in accordance with recommendation 21.

## ***II. Access to registry services***

### **Recommendation 4. Public access**

The Regulation should provide that any person may submit a notice or a search request to the registry in accordance with recommendations 6 and 9.

### **Recommendation 5. Operating days and hours**

The Regulation should provide that:

(a) If access to the services of the registry is provided through a physical office:

- (i) Each office of the registry is open to the public during [the days and hours to be specified by the enacting State]; and
- (ii) Information about any registry office locations and their opening days and hours is publicized on the registry's website, if any, or otherwise widely publicized, and the opening days and hours of registry offices are posted at each office;

(b) If access to the services of the registry is provided through electronic means of communication, electronic access is available at all times; and

(c) Notwithstanding subparagraphs (a) and (b) of this recommendation:

- (i) The registry may suspend access to the services of the registry in whole or in part for a period of time that is as short as practicable; and
- (ii) Notification of the suspension and its expected duration is published on the registry's website, if any, or otherwise widely publicized, in advance when feasible and, if not feasible, as soon thereafter as reasonably practicable, and, if the registry provides access to its services through physical offices, the notification is posted at each office.

### **Recommendation 6. Access to registration services**

The Regulation should provide that:

(a) Any person may submit a notice for registration if that person:

- (i) Uses the applicable notice form prescribed by the registry;
- (ii) Identifies itself in the manner prescribed by the registry; and
- (iii) Has paid, or made arrangements to pay to the satisfaction of the registry, any fee prescribed by the registry.

(b) If access to registration services is refused, the registry provides the reason as soon as practicable.

**Recommendation 7. Verification of registrant's identity, evidence of grantor authorization and scrutiny of the contents of the notice not required**

The Regulation should provide that:

(a) The registry maintains information about the identity of the registrant but does not require verification of the information;

(b) The registry does not require evidence of the existence of the grantor's authorization for the registration of a notice; and

(c) Except as provided in recommendations 8, subparagraph (a), and 10, subparagraph (a), the registry does not conduct other scrutiny of the content of the notice and, in particular, it is not the responsibility of the registry to ensure that information provided in the notice is entered in a field designated for that type of information or is complete, accurate or legally sufficient.

**Recommendation 8. Rejection of the registration of a notice**

The Regulation should provide that:

(a) The registry rejects the registration of a notice if no information is entered in one or more of the required designated fields or if the information entered is not legible; and

(b) The registry provides the reason for the rejection as soon as practicable.

**Recommendation 9. Access to searching services**

The Regulation should provide that:

(a) Any person may submit a search request if that person:

(i) Uses the applicable search request form prescribed by the registry; and

(ii) Has paid, or made arrangements to pay to the satisfaction of the registry, any fee prescribed by the registry.

(b) If access to searching services is refused, the registry provides the reason as soon as practicable.

**Recommendation 10. Rejection of a search request**

The Regulation should provide that:

(a) The registry rejects a search request if the request does not provide a search criterion in a legible manner; and

(b) The registry provides the reason for the rejection as soon as practicable.



### **III. Registration**

#### **Recommendation 11. Time of effectiveness of the registration of a notice**

The Regulation should provide that:

(a) The registration of an initial or amendment notice is effective from the date and time when the information in the notice is entered into the registry record so as to be accessible to searchers of the public registry record;

(b) The registry maintains a record of the date and time when the information in an initial or amendment notice is entered into the registry record so as to be accessible to searchers of the public registry record;

(c) The registry enters into the registry record and indexes or otherwise organizes information in an initial or amendment notice so as to make it accessible to searchers of the public registry record as soon as practicable and in the order in which the initial or amendment notice was submitted to the registry;

(d) The registration of a cancellation notice is effective from the date and time when the previously registered notice to which it relates is no longer accessible to searchers of the public registry record; and

(e) The registry maintains a record of the date and time when the previously registered notice to which a cancellation notice relates is no longer accessible to searchers of the public registry record.

#### **Recommendation 12. Period of effectiveness of the registration of a notice**

The Regulation should provide that:

##### **Option A**

(a) The registration of an initial notice is effective for [a relatively short period of time, such as five years, specified in the law of the enacting State];

(b) The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry; and

(c) The registration of an amendment notice extending the period of effectiveness extends the period for [the period of time specified in subparagraph (a)] beginning from the time the current period would have expired if it had not been extended.

##### **Option B**

(a) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice;

(b) The period of effectiveness of the registration may be extended at any time before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness; and

(c) The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the

amendment notice beginning from the time the current period would have expired if it had not been extended.

### **Option C**

(a) The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field in the notice, not exceeding [a long period of time, such as, 20 years, specified in the law of the enacting State];

(b) The period of effectiveness of the registration may be extended within [a short period of time, such as six months, specified in the law of the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness not exceeding [the period of time specified in subparagraph (a)]; and

(c) The registration of an amendment notice extending the period of effectiveness extends the period for the amount of time specified by the registrant in the amendment notice beginning from the time the current period would have expired if it had not been extended.

### **Recommendation 13. Time when a notice may be registered**

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

### **Recommendation 14. Sufficiency of a single notice**

The Regulation should provide that the registration of a single notice is sufficient to achieve the third-party effectiveness of one or more than one security right created by the grantor in favour of the same secured creditor in the encumbered asset described in the notice, whether the security right or rights exist at the time of registration or are created thereafter, and whether they arise from one or more than one security agreement between the same parties.

