

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

# UNCITRAL Model Law on Secured Transactions



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# UNCITRAL Model Law on Secured Transactions<sup>1</sup>

## Chapter I. Scope of application and general provisions

### Article 1. Scope of application

1. This Law applies to security rights in movable assets.
2. With the exception of articles 72-82, this Law applies to outright transfers of receivables by agreement.
3. Notwithstanding paragraph 1, this Law does not apply to security rights in:
  - (a) The right to request payment under, or to receive the proceeds of, an independent guarantee or letter of credit;
  - (b) Intellectual property in so far as this Law is inconsistent with [the law relating to intellectual property to be specified by the enacting State];<sup>2</sup>
  - (c) Intermediated securities; [or]
  - (d) Payment rights arising under or from financial contracts governed by netting agreements, except a payment right arising upon the termination of all outstanding transactions[; or]
  - [e) Any other types of asset to be specified by the enacting State, such as those that are subject to specialized secured transactions and asset-based registration regimes under other law to the extent that that other law governs matters addressed in this Law].<sup>3</sup>
4. This Law does not apply to security rights in proceeds of encumbered assets if the proceeds are a type of asset to which this Law does not apply, to the extent that [any other law to be specified by the enacting State] applies to security rights in those types of asset and governs the matters addressed in this Law.
5. Nothing in this Law affects the rights and obligations of the grantor and the debtor of the receivable under other laws governing the protection of parties to transactions made for personal, family or household purposes.
6. Nothing in this Law overrides a provision of any other law that limits the creation or enforcement of a security right in, or the transferability of, specific types of asset, with the exception of a provision that limits the creation or enforcement of a security right in, or the transferability of, an asset on the sole ground that it is a future asset, or a part of or an undivided interest in an asset.

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<sup>1</sup> “Secured transaction” means a transaction that creates a security right in a movable asset. Thus, there is no substantive difference between the title of the Model Law in the language versions that do not use the term “secured transaction” and the title of the UNCITRAL *Legislative Guide on Secured Transactions*.

<sup>2</sup> This provision may not be necessary if the enacting State has coordinated, or has otherwise addressed, the relationship between this Law and any secured transaction provisions of its law relating to intellectual property.

<sup>3</sup> If the enacting State decides to introduce any other exception(s), they should be limited and set out in its enactment of the Model Law in a clear and specific way.

## Article 2. Definitions and rules of interpretation

For the purposes of this Law:

- (a) “Acquisition secured creditor” means a secured creditor that has an acquisition security right;
- (b) “Acquisition security right” means a security right in a tangible asset, or in intellectual property or the rights of a licensee under a licence of intellectual property, which secures an obligation to pay any unpaid portion of the purchase price of an asset, or other credit extended to enable the grantor to acquire rights in the asset to the extent that the credit is used for that purpose;
- (c) “Bank account” means an account maintained by an authorized deposit-taking institution to which funds may be credited or debited;
- (d) “Certificated non-intermediated securities” means non-intermediated securities represented by a certificate that:
  - (i) Provides that the person entitled to the securities is the person in possession of the certificate; or
  - (ii) Identifies the person entitled to the securities;
- (e) “Competing claimant” means a creditor of a grantor or other person with rights in an encumbered asset that may be in competition with the rights of a secured creditor in the same encumbered asset. The term includes:
  - (i) Another secured creditor of the grantor that has a security right in the same encumbered asset;
  - (ii) Another creditor of the grantor that has a right in the same encumbered asset;
  - (iii) The insolvency representative in insolvency proceedings in respect of the grantor; and
  - (iv) A buyer or other transferee, lessee or licensee of the encumbered asset;
- (f) “Consumer goods” means goods primarily used or intended to be used by the grantor for personal, family or household purposes;
- (g) “Control agreement”:
  - (i) With respect to uncertificated non-intermediated securities, means an agreement in writing between the issuer, the grantor and the secured creditor, according to which the issuer agrees to follow instructions from the secured creditor with respect to the securities, without further consent from the grantor; and
  - (ii) With respect to rights to payment of funds credited to a bank account, means an agreement in writing between the deposit-taking institution, the grantor and the secured creditor, according to which the deposit-taking institution agrees to follow instructions from the secured creditor with respect to the payment of funds credited to the bank account without further consent from the grantor;

(h) “Debtor” means a person that owes payment or other performance of a secured obligation, whether or not that person is the grantor of the security right securing payment or other performance of that obligation, including a secondary obligor such as a guarantor of a secured obligation;

(i) “Debtor of the receivable” means a person that owes payment of a receivable that is subject to a security right, including a guarantor or other person secondarily liable for payment of the receivable;

(j) “Default” means the failure of a debtor to pay or otherwise perform a secured obligation and any other event that constitutes default under the terms of an agreement between the grantor and the secured creditor;

(k) “Encumbered asset” means:

(i) A movable asset that is subject to a security right; and

(ii) A receivable that is the subject of an outright transfer by agreement;

(l) “Equipment” means a tangible asset other than inventory or consumer goods that is primarily used or intended to be used by the grantor in the operation of its business;

(m) “Financial contract” means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any securities repurchase or lending transaction, and any other transaction similar to those transactions entered into in financial markets and any combination of those transactions;

(n) “Future asset” means a movable asset, which does not exist or which the grantor does not have rights in or the power to encumber at the time the security agreement is concluded;

(o) “Grantor” means:

(i) A person that creates a security right to secure either its own obligation or that of another person;

(ii) A buyer or other transferee of an encumbered asset that acquires its rights subject to a security right; and

(iii) A transferor under an outright transfer of a receivable by agreement;

(p) “Intangible asset” means any movable asset other than a tangible asset;

(q) “Inventory” means tangible assets held by the grantor for sale or lease in the ordinary course of the grantor’s business, including raw materials and work in process;

(r) “Knowledge” means actual knowledge;

(s) “Mass” means a tangible asset which results when a tangible asset is so commingled with one or more other tangible assets of the same kind that they have lost their separate identities;

(t) “Money” means currency authorized as legal tender by any State;

(u) “Movable asset” means a tangible or intangible asset, other than immovable property;

(v) “Netting agreement” means an agreement between two or more parties that provides for one or more of the following:

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;

(ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or

(iii) The set-off of amounts calculated as set out in subparagraph (ii) under two or more netting agreements;

(w) “Non-intermediated securities” means securities other than securities credited to a securities account and rights in securities resulting from the credit of securities to a securities account;

(x) “Notice” means a communication in writing;

(y) “Notification of a security right in a receivable” means a notice by the grantor or the secured creditor informing the debtor of the receivable that a security right has been created in the receivable;

(z) “Possession” means the actual possession of a tangible asset by a person or its representative, or by an independent person that acknowledges holding it for that person;

(aa) “Priority” means the right of a person in an encumbered asset in preference to the right of a competing claimant;

(bb) “Proceeds” means whatever is received in respect of an encumbered asset, including what is received as a result of a sale or other transfer, lease, licence or collection of an encumbered asset, civil and natural fruits, insurance proceeds, claims arising from defects in, damage to or loss of an encumbered asset, and proceeds of proceeds;

(cc) “Product” means a tangible asset which results when a tangible asset is so physically associated or united with one or more other tangible assets of a different kind, or when one or more tangible assets are so manufactured, assembled or processed, that they have lost their separate identities;

(dd) “Receivable” means a right to payment of a monetary obligation, excluding a right to payment evidenced by a negotiable instrument, a right to payment of funds credited to a bank account and a right to payment under a non-intermediated security;

(ee) “Registry” means the registry established under article 28 of this Law;

(ff) “Secured creditor” means:

(i) A person that has a security right; and

(ii) A transferee under an outright transfer of a receivable by agreement;

(gg) “Secured obligation” means an obligation secured by a security right;

(hh) “Securities” means:

[(i)] An obligation of an issuer or any share or similar right of participation in an issuer or in the enterprise of an issuer that:

a. Is one of a class or series, or by its terms is divisible into a class or series; [and]

b. Is of a type dealt in or traded on a recognized market, or is issued as a medium for investment;

[and

(ii) The enacting State to specify any additional rights that should qualify as securities even if they do not satisfy the requirements expressed in subparagraphs (i) a. and (i) b.;

(ii) “Securities account” means an account maintained by an intermediary to which securities may be credited or debited;

(jj) “Security agreement” means:

(i) An agreement, regardless of whether the parties have denominated it as a security agreement, between a grantor and a secured creditor that provides for the creation of a security right; and

(ii) An agreement that provides for the outright transfer of a receivable;

(kk) “Security right” means:

(i) A property right in a movable asset that is created by an agreement to secure payment or other performance of an obligation, regardless of whether the parties have denominated it as a security right, and regardless of the type of asset, the status of the grantor or secured creditor, or the nature of the secured obligation; and

(ii) The right of the transferee under an outright transfer of a receivable by agreement;

(ll) “Tangible asset” means any tangible movable asset. Except in article 2, subparagraphs (b), (l), (q), (s) and (cc), and articles 11, 20, 33, 34 and 38-42, the term includes money, negotiable instruments, negotiable documents and certificated non-intermediated securities;

(mm) “Uncertificated non-intermediated securities” means non-intermediated securities not represented by a certificate; and

(nn) “Writing” includes an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

### **Article 3. Party autonomy**

1. With the exception of articles 4, 6, 9, 53, 54, 72, paragraph 3, and 85-107, the provisions of this Law may be derogated from or varied by agreement.

2. An agreement referred to in paragraph 1 does not affect the rights or obligations of any person that is not a party to the agreement.

3. Nothing in this Law affects any agreement to use alternative dispute resolution, including arbitration, mediation, conciliation and online dispute resolution.

#### **Article 4. General standards of conduct**

A person must exercise its rights and perform its obligations under this Law in good faith and in a commercially reasonable manner.

#### **Article 5. International origin and general principles**

1. In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith.
2. Questions concerning matters governed by this Law that are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

## **Chapter II. Creation of a security right**

### **A. General rules<sup>4</sup>**

#### **Article 6. Creation of a security right and requirements for a security agreement**

1. A security right is created by a security agreement, provided that the grantor has rights in the asset to be encumbered or the power to encumber it.
2. A security agreement may provide for the creation of a security right in a future asset, but the security right in that asset is created only when the grantor acquires rights in it or the power to encumber it.
3. Except as provided in paragraph 4, a security agreement must be [concluded in] [evidenced by]<sup>5</sup> a writing that is signed by the grantor and:
  - (a) Identifies the secured creditor and the grantor;
  - (b) Describes the secured obligation as provided in article 9; [and]
  - (c) Describes the encumbered asset as provided in article 9[; and]
  - (d) States the maximum amount for which the security right may be enforced].<sup>6</sup>
4. A security agreement may be oral if the secured creditor is in possession of the encumbered asset.

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<sup>4</sup> In this chapter and all other chapters, the general rules are subject to the asset-specific rules. The enacting State may wish to include in its law a provision that addresses this matter.

<sup>5</sup> The enacting State should choose the option that best fits its legal system.

<sup>6</sup> The enacting State may wish to include this subparagraph if it determines that an indication of the maximum monetary amount for which the security right may be enforced would be helpful to facilitate secured lending from subsequent creditors.

### **Article 7. Obligations that may be secured**

A security right may secure one or more obligations of any type, present or future, determined or determinable, conditional or unconditional, fixed or fluctuating.

### **Article 8. Assets that may be encumbered**

A security right may encumber:

- (a) Any type of movable asset;
- (b) A part of or an undivided right in a movable asset;
- (c) A generic category of movable assets; and
- (d) All of a grantor's movable assets.

### **Article 9. Description of encumbered assets and secured obligations**

1. The encumbered assets and secured obligations must be described in the security agreement in a manner that reasonably allows their identification.
2. A description of encumbered assets that indicates that the encumbered assets consist of all the grantor's movable assets, or of all the grantor's movable assets within a generic category, satisfies the standard in paragraph 1.
3. A description of secured obligations that indicates that the security right secures all obligations owed to the secured creditor at any time satisfies the standard in paragraph 1.

