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Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Chapter V. Priority of a security right

Article 48. Priority between security rights granted by the same grantor in the same encumbered asset

1. Priority between competing security rights granted by the same grantor in the same encumbered asset is determined as follows:

(a) As between security rights that were made effective against third parties by registration of a notice, priority is determined by the order of registration, regardless of the order of creation of the security rights;

(b) As between security rights that were made effective against third parties otherwise than by registration, 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, priority is determined (regardless of when creation occurs) by the order of registration or third-party effectiveness, whichever occurs first.

2. This article is subject to the exceptions provided in articles 49 and 55-64, as well as in articles 103-111.

Article 49. Priority of a security right registered in a specialized registry or noted on a title certificate

1. A security right in an asset that is made effective against third parties by registration in a specialized registry or notation on a title certificate, as provided in article 23, has priority as against:

(a) A security right in the same asset with respect to which a notice is registered in the general security rights registry or which is made effective against third parties by a method other than registration in a specialized registry or notation on a title certificate, regardless of the order; and

(b) A security right that is subsequently registered in the specialized registry or noted on a title certificate.

2. If an encumbered asset is transferred or leased and, at the time of transfer or lease, a security right in that asset is effective against third parties by registration in a specialized registry or notation on a title certificate, as provided in article 23, the transferee or lessee takes its rights subject to the security right, except as provided in paragraphs 2-8 of article 50.

3. If the security right has not been made effective against third parties by registration in a specialized registry or notation on a title certificate, a transferee, or lessee takes its rights free of the security right.

Article 50. Priority of rights of transferees or lessees of an encumbered asset

1. If an encumbered asset is transferred or leased and a security right in that asset is effective against third parties at the time of the transfer or lease, a transferee or lessee takes its rights subject to the security right except as provided in paragraphs 2-7 of this article.
2. A security right does not continue in an encumbered asset that the grantor sells or otherwise disposes of, if the secured creditor authorizes the sale or other disposition free of the security right.
3. The rights of a lessee 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 asset sold in the ordinary course of the seller's business takes free of a security right in the asset, provided that, at the time of the sale, 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 asset leased in the ordinary course of the lessor's business are not affected by a security right in the asset, provided that, at the time of the conclusion of the lease, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement.
6. If a buyer acquires a right in an encumbered asset free of a security right, any person that subsequently acquires a right in the asset from the buyer also takes free of the security right.
7. If the rights of a lessee are not affected by a security right, the rights of a sub-lessee are also unaffected by the security right.

[Note to the Working Group: The Working Group may wish to note that article 50 is based on recommendations 79-82 of the Secured Transactions Guide and that references to licences and licensees have been deleted (in this article and other articles, such as article 49) as the draft Model Law is not intended to apply to intellectual property rights.]

Article 51. Priority of preferential claims

Only the claims of [any limited specific claims to be set out by the enacting State] have priority over a security right and only up to an amount of [a limited amount to be set out by the enacting State].

[Note to the Working Group: The Working Group may wish to note that article 51 is intended to reflect the substance of recommendation 83 of the Secured Transactions Guide.]

Article 52. Priority of rights of judgement creditors

1. Subject to article 108, a security right has priority as against the rights of an unsecured creditor, unless the unsecured creditor, under other law, obtained a judgement or provisional court order against the grantor and took the steps necessary to acquire rights in the encumbered asset by reason of the judgement

or provisional court order before the security right was made effective against third parties.

2. The priority of the security right extends to credit extended by the secured creditor:

(a) Before the expiry of [a short period of time, such as thirty days, to be specified by the enacting State] days after the unsecured creditor notified the secured creditor that it had taken the steps necessary to acquire rights in the encumbered asset; or

(b) Pursuant to an irrevocable commitment in a fixed amount or an amount to be fixed pursuant to a specified formula of the secured creditor to extend credit, if the commitment was made before the unsecured creditor notified the secured creditor that it had taken the steps necessary to acquire rights in the encumbered asset.

**Article 53. Priority of rights of persons
providing services with respect to an encumbered asset**

If other law gives rights equivalent to security rights to a creditor that has provided services with respect to an encumbered asset, such rights are limited to the asset in the possession of that creditor up to the reasonable value of the services rendered and have priority as against security rights in the asset that were made effective against third parties by one of the methods referred to in article 19 or 20.