### **Recommendation 15. Registration number**

For the purposes of recommendations 16, 18, 30, 32 and 34, the Regulation should provide that the registry assigns a unique registration number to an initial notice and associates all notices that contain that number with the initial notice.

### **Recommendation 16. Indexing or other organization of information in the registry record**

The Regulation should provide that:

(a) The registry indexes or otherwise organizes the information in an initial or amendment notice in the public registry record so as to make the information accessible to a searcher in accordance with recommendation 34 together with all information provided in notices that contain the same registration number; and

(b) The registry indexes or otherwise organizes information in a cancellation notice in the registry archives so as to make the information retrievable by the registry together with all information provided in notices that contain the same registration number.

### **Recommendation 17. Integrity of the registry record**

The Regulation should provide that:

(a) Except as provided in recommendations 19 and 20, the registry does not amend information in or remove information from the registry record; and

(b) The registry protects the registry record from loss or damage, and provides for back-up mechanisms to allow reconstruction of the registry record.

### **Recommendation 18. Copy of registered notice**

The Regulation should provide that:

(a) The registry sends as soon as practicable a copy of a registered notice to each person identified in the notice as the secured creditor at the address set forth in the notice, indicating the date and time when the registration of the notice became effective and the registration number;

(b) Within [a short period of time, such as 10 days, to be specified by the enacting State] after the person identified in a registered notice as the secured creditor has received a copy of the registered notice in accordance with subparagraph (a) of this recommendation, that person must send:

- (i) A copy of an initial notice to each person identified in the notice as the grantor at the address set forth in the notice; and
- (ii) A copy of an amendment or cancellation notice to each person identified in the notice as the grantor at the most recent address set forth in the public registry record or, if the person identified in the notice as the secured creditor knows that the grantor's address has changed, at the grantor's most recent address known to that person or an address reasonably available to that person, even if the person identified in the notice as the grantor has multiple addresses or no address in the State in which the registry is located.

### **Recommendation 19. Amendment of information in the public registry record**

The Regulation should provide that:

(a) Information in a registered notice may be amended by the person identified in the notice as the secured creditor through the registration of an amendment notice in accordance with recommendation 30, 31 or 33; and

(b) The registration of an amendment notice does not result in the deletion or modification of information in the registered notice to which the amendment notice relates.

**Recommendation 20. Removal of information from the public registry record**

The Regulation should provide that information in a registered notice is removed from the public registry record upon the expiry of the period of effectiveness of the notice in accordance with recommendation 12 or upon registration of a cancellation notice in accordance with recommendation 32 or 33.

**Recommendation 21. Archiving of information removed from the public registry record**

The Regulation should provide that information removed from the public registry record in accordance with recommendation 20 is archived for a period of at least [a long period of time, such as 20 years, to be specified by the enacting State] in a manner that enables the information to be retrieved by the registry in accordance with recommendation 16, subparagraph (b).

**Recommendation 22. Language of a notice**

The Regulation should provide that the information in a notice must be expressed in [the language or languages to be specified by the enacting State], and in the character set determined and publicized by the registry.

#### ***IV. Registration of initial notices***

**Recommendation 23. Information required in an initial notice**

The Regulation should provide that:

(a) An initial notice must contain the following information in the designated field for each item:

- (i) The identifier of the grantor determined in accordance with recommendations 24-26, [and] the address of the grantor [and any other information to be specified by the enacting State to assist in uniquely identifying the grantor];
- (ii) The identifier of the secured creditor determined in accordance with recommendation 27 and the address of the secured creditor;
- (iii) A description of the encumbered assets in accordance with recommendation 28;
- [(iv) The period of effectiveness of the registration in accordance with recommendation 12;<sup>2</sup> and

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<sup>2</sup>If the law of the enacting State allows a registrant to choose the period of effectiveness of a notice (see option B or C of recommendation 12, and *Secured Transactions Guide*, rec. 69).

- (v) The maximum monetary amount for which the security right may be enforced];<sup>3</sup> and

(b) If there is more than one grantor or secured creditor, the required information must be entered in the designated field separately for each grantor or secured creditor.

#### **Recommendation 24. Grantor identifier (natural person)<sup>4</sup>**

The Regulation should provide that, if the grantor is a natural person:

- (a) The grantor identifier is the name of the grantor;
- (b) [The enacting State should specify the various components of the grantor's name and the designated field for each component];
- (c) [The enacting State should specify the official documents on the basis of which the grantor's name should be determined and the hierarchy of authoritative-ness among those official documents]; and
- (d) [The enacting State should specify the way in which the grantor's name should be determined in the case of a name change after the issuance of an official document].

#### **Recommendation 25. Grantor identifier (legal person)**

The Regulation should provide that, if the grantor is a legal person:

- (a) The grantor identifier is the name of the grantor; and
- (b) The name of the grantor is the name specified in a current [document, law or decree to be specified by the enacting State] constituting the legal person.

#### **[Recommendation 26. Grantor identifier (special cases)<sup>5</sup>**

The Regulation should provide that [the enacting State should specify the grantor identifier in special cases, such as those involving a person that is subject to insolvency proceedings, a trustee or a representative of the estate of a deceased person].

#### **Recommendation 27. Secured creditor identifier**

The Regulation should provide that:

- (a) If the secured creditor is a natural person, the secured creditor identifier is the name of the secured creditor determined in accordance with recommendation 24;

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<sup>3</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d)).

<sup>4</sup>With the exception of its subparagraph (a), which reflects essential recommendations of the *Secured Transactions Guide* (recs. 59 and 60), recommendation 24 is illustrative; the enacting State will have to adjust its wording based on the naming conventions in the enacting State.