### **Article 10. Rights to proceeds and commingled funds**

1. A security right in an encumbered asset extends to its identifiable proceeds.
2. Where proceeds in the form of money or funds credited to a bank account are commingled with other assets of the same kind:
  - (a) The security right extends to the commingled money or funds, notwithstanding that they have ceased to be identifiable;
  - (b) The security right in the commingled money or funds is limited to the amount of money or funds immediately before they were commingled; and
  - (c) If at any time after the commingling, the amount of the commingled money or funds is less than the amount of the money or funds immediately before they were commingled, the security right in the commingled money or funds is limited to the lowest amount between the time when the money or funds were commingled and the time when the security right is claimed.

### **Article 11. Tangible assets commingled in a mass or transformed into a product**

1. A security right in a tangible asset that is commingled in a mass extends to the mass. A security right in a tangible asset that is transformed into a product extends to the product.

2. A security right that extends to a mass is limited to the same proportion of the mass as the quantity of the encumbered asset bore to the quantity of the entire mass immediately after the commingling.
3. A security right that extends to a product is limited to the value of the encumbered asset immediately before it became part of the product.

#### **Article 12. Extinguishment of security rights**

A security right is extinguished when all secured obligations have been discharged and there are no outstanding commitments to extend credit secured by the security right.

### **B. Asset-specific rules**

#### **Article 13. Contractual limitations on the creation of security rights in receivables**

1. A security right in a receivable is effective notwithstanding any agreement between the initial or any subsequent grantor and the debtor of the receivable or any secured creditor limiting in any way the grantor's right to create a security right.
2. Nothing in this article affects any obligation or liability of the grantor for breach of the agreement referred to in paragraph 1, but the other party to the agreement may not avoid the contract giving rise to the receivable or the security agreement on the sole ground of the breach of that agreement, or raise against the secured creditor any claim it may have as a result of such a breach against the grantor, as provided in article 64, paragraph 2. A person that is not a party to the agreement referred to in paragraph 1 is not liable for the grantor's breach of the agreement on the sole ground that it had knowledge of the agreement.
3. This article applies only to receivables:
  - (a) Arising from a contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of immovable property;
  - (b) Arising from a contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;
  - (c) Representing the payment obligation for a credit card transaction; or
  - (d) Arising upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

#### **Article 14. Personal or property rights securing or supporting payment or other performance of encumbered receivables or other intangible assets, or negotiable instruments**

A secured creditor with a security right in a receivable or other intangible asset or in a negotiable instrument has the benefit of any personal or property right that secures or supports payment or other performance of the encumbered asset without a new act of transfer. If that right is transferable under the law governing it only



with a new act of transfer, the grantor is obliged to transfer the benefit of that right to the secured creditor.

#### **Article 15. Rights to payment of funds credited to a bank account**

A security right in a right to payment of funds credited to a bank account is effective notwithstanding an agreement between the grantor and the deposit-taking institution limiting in any way the grantor's right to create a security right.

#### **Article 16. Negotiable documents and tangible assets covered by negotiable documents**

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

#### **Article 17. Tangible assets with respect to which intellectual property is used**

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

### **Chapter III. Effectiveness of a security right against third parties**

#### **A. General rules**

##### **Article 18. Primary methods for achieving third-party effectiveness**

1. A security right in an encumbered asset is effective against third parties if a notice with respect to the security right is registered in the Registry.
2. A security right in a tangible asset is also effective against third parties if the secured creditor is in possession of the asset.

##### **Article 19. Proceeds**

1. If a security right in an asset is effective against third parties, a security right in any proceeds of that asset arising under article 10 is effective against third parties without any further act if the proceeds are in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account.

2. If a security right in an asset is effective against third parties, a security right arising under article 10 in any proceeds of that asset other than the types of proceeds referred to in paragraph 1 is effective against third parties:

(a) For [a short period of time to be specified by the enacting State] after the proceeds arise; and

(b) Thereafter, only if the security right in the proceeds is made effective against third parties by one of the methods applicable to the relevant type of encumbered asset referred to in the provisions of this chapter before the expiry of the time period specified in subparagraph (a).

**Article 20. Tangible assets commingled in a mass or transformed into a product**

If a security right in a tangible asset is effective against third parties, a security right in a mass or product to which the security right extends under article 11 is effective against third parties without any further act.

**Article 21. Changes in the method for achieving third-party effectiveness**

A security right that is effective against third parties remains effective against third parties despite a change in the method for achieving third-party effectiveness, provided that there is no time when the security right is not effective against third parties.

**Article 22. Lapses in third-party effectiveness**

If the third-party effectiveness of a security right lapses, third-party effectiveness may be re-established, but the security right is effective against third parties only as of that time.

**Article 23. Continuity in third-party effectiveness upon a change of the applicable law to this Law**

1. If a security right is effective against third parties under the law of another State and this Law becomes applicable, the security right remains effective against third parties under this Law if it is made effective against third parties in accordance with this Law before the earlier of:

(a) The time when third-party effectiveness would have lapsed under the law of the other State; and

(b) The expiry of [a short period of time to be specified by the enacting State] after this Law becomes applicable.

2. If a security right continues to be effective against third parties under paragraph 1, the time of third-party effectiveness is the time when it was achieved under the law of the other State.

**Article 24. Acquisition security rights in consumer goods**

An acquisition security right in consumer goods with an acquisition price below [an amount to be specified by the enacting State] is effective against third parties upon its creation without any further act.

**B. Asset-specific rules**

**Article 25. Rights to payment of funds credited to a bank account**

A security right in a right to payment of funds credited to a bank account may also be made effective against third parties by:

(a) The creation of the security right in favour of the deposit-taking institution;

(b) The conclusion of a control agreement; or

(c) The secured creditor becoming the account holder.

**Article 26. Negotiable documents and tangible assets  
covered by negotiable documents**

1. If a security right in a negotiable document is effective against third parties, the security right that extends to the tangible asset covered by the document in accordance with article 16 is also effective against third parties.
2. During the period when a negotiable document covers a tangible asset, a security right in the asset may also be made effective against third parties by the secured creditor's possession of the document.
3. A security right in a negotiable document that was effective against third parties by the secured creditor's possession of the document remains effective against third parties for [a short period of time to be specified by the enacting State] after the document or the asset covered by the document has been returned to the grantor or other person for the purpose of dealing with the asset.

**Article 27. Uncertificated non-intermediated securities**

A security right in uncertificated non-intermediated securities may also be made effective against third parties by:

- (a) The [notation of the security right] [entry of the name of the secured creditor as the holder of the securities]<sup>7</sup> in the books maintained by or on behalf of the issuer for the purpose of recording the name of the holder of the securities; or
- (b) The conclusion of a control agreement.

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<sup>7</sup> The enacting State should choose the method that best fits its legal system.

## **Chapter IV. The registry system**

### **Article 28. Establishment of the Registry**

A registry is established to give effect to the provisions of this Law relating to the registration of notices with respect to security rights.

## **Model Registry Provisions<sup>8</sup>**

### **A. General rules**

#### **Article 1. Definitions and rules of interpretation**

For the purposes of these Provisions:

(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 notice” means a notice submitted to the Registry in the prescribed registry notice form to modify information contained in a related registered notice;

(c) “Cancellation notice” means a notice submitted to the Registry in the prescribed registry notice form to cancel the effectiveness of the registration of all related registered notices;

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

(e) “Initial notice” means a notice submitted to the Registry in the prescribed registry notice form to achieve the third-party effectiveness of the security right to which the notice relates;

(f) “Notice” means an initial notice, an amendment notice and a cancellation notice;

(g) “Registered notice” means a notice the information in which has been entered into the registry record;

(h) “Registrant” means a person who submits a notice to the Registry;

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

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<sup>8</sup> The Model Registry Provisions are intended to take effect simultaneously with the enactment of the Model Law. They are presented as a separate component with their own internal numbering in order to give enacting States flexibility in their implementation. Depending on its drafting conventions, an enacting State may choose to: (a) incorporate all of the Provisions in its enactment of the Model Law as a separate chapter; (b) incorporate all of the Provisions in a separate statute or other type of legal instrument; or (c) incorporate some of the Provisions in its enactment of the Model Law and the rest in a separate statute or other type of legal instrument.

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

[(k) “Registry” means the Registry established under article 28 of the Law;]<sup>9</sup>  
and

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

### **Article 2. Grantor’s authorization for registration**

1. Registration of an initial notice with respect to a security right in an asset of a grantor is ineffective unless authorized by that grantor in writing.
2. Registration of an amendment notice that adds encumbered assets [or increases the maximum amount for which the security right may be enforced]<sup>10</sup> or extends the period of effectiveness of the registration of a notice is ineffective unless authorized by the grantor in writing.
3. [With the exception of an amendment notice to add a buyer of an encumbered asset as a grantor in accordance with article 26 of these Provisions, registration]<sup>11</sup> [Registration] of an amendment notice that adds a grantor is ineffective unless authorized by the additional grantor in writing.
4. Authorization may be given before or after the registration of an initial or amendment notice.
5. A written security agreement is sufficient to constitute authorization by the grantor for the registration of an initial or amendment notice covering an encumbered asset described in that security agreement.
6. The Registry may not require evidence of the existence of the grantor’s authorization.

### **Article 3. One notice sufficient for multiple security rights**

The registration of a single notice may relate to security rights created by the grantor in favour of the secured creditor under one or more than one security agreement.

### **Article 4. Advance registration**

A notice may be registered before the creation of a security right or the conclusion of a security agreement to which the notice relates.

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<sup>9</sup> If a State incorporates the Model Registry Provisions in its enactment of the Model Law, it will not need to define the term “Registry” in this article. If a State incorporates the Model Registry Provisions in another statute or other type of legal instrument, it will need to include this definition in that other statute or instrument.

<sup>10</sup> This wording will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law.

<sup>11</sup> This wording will be necessary if the enacting State implements option A or option B of article 26 of the Model Registry Provisions.

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

### **Article 5. Conditions for access to registry services**

1. Any person may submit a notice to the Registry, if that person:
  - (a) Uses the prescribed registry notice form; [and]
  - (b) Identifies itself in the prescribed manner[; and]
  - (c) Has paid or arranged to pay the prescribed fee].<sup>12</sup>
2. A person may submit an amendment or cancellation notice if that person also satisfies [the secure access requirements to be specified by the Registry].
3. Any person may submit a search request to the Registry if that person:
  - [(a)] Uses the prescribed registry search request form[; and]
  - (b) Has paid or arranged to pay the prescribed fee].<sup>13</sup>
4. If access to registry services is refused, the Registry must communicate the reason to the registrant or searcher without delay.

### **Article 6. Rejection of the registration of a notice or a search request**

1. The Registry must reject the registration of:
  - (a) A notice if no information is entered in one of the mandatory designated fields or if information entered in one of the mandatory designated fields is illegible; or
  - (b) An amendment notice to extend the period of effectiveness of the registration of a notice if it is not submitted within the period referred to in article 14, paragraph 2, of these Provisions.
2. The Registry must reject a search request if no information is entered in one of the fields designated for entering a search criterion or if information entered in one of the fields designated for entering a search criterion is illegible.
3. Except as provided in paragraph 1 and 2, the Registry may not reject the registration of a notice or a search request.
4. If the registration of a notice or a search request is rejected, the Registry must communicate the reason to the registrant or searcher without delay.

### **Article 7. Information about the registrant's identity and scrutiny of the form or contents of a notice by the Registry**

1. The Registry must maintain information about a registrant's identity submitted in accordance with article 5, paragraph 1 (b), of these Provisions, and must, upon request, provide that information to the person identified in a registered notice as the grantor.

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<sup>12</sup> This provision will be necessary if the enacting State implements option A of article 33 of the Model Registry Provisions.

<sup>13</sup> This provision will be necessary if the enacting State implements option A of article 33 of the Model Registry Provisions.

2. The Registry may not require verification of the information about a registrant's identity submitted in accordance with article 5, paragraph 1 (b), of these Provisions.

3. The Registry may not scrutinize the form or content of a notice or a search request other than to the extent authorized in articles 5 and 6 of these Provisions.