Article 54. Priority of a supplier's reclamation right

If other law provides that a supplier of tangible assets has the right to reclaim them, the right to reclaim is subordinate to a security right that was made effective against third parties before the supplier exercised its right.

**Article 55. Priority of a security right
in an attachment to immovable property**

1. A security right or any other right, such as the right of a buyer or lessee, in an attachment to immovable property that is created and made effective against third parties under immovable property law, as provided in articles 11 and 27, has priority as against a security right in that attachment that is made effective against third parties by one of the methods referred to in article 19 or 20.

2. A security right in a tangible asset that is an attachment to immovable property at the time the security right is made effective against third parties or that becomes an attachment to immovable property subsequently, which is made effective against third parties by registration in the immovable property registry as provided in article 27, has priority as against a security right or any other right, such as the right of a buyer or lessee, in the related immovable property that is registered subsequently in the immovable property registry.

**Article 56. Priority of a security
right in an attachment to a movable asset**

A security right or any other right, such as the right of a buyer or lessee, in an attachment to a movable asset that is made effective against third parties by

registration in a specialized registry or by notation on a title certificate as provided in article 26 has priority as against a security right or other right in the related movable asset that is subsequently registered in the specialized registry or noted on the title certificate.

Article 57. Priority of a security right in a mass or product

1. If two or more security rights in the same tangible asset continue in a mass or product as provided in article 12, they retain the same priority as the security rights in the asset had as against each other immediately before the asset became part of the mass or product.
2. If security rights in separate tangible assets continue in the same mass or product and each security right is effective against third parties, the secured creditors are entitled to share in the aggregate maximum value of their security rights in the mass or product according to the ratio of the value of the respective security rights.
3. For purposes of the formula provided in paragraph 2 of this article, the maximum value of a security right is the lesser of the value determined pursuant to article 12 and the amount of the secured obligation.
4. An acquisition security right in a separate tangible asset that continues in a mass or product and is effective against third parties has priority as against a security right granted by the same grantor in the mass or product.

Article 58. Irrelevance of knowledge of the existence of a security right

Knowledge of the existence of a security right on the part of a competing claimant does not affect priority.

[Note to the Working Group: The Working Group may wish to note that the commentary will refer to the impact of knowledge that a transaction violates the rights of a secured creditor (see article 50, paragraphs 4 and 5).]

Article 59. Subordination

A competing claimant entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any other existing or future competing claimant.

Article 60. Impact of continuity in third-party effectiveness on priority

1. For the purpose of article 48, 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.
2. If a security right is covered by a registered notice or made effective against third parties and subsequently there is a period during which the security right is neither covered by a registered notice nor effective against third parties, the priority of the security right dates from the earliest time thereafter when the security right is either covered by a registered notice or made effective against third parties.

[Note to the Working Group: The Working Group may wish to consider addressing the issue of the effectiveness of amendment and cancellation notices that are unauthorized by the secured creditor or are fraudulent (see also note to article 46 in document A/CN.9/WG.VI/WP.55/Add.2 and note to recommendation 19 of the draft Registry Guide in document A/CN.9/WG.VI/WP.54/Add.5).]

**Article 61. Priority of security rights
securing existing and future obligations**

Subject to article 52, the priority of a security right extends to all secured obligations, regardless of the time when they are incurred.

Article 62. Extent of priority

[If the enacting State implements article 36, subparagraph (d)], the priority of the security right is limited to the maximum amount set out in the registered notice.

**Article 63. Application of priority
rules to a security right in a future asset**

For the purposes of article 48, subparagraphs 1 (a) and (c), the priority of a security right extends to all encumbered assets covered by the registered notice, irrespective of whether they are acquired by the grantor or come into existence before, at or after the time of registration.

**Article 64. Application of priority
rules to a security right in proceeds**

For the purposes of article 48, the time of third-party effectiveness or the time of registration of a notice as to a security right in an encumbered asset is also the time of third-party effectiveness or registration as to a security right in its proceeds.

**Chapter VI. Rights and obligations
of the parties to a security agreement**

**Article 65. Rights and obligations
of the parties to a security agreement**

The mutual rights and obligations of the parties are determined by:

- (a) The terms and conditions set forth in that agreement, including any rules or general conditions referred to therein;
- (b) Any usage to which they have agreed; and
- (c) Unless otherwise agreed, any practices they have established between themselves.