<sup>5</sup>Recommendations 26 is illustrative; the enacting State may wish to adjust the wording based on its law and to add other special cases.

(b) If the secured creditor is a legal person, the secured creditor identifier is the name of the secured creditor determined in accordance with recommendation 25; and

(c) If the secured creditor falls within the special cases referred to in recommendation 26, the secured creditor identifier is the name as determined in accordance with recommendation 26.

### **Recommendation 28. Description of encumbered assets**

The Regulation should provide that:

(a) The encumbered assets must be described in the designated field of the notice in a manner that reasonably allows their identification;

(b) A generic description that refers to all assets within a category of movable assets includes all of the grantor's present and future assets within the specified category; and

(c) A generic description that refers to all of the grantor's movable assets includes all of the grantor's present and future movable assets.

### **Recommendation 29. Incorrect or insufficient information**

The Regulation should provide that:

(a) The registration of an initial notice, or an amendment notice that changes the grantor's identifier or adds a grantor, is effective only if the notice provides the grantor's correct identifier as set forth in recommendations 24-26 or, in the case of an incorrect identifier, if the notice would be retrieved by a search of the public registry record using the grantor's correct identifier;

(b) Except as provided in subparagraph (c) of this recommendation, an incorrect or insufficient statement of the information required in a notice other than the grantor's identifier does not render the registration of a notice ineffective, unless the incorrect or insufficient statement would seriously mislead a reasonable searcher;

[(c) An incorrect statement in a notice with respect to the period of effectiveness of the registration of a notice<sup>6</sup> or the maximum amount for which the security right may be enforced<sup>7</sup> does not render the registration of the notice ineffective, except to the extent that it seriously misled third parties that relied on the registered notice;]

(d) An incorrect statement of the identifier of a grantor in a notice in accordance with subparagraph (a) of this recommendation does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice; and

(e) An insufficient description of some encumbered assets in a notice does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described in the notice.

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<sup>6</sup>If the law of the enacting State allows a registrant to choose the period of effectiveness of a notice (see option B or C of recommendation 12, and *Secured Transactions Guide*, rec. 69).

<sup>7</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d)).

## ***V. Registration of amendment and cancellation notices***

### **Recommendation 30. Information required in an amendment notice**

The Regulation should provide that:

(a) An amendment notice must contain the following information in the designated field for each item:

- (i) The registration number of the initial notice to which the amendment relates; and
- (ii) If information is to be added, deleted or changed, the information to be added, deleted or changed in the manner for entering the relevant kind of information in an initial notice in accordance with recommendation 23; and

(b) An amendment notice may relate to one or multiple items of information in a notice.

### **Recommendation 31. Global amendment of secured creditor information in multiple notices**

#### ***Option A***

The Regulation should provide that the person identified in multiple registered notices as the secured creditor may amend its information in all these notices with a single global amendment.

#### ***Option B***

The Regulation should provide that the person identified in multiple registered notices as the secured creditor may request the registry to amend its information in all these notices with a single global amendment.

### **Recommendation 32. Information required in a cancellation notice**

The Regulation should provide that a cancellation notice must contain in the designated field the registration number of the initial notice to which the cancellation relates.

### **Recommendation 33. Compulsory amendment or cancellation**

The Regulation should provide that:

(a) The secured creditor must register an amendment or cancellation notice, as the case may be, if:

- (i) The registration of an initial or amendment notice has not been authorized by the grantor at all or to the extent described in the notice;
- (ii) The registration of an initial or amendment notice has been authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded;

- (iii) The security agreement has been revised in a way that makes the information contained in the notice incorrect or insufficient; or
- (iv) The security right to which the notice relates has been extinguished by full payment or otherwise and there is no further commitment by the secured creditor to extend credit;

(b) In the case of subparagraphs (a) (ii) to (a) (iv) of this recommendation, the secured creditor may charge any fee agreed upon with the grantor;

(c) Not later than [a short period of time, such as 15 days, to be specified by the enacting State] after receipt of a written request from the grantor, the secured creditor is obliged to comply with its obligation under subparagraph (a) of this recommendation;

(d) Notwithstanding subparagraph (b) of this recommendation, no further fee or expense may be charged or accepted by the secured creditor if it complies with the written request from the grantor in accordance with subparagraph (c) of this recommendation;

(e) If the secured creditor does not comply within the time period provided in subparagraph (c) of this recommendation, the grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through a summary judicial or administrative procedure;

(f) The grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through a summary judicial or administrative procedure even before expiry of the time period provided in subparagraph (c) of this recommendation, provided that there are appropriate mechanisms to protect the secured creditor; and

(g) The amendment or cancellation notice, as the case may be, in accordance with subparagraphs (e) and (f) of this recommendation is registered by:

### ***Option A***

The registry as soon as practicable upon receipt of the notice with a copy of the relevant judicial or administrative order attached.

### ***Option B***

A judicial or administrative officer as soon as practicable upon issuance of the relevant judicial or administrative order with a copy thereof attached.

## ***VI. Search criteria and search results***

### **Recommendation 34. Search criteria**

The Regulation should provide that the criterion by which a search of the public registry record may be conducted is:

- (a) The grantor identifier; or
- (b) The registration number.