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

#### **Article 8. Information required in an initial notice**

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

(a) The identifier and address of the grantor in accordance with article 9 of these Provisions [and any additional information that the enacting State may decide to require to be entered to assist in uniquely identifying the grantor];

(b) The identifier and address of the secured creditor or its representative in accordance with article 10 of these Provisions; [and]

(c) A description of the encumbered assets in accordance with article 11 of these Provisions[; and]

[(d) The period of effectiveness of the registration in accordance with article 14 of these Provisions];<sup>14</sup> [and]

[(e) A statement of the maximum amount for which the security right may be enforced].<sup>15</sup>

#### **Article 9. Grantor identifier**

1. Where the person to be identified in an initial or amendment notice as the grantor is a natural person, the grantor identifier is the name of that person as it appears in [the relevant official document to be specified by the enacting State; if the enacting State specifies more than one document, it must designate the order in which each document should be used to determine that person's name].

2. [The enacting State should specify which components of the grantor's name determined in accordance with paragraph 1 must be entered in an initial or amendment notice].

3. [The enacting State should specify the manner in which the grantor's name is determined if the name is legally changed after the issuance of the relevant document referred to in paragraph 1.]

4. Where the person to be identified in an initial or amendment notice as the grantor is a legal person, the grantor identifier is the name of that person as it appears in [the relevant document, law or decree to be specified by the enacting State] constituting that person.

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<sup>14</sup> This provision will be necessary if the enacting State implements option B or option C of article 14 of the Model Registry Provisions.

<sup>15</sup> This provision will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law.

5. [The enacting State should specify whether additional information must be entered in an initial or amendment notice in special cases, such as where the grantor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

#### **Article 10. Secured creditor identifier**

1. Where the person to be identified in an initial or amendment notice as the secured creditor is a natural person, the secured creditor identifier is the name of that person as it appears in [the relevant official document to be specified by the enacting State; if the enacting State specifies more than one document, it must designate the order in which each document should be used to determine that person's name].

2. Where the person to be identified in an initial or amendment notice as the secured creditor is a legal person, the secured creditor identifier is the name of that person as it appears in [the relevant document, law or decree to be specified by the enacting State] constituting that person.

3. [The enacting State should specify whether additional information must be entered in an initial or amendment notice in special cases, such as where the secured creditor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

#### **Article 11. Description of encumbered assets**

1. The encumbered assets must be described in an initial or amendment notice in a manner that reasonably allows their identification.

2. A description that indicates that the encumbered assets consist of all of the grantor's movable assets, or of all of the grantor's movable assets within a generic category, satisfies the standard in paragraph 1.

#### **Article 12. Language of information in a notice**

1. With the exception of the names and addresses of the grantor and the secured creditor or its representative, the information contained in an initial or amendment notice must be expressed in [the language or languages to be specified by the enacting State].

2. The information contained in an initial or amendment notice must be expressed in the character set prescribed and publicized by the Registry.

#### **Article 13. Time of effectiveness of the registration of a notice**

1. 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 that it is accessible to searchers of the public registry record.

2. The Registry must enter information in an initial or amendment notice into the public registry record without delay after the notice is submitted and in the order in which each notice is submitted.



3. The Registry must record the date and time when the information in an initial or amendment notice is entered into the registry record so that it is accessible to searchers of the public registry record.

**Option A<sup>16</sup>**

4. The registration of a cancellation notice is effective from the date and time when the information in the notice to which it relates is no longer accessible to searchers of the public registry record.

**Option B<sup>17</sup>**

4. The registration of a cancellation notice is effective from the date and time when the information in the notice is entered into the registry record so that it is accessible to searchers of the public registry record.

**Option A<sup>18</sup>**

5. The Registry must record the date and time when the information in the initial or amendment notice to which a cancellation notice relates is no longer accessible to searchers of the public registry record.

**Option B<sup>19</sup>**

5. The Registry must record the date and time when the information in a cancellation notice is entered into the registry record so that it is accessible to searchers of the public registry record.

**Article 14. Period of effectiveness of the registration of a notice**

**Option A**

1. The registration of an initial notice is effective for [a period of time to be specified by the enacting State].

2. The period of effectiveness of the registration of an initial notice may be extended within [a period of time to be specified by the enacting State] before its expiry by the registration of an amendment notice providing for an extension.

3. The period of effectiveness of the registration of an initial notice may be extended more than once.

4. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period referred to in paragraph 1 beginning from the time when the current period would have expired if the amendment notice had not been registered.

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<sup>16</sup> This provision will be necessary if the enacting State implements option A or option B of article 21 of the Model Registry Provisions.

<sup>17</sup> This provision will be necessary if the enacting State implements option C or option D of article 21 of the Model Registry Provisions.

<sup>18</sup> This provision will be necessary if the enacting State implements option A of paragraph 4 of this article.

<sup>19</sup> This provision will be necessary if the enacting State implements option B of paragraph 4 of this article.

### **Option B**

1. The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field of the notice.
2. The period of effectiveness of the registration of an initial notice may be extended at any time before its expiry by the registration of an amendment notice that indicates a new period in the designated field.
3. The period of effectiveness of the registration of an initial notice may be extended more than once.
4. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period indicated in the amendment notice beginning from the time when the current period would have expired if the amendment notice had not been registered.

### **Option C**

1. The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field of the notice, not exceeding [a maximum period of time to be specified by the enacting State].
2. The period of effectiveness of the registration of an initial notice may be extended within [a period of time to be specified by the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period not exceeding the maximum period of time referred to in paragraph 1.
3. The period of effectiveness of the registration of an initial notice may be extended more than once.
4. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period specified in the amendment notice beginning from the time when the current period would have expired if the amendment notice had not been registered.

### **Article 15. Obligation to send a copy of a registered notice**

1. Without delay after the registration of a notice, the Registry must send to the person identified in the notice as the secured creditor at its address set out in the notice a copy of the information in the registered notice, indicating:
  - (a) The date and time recorded by the Registry in accordance with article 13, paragraph 3, of these Provisions; and
  - (b) The registration number assigned to the initial notice by the Registry in accordance with article 28, paragraph 1, of these Provisions.
2. Within [a period to be specified by the enacting State] after the person identified in a registered notice as the secured creditor receives a copy of the information in the notice in accordance with paragraph 1, that person must send it to the person identified in the notice as the grantor:
  - (a) At the address set out in the notice; or

(b) If that person knows that the address has changed, at the most recent address if known or reasonably available to that person.

3. The failure of a person to comply with its obligation in accordance with paragraph 2 does not affect the effectiveness of the registration of the related notice.

4. A person that fails to comply with its obligation in accordance with paragraph 2 is liable to the person identified in the notice as the grantor only for [a nominal amount to be specified by the enacting State] and any actual loss or damage proven to have resulted from that failure.

## **D. Registration of an amendment or cancellation notice**

### **Article 16. Right to register an amendment or cancellation notice**

1. Subject to paragraph 2, only the person identified in a registered initial notice as the secured creditor may register an amendment or cancellation notice relating to that notice.

2. After registration of an amendment notice changing the person identified in an initial or amendment notice as the secured creditor, only the person identified in the amendment notice as the new secured creditor may register an amendment or cancellation notice.

### **Article 17. Information required in an amendment notice**

1. An amendment notice must contain in the relevant designated field:

- (a) The registration number of the initial notice to which it relates; and
- (b) The information to be added or changed.

2. An amendment notice may modify one or more than one item of information in the notice to which it relates.

### **Article 18. Global amendment of secured creditor information**

#### **Option A**

A person may register a single amendment notice to amend its identifier, its address or both in multiple registered notices in which that person is identified as the secured creditor.

#### **Option B**

The Registry must amend the identifier, address or both of a person identified as the secured creditor in multiple registered notices upon the request of that person.

### **Article 19. Information required in a cancellation notice**

A cancellation notice must contain in the relevant designated field the registration number of the initial notice to which it relates.

## **Article 20. Compulsory registration of an amendment or cancellation notice**

1. The secured creditor must register an amendment notice deleting encumbered assets described in a registered notice if:

(a) The grantor has not authorized the registration of a notice in relation to those assets and the secured creditor has been informed by the grantor that it will not authorize that registration;

(b) The security agreement to which the registered notice relates has been revised to release those assets from the security right and the grantor has not otherwise authorized the registration of a notice covering those assets; or

(c) The grantor authorized the registration of a notice covering those assets but the authorization has been withdrawn and no security agreement covering those assets has been concluded.

[2. The secured creditor must register an amendment notice reducing the maximum amount specified in a registered notice if:

(a) The grantor has authorized the registration of a notice only in the reduced amount and the secured creditor has been informed by the grantor that it will not authorize the registration of a notice in the higher amount; or

(b) The security agreement to which the registered notice relates has been revised to reduce the maximum amount specified in that agreement and the grantor has not otherwise authorized the registration of a notice in that amount.]<sup>20</sup>

[3.] The secured creditor must register a cancellation notice if:

(a) The registration of the initial notice was not authorized by the grantor and the secured creditor has been informed by the grantor that it will not authorize the registration of the initial notice;

(b) The registration of the initial notice was authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded; or

(c) The security right to which the initial notice relates has been extinguished.

[4.] The secured creditor may not charge or accept a fee or expense for complying with its obligation in accordance with paragraph 1 (a), 1 (c), [2 (a)], [3] (a) or [3] (b).

[5.] If the conditions set out in paragraph 1, [2] or [3] have been met, the grantor may request the secured creditor in writing, reasonably identifying itself and the related initial or amendment notice to register the appropriate amendment or cancellation notice. The secured creditor may not charge or accept any fee or expense for complying with the grantor's request.

[6.] If the secured creditor does not comply with the grantor's request made in accordance with paragraph [5] within [a short period of time to be specified by the enacting State] after its receipt, the grantor may seek an order for the registration of

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<sup>20</sup> This provision will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law and articles 8, subparagraph (e), and 24, paragraph 7, of the Model Registry Provisions.

an amendment or cancellation notice through [a summary judicial or administrative procedure to be specified by the enacting State].

[7.] Where an order for the registration of an amendment or cancellation notice is issued in accordance with paragraph [6], the Registry must register the notice without delay [upon receipt of a request with a copy of the relevant order] [upon the issuance of the relevant order].

**Article 21. Effectiveness of the registration of an amendment or cancellation notice not authorized by the secured creditor**

**Option A**

The registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.

**Option B**

1. Subject to paragraph 2, the registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.

2. The unauthorized registration of an amendment or cancellation notice does not affect the priority of the security right to which the notice relates as against the right of a competing claimant which arose before the registration and over which the security right had priority before the registration.

**Option C**

The registration of an amendment or cancellation notice is ineffective unless authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.

**Option D**

1. Subject to paragraph 2, the registration of an amendment or cancellation notice is ineffective unless authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.

2. The unauthorized registration of an amendment or cancellation notice is effective against a competing claimant whose right was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, provided that the competing claimant did not have knowledge that the registration was unauthorized at the time it acquired its right.

## **E. Searches**

### **Article 22. Search criteria**

A search of the public registry record may be conducted according to:

- (a) The identifier of the grantor; or
- (b) The registration number of the initial notice.

### **Article 23. Search results**

1. Upon submission of a search request, the Registry must provide a search result that indicates the date and time when the search was performed and:

#### **Option A**

- (a) Sets out all information in each registered notice that contains information matching the search criterion exactly; or
- (b) Indicates that no registered notice contains information matching the search criterion exactly.

#### **Option B**

- (a) Sets out all information in each registered notice that contains information matching the search criterion:
    - (i) Exactly; or
    - (ii) Where the search criterion is the grantor identifier, closely [under criteria to be specified by the enacting State]; or
  - (b) Indicates that no registered notice contains information matching the search criterion:
    - (i) Exactly; or
    - (ii) Where the search criterion is the grantor identifier, closely [under criteria to be specified by the enacting State].
2. Upon request by a searcher, the Registry must issue an official search certificate setting out the search result and certifying that it was issued by the Registry.
3. A written search result that purports to have been issued by the Registry is proof of its contents in the absence of evidence to the contrary.

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

### **Article 24. Registrant errors in required information**

1. An error in the grantor identifier entered in an initial or amendment notice does not render the registration of the notice ineffective if the information in the notice would be retrieved by a search of the public registry record using the grantor's correct identifier as the search criterion.