Article 66. Mandatory rules

1. The party in possession of an encumbered asset must take reasonable steps to preserve the asset and its value.

2. The secured creditor must return an encumbered asset in its possession if, all commitments to extend credit having been terminated, the security right has been extinguished by full payment or otherwise.

[Note to the Working Group: The Working Group may wish to note that article 47 deals with the secured creditor's duty to register a cancellation notice and consider whether that matter should be addressed instead in article 66 or also in article 66.]

Article 67. Non-mandatory rules

Unless otherwise agreed, the secured creditor is entitled:

- (a) To be reimbursed for reasonable expenses incurred for the preservation of an encumbered asset in its possession;
- (b) To make reasonable use of an encumbered asset in its possession and to apply the revenues it generates to the payment of the secured obligation; and
- (c) To inspect an encumbered asset in the possession of the grantor.

Article 68. Representations of the assignor

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

- (a) The assignor has the right to assign the receivable;
- (b) The assignor has not previously assigned the receivable to another assignee; and
- (c) The debtor of the receivable does not and will not have any defences or rights of set-off.

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

[Note to the Working Group: The Working Group may wish to note that the commentary will clarify that articles 68-70 are based on recommendations 114-116 of the Secured Transactions Guide, which in turn are based articles 12-14 of the United Nations Assignment Convention.]

Article 69. Right to notify the debtor of the receivable

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor of the receivable notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in subparagraph (a) of this article is not ineffective for the purposes of article 74 by reason of such breach.

3. Nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 70. Right of the assignee to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:
 - (a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and tangible assets returned in respect of the assigned receivable;
 - (b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to tangible assets returned to the assignor in respect of the assigned receivable; and
 - (c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to tangible assets returned to such person in respect of the assigned receivable.
2. The assignee may not retain more than the value of its right in the receivable.

Chapter VII. Rights and obligations of the debtor of the receivable

Article 71. Protection of the debtor of the receivable

1. Except as otherwise provided in this Law, an assignment does not, without the consent of the debtor of the receivable, affect the rights and obligations of the debtor of the receivable, including the payment terms contained in the original contract.
2. A payment instruction may change the person, address or account to which the debtor of the receivable is required to make payment, but may not change:
 - (a) The currency of payment specified in the original contract; or
 - (b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor of the receivable is located.

[Note to the Working Group: The Working Group may wish to note that the commentary will clarify that articles 68-70 are based on recommendations 117-123 of the Secured Transactions Guide, which in turn are based articles 15-21 of the United Nations Assignment Convention.]

Article 72. Notification of the assignment

1. Notification of the assignment or a payment instruction is effective when received by the debtor of the receivable if it is in a language that is reasonably expected to inform the debtor of the receivable about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.
2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 73. Discharge of the debtor of the receivable by payment

1. Until the debtor of the receivable receives notification of the assignment, it is entitled to be discharged by paying in accordance with the original contract.
2. After the debtor of the receivable receives notification of the assignment, subject to paragraphs 3-8 of this article, it is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor of the receivable, in accordance with such payment instruction.
3. If the debtor of the receivable receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, it is discharged by paying in accordance with the last payment instruction received from the assignee before payment.
4. If the debtor of the receivable receives notification of more than one assignment of the same receivable made by the same assignor, it is discharged by paying in accordance with the first notification received.
5. If the debtor of the receivable receives notification of one or more subsequent assignments, it is discharged by paying in accordance with the notification of the last of such subsequent assignments.
6. If the debtor of the receivable receives notification of the assignment of a part of or an undivided interest in one or more receivables, it is discharged by paying in accordance with the notification or in accordance with this article as if the debtor of the receivable had not received the notification.
7. If the debtor of the receivable receives a notification as provided in paragraph 6 of this article and pays in accordance with the notification, it is discharged only to the extent of the part or undivided interest paid.
8. If the debtor of the receivable receives notification of the assignment from the assignee, it is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor of the receivable is discharged by paying in accordance with this article as if the notification from the assignee had not been received.
9. Adequate proof of an assignment referred to in paragraph 8 of this article includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.
10. This article does not affect any other ground on which payment by the debtor of the receivable to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor of the receivable.