**Recommendation 35. Search results**

The Regulation should provide that:

(a) The registry provides a search result that indicates the date and time when the search was performed and either sets forth all information in each registered notice that contains information matching the search criterion used by the searcher or indicates that no registered notice contained information matching that search criterion;

(b) A search result sets forth the information in each registered notice that contains information matching exactly the search criterion used by the searcher except [the enacting State to specify the cases in which a search result may set forth the information in each registered notice that contains information matching closely the search criterion and the rules used by the registry to determine what constitutes a close match];

(c) Upon a request submitted by a searcher, the registry issues an official search certificate indicating the search result.

***VII. Registration and search fees*****Recommendation 36. Fees for the services of the registry**

The Regulation should provide that:

***Option A***

(a) The following fees are payable for the services of the registry:

(i) Registration of a notice:

a. Paper: [...];

b. Electronic: [...];

(ii) Searches:

a. Paper: [...];

b. Electronic: [...];

(iii) Certificates:

a. Paper: [...];

b. Electronic: [...];

(b) The registry may enter into an agreement with a person to establish a registry user account to facilitate the payment of fees.

***Option B***

The [administrative authority to be specified by the enacting State] may determine the fees and methods of payment for the services of the registry by decree.

***Option C***

The following services of the registry are free of charge [types of service to be specified by the enacting State.]



## Annex II

### Examples of registry forms

#### I. INITIAL NOTICE

<b>Time of effectiveness of registration:</b> ____ (dd/mm/yyyy) ____ (hh/mm/ss)
<b>Registration No.:</b>
<b>THE ABOVE FIELDS ARE FOR REGISTRY OFFICE USE ONLY.</b>

*IT IS THE REGISTRANT'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION<sup>1</sup> IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE NOTICE IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.*

#### A. GRANTOR INFORMATION

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
Additional information about the grantor (if necessary to uniquely identify the grantor)		
2. LEGAL PERSON		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
3. INDICATE IF THE GRANTOR IS <sup>2</sup>		
<input type="checkbox"/>		
<input type="checkbox"/>		

<sup>1</sup>The enacting State may wish to provide additional fields for registrants to enter multiple grantors.

<sup>2</sup>The enacting State may wish to provide additional fields for registrants to enter special types of grantor, such as a person that is subject to insolvency proceedings, or a trustee or representative of an estate.

**B. SECURED CREDITOR INFORMATION<sup>3</sup>**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
2. LEGAL PERSON		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

**C. DESCRIPTION OF ENCUMBERED ASSETS**

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**D. DURATION OF REGISTRATION**

<p><b>Option A:</b> This notice shall be effective for [a period of time to be specified in the law of the enacting State].<sup>4</sup></p> <p>This notice shall be effective until _____ (dd/mm/yyyy) [FOR REGISTRY USE ONLY]</p> <p><b>Option B:</b> This notice shall be effective for [a period of time to be indicated by the registrant].<sup>5</sup></p> <p>This notice shall be effective until _____ (dd/mm/yyyy) [FOR REGISTRY USE ONLY]</p> <p><b>Option C:</b> This notice shall be effective for [a period of time to be indicated by the registrant]<sup>5</sup> not exceeding [a long period of time to be specified in the law of the enacting State].<sup>6</sup></p> <p>This notice shall be effective until _____ (dd/mm/yyyy) [FOR REGISTRY USE ONLY]</p>
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**[E. MAXIMUM AMOUNT FOR WHICH SECURITY RIGHT IS ENFORCEABLE]<sup>7</sup>**

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<sup>3</sup>The enacting State may wish to provide additional fields for registrants to enter multiple secured creditors.

<sup>4</sup>The period will be automatically generated (in the case of an electronic notice form) or manually entered by the registry (in the case of a paper notice form).

<sup>5</sup>If the law of the enacting State allows a registrant to choose the duration of a notice (see option B or C of recommendation 12 above and *Secured Transactions Guide*, rec. 69).

<sup>6</sup>The maximum period will be automatically generated (in the case of an electronic notice form) or manually entered (in the case of a paper notice form) by the registry.

<sup>7</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d))

**F. ADDITIONAL INFORMATION**

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**G. INDICATE IF THE REGISTRATION IS TRANSITIONAL**

## II. AMENDMENT NOTICE

**Time of effectiveness of registration:** \_\_\_\_ (dd/mm/yyyy) \_\_\_\_ (hh/mm/ss)

**THE ABOVE FIELDS ARE FOR REGISTRY OFFICE USE ONLY.**

*IT IS THE REGISTRANT'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION<sup>1</sup> IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE NOTICE IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.*

**REGISTRATION NO. OF INITIAL NOTICE TO WHICH THE AMENDMENT RELATES:**

### SELECT ONE OR MORE OF THE FOLLOWING:

**A. ADD GRANTOR**

<b>1. NATURAL PERSON</b>		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
Additional information about the grantor (if necessary to uniquely identify the grantor)		
<b>2. LEGAL PERSON</b>		
Name		
Address (city/state/postal code)	Street or P.O. box (if any)	Electronic address (if any)
<b>3. INDICATE IF THE GRANTOR IS<sup>2</sup></b>		
<input type="checkbox"/>		
<input type="checkbox"/>		

<sup>1</sup>The enacting State may wish to provide additional fields for registrants to enter multiple grantors.

<sup>2</sup>The enacting State may wish to provide additional fields for registrants to enter special types of grantor, such as a person that is subject to insolvency proceedings, or a trustee or representative of an estate.