[2. An error in the grantor identifier entered in an initial or amendment notice does not render the registration of the notice ineffective if the information in the notice would be retrieved as a close match [under criteria to be specified by the enacting State] by a search of the public registry record using the grantor's correct identifier as the search criterion, unless the error would seriously mislead a reasonable searcher.]<sup>21</sup>

[3.] An error in the grantor identifier that renders the registration of a notice ineffective with respect to that grantor in accordance with paragraph 1 or 2 does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice.

[4.] An error in information required to be entered in an initial or amendment notice other than the grantor's identifier does not render the registration ineffective unless the error would seriously mislead a reasonable searcher.

[5.] An error in the description of an encumbered asset that renders the registration of a notice ineffective with respect to that asset in accordance with paragraph 4 does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described in the notice.

[[6.] Notwithstanding paragraph [4], an error in the period of effectiveness of registration specified in an initial or amendment notice does not render the registration of the notice ineffective, except to the extent that third parties relied on the erroneous information in the registered notice.]<sup>22</sup>

[[7.] Notwithstanding paragraph [4], an error in the maximum amount stated in an initial or amendment notice does not render the registration ineffective, but the priority of the security right is limited to the maximum amount stated in the notice or in the security agreement, whichever is lower.]<sup>23</sup>

#### **Article 25. Post-registration change of grantor identifier**

1. Subject to paragraphs 2 and 3, the third-party effectiveness and priority of a security right that was made effective against third parties by registration of a notice are not affected by a change in the identifier of the grantor after the notice is registered.

2. If the identifier of the grantor changes after a notice is registered, a competing security right created by the grantor that was made effective against third parties after the change has priority over the security right to which the notice relates, unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice disclosing the new identifier of the grantor is registered:

(a) Before the expiry of [a short period of time to be specified by the enacting State] after the change; or

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<sup>21</sup> This provision will be necessary if the enacting State implements option B of article 23 of the Model Registry Provisions.

<sup>22</sup> This provision will be necessary if the enacting State implements option B or option C of article 14 of the Model Registry Provisions.

<sup>23</sup> This provision will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law and article 8, subparagraph (e), of the Model Registry Provisions.

(b) After the expiry of the period referred to in paragraph 2 (a) but before the competing security right is made effective against third parties.

3. If the identifier of the grantor changes after a notice is registered, a buyer to whom the encumbered asset is sold after the change acquires its rights free of the security right to which the notice relates, unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice disclosing the new identifier of the grantor is registered:

(a) Before the expiry of the period referred to in paragraph 2 (a); or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the buyer acquires its rights in the asset.

4. Paragraphs 2 and 3 do not apply if the information in the notice referred to in paragraph 1 would be retrieved by a search using the new identifier of the grantor as a search criterion.<sup>24</sup>

## **Article 26. Post-registration transfer of an encumbered asset**

### **Option A**

1. Subject to paragraphs 2 and 3, the third-party effectiveness and priority of a security right in an encumbered asset that was made effective against third parties by registration of a notice are not affected by a sale of the encumbered asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.

2. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 34 of the Law, a competing security right created by the buyer that is made effective against third parties after the sale has priority over the security right to which the notice relates, unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice is registered adding the buyer as a new grantor:

(a) Before the expiry of [a short period of time to be specified by the enacting State] after the sale; or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the competing security right is made effective against third parties.

3. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 34 of the Law, a subsequent buyer to whom the initial buyer sells the encumbered asset acquires its rights free of the security right to which the notice relates, unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the initial buyer as a new grantor is registered:

(a) Before the expiry of the period referred to paragraph 2 (a); or

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<sup>24</sup> This provision will be necessary if the enacting State implements option B of article 23, paragraph 1, of the Model Registry Provisions.



(b) After the expiry of the period referred to in paragraph 2 (a) but before the subsequent buyer acquires its rights in the encumbered asset.

4. The third-party effectiveness and priority of a security right in intellectual property that was made effective against third parties by registration of a notice are not affected by a sale of the intellectual property after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.

### **Option B**

1. Subject to paragraphs 2 to 4, the third-party effectiveness and priority of a security right in an encumbered asset that was made effective against third parties by registration of a notice are not affected by a sale of the encumbered asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.

2. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 34 of the Law, a competing security right created by the buyer that is made effective against third parties after the secured creditor acquires knowledge of the sale and the identifier of the buyer has priority over the security right to which the notice relates, unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the buyer as a new grantor is registered:

(a) Before the expiry of [a short period of time to be specified by the enacting State] after the secured creditor acquires the relevant knowledge; or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the competing security right is made effective against third parties.

3. If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 34 of the Law, a subsequent buyer to whom the encumbered asset is sold after the secured creditor acquires knowledge of the sale and the identifier of the buyer acquires its rights free of the security right to which the notice relates, unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the identifier of the initial buyer as a new grantor is registered:

(a) Before the expiry of the period referred to in paragraph 2 (a); or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the subsequent buyer acquires its rights in the encumbered asset.

4. If there are one or more subsequent sales of an encumbered asset before the secured creditor acquires knowledge of the sale and the identifier of the buyer, the obligation to register an amendment notice under paragraphs 2 and 3 is satisfied if the secured creditor registers an amendment notice adding the identifier of the most recent buyer of which it has knowledge as a new grantor.

5. The third-party effectiveness and priority of a security right in intellectual property that was made effective against third parties by registration of a notice are not affected by the sale of the intellectual property after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.

### **Option C**

The third-party effectiveness and priority of a security right in an encumbered asset that is made effective against third parties by registration of a notice are not affected by a sale of the asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.

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

### **Article 27. The registrar**

The [appropriate authority to be specified by the enacting State] has the power to appoint and dismiss the registrar, and to determine the registrar's duties and monitor their performance.

### **Article 28. Organization of information in the registry record**

1. The Registry must assign a registration number to an initial notice and organize the registry record so that all registered amendment and cancellation notices that contain that number are associated with the initial notice in the registry record.
2. The Registry must organize the registry record so that the information in a registered initial notice and in any associated registered notice can be retrieved

### **Option A<sup>25</sup>**

as an exact match by a searcher of the registry record that uses the correct identifier of the grantor as the search criterion.

### **Option B<sup>26</sup>**

as an exact match or as a close match by a searcher of the registry record that uses the correct identifier of the grantor as the search criterion.

### **Option A<sup>27</sup>**

3. The Registry must organize the registry record so that a person may register a single amendment notice to amend its identifier, address or both in multiple registered notices in which that person is identified as the secured creditor.

### **Option B<sup>28</sup>**

3. The Registry must organize the registry record so that it may amend the identifier, address or both of a person identified as the secured creditor in multiple registered notices upon the request of that person.

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<sup>25</sup> This provision will be necessary if the enacting State implements option A of article 23, paragraph 1, of the Model Registry Provisions.

<sup>26</sup> This provision will be necessary if the enacting State implements option B of article 23, paragraph 1, of the Model Registry Provisions.

<sup>27</sup> This provision will be necessary if the enacting State implements option A of article 18 of the Model Registry Provisions.

<sup>28</sup> This provision will be necessary if the enacting State implements option B of article 18 of the Model Registry Provisions.

4. Upon registration of an amendment or cancellation notice, the Registry may not amend or remove information contained in any associated registered notice from the registry record.

**Article 29. Integrity of information in the registry record**

1. Except as provided in articles 30 and 31 of these Provisions, the Registry may not amend or remove information contained in a registered notice from the registry record.
2. The Registry must preserve all information contained in the registry record and reconstruct the registry record in the event of loss or damage.

**Article 30. Removal of information from the public registry record and archival**

**Option A**

1. The Registry must remove information in a registered notice from the public registry record upon the expiry of the period of effectiveness of the registration of a notice in accordance with article 14 of these Provisions, or upon the registration of a cancellation notice in accordance with article 19, including any cancellation notice registered in accordance with article 20, paragraph 3 or 7, of these Provisions.<sup>29</sup>

**Option B**

1. The Registry must remove information in a registered notice from the public registry record upon the expiry of the period of effectiveness of the registration of a notice in accordance with article 14 of these Provisions.<sup>30</sup>
2. Except as provided in paragraph 1, the Registry may not remove information contained in a registered notice from the public registry record.
3. The Registry must archive information removed from the public registry record in accordance with paragraph 1 for [a period of time to be specified by the enacting State that is at least co-extensive with its prescription period for rights arising from a security agreement under contract or property law] in a manner that enables the information to be retrieved by the Registry in accordance with article 28 of these Provisions.

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<sup>29</sup> This provision will be necessary if the enacting State implements option A or B of article 21 of the Model Registry Provisions.

<sup>30</sup> This provision will be necessary if the enacting State implements option C or D of article 21 of the Model Registry Provisions.

### **Article 31. Correction of errors made by the Registry**

1. Without delay after discovering that it [made an error or omission in entering into the public registry record the information contained in a notice submitted for registration or]<sup>31</sup> erroneously removed from the public registry record information contained in a registered notice, the Registry must

#### **Option A**

[register a notice to correct the error or omission, or] restore the erroneously removed information, and send a copy of the information in the registered notice to the person identified in the notice as the secured creditor.

#### **Option B**

inform the person identified in the registered notice as the secured creditor to enable that person to [register a notice to correct the error or omission or] restore the erroneously removed information.

#### **Option A**

2. The registration of a notice referred to in paragraph 1 is effective as of the time the information in the notice becomes accessible to searchers of the public registry record.

#### **Option B**

2. The registration of a notice referred to in paragraph 1 is effective as of the time the information in the notice becomes accessible to searchers of the public registry record.

3. Notwithstanding paragraph 1, the security right to which the notice relates has the priority it would otherwise have had over the right of a competing claimant but for [the Registry's error or omission or] the Registry's erroneous removal of the information.

#### **Option C**

2. The registration of a notice referred to in paragraph 1 is effective as of the time it would have been effective if [the error or omission had never been made or] the information had never been erroneously removed.

#### **Option D**

2. The registration of a notice referred to in paragraph 1 is effective as of the time it would have been effective if [the error or omission had never been made or] the information had never been erroneously removed.

3. Notwithstanding paragraph 1, the security right to which the notice relates is subordinate to the right of a competing claimant that acquired a right in the encumbered asset in reliance on a search of the public registry record made before

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<sup>31</sup> This wording will not be necessary if the enacting State implements an electronic Registry in which registrants enter information directly into the registry record.

the notice was registered, provided the competing claimant did not have knowledge of [the error or omission or] the erroneous removal of the information at the time it acquired its right.

### **Article 32. Limitation of liability of the Registry**

#### **Option A**

1. Any liability that the Registry may have in accordance with other law is limited to loss or damage caused by:

(a) An error or omission in a search result issued to a searcher or in a copy of information in a registered notice sent to a secured creditor in accordance with article 15, paragraph 1;

(b) [An error or omission in entering or failing to enter information in a notice submitted to the Registry into the public registry record or] the erroneous removal of information in the registered notice from the public registry record;

(c) The failure of the Registry to send a copy of a registered notice to the person identified in the notice as the secured creditor in accordance with article 15, paragraph 1, or article 31, paragraph 1, of these Provisions; and

(d) The provision of false or misleading information to a registrant or searcher.

2. Any liability under paragraph 1 is limited to [a maximum amount to be specified by the enacting State].

#### **Option B**

Any liability that the Registry may have in accordance with other law for loss or damage caused by an error or omission in the administration or operation of the Registry is limited to [a maximum amount to be specified by the enacting State].

#### **Option C**

The Registry is not liable for loss or damage caused to a person by an error or omission in the administration or operation of the Registry.

### **Article 33. Registry fees**

#### **Option A**

1. Fees may be charged for [the Registry services and in the amounts to be specified by the enacting State].

2. The [authority to be specified by the enacting State pursuant to article 27 of these Provisions] may modify the fee schedule from time to time.

3. The Registry must publicize the fee schedule.

4. The Registry may enter into an account agreement with any person to facilitate the registration process, including the payment of registry fees.

#### **Option B**

The Registry may not charge any fee for its services.