Article 74. Defences and rights of set-off of the debtor of the receivable

1. In a claim by the assignee against the debtor of the receivable for payment of the assigned receivable, the debtor of the receivable may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor of the receivable could avail itself as if the assignment had not been made and such claim were made by the assignor.
2. The debtor of the receivable may raise against the assignee any other right of set-off, provided that it was available to the debtor of the receivable at the time notification of the assignment was received by the debtor of the receivable.
3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor of the receivable may raise pursuant to article 14, paragraph 2, or article 15, paragraph 5, against the assignor for breach of an agreement limiting in any way the assignor's right to make the assignment are not available to the debtor of the receivable against the assignee.

Article 75. Agreement not to raise defences or rights of set-off

1. Subject to paragraph 3 of this article, the debtor of the receivable may agree with the assignor in a writing signed by the debtor of the receivable not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 74.
2. An agreement under paragraph 1 of this article, which may be modified only by an agreement in a writing signed by the debtor of the receivable and the effect of which as against the assignee is determined by article 76, paragraph 2, precludes the debtor of the receivable from raising against the assignee the defences and rights of set-off provided in paragraph 1 of this article.
3. The debtor of the receivable may not waive defences arising from fraudulent acts on the part of the assignee or based on the incapacity of the debtor of the receivable.

Article 76. Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor of the receivable that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.
2. An agreement concluded after notification of the assignment between the assignor and the debtor of the receivable that affects the assignee's rights is ineffective as against the assignee unless:
 - (a) The assignee consents to it; or
 - (b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

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

**Article 77. Recovery of payments
made by the debtor of the receivable**

1. Failure of the assignor to perform the original contract does not entitle the debtor of the receivable to recover from the assignee a sum paid by the debtor of the receivable to the assignor or the assignee.
2. This does not affect any rights that the debtor of the receivable may have against the assignor.

[Note to the Working Group: The Working Group may wish to note that article 77 is based on recommendation 123 of the Secured Transactions Guide, which in turn is based on article 21 of the United Nations Assignment Convention. Paragraph 2 has been added to clarify that this article is not intended to deprive the debtor of the receivable of any rights it might have under other law to seek recovery of payments from its contractual partner, that is, the assignor.]

Chapter VIII. Enforcement of a security right

**Article 78. General standard of
conduct in the context of enforcement**

A person must enforce its rights and perform its obligations under the provisions on enforcement in good faith and in a commercially reasonable manner.

Article 79. Limitations on party autonomy

1. The general standard of conduct provided in article 78 cannot be waived unilaterally or varied by agreement at any time.
2. Subject to paragraph 1 of this article:
 - (a) The grantor and any other person that owes payment or other performance of the secured obligation may waive unilaterally or vary by agreement any of its rights under the provisions on enforcement, but only after default; and
 - (b) The secured creditor may waive unilaterally or vary by agreement any of its rights under the provisions on enforcement.
3. A variation of rights by agreement may not adversely affect the rights of any person not a party to the agreement.
4. A person challenging the effectiveness of the agreement on the ground that is inconsistent with paragraphs 1, 2, 3 or 4 of this article has the burden of proof.

Article 80. Liability

If a person fails to comply with its obligations under the provisions on enforcement, it is liable for damages caused by such failure.

Article 81. Judicial or other relief for non-compliance

The debtor, the grantor or any other interested person is entitled at any time to apply to a court or other authority for relief from the secured creditor's failure to comply with its obligations under the provisions on enforcement.

[Note to the Working Group: The Working Group may wish to note that, for the purposes of this and other articles (e.g. article 84), the commentary will give examples of interested persons, such as a secured creditor with a lower priority ranking than that of the enforcing secured creditor, a guarantor or a co-owner of the encumbered assets.]

Article 82. Expeditious judicial proceedings

Where the secured creditor, the grantor or any other person that owes performance of the secured obligation, or claims to have a right in an encumbered asset, applies to a court or other authority with respect to the exercise of post-default rights, the proceedings should be conducted in a reasonably expeditious manner.

[Note to the Working Group: If the Working Group decides to retain the expression "in a reasonably expeditious manner", it may wish to further clarify this expression in this article or in the relevant commentary. Alternatively the Working Group may wish to consider revising the formulation of this article.]

Article 83. Post-default rights of the grantor

After default, the grantor is entitled to exercise one or more of the following rights:

- (a) Pay in full the secured obligation and obtain a release from the security right of all encumbered assets, as provided in article 84;
- (b) Apply to a court or other authority for relief if the secured creditor is not complying with its obligations under the provisions of this law, as provided in article 81;
- (c) Propose to the secured creditor, or reject the proposal of the secured creditor, that the secured creditor acquire an encumbered asset in total or partial satisfaction of the secured obligation, as provided in paragraphs 3 and 4 of article 95; and
- (d) Exercise any other right provided in the security agreement or any law.