**B. DELETE GRANTOR**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
2. LEGAL PERSON		
Name		

**C. CHANGE GRANTOR INFORMATION**

**1. GRANTOR TO WHOM THIS CHANGE RELATES**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
2. LEGAL PERSON		
Name		

**2. NEW GRANTOR INFORMATION**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
Additional information about the grantor (if necessary to uniquely identify the grantor)		
2. LEGAL PERSON		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
3. INDICATE IF THE GRANTOR IS <sup>2</sup>		
<input type="checkbox"/> <input type="checkbox"/>		

**D. ADD SECURED CREDITOR**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
2. LEGAL PERSON		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

 **E. DELETE SECURED CREDITOR**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
2. LEGAL PERSON		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

 **F. CHANGE SECURED CREDITOR INFORMATION****1. SECURED CREDITOR TO WHOM THIS CHANGE RELATES**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
2. LEGAL PERSON		
Name		



**2. NEW SECURED CREDITOR INFORMATION**

<b>1. NATURAL PERSON</b>		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
<b>2. LEGAL PERSON</b>		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

**G. ADDITION OF ENCUMBERED ASSETS**

Insert description of encumbered assets to be added:
--

**H. DELETION OF ENCUMBERED ASSETS**

Insert description of encumbered assets to be deleted:
--

**I. CHANGE OF DESCRIPTION OF ENCUMBERED ASSETS**

**1. ENCUMBERED ASSETS TO WHICH THIS CHANGE RELATES**

Insert description of encumbered assets to be changed:
--

**2. NEW DESCRIPTION OF ENCUMBERED ASSETS**

Insert new description of encumbered assets:
--

**[ ] J. EXTEND DURATION OF REGISTRATION]**

**Option A:** This notice shall be effective for [a period of time to be specified in the law of the enacting State].<sup>3</sup>

This notice shall be effective until \_\_\_\_\_ (dd/mm/yyyy) [FOR REGISTRY USE ONLY]

**Option B:** This notice shall be effective for [a period of time to be indicated by the registrant].<sup>4</sup>

This notice shall be effective until \_\_\_\_\_ (dd/mm/yyyy) [FOR REGISTRY USE ONLY]

**Option C:** This notice shall be effective for [a period of time to be indicated by the registrant]<sup>4</sup> not exceeding [a long period of time to be specified in the law of the enacting State].<sup>5</sup>

This notice shall be effective until \_\_\_\_\_ (dd/mm/yyyy) [FOR REGISTRY USE ONLY]

**[ ] K. CHANGE MAXIMUM AMOUNT FOR WHICH SECURITY RIGHT MAY BE ENFORCED]<sup>6</sup>**

<sup>3</sup>The period will be automatically generated (in the case of an electronic notice form) or manually entered by the registry (in the case of a paper notice form).

<sup>4</sup>If the law of the enacting State allows a registrant to choose the duration of a notice (see option B or C of recommendation 12 above and *Secured Transactions Guide*, rec. 69).

<sup>5</sup>The maximum period will be automatically generated (in the case of an electronic notice form) or manually entered (in the case of a paper notice form) by the registry.

<sup>6</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d))

### III. CANCELLATION NOTICE

**Time of effectiveness of registration:** \_\_\_\_ (dd/mm/yyyy) \_\_\_\_ (hh/mm/ss)

**THE ABOVE FIELDS ARE FOR REGISTRY OFFICE USE ONLY.**

*IT IS THE REGISTRANT'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE NOTICE IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.*

**REGISTRATION NO. OF INITIAL NOTICE TO WHICH THE AMENDMENT RELATES:**

*PLEASE NOTE THAT UPON REGISTRATION OF THIS CANCELLATION NOTICE, INFORMATION CONTAINED IN THE INITIAL AND ANY SUBSEQUENT AMENDMENT NOTICES SHALL BE REMOVED FROM THE PUBLIC REGISTRY RECORD. THEREAFTER, THE RELEVANT SECURITY RIGHT WILL NO LONGER BE EFFECTIVE AGAINST THIRD PARTIES. WHILE THIRD-PARTY EFFECTIVENESS MAY BE RE-ESTABLISHED, IT WILL TAKE EFFECT ONLY FROM THE TIME THAT IT IS RE-ESTABLISHED.*

#### IV. AMENDMENT NOTICE PURSUANT TO A JUDICIAL OR ADMINISTRATIVE ORDER

**Time of effectiveness of registration:** \_\_\_\_ (dd/mm/yyyy) \_\_\_\_ (hh/mm/ss)

**THE ABOVE FIELDS ARE FOR REGISTRY OFFICE USE ONLY.**

*IT IS THE REGISTRANT'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE NOTICE IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.*

**REGISTRATION NO. OF INITIAL NOTICE TO WHICH THE  
AMENDMENT RELATES:**

##### A. REGISTRANT INFORMATION

Family name	First given name	Second given name (if any)
Position		
Name of judicial or administrative authority		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

**B. COPY OF JUDICIAL OR ADMINISTRATIVE ORDER ATTACHED**

**SELECT ONE OR MORE OF THE FOLLOWING:**

**C. DELETE GRANTOR**

<b>1. NATURAL PERSON</b>		
Family name	First given name	Second given name (if any)
<b>2. LEGAL PERSON</b>		
Name		

**D. CHANGE OF GRANTOR INFORMATION**

**1. GRANTOR TO WHOM THIS CHANGE RELATES**

<b>1. NATURAL PERSON</b>		
Family name	First given name	Second given name (if any)
<b>2. LEGAL PERSON</b>		
Name		

**2. NEW INFORMATION**

<b>1. NATURAL PERSON</b>		
Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
Additional information about the grantor (if necessary to uniquely identify the grantor)		
<b>2. LEGAL PERSON</b>		
Name		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)
<b>3. INDICATE IF THE GRANTOR IS<sup>1</sup></b>		
<input type="checkbox"/> <input type="checkbox"/>		

**E. DELETION OF ENCUMBERED ASSETS**

Insert new description of encumbered assets:
--

<sup>1</sup>The enacting State may wish to provide additional fields for registrants to enter special types of grantor, such as a person that is subject to insolvency proceedings, or a trustee or representative of an estate.