## **Chapter V. Priority of a security right**

### **A. General rules**

#### **Article 29. Competing security rights created by the same grantor**

Subject to articles 33, 38, 39 and 41-43, priority between competing security rights created by the same grantor in the same encumbered asset is determined according to the following rules:

(a) As between security rights that were made effective against third parties by registration of a notice in the Registry, priority is determined by the order of registration, without regard to the order of creation of the security rights;

(b) As between security rights that were made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of third-party effectiveness; and

(c) As between a security right that was made effective against third parties by registration and a security right that was made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of registration or third-party effectiveness, whichever occurs first.

#### **Article 30. Competing security rights created by different grantors**

Subject to [article 26 of the Model Registry Provisions], priority between competing security rights created by different grantors in the same encumbered asset is determined according to article 29.

#### **Article 31. Competing security rights in the case of a change in the method of third-party effectiveness**

The priority of a security right is not affected by a change in the method by which it is made effective against third parties, provided that there is no time when the security right is not effective against third parties.

#### **Article 32. Competing security rights in proceeds**

Subject to article 41, a security right in proceeds of an encumbered asset that is effective against third parties under article 19 has the same priority over a competing security right as the security right in the encumbered asset from which the proceeds arose.

#### **Article 33. Competing security rights in tangible assets commingled in a mass or transformed into a product**

1. If two or more security rights in the same tangible asset extend to a mass or product as provided in article 11 and each security right is effective against third parties as provided in article 20, the priority of each security right in the mass or product is the same as the priority that each security right in that tangible asset had immediately before the tangible asset became part of the mass or product.

2. If more than one security right extends to the same mass or product under article 11 and each was a security right in a separate tangible asset at the time of

commingling or transforming, the secured creditors are entitled to share in the mass or product according to the ratio that the obligation secured by each security right bears to the sum of the obligations secured by all the security rights.

3. For the purposes of paragraph 2, the obligation secured by a security right that extends to the mass or product is subject to any limitation on the security right under article 11.

**Article 34. Security rights competing with rights of buyers  
or other transferees, lessees or licensees of an encumbered asset**

1. If an encumbered asset is sold or otherwise transferred, leased or licensed while the security right in that asset is effective against third parties, the buyer or other transferee, lessee or licensee acquires its rights subject to the security right except as provided in this article.

2. A buyer or other transferee of an encumbered asset acquires its rights free of the security right, if the secured creditor authorizes the sale or other transfer of the asset free of the security right.

3. The rights of a lessee or licensee of an encumbered asset are not affected by a security right if the secured creditor authorizes the grantor to lease or license the asset unaffected by the security right.

4. A buyer of a tangible encumbered asset sold in the ordinary course of the seller's business acquires its rights free of the security right, provided that, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement.

5. The rights of a lessee of a tangible encumbered asset leased in the ordinary course of the lessor's business are not affected by the security right, provided that, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement.

6. Subject to the rights of a secured creditor with a security right in intellectual property in accordance with article 50, the rights of a non-exclusive licensee of an intangible encumbered asset licensed in the ordinary course of the licensor's business are not affected by the security right, provided that, at the time of the conclusion of the licence agreement, the licensee does not have knowledge that the licence violates the rights of the secured creditor under the security agreement.

7. If a buyer or other transferee of a tangible encumbered asset acquires its rights free of a security right, any subsequent buyer or other transferee also acquires its rights free of that security right.

8. If the rights of a lessee of a tangible encumbered asset or a licensee of an intangible encumbered asset are not affected by the security right, the rights of any sub-lessee or sub-licensee are also unaffected by that security right.

9. A buyer acquires its rights free of, and the rights of a lessee are not affected by, an acquisition security right in consumer goods unless the security right is made effective against third parties otherwise than under article 24 before the buyer or lessee acquires its rights in the goods.

**Article 35. Impact of the grantor’s  
insolvency on the priority of a security right**

A security right that is effective against third parties under this Law at the time of the commencement of insolvency proceedings in respect of the grantor remains effective against third parties and retains the priority it had before the commencement of the insolvency proceedings, unless another claim has priority pursuant to [the insolvency law to be specified by the enacting State].

**Article 36. Security rights competing with preferential claims**

The following claims arising by operation of other law have priority over a security right that is effective against third parties but only up to [the enacting State to specify the amount for each category of claim]:

- (a) [...];
- (b) [...].<sup>32</sup>

**Article 37. Security rights competing with rights of judgment creditors**

1. Subject to article 40, the right of a creditor that has obtained a judgment or provisional order (“judgment creditor”) has priority over a security right if, before the security right is made effective against third parties, the judgment creditor has [taken the steps to be specified by the enacting State for a judgment creditor to acquire rights in the encumbered asset or the steps referred to in the relevant provisions of other law to be specified by the enacting State].

2. If a security right is made effective against third parties before or at the same time the judgment creditor acquires its right in an encumbered asset by taking the steps referred to in paragraph 1, the security right has priority but that priority is limited to the greater of the credit extended by the secured creditor:

(a) Before the secured creditor received a notice from the judgment creditor that the judgment creditor has taken the steps referred to in paragraph 1 or within [a short period of time to be specified by the enacting State] thereafter; or

(b) Pursuant to an irrevocable commitment of the secured creditor to extend credit in a fixed amount or an amount to be fixed pursuant to a specified formula, if the commitment was made before the secured creditor received a notice from the judgment creditor that the judgment creditor had taken the steps referred to in paragraph 1.

**Article 38. Acquisition security rights  
competing with non-acquisition security rights<sup>33</sup>**

**Option A**

1. An acquisition security right in equipment, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be

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<sup>32</sup> This provision will not be necessary if the law of the enacting State does not recognize any preferential claims.

<sup>33</sup> Articles 38-42 implement the unitary-approach recommendations of the *Secured Transactions Guide*. If a State prefers to adopt the non-unitary approach recommendations, it should consider implementing instead recommendations 187-202 of the *Secured Transactions Guide*.



used by the grantor in the operation of its business, has priority over a competing non-acquisition security right created by the grantor, provided that:

(a) The acquisition secured creditor is in possession of the equipment; or

(b) A notice with respect to the acquisition security right is registered in the Registry before the expiry of [a short period of time to be specified by the enacting State] after the grantor obtains possession of the equipment or the agreement for the sale or licence of the intellectual property to the grantor has been concluded.

2. An acquisition security right in inventory, or in intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business, has priority over a competing non-acquisition security right created by the grantor, provided that:

(a) The acquisition secured creditor is in possession of the inventory; or

(b) Before the grantor obtains possession of the inventory or the agreement for the sale or licence of the intellectual property to the grantor has been concluded:

(i) A notice with respect to the acquisition security right is registered in the Registry; and

(ii) A non-acquisition secured creditor that has registered a notice in the Registry with respect to a non-acquisition security right created by the grantor in an asset of the same kind receives a notice from the acquisition secured creditor stating that it has or intends to obtain an acquisition security right in the asset described in the notice and describes the asset to reasonably allow its identification.

3. An acquisition security right in consumer goods, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor for personal, family or household purposes, has priority over a competing non-acquisition security right created by the grantor.

4. A notice, sent in accordance with paragraph 2 (b) (ii):

(a) May cover acquisition security rights under multiple transactions between the same parties without the need to identify each transaction; and

(b) Is sufficient only for security rights in inventory of which the grantor obtains possession or intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business which the grantor acquires not later than the expiry of [a period of time to be specified by the enacting State] after the notice is received.

#### **Option B**

1. An acquisition security right in equipment, inventory, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor in the operation of its business or held by the grantor for sale or licence in the ordinary course of the grantor's business, has priority over a competing non-acquisition security right created by the grantor, provided that:

(a) The acquisition secured creditor is in possession of the equipment or inventory; or

(b) A notice with respect to the acquisition security right is registered in the Registry before the expiry of [a short period of time to be specified by the enacting State] after the grantor obtains possession of the equipment or inventory, or the agreement for the sale or licence of the intellectual property to the grantor has been concluded.

2. An acquisition security right in consumer goods, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor for personal, family or household purposes, has priority over a competing non-acquisition security right created by the grantor.

#### **Article 39. Competing acquisition security rights**

1. Subject to paragraph 2, priority between competing acquisition security rights is determined according to article 29.

2. An acquisition security right of a seller or lessor, or of a licensor of intellectual property made effective against third parties not later than the expiry of the period specified in article 38, paragraph 1 (b), has priority over a competing acquisition security right.

#### **Article 40. Acquisition security rights competing with the rights of judgment creditors**

An acquisition security right that is made effective against third parties not later than the expiry of the period specified in article 38, paragraph 1 (b), has priority over the rights of a judgment creditor that would otherwise have priority under article 37.

#### **Article 41. Competing security rights in proceeds of an asset subject to an acquisition security right<sup>34</sup>**

##### **Option A**

1. Subject to paragraph 2, a security right in proceeds of an asset that is the subject of an acquisition security right has the same priority over a competing security right that the acquisition security right in the asset from which the proceeds arose has under article 38.

2. Where the proceeds arose from inventory, or from intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business, the security right in the proceeds has the same priority over a competing security right that:

(a) A non-acquisition security right in an asset of the same kind as the proceeds has under article 29 if the proceeds take the form of receivables, negotiable instruments, or rights to payment of funds credited to a bank account; and

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<sup>34</sup> Option A will be necessary if a State adopts option A of article 38. Option B will be necessary if a State adopts option B of article 38.

(b) The acquisition security right in the asset from which the proceeds arose has under article 38 if the proceeds take any other form, provided that before the proceeds arose a secured creditor that has registered a notice in the Registry with respect to a non-acquisition security right created by the grantor in an asset of the same kind as the proceeds receives a notice from the acquisition secured creditor stating that it has or intends to obtain a security right in assets of that kind and describes those assets sufficiently to enable them to be identified.

### **Option B**

A security right in proceeds of an asset that is the subject of an acquisition security right has the same priority over a competing security right that a non-acquisition security right in the asset from which the proceeds arose has under article 29.

#### **Article 42. Acquisition security rights extending to a mass or product competing with non-acquisition security rights in the mass or product**

Subject to article 38, an acquisition security right in a tangible asset that extends to a mass or product and is effective against third parties has priority over a non-acquisition security right granted by the same grantor in the mass or product.

#### **Article 43. Subordination**

1. A person may at any time subordinate the priority of its rights under this Law in favour of any existing or future competing claimant. The beneficiary need not be a party to the subordination.
2. Subordination does not affect the rights of competing claimants other than the person subordinating its priority and the beneficiary of the subordination.

#### **Article 44. Future advances and future encumbered assets**

1. Subject to article 37, the priority of a security right extends to all secured obligations, including obligations incurred after the security right became effective against third parties.
2. The priority of a security right covers all encumbered assets described in a notice registered in the Registry, whether they are acquired by the grantor or come into existence before or after the time of registration.

#### **Article 45. Irrelevance of knowledge of the existence of a security right**

Knowledge of the existence of a security right on the part of a secured creditor does not affect the priority of the security right under this Law.

## **B. Asset-specific rules**

#### **Article 46. Negotiable instruments**

1. A security right in a negotiable instrument that is made effective against third parties by possession of the instrument has priority over a security right in the

instrument that is made effective against third parties by registration of a notice in the Registry.

2. A buyer or other consensual transferee of an encumbered negotiable instrument acquires its rights free of a security right that is made effective against third parties by registration of a notice in the Registry if the buyer or other transferee:

(a) Qualifies as a [protected holder] [other type of holder to be specified by the enacting State]; or

(b) [Takes possession of the negotiable instrument and gives value] [takes any other act to be specified by the enacting State] without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement.

#### **Article 47. Rights to payment of funds credited to a bank account**

1. A security right in a right to payment of funds credited to a bank account made effective against third parties by the secured creditor becoming the account holder has priority over a competing security right that is made effective against third parties by any other method.

2. A security right in a right to payment of funds credited to a bank account with respect to which the secured creditor is the deposit-taking institution has priority over a competing security right made effective against third parties by any method, except a security right that is made effective against third parties by the secured creditor becoming the account holder.