Article 84. Extinction of the security right after full satisfaction of the secured obligation

1. The debtor, the grantor or any other interested person is entitled to satisfy the secured obligation in full, including payment of the costs of enforcement up to the time of full satisfaction.
2. This right may be exercised until the earlier of the disposition, acquisition or collection of an encumbered asset by the secured creditor or the conclusion of an agreement by the secured creditor to dispose of the encumbered asset.

3. If all commitments to extend credit have terminated, full satisfaction of the secured obligation extinguishes the security right in all encumbered assets, subject to any rights of subrogation in favour of the person satisfying the secured obligation.

Article 85. Post-default rights of the secured creditor

After default, the secured creditor is entitled to exercise one or more of the following rights with respect to an encumbered asset:

- (a) Obtain possession of a tangible encumbered asset, as provided in articles 90 and 91;
- (b) Sell or otherwise dispose of, lease or license an encumbered asset, as provided in articles 92 and 93;
- (c) Propose that the secured creditor acquires an encumbered asset in total or partial satisfaction of the secured obligation, as provided in article 95;
- (d) Enforce its security right in an attachment, as provided in articles 99;
- (e) Collect on or otherwise enforce a security right in an encumbered asset that is a receivable, as provided in article 101; and
- (f) Exercise any other right provided in the security agreement (except to the extent inconsistent with the provisions of this Law) or any law.

Article 86. Judicial and extrajudicial methods of exercising post-default rights

1. After default, the secured creditor may exercise its rights provided in article 85 either by applying to a court or other authority, or without application to a court or other authority.
2. Extrajudicial exercise of the secured creditor's rights is subject to the general standard of conduct provided in article 78 and the requirements provided in articles 91-93 with respect to extrajudicial obtaining of possession and disposition of an encumbered asset.

Article 87. Cumulative post-default rights

The exercise of one post-default right does not prevent the exercise of another right, except to the extent that the exercise of one right has made the exercise of another right impossible.

Article 88. Post-default rights with respect to the secured obligation

The exercise of a post-default right with respect to an encumbered asset does not prevent the exercise of a post-default right with respect to the obligation secured by that asset, and vice versa.

Article 89. Right of higher-ranking secured creditor to take over enforcement

1. If a secured creditor has commenced enforcement by taking any of the actions described in the provisions on enforcement or a judgement creditor has taken the steps referred to in article 52, a secured creditor whose security right has priority as against that of the enforcing secured creditor or the enforcing judgement creditor is entitled to take control of the enforcement process at any time before the earlier of the final disposition or acquisition or collection of an encumbered asset or the conclusion of an agreement by the secured creditor to dispose of the encumbered asset.
2. The right to take control includes the right to enforce by any method available under articles 78-102.

Article 90. Secured creditor's right to possession of an encumbered asset

After default the secured creditor is entitled to possession of a tangible encumbered asset.

Article 91. Extrajudicial obtaining of possession of an encumbered asset

The secured creditor may elect to obtain possession of a tangible encumbered asset without applying to a court or other authority only if:

- (a) The grantor has consented in the security agreement to the secured creditor obtaining possession without applying to a court or other authority;
- (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 without applying to a court or other authority; and
- (c) At the time the secured creditor seeks to obtain possession of the encumbered asset the grantor and any person in possession of the encumbered asset does not object.

Article 92. Extrajudicial disposition of an encumbered asset

1. After default, a secured creditor is entitled, without applying to a court or other authority, to sell or otherwise dispose of or lease an encumbered asset to the extent of the grantor's rights in the encumbered asset.
2. Subject to the standard of conduct provided in article 78, a secured creditor that elects to exercise this right may select the method, manner, time, place and other aspects of the disposition or lease.

**Article 93. Advance notice of
extrajudicial disposition of an encumbered asset**

1. After default, the secured creditor must give notice of its intention to sell or otherwise dispose of, lease or licence an encumbered asset without applying to a court or other authority.
2. The notice 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.
3. The notice should be given in an efficient, timely and reliable way so as to protect the grantor or other interested parties, while, at the