**F. CHANGE OF DESCRIPTION OF ENCUMBERED ASSETS****1. ENCUMBERED ASSETS TO WHICH THIS CHANGE RELATES**

Insert description of encumbered assets to be changed:

**2. NEW DESCRIPTION**

Insert new description of encumbered assets to be changed:

 **G. CHANGE MAXIMUM AMOUNT FOR WHICH SECURITY RIGHT MAY BE ENFORCED<sup>2</sup>**

---

<sup>2</sup>If the law of the enacting State provides that this information must be included in a notice (see *Secured Transactions Guide*, rec. 57, subpara. (d)).

## V. CANCELLATION NOTICE PURSUANT TO A JUDICIAL OR ADMINISTRATIVE ORDER

**Time of effectiveness of registration:** \_\_\_\_ (dd/mm/yyyy) \_\_\_\_ (hh/mm/ss)

**THE ABOVE FIELDS ARE FOR REGISTRY OFFICE USE ONLY.**

*IT IS THE REGISTRANT'S RESPONSIBILITY TO ENSURE THAT ALL REQUIRED INFORMATION IS PROVIDED AND ENTERED IN THE DESIGNATED FIELD OF THE NOTICE IN A LEGIBLE MANNER AND THAT THE INFORMATION IS COMPLETE, ACCURATE AND LEGALLY EFFECTIVE.*

**REGISTRATION NO. OF INITIAL NOTICE TO WHICH THE  
AMENDMENT RELATES:**

### A. REGISTRANT INFORMATION

Family name	First given name	Second given name (if any)
Position		
Name of judicial or administrative authority		
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

**B. COPY OF JUDICIAL OR ADMINISTRATIVE ORDER ATTACHED**

## VI. SEARCH REQUEST FORM

*IT IS THE SEARCHER'S RESPONSIBILITY TO ENSURE THAT INFORMATION PROVIDED IN EITHER SECTION A OR B IS ENTERED IN A LEGIBLE MANNER.*

**A. GRANTOR INFORMATION**

1. NATURAL PERSON		
Family name	First given name	Second given name (if any)
2. LEGAL PERSON		
Name		

**B. REGISTRATION NO. OF INITIAL NOTICE**

--

**C. ADDRESSEE OF THE SEARCH RESULT<sup>1</sup>**

Family name	First given name	Second given name (if any)
Address (city/state/postal code)	Street or P.O. Box (if any)	Electronic address (if any)

<sup>1</sup>Necessary in the case of a paper-based registry system.



## VII. SEARCH RESULTS

**A. TIME OF SEARCH:** \_\_\_\_\_ (dd/mm/yyyy) \_\_\_\_\_ (hh/mm/ss)

### B. SEARCH CRITERION USED

1. Name of grantor: \_\_\_\_\_

2. Registration number of initial notice: \_\_\_\_\_

### C. SEARCH RESULT

No corresponding notices were retrieved.

The following corresponding notices were retrieved.<sup>1</sup>

	Registration number of initial notice	Name of grantor
1.		
2.		
3.		
4.		
5.		

---

<sup>1</sup>This table is indicative. Depending on the design of the registry, a search result may show all of the information in the retrieved notices immediately or in stages (using separate links).

## VIII. REJECTION OF A REGISTRATION OR A SEARCH REQUEST

**A. TIME OF REJECTION:** \_\_\_\_\_ (dd/mm/yyyy) \_\_\_\_\_ (hh/mm/ss)

**B. SEARCH CRITERION USED**

B.1. Registration of an initial notice

The identifier of the grantor

The address of the grantor

The identifier of the secured creditor

The address of the secured creditor

A description of the encumbered assets

[The duration of the registration]

[The maximum monetary amount for which the security right may be enforced]

B.2 Registration of an amendment notice

The registration number of the initial notice to which the amendment relates

Information for addition

Information for deletion

Information for change

B.3 Registration of a cancellation notice

The registration number of the initial notice to which the cancellation relates

**C. THE SEARCH REQUEST IS REJECTED BECAUSE IT FAILED TO  
PROVIDE A SEARCH CRITERION IN A LEGIBLE MANNER.**

## Annex III

# Decision of the United Nations Commission on International Trade Law and General Assembly resolution 68/106

### A. Decision of the Commission

At its 970th meeting, on 16 July 2013, the Commission adopted the following decision:

*The United Nations Commission on International Trade Law,*

*Recalling* General Assembly resolution 63/121 of 11 December 2008, in which the Assembly recommended that all States give favourable consideration to the *UNCITRAL Legislative Guide on Secured Transactions*<sup>1</sup> when revising or adopting legislation relevant to secured transactions,

*Recognizing* that an efficient secured transactions regime with a publicly accessible security rights registry of the kind recommended in the Secured Transactions Guide is likely to increase access to affordable secured credit and thus promote economic growth, sustainable development, the rule of law and financial inclusion and assist in combating poverty,

*Noting with satisfaction* that the UNCITRAL Guide on the Implementation of a Security Rights Registry is consistent with and usefully supplements the Secured Transactions Guide and that, together, the two guides will provide comprehensive guidance to States with respect to legal and practical issues that need to be addressed when implementing a modern secured transactions regime,