3. A security right in a right to payment of funds credited to a bank account made effective against third parties by a control agreement has priority over a competing security right except:

(a) A security right of the deposit-taking institution; or

(b) A security right that is made effective against third parties by the secured creditor becoming the account holder.

4. The order of priority among competing security rights in a right to payment of funds credited to a bank account that are made effective against third parties by the conclusion of control agreements is determined on the basis of the time of conclusion of the control agreements.

5. A deposit-taking institution's right under other law to set off obligations owed to it by the grantor against the grantor's right to payment of funds credited to a bank account maintained with the deposit-taking institution has priority as against a security right in the right to payment of funds credited to the bank account, except a security right that is made effective against third parties by the secured creditor becoming the account holder.

6. A transferee of funds from a bank account pursuant to a transfer initiated or authorized by the grantor acquires its rights free of a security right in the right to payment of funds credited to the bank account, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

7. Paragraph 6 does not adversely affect the rights of transferees of funds from bank accounts under [the relevant law to be specified by the enacting State].

#### **Article 48. Money**

1. A transferee that obtains possession of money that is subject to a security right acquires its rights free of the security right, unless that person has knowledge that the transfer violates the rights of the secured creditor under the security agreement.
2. This article does not adversely affect the rights of persons in possession of money under [the relevant law to be specified by the enacting State].

#### **Article 49. Negotiable documents and tangible assets covered by negotiable documents**

1. Subject to paragraph 2, a security right in a tangible asset made effective against third parties by possession of the negotiable document covering that asset has priority over a competing security right made effective against third parties by any other method.
2. Paragraph 1 does not apply to a security right in a tangible asset other than inventory if the security right of the secured creditor not in possession of the negotiable document was made effective against third parties before the earlier of:
  - (a) The time that the asset became covered by the negotiable document; and
  - (b) The time of conclusion of an agreement between the grantor and the secured creditor in possession of the negotiable document providing for the asset to be covered by a negotiable document so long as the asset became so covered within [a short period of time to be specified by the enacting State] from the date of the agreement.
3. A transferee of an encumbered negotiable document that obtains possession of the document under [the relevant law to be specified by the enacting State under which certain transferees of negotiable documents acquire their rights free of competing claims] acquires its rights free of a security right in the negotiable document and the tangible assets covered thereby that is made effective against third parties by any other method.

#### **Article 50. Intellectual property**

Article 34, paragraph 6, does not affect any rights that a secured creditor may have as an owner or licensor of intellectual property under [the relevant law relating to intellectual property to be specified by the enacting State].

#### **Article 51. Non-intermediated securities**

1. A security right in certificated non-intermediated securities made effective against third parties by the secured creditor's possession of the certificate has priority over a competing security right created by the same grantor in the same securities made effective against third parties by registration of a notice in the Registry.
2. A security right in uncertificated non-intermediated securities made effective against third parties by [a notation of the security right] [entry of the name of the

secured creditor as the holder of the securities]<sup>35</sup> in the books maintained for that purpose by or on behalf of the issuer has priority over a security right in the same securities made effective against third parties by any other method.

3. A security right in uncertificated non-intermediated securities made effective against third parties by the conclusion of a control agreement has priority over a security right in the same securities made effective against third parties by registration of a notice in the Registry.

4. The order of priority among competing security rights in uncertificated non-intermediated securities made effective against third parties by the conclusion of control agreements is determined on the basis of the time of conclusion of the control agreements.

5. This article does not adversely affect the rights of holders of non-intermediated securities under [the relevant law relating to the transfer of securities to be specified by the enacting State].

## **Chapter VI. Rights and obligations of the parties and third-party obligors**

### **Section I. Mutual rights and obligations of the parties to a security agreement**

#### **A. General rules**

##### **Article 52. Sources of mutual rights and obligations of the parties**

1. The mutual rights and obligations of the grantor and the secured creditor arising from their agreement are determined by the terms and conditions set out in that agreement, including any rules or general conditions referred to therein.

2. The grantor and the secured creditor are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

##### **Article 53. Obligation of the party in possession to exercise reasonable care**

A grantor or secured creditor in possession of an encumbered asset must exercise reasonable care to preserve the asset.

##### **Article 54. Obligation of the secured creditor to return an encumbered asset**

Upon extinguishment of a security right in an encumbered asset, a secured creditor in possession must return the asset to the grantor or deliver it to the person designated by the grantor.

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<sup>35</sup> The enacting State should insert here the method chosen in article 27.

**Article 55. Right of the secured creditor to use and inspect an encumbered asset, and to be reimbursed for expenses**

1. A secured creditor in possession of an encumbered asset has the right:
  - (a) To be reimbursed for reasonable expenses it incurs for the preservation of the asset in accordance with article 53; and
  - (b) To make reasonable use of the asset and apply the revenues it generates to the payment of the secured obligation.
2. A secured creditor not in possession has the right to inspect an encumbered asset in the possession of the grantor.

**Article 56. Right of the grantor to obtain information**

1. Within [a short period of time to be specified by the enacting State] after receipt of a written request by a grantor, a secured creditor other than a transferee under an outright transfer of a receivable by agreement must send to the grantor at the address specified in the request:
  - (a) A statement of the obligation currently secured; and
  - (b) A description of the assets currently encumbered.
2. The grantor is entitled without charge to one response to a request during [a period of time to be specified by the enacting State].
3. The secured creditor may require payment of a charge not exceeding [a nominal amount to be specified by the enacting State] for each additional response.

**B. Asset-specific rules**

**Article 57. Representations of the grantor of a security right in a receivable**

1. At the time of conclusion of a security agreement that creates a security right in a receivable, the grantor represents that:
  - (a) The grantor has not previously created a security right in the receivable in favour of another secured creditor; and
  - (b) The debtor of the receivable does not and will not have any defences or rights of set-off.
2. The grantor does not represent that the debtor of the receivable has, or will have, the ability to pay.

**Article 58. Right of the grantor or the secured creditor to notify the debtor of the receivable**

1. The grantor or the secured creditor or both may give the debtor of the receivable notification of the security right and a payment instruction, but after notification of the security right has been received by the debtor of the receivable only the secured creditor may send a payment instruction.

2. Notification of a security right or payment instruction sent in breach of an agreement between the grantor and the secured creditor is not ineffective for the purposes of article 63, but nothing in this article affects any obligation or liability of the party in breach for any damages arising as a result of the breach.

**Article 59. Right of the secured creditor to payment of a receivable**

1. As between the grantor of a security right in a receivable and the secured creditor, whether or not notification of the security right has been sent:

(a) If payment with respect to the receivable is made to the secured creditor, the secured creditor is entitled to retain the proceeds of payment and to any tangible asset returned with respect to the receivable;

(b) If payment with respect to the receivable is made to the grantor, the secured creditor is entitled to payment of the proceeds of the payment and to any asset returned to the grantor with respect to the receivable; and

(c) If payment with respect to the receivable is made to another person over whom the secured creditor has priority, the secured creditor is entitled to payment of the proceeds of the payment and to any asset returned to that person with respect to the receivable.

2. The secured creditor may not retain more than the value of its right in the receivable.

**Article 60. Right of the secured creditor  
to preserve encumbered intellectual property**

If so agreed between the grantor and the secured creditor, the secured creditor is entitled to [the enacting State to specify the steps necessary to preserve encumbered intellectual property].

**Section II. Rights and obligations of  
third-party obligors**

**A. Receivables**

**Article 61. Protection of the debtor of the receivable**

1. Except as otherwise provided in this Law, the creation of a security right in a receivable does not, without the consent of the debtor of the receivable, affect its rights and obligations, including the payment terms contained in the contract giving rise to the receivable.

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

(a) The currency of payment specified in the contract giving rise to the receivable; or

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



### **Article 62. Notification of a security right in a receivable**

1. Notification of a security right in a receivable or a payment instruction is effective when received by the debtor of the receivable if it reasonably identifies the encumbered receivable and the secured creditor, and is in a language that is reasonably expected to inform the debtor of the receivable about its contents.
2. It is sufficient if a notification of the security right or a payment instruction is in the language of the contract giving rise to the receivable.
3. Notification of a security right in a receivable or a payment instruction may relate to receivables arising after notification.
4. Notification of a security right in a receivable created in favour of a secured creditor by the initial or any other secured creditor constitutes notification of all prior security rights in that receivable.

### **Article 63. Discharge of the debtor of the receivable by payment**

1. Until the debtor of the receivable receives notification of a security right in a receivable, it is discharged by paying in accordance with the contract giving rise to the receivable.
2. After the debtor of the receivable receives notification of a security right in a receivable, subject to paragraphs 3-8, it is discharged only by paying the secured creditor or, if otherwise instructed in the notification or subsequently by the secured creditor in a writing received by the debtor of the receivable, in accordance with that payment instruction.
3. If the debtor of the receivable receives more than one payment instruction relating to a single security right in the same receivable created by the same grantor, it is discharged by paying in accordance with the last payment instruction received from the secured creditor before payment.
4. If the debtor of the receivable receives notification of more than one security right in the same receivable created by the same grantor, it is discharged by paying in accordance with the first notification received.
5. If the debtor of the receivable receives notification of one or more security rights in the same receivable created in favour of a secured creditor by the initial or any other secured creditor, it is discharged by paying in accordance with the notification of the last of such security rights.
6. If the debtor of the receivable receives notification of a security right in a part of or an undivided interest in one or more receivables, it is discharged either by paying in accordance with the notification or in accordance with this article as if the debtor of the receivable had not received the notification.
7. If the debtor of the receivable receives a notification as provided in paragraph 6 and pays in accordance with the notification, it is discharged only to the extent of the part or undivided interest paid.
8. If the debtor of the receivable receives notification of a security right in the receivable from the secured creditor, the debtor of the receivable is entitled to request the secured creditor to provide within a reasonable period of time adequate proof of its security right and, if the security right is created in favour of a secured

creditor by the initial or any other secured creditor, adequate proof of the security right created by the initial grantor in favour of the initial secured creditor, and of any intermediate security right. Unless the secured creditor does so, the debtor of the receivable is discharged by paying in accordance with this article as if it had not received notification of the security right.

9. Adequate proof of a security right referred to in paragraph 8 includes but is not limited to any writing emanating from the grantor and indicating that a security right has been created.

10. This article does not affect any other ground on which payment by the debtor of the receivable to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund, discharges the debtor of the receivable.

#### **Article 64. Defences and rights of set-off of the debtor of the receivable**

1. Unless otherwise agreed in accordance with article 65, in a claim by the secured creditor against the debtor of the receivable for payment of the encumbered receivable, the debtor of the receivable may raise against the secured creditor:

(a) In the case of a receivable arising from a contract, all defences and rights of set-off arising from that contract, or any other contract that was part of the same transaction, of which the debtor of the receivable could avail itself as if the security right had not been created and the claim were made by the grantor; and

(b) Any other right of set-off that was available to the debtor of the receivable at the time it received notification of the security right.

2. Notwithstanding paragraph 1, the debtor of the receivable may not raise a breach of an agreement referred to in article 13, paragraph 2, as a defence or right of set-off against the grantor.

#### **Article 65. Agreement not to raise defences or rights of set-off**

1. Subject to paragraph 3, the debtor of the receivable may agree with the grantor in a writing signed by the debtor of the receivable not to raise against the secured creditor the defences and rights of set-off that it could raise in accordance with article 64.

2. The agreement referred to in paragraph 1 may be modified only by an agreement in a writing signed by the debtor of the receivable. The effectiveness of such a modification against the secured creditor is determined by article 66, paragraph 2.

3. The debtor of the receivable may not waive defences arising from fraudulent acts on the part of the secured creditor or based on the incapacity of the debtor of the receivable.

#### **Article 66. Modification of the contract giving rise to a receivable**

1. In the case of a receivable arising from a contract, an agreement concluded before notification of a security right in a receivable between the grantor and the debtor of the receivable that affects the secured creditor's rights is effective as against the secured creditor, and the secured creditor acquires corresponding rights.

2. An agreement under paragraph 1 concluded after notification of a security right in a receivable is ineffective against the secured creditor unless:

(a) The secured creditor consents to it; or

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

3. Paragraphs 1 and 2 do not affect any right of the grantor or the secured creditor arising from breach of an agreement between them.

#### **Article 67. Recovery of payments**

The failure of the grantor of a security right in a receivable arising from a contract to perform that contract does not entitle the debtor of the receivable to recover from the secured creditor a sum paid by the debtor of the receivable to the grantor or the secured creditor.

### **B. Negotiable instruments**

#### **Article 68. Rights as against the obligor under a negotiable instrument**

The rights of a secured creditor that has a security right in a negotiable instrument as against any person obligated on the negotiable instrument are determined by [the relevant law relating to negotiable instruments to be specified by the enacting State].

### **C. Rights to payment of funds credited to a bank account**

#### **Article 69. Rights as against the deposit-taking institution**

1. The creation of a security right in a right to payment of funds credited to a bank account maintained with a deposit-taking institution does not:

(a) Affect the rights and obligations of the deposit-taking institution without its consent; or

(b) Obligate the deposit-taking institution to provide any information about the bank account to third parties.

2. Any rights of set-off that a deposit-taking institution, with which a bank account is maintained, may have are not affected by any security right that the deposit-taking institution may have in a right to payment of funds credited to that bank account.

## **D. Negotiable documents and tangible assets covered by negotiable documents**

### **Article 70. Rights as against the issuer of a negotiable document**

The rights of a secured creditor that has a security right in a negotiable document as against the issuer of the document or any other person obligated on the document are determined by [the relevant law relating to negotiable documents to be specified by the enacting State].

## **E. Non-intermediated securities**

### **Article 71. Rights as against the issuer of a non-intermediated security**

The rights of a secured creditor that has a security right in non-intermediated securities as against the issuer of the securities are determined by [the relevant law relating to the obligations of the issuer of non-intermediated securities to be specified by the enacting State].

## **Chapter VII. Enforcement of a security right**

### **A. General rules**

#### **Article 72. Post-default rights**

1. After default, the grantor and the secured creditor are entitled to exercise:
  - (a) Any right under the provisions of this chapter; and
  - (b) Any other right provided in the security agreement or any other law, except to the extent it is inconsistent with the provisions of this Law.
2. The exercise of one post-default right does not prevent the exercise of another post-default right, except to the extent that the exercise of one right makes the exercise of another right impossible.
3. Before default, the grantor or the debtor may not waive unilaterally or vary by agreement any of its rights under the provisions of this chapter.

#### **Article 73. Methods of exercising post-default rights**

1. The secured creditor may exercise its post-default rights by application to [a court or other authority to be specified by the enacting State] or without such an application.
2. The exercise of the secured creditor's post-default rights by application to [a court or other authority to be specified by the enacting State] is determined by the provisions of this chapter and [the provisions to be specified by the enacting State], including the provisions on proceedings in the form of [the expeditious proceedings to be specified by the enacting State].

3. The exercise of the secured creditor's post-default rights without application to [a court or other authority to be specified by the enacting State] is determined by the provisions of this chapter.

#### **Article 74. Relief for non-compliance**

##### **Option A**

If the secured creditor does not comply with its obligations under this chapter, the grantor, any other person with a right in the encumbered asset, or the debtor is entitled to apply for relief to [a court or other authority to be specified by the enacting State], including expeditious relief in the form of [the expeditious proceedings to be specified by the enacting State].

##### **Option B**

A person whose rights are affected by the non-compliance of another person with the provisions of this chapter is entitled to apply for relief to [a court or other authority to be specified by the enacting State], including expeditious relief in the form of [the expeditious proceedings to be specified by the enacting State].

#### **Article 75. Right of affected persons to terminate enforcement**

1. The grantor, any other person with a right in the encumbered asset or the debtor is entitled to terminate the enforcement process by paying or otherwise performing the secured obligation in full, including the reasonable cost of enforcement.
2. The right of termination may be exercised until the earlier of:
  - (a) The sale or other disposition, the acquisition or the collection of the encumbered asset by the secured creditor; and
  - (b) The conclusion of an agreement by the secured creditor for the sale or other disposition of the encumbered asset.
3. Where the secured creditor has leased or licensed the encumbered asset to a third party, the right of termination may still be exercised subject to the rights of the lessee or licensee.

#### **Article 76. Right of a higher-ranking secured creditor to take over enforcement**

1. Notwithstanding commencement of enforcement by another creditor, a secured creditor whose security right has priority over that of the enforcing creditor is entitled to take over enforcement at any time before the earlier of:
  - (a) The sale or other disposition, acquisition or collection of an encumbered asset by the enforcing creditor; and
  - (b) The conclusion of an agreement by that creditor for the sale or other disposition of an encumbered asset.
2. The right of the higher-ranking secured creditor to take over enforcement includes the right to enforce by any method available to a secured creditor under this Law.

**Article 77. Right of the secured creditor  
to obtain possession of an encumbered asset**

1. Subject to the rights of a person, including a lessee or licensee, with a superior right to possession, the secured creditor is entitled to obtain possession of an encumbered asset after default either by applying or without applying to [a court or other authority to be specified by the enacting State].
2. If the secured creditor decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], all of the following conditions must be satisfied:
  - (a) The grantor has consented in writing to the secured creditor obtaining possession without applying to [a court or other authority to be specified by the enacting State];
  - (b) The secured creditor has given the grantor and any person in possession of the encumbered asset notice of default and of the secured creditor's intent to obtain possession; and
  - (c) At the time the secured creditor attempts to obtain possession of the encumbered asset, the person in possession of the encumbered asset does not object.
3. The notice referred to in paragraph 2 (b) need not be given if the encumbered asset is perishable or may decline in value speedily.
4. If a higher-ranking secured creditor is in possession of the encumbered asset, a lower-ranking secured creditor is not entitled to obtain possession of the asset.

**Article 78. Right of the secured creditor to dispose of an encumbered asset**

1. After default, the secured creditor is entitled to sell or otherwise dispose of, lease or license an encumbered asset either by applying or without applying to [a court or other authority to be specified by the enacting State].
2. If the secured creditor decides to exercise the right provided in paragraph 1 by applying to [a court or other authority to be specified by the enacting State], the method, manner, time, place and other aspects of the sale or other disposition, lease or licence are determined by [the rules to be specified by the enacting State].
3. If the secured creditor decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], the secured creditor may select the method, manner, time, place and other aspects of the sale or other disposition, lease or licence, including whether to sell or otherwise dispose of, lease or license encumbered assets individually, in groups or altogether.
4. If the secured creditor decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], the secured creditor must give notice of its intention to:
  - (a) The grantor and the debtor;
  - (b) Any person with a right in the encumbered asset that informs the secured creditor of that right in writing at least [a short period of time to be specified by the enacting State] before the notice is sent to the grantor;

(c) Any other secured creditor that registered a notice with respect to a security right in the encumbered asset at least [a short period of time to be specified by the enacting State] before the notice is sent to the grantor; and

(d) Any other secured creditor that was in possession of the encumbered asset when the enforcing secured creditor took possession.

5. The notice referred to in paragraph 4 must be given at least [a short period of time to be specified by the enacting State] before the sale or other disposition, lease or licence takes place and must contain:

(a) A description of the encumbered assets;

(b) A statement of the amount required at the time the notice is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement;

(c) A statement that the grantor, any other person with a right in the encumbered asset or the debtor is entitled to terminate the enforcement process as provided in article 75; and

(d) A statement of the date after which the encumbered asset will be sold or otherwise disposed of, leased or licensed, or, in the case of a public disposition, the time, place and manner of the intended disposition.

6. The notice referred to in paragraph 4 must be in a language that is reasonably expected to inform the recipient about its content.

7. It is sufficient if the notice to the grantor referred to in paragraph 4 is in the language of the security agreement.

8. The notice referred to in paragraph 4 need not be given if the encumbered asset is perishable, may decline in value speedily or is of a kind sold on a recognized market.

**Article 79. Distribution of the proceeds of a disposition  
of an encumbered asset and debtor's liability for any deficiency**

1. If the secured creditor decides to exercise the right provided in article 78 by applying to [a court or other authority to be specified by the enacting State], the distribution of the proceeds of sale or other disposition of, lease or licence of an encumbered asset is determined by [the provisions to be specified by the enacting State], but in accordance with the provisions of this Law on priority.

2. If the secured creditor decides to exercise the right provided in article 78 without applying to [a court or other authority to be specified by the enacting State]:

(a) [Subject to article 36,] the enforcing secured creditor must apply the proceeds of its enforcement to the secured obligation after deducting the reasonable cost of enforcement;

(b) Except as provided in paragraph 2 (c), the enforcing secured creditor must pay any surplus remaining to any subordinate competing claimant that, prior to any distribution of the surplus, notified the enforcing secured creditor of its claim, to the extent of the amount of that claim, and remit any balance remaining to the grantor; and

(c) Whether or not there is any dispute as to the entitlement or priority of any competing claimant under this Law, the enforcing secured creditor may pay the surplus to [a competent judicial or other authority or to a public deposit fund to be specified by the enacting State] for distribution in accordance with the provisions of this Law on priority.

3. The debtor remains liable for any amount owing after application of the net proceeds of enforcement to the secured obligation.

**Article 80. Right to propose the acquisition  
of an encumbered asset by the secured creditor**

1. After default, the secured creditor may propose in writing to acquire one or more of the encumbered assets in total or partial satisfaction of the secured obligation.

2. The secured creditor must send the proposal to:

(a) The grantor and the debtor;

(b) Any person with a right in the encumbered asset that informs the secured creditor of that right in writing, at least [a short period of time to be specified by the enacting State] before the proposal is sent to the grantor;

(c) Any other secured creditor that registered a notice with respect to a security right in the encumbered asset at least [a short period of time to be specified by the enacting State] before the proposal is sent to the grantor; and

(d) Any other secured creditor that was in possession of the encumbered asset when the secured creditor took possession.

3. The proposal must include:

(a) A statement of the amount required at the time the proposal is given to satisfy the secured obligation, including interest and the reasonable cost of enforcement, and the amount of the secured obligation that is proposed to be satisfied;

(b) A statement that the secured creditor proposes to acquire the encumbered asset described in the proposal in total or partial satisfaction of the secured obligation;

(c) A statement that the grantor, any other person with a right in the encumbered asset or the debtor is entitled to terminate the enforcement as provided in article 75;

(d) A statement of the date after which the secured creditor will acquire the encumbered asset.

4. The secured creditor that has made a proposal for the acquisition of an encumbered asset in full satisfaction of the secured obligation acquires the encumbered asset, unless it receives an objection in writing from any person entitled to receive the proposal under paragraph 2 within [a short period of time to be specified by the enacting State] after the proposal is received by that person.

5. The secured creditor that has made a proposal for the acquisition of the encumbered asset in partial satisfaction of the secured obligation acquires the



encumbered asset, only if it receives the consent in writing of all persons entitled to receive the proposal under paragraph 2 within [a short period of time to be specified by the enacting State] after the proposal is received by each of them.

6. The grantor may request the secured creditor to make a proposal under paragraph 1 and, if the secured creditor accepts the grantor's request, it must proceed as provided in paragraphs 1-5.

#### **Article 81. Rights acquired in an encumbered asset**

1. If the secured creditor sells or otherwise disposes of an encumbered asset by applying to [a court or other authority to be specified by the enacting State], the buyer or other transferee acquires the asset [the enacting State to specify whether the buyer or other transferee acquires its rights free of any rights or not].

2. If the secured creditor leases or licenses an encumbered asset by applying to [a court or other authority to be specified by the enacting State], [the enacting State to specify whether a lessee or licensee is entitled to the benefit of the lease or licence during its term or not].

3. If the secured creditor sells or otherwise disposes of an encumbered asset without applying to [a court or other authority to be specified by the enacting State], the buyer or other transferee acquires the grantor's right in the asset free of the rights of the enforcing secured creditor and any competing claimant, except rights that have priority over the right of the enforcing secured creditor.

4. If the secured creditor leases or licenses an encumbered asset without applying to [a court or other authority to be specified by the enacting State], the lessee or licensee is entitled to the benefit of the lease or licence during its term, except as against creditors with rights that have priority over the right of the enforcing secured creditor.