*Noting also* that secured transactions law reform could not be effectively implemented without the establishment of an efficient, publicly accessible security rights registry where information about the potential existence of a security right in movable assets may be registered, and that States urgently need guidance with respect to the establishment and operation of such registries,

*Noting further* that the harmonization of national security rights registries on the basis of the Registry Guide is likely to increase the availability of credit across

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<sup>1</sup> United Nations publication, Sales No. E.09.V.12.

national borders and thus facilitate the development of international trade, which, if achieved on the basis of equality and mutual benefit to all States, is an important element in promoting friendly relations among States,

*Expressing* its appreciation to international intergovernmental and non-governmental organizations active in the field of secured transactions law reform for their participation in and support for the development of the Registry Guide,

*Expressing also* its appreciation to the participants of Working Group VI (Security Interests), as well as to the Secretariat, for their contribution to the development of the Registry Guide,

1. *Adopts* the UNCITRAL Guide on the Implementation of a Security Rights Registry, consisting of the text contained in documents A/CN.9/WG.VI/WP.54, A/CN.9/WG.VI/WP.54/Add.1-4, A/CN.9/781 and A/CN.9/781/Add.1-2, with amendments adopted by the Commission at its forty-sixth session, and authorizes the Secretariat to edit and finalize the text of the UNCITRAL Guide on the Implementation of a Security Rights Registry pursuant to the deliberations of the Commission at that session;

2. *Requests* the Secretary-General to publish the UNCITRAL Guide on the Implementation of a Security Rights Registry, including electronically, and to disseminate it broadly to Governments and other interested bodies;

3. *Recommends* that all States give favourable consideration to the UNCITRAL Guide on the Implementation of a Security Rights Registry when revising relevant legislation, administrative regulations or guidelines, and to the *UNCITRAL Legislative Guide on Secured Transactions*<sup>2</sup> when revising or adopting legislation relevant to secured transactions, and invites States that have used the guides to advise the Commission accordingly;

4. *Also recommends* that all States continue to consider becoming party to the United Nations Convention on the Assignment of Receivables in International Trade,<sup>3</sup> the principles of which are also reflected in the *UNCITRAL Legislative Guide on Secured Transactions*, and the optional annex of which refers to the registration of notices with regard to assignments.

---

<sup>2</sup> Ibid.

<sup>3</sup> General Assembly resolution 56/81, annex.

## B. General Assembly resolution 68/108

At its 68th plenary meeting, on 16 December 2013, the General Assembly adopted on the basis of the report of the Sixth Committee (A/68/462), the following resolution:

### **United Nations Commission on International Trade Law Guide on the Implementation of a Security Rights Registry**

*The General Assembly,*

*Recognizing* the importance to all States of efficient secured transactions regimes in promoting access to affordable secured credit,

*Recognizing also* that access to affordable secured credit is likely to assist all countries, in particular developing countries and countries with economies in transition, in their efforts to achieve economic growth, sustainable development, the rule of law and financial inclusion,

*Recalling* its resolution 63/121 of 11 December 2008, in which it recommended that all States give favourable consideration to the *Legislative Guide on Secured Transactions* of the United Nations Commission on International Trade Law<sup>1</sup> when revising or adopting legislation relevant to secured transactions,

*Recognizing* that an efficient secured transactions regime with a publicly accessible security rights registry of the kind recommended in the *Legislative Guide on Secured Transactions* is likely to increase access to affordable secured credit,

*Noting with satisfaction* that the United Nations Commission on International Trade Law Guide on the Implementation of a Security Rights Registry<sup>2</sup> is consistent with and usefully supplements the *Legislative Guide on Secured Transactions* and that the two Guides, together, will provide comprehensive guidance to States with respect to legal and practical issues that need to be addressed when implementing a modern secured transactions regime,

*Noting* that secured transactions law reform could not be effectively implemented without the establishment of an efficient, publicly accessible security rights registry where information about the potential existence of a security right in movable assets may be registered and that States urgently need guidance with respect to the establishment and operation of such registries,

*Taking into account* that the harmonization of national security rights registries on the basis of the Guide on the Implementation of a Security Rights Registry is

---

<sup>1</sup>United Nations publication, Sales No. E.09.V.12.

<sup>2</sup>See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, chap. IV.

likely to increase the availability of credit across national borders and thus facilitate the development of international trade, which, if achieved on the basis of equality and mutual benefit to all States, is an important element in promoting friendly relations among States,

*Expressing its appreciation* to intergovernmental and international non-governmental organizations active in the field of secured transactions law reform for their participation in and support for the development of the Guide on the Implementation of a Security Rights Registry,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for the completion and adoption of the Guide on the Implementation of a Security Rights Registry;<sup>2</sup>

2. *Requests* the Secretary-General to publish the Guide on the Implementation of a Security Rights Registry, including through electronic means, and to disseminate it broadly to Governments and other interested bodies such as national and international financial institutions and chambers of commerce;

3. *Recommends* that all States give favourable consideration to the Guide on the Implementation of a Security Rights Registry when revising relevant legislation, administrative regulations or guidelines and to the *Legislative Guide on Secured Transactions* of the Commission<sup>1</sup> when revising or adopting legislation relevant to secured transactions, and invites States that have used the Guides to advise the Commission accordingly;

4. *Also recommends* that all States continue to consider becoming parties to the United Nations Convention on the Assignment of Receivables in International Trade,<sup>3</sup> the principles of which are reflected in the *Legislative Guide on Secured Transactions* and the optional annex to which refers to the registration of data with regard to assignments.