5. If the secured creditor sells or otherwise disposes of, leases or licenses the encumbered asset not in compliance with the provisions of this chapter, the buyer or other transferee, lessee or licensee of the encumbered asset acquires the rights or benefits described in paragraphs 1 and 2, provided that it had no knowledge of a violation of the provisions of this chapter that materially prejudiced the rights of the grantor or another person.

### **B. Asset-specific rules**

#### **Article 82. Collection of payment**

1. After default, the secured creditor with a security right in a receivable, negotiable instrument, right to payment of funds credited to a bank account or non-intermediated security is entitled to collect payment from the debtor of the receivable, obligor under the negotiable instrument, deposit-taking institution or issuer of the non-intermediated security.

2. The secured creditor may exercise the right to collect under paragraph 1 before default if the grantor consents.

3. The secured creditor exercising the right to collect under paragraph 1 or 2 is also entitled to enforce any personal or property right that secures or supports payment of the encumbered asset.
4. If a security right in a right to payment of funds credited to a bank account has been made effective against third parties by registration of a notice, the secured creditor is entitled to collect or otherwise enforce its security right only pursuant to an order of a court, unless the deposit-taking institution agrees otherwise.
5. The right of the secured creditor to collect under paragraphs 1 to 4 is subject to articles 61-71.

**Article 83. Collection of payment by an outright transferee of a receivable**

1. In the case of an outright transfer of a receivable by agreement, the transferee is entitled to collect the receivable at any time after payment becomes due.
2. The transferee exercising the right to collect under paragraph 1 is also entitled to enforce any personal or property right that secures or supports payment of the receivable.
3. The right of the transferee to collect under paragraphs 1 and 2 is subject to articles 61-71.

## **Chapter VIII. Conflict of laws<sup>36</sup>**

### **A. General rules**

**Article 84. Mutual rights and obligations of the grantor and the secured creditor**

The law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from their security agreement is the law chosen by them and, in the absence of a choice of law, the law governing the security agreement.

**Article 85. Security rights in tangible assets**

1. Except as provided in paragraphs 2 to 4 and article 100, the law applicable to the creation, effectiveness against third parties and priority of a security right in a tangible asset is the law of the State in which the asset is located.
2. The law applicable to the priority of a security right in a tangible asset covered by a negotiable document made effective against third parties by possession of the document as against the right of a competing claimant is the law of the State in which the document is located.
3. The law applicable to the creation, third-party effectiveness and priority of a security right in a tangible asset of a type ordinarily used in more than one State is the law of the State in which the grantor is located.

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<sup>36</sup> Depending on its legal tradition and drafting conventions, the enacting State may incorporate the provisions of this chapter in its enactment of the Model Law or in a separate law (civil code or other law).

4. A security right in a tangible asset that is in transit at the time of its putative creation or intended to be relocated to a State other than the State in which it is located at that time may also be created and made effective against third parties under the law of the State of the asset's ultimate destination, provided that the asset reaches that State within [a short period of time to be specified by the enacting State] after the time of the putative creation of the security right.

#### **Article 86. Security rights in intangible assets**

Except as provided in articles 87 and 97-100, the law applicable to the creation, effectiveness against third parties and priority of a security right in an intangible asset is the law of the State in which the grantor is located.

#### **Article 87. Security rights in receivables relating to immovable property**

Notwithstanding article 86, in the case of a security right in a receivable that either arises from the sale or lease of immovable property or is secured by immovable property, the law applicable to the priority of the security right in the receivable as against the right of a competing claimant that is registrable in the immovable property registry in which rights in the relevant immovable may be registered is the law of the State under whose authority the immovable property registry is maintained.

#### **Article 88. Enforcement of security rights**

The law applicable to issues relating to the enforcement of a security right in:

- (a) A tangible asset is the law of the State in which the asset is located at the time of commencement of enforcement, except as provided in article 100; and
- (b) An intangible asset is the law applicable to the priority of the security right, except as provided in articles 97, 99 and 100.

#### **Article 89. Security rights in proceeds**

1. The law applicable to the creation of a security right in proceeds is the law applicable to the creation of the security right in the original encumbered asset from which the proceeds arose.
2. The law applicable to the third-party effectiveness and priority of a security right in proceeds is the law applicable to the third-party effectiveness and priority of a security right in an original encumbered asset of the same kind as the proceeds.

#### **Article 90. Meaning of "location" of the grantor**

For the purposes of the provisions of this chapter, the grantor is located:

- (a) In the State in which it has its place of business;
- (b) If the grantor has a place of business in more than one State, in the State in which the central administration of the grantor is exercised; and
- (c) If the grantor does not have a place of business, in the State in which the grantor has his or her habitual residence.

### **Article 91. Relevant time for determining location**

1. Except as provided in paragraph 2, references to the location of the encumbered asset or of the grantor in the provisions of this chapter refer:

(a) For creation issues, to the location at the time of the putative creation of the security right; and

(b) For third-party effectiveness and priority issues, to the location at the time when the issue arises.

2. If the right of a secured creditor in an encumbered asset is created and made effective against third parties and the rights of all competing claimants are established before a change in the location of the asset or the grantor, references in the provisions of this chapter to the location of the asset or of the grantor refer, with respect to third-party effectiveness and priority issues, to the location prior to the change.

### **Article 92. Exclusion of *renvoi***

A reference in the provisions of this chapter to “the law” of a State as the law applicable to an issue refers to the law in force in that State other than its rules of private international law.

### **Article 93. Overriding mandatory rules and public policy (*ordre public*)**

1. The provisions of this chapter do not prevent a court from applying overriding mandatory provisions of the law of the forum that apply irrespective of the law applicable under the provisions of this chapter.

2. The law of the forum determines when a court may or must apply or take into account overriding mandatory provisions of another law.

3. A court may exclude the application of a provision of the law applicable under the provisions of this chapter only if and to the extent that the result of its application would be manifestly incompatible with fundamental notions of public policy (*ordre public*) of the forum.

4. The law of the forum determines when a court may or must apply or take into account the public policy (*ordre public*) of a State other than the State the law of which would be applicable under the provisions of this chapter.

5. This article does not prevent an arbitral tribunal from applying or taking into account public policy (*ordre public*), or from applying or taking into account overriding mandatory provisions of a law other than the law applicable under the provisions of this chapter, if the arbitral tribunal is required or entitled to do so.

6. This article does not permit a court to displace the provisions of this chapter dealing with the law applicable to the third-party effectiveness and priority of a security right.

### **Article 94. Impact of commencement of insolvency proceedings on the law applicable to a security right**

The commencement of insolvency proceedings in respect of the grantor does not displace the law applicable to a security right under the provisions of this chapter.

## **Article 95. Multi-unit States**

If the law applicable to an issue is the law of a State that comprises one or more territorial units each of which has its own rules of law in respect of that issue:

(a) Any reference in the provisions of this chapter to the law of a State means the law in force in the relevant territorial unit; and

(b) The internal conflict-of-laws rules of that State, or in the absence of such rules, of that territorial unit determine the territorial unit whose substantive law is to apply.

## **B. Asset-specific rules**

### **Article 96. Rights and obligations between third-party obligors and secured creditors**

The law governing the rights and obligations between a debtor of a receivable, an obligor under a negotiable instrument or an issuer of a negotiable document and the grantor of a security right in that type of asset also is the law applicable to:

(a) The rights and obligations between the secured creditor and the debtor, obligor or issuer;

(b) The conditions under which the security right may be invoked against the debtor, obligor or issuer, including whether an agreement limiting the grantor's right to create a security right may be asserted by the debtor, obligor or issuer; and

(c) Whether the obligations of the debtor, obligor or issuer have been discharged.

### **Article 97. Security rights in rights to payment of funds credited to a bank account**

1. Subject to article 98, the law applicable to the creation, effectiveness against third parties, priority and enforcement of a security right in a right to payment of funds credited to a bank account, as well as to the rights and obligations between the deposit-taking institution and the secured creditor, is

#### **Option A**

the law of the State in which the deposit-taking institution maintaining the account has its place of business.

2. If the deposit-taking institution has places of business in more than one State, the law applicable is the law of the State in which the office maintaining the account is located.

#### **Option B**

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

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

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

#### **Article 98. Third-party effectiveness of a security right in certain types of asset by registration**

If the law of the State in which a grantor is located recognizes registration of a notice as a method for achieving effectiveness against third parties of a security right in a negotiable instrument, negotiable document, right to payment of funds credited to a bank account or certificated non-intermediated security, the law of that State also is the law applicable to the third-party effectiveness of the security right in that asset by registration.

#### **Article 99. Security rights in intellectual property**

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

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

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

#### **Article 100. Security rights in non-intermediated securities**

1. The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security right in non-intermediated equity securities, as well as to its effectiveness against the issuer, is the law under which the issuer is constituted.

2. The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security right in non-intermediated debt securities, as well as to its effectiveness against the issuer, is the law governing the securities.

### **Chapter IX. Transition**

#### **Article 101. Amendment and repeal of other laws**

1. [The laws to be specified by the enacting State] are repealed.

2. [The laws to be specified by the enacting State] are amended as follows [the text of the relevant amendments to be specified by the enacting State].

**Article 102. General applicability of this Law**

1. For the purposes of the provisions of this chapter:
  - (a) “Prior law” means the law applicable under the conflict-of-laws rules of [the enacting State] that applied to prior security rights immediately before the entry into force of this Law; and
  - (b) “Prior security right” means a right created by an agreement entered into before the entry into force of this Law that is a security right within the meaning of this Law and to which this Law would have applied if it had been in force when the right was created.
2. Except as otherwise provided in this chapter, this Law applies to all security rights, including prior security rights within its scope.

**Article 103. Applicability of prior law to matters that are the subject of proceedings commenced before the entry into force of this Law**

1. Subject to paragraph 2, prior law applies to a matter that is the subject of proceedings before a court or arbitral tribunal commenced before the entry into force of this Law.
2. If any step has been taken to enforce a prior security right before the entry into force of this Law, enforcement may continue under prior law or may proceed under this Law.

**Article 104. Applicability of prior law to the creation of a prior security right**

1. Prior law determines whether a prior security right was created.
2. A prior security right remains effective between the parties notwithstanding that its creation did not comply with the creation requirements of this Law.

**Article 105. Transitional rules for determining the third-party effectiveness of a prior security right**

1. A prior security right that was effective against third parties under prior law at the time this Law entered into force continues to be effective against third parties under this Law until the earlier of:
  - (a) The time it would have ceased to be effective against third parties under prior law; and
  - (b) The expiration of [a period of time to be specified by the enacting State] after the entry into force of this Law.
2. If the third-party effectiveness requirements of this Law are satisfied before the third-party effectiveness of a prior security right ceases in accordance with paragraph 1, the prior security right continues to be effective against third parties under this Law from the time when it was made effective against third parties under prior law.
3. If the third-party effectiveness requirements of this Law are not satisfied before the third-party effectiveness of a prior security right ceases in accordance

with paragraph 1, the prior security right is effective against third parties only from the time it is made effective against third parties under this Law.

4. A written agreement between a grantor and a secured creditor creating a prior security right is sufficient to constitute authorization by the grantor for the registration of a notice covering the assets described in that agreement under this Law.

5. If a prior security right referred to in paragraph 2 was made effective against third parties by the registration of a notice under prior law, the time of registration under prior law is the time to be used for the purposes of applying the priority rules of this Law that refer to the time of registration of a notice of a security right.

**Article 106. Application of prior law to the priority of a prior security right as against the rights of competing claimants arising under prior law**

1. The priority of a prior security right as against the rights of a competing claimant is determined by prior law if:

(a) The security right and the rights of all competing claimants arose before the entry into force of this Law; and

(b) The priority status of none of these rights has changed since the entry into force of this Law.

2. For the purposes of paragraph 1 (b), the priority status of a prior security right has changed only if:

(a) It was effective against third parties when this Law entered into force but ceased to be effective against third parties; or

(b) It was not effective against third parties under prior law when this Law entered into force, and only became effective against third parties under this Law.

**Article 107. Entry into force of this Law**

This Law enters into force [on the date or according to mechanism to be specified by the enacting State].

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