---

<sup>3</sup>General Assembly resolution 56/81, annex.

# Index

	<i>Chapter/paragraph</i>
<i>Access to registry services</i>	
Acceptance of initial notice	II, 95
Authorization for registration	II, 101
Entitlement to register	II, 95-99
Entitlement to search	II, 103
Incomplete or illegible notices	II, 97-99
Operating days and hours	II, 92-94
Privacy concerns	II, 103
Public access	II, 90-91
Registrant identity	II, 96; II, 100
Rejection of registration	II, 97-99
Rejection of search requests	II, 106
Scrutiny of notice content	II, 102
Search form	II, 104
Searcher identity	II, 105
<i>Amendment and cancellation notices</i>	
Amendment	V, 221-242
Amendment (authorization)	V, 223
Amendment (compulsory)	V, 260-263
Amendment (unauthorized)	V, 249-259
Assignment of obligation	V, 234-235
Cancellation	V, 243-244
Cancellation (authorization)	V, 249
Cancellation (compulsory)	V, 260-263
Cancellation (inadvertent)	V, 245-248
Cancellation (unauthorized)	V, 249-259
Description of encumbered assets (change)	V, 238-239
Encumbered assets (addition)	V, 236
Encumbered assets (deletion)	V, 237
Encumbered assets (transfer)	V, 229-232
Expiration (inadvertent)	V, 245-248
Extension of period of effectiveness	V, 240-241

	<i>Chapter/paragraph</i>
Grantor (name change)	V, 226-228
Intellectual property (transfer)	V, 230-231
Purpose	V, 221
Result	V, 222
Secured creditor (global amendment of information)	V, 242
Security right (transfer)	V, 234-235
Subordination of priority	V, 233
<i>Establishment of security rights registry</i>	
Additional services	I, 81
Centralized registry record	I, 82
Coordination (among national security rights registries)	I, 70
Coordination (with immovable property registries)	I, 67-69
Coordination (with other movable property registries)	I, 64-66
Data integrity	I, 87
Electronic vs. paper-based registry	I, 82-89
Hardware and software	I, 88
Implementation considerations	I, 76-79
Interface with other registries and databases	I, 89
Operation (responsibility)	I, 77
Ownership of registry record	I, 77
Public education	I, 79
Purpose	I, 73
Registrar (appointment)	I, 74
Registry functions	I, 75
Remote access	I, 86
Staffing	I, 76
Storage capacity	I, 78
Terms and conditions of use	I, 80-81
<i>Fees</i>	
Electronic vs. paper-based system (establishment costs)	VIII, 275
Electronic vs. paper-based system (usage fees)	VII, 280
Maximum amount indicated in notice	VII, 278
Period of effectiveness (fees)	VII, 277
Policy considerations	VII, 274-280
Registration vs. search fees	VII, 276
Regulation of fees	VII, 279
Start-up costs	VII, 275



	<i>Chapter/paragraph</i>
<i>Initial notices</i>	
Attachments to immovable property	IV, 198
Description of encumbered assets	IV, 190-198
Encumbered assets (omission and error)	IV, 211-213
Future assets	IV, 191
Grantor (address)	IV, 181-183
Grantor (distinction between natural and legal persons)	IV, 161
Grantor (error in identifier)	IV, 205-208
Grantor (identifier)	IV, 161-180
Grantor (information)	IV, 157-183
Grantor identifier (legal persons)	IV, 170-173
Grantor identifier (natural persons)	IV, 163-169
Grantor identifier (special cases)	IV, 174-180
Maximum amount for which security right may be enforced	IV, 200-204
Period of effectiveness	IV, 199
Proceeds (description)	IV, 195-197
Representative of secured creditor	IV, 186-187
Required content (overview)	IV, 157
Secured creditor (error)	IV, 209-210
Secured creditor (information)	IV, 184-189
Serial-number assets (description)	IV, 193-194
 <i>Registration</i>	
Advance registration	III, 122-124
Amendment (of registry record)	III, 150
Archives (of public registry record)	III, 151-152
Back-up of registry records	III, 137
Grantor (entitlement to a copy of registered notice)	III, 148-149
Grantor identifier indexing	III, 128-130
Indexing criteria	III, 128-134
Integrity and security (of registry record)	III, 135-140
Language (of notices and search requests)	III, 153-156
Modification or removal of information (by registry staff)	III, 136
Multiple security rights (sufficiency of single notice)	III, 125-126
Period of effectiveness	III, 113-120
Registration numbers	III, 127
Removal (of expired or cancelled registrations)	III, 151
Responsibility and liability of registry	III, 140-144
Secured creditor (entitlement to a copy of registered notice)	III, 145-147
Serial-number indexing	III, 131-134

	<i>Chapter/paragraph</i>
Staff corruption	III, 138
Staff limitations	III, 139
Third-party effectiveness (re-establishment)	III, 121
Time of effectiveness (cancellation notice)	III, 112
Time of effectiveness (initial and amendment notice)	III, 107-111
<i>Search criteria and search results</i>	
Search certificate	VI, 272
Secured creditor (global amendment of information)	VI, 267
Search criteria (grantor identifier)	VI, 264
Search criteria (secured creditor identifier)	VI, 267
Search criteria (serial number)	VI, 266
Search criteria (unique registration number)	VI, 265
Search results	VI, 268-273
Search results (all matching information)	VI, 268
Search results (exact and close matches)	VI, 269-271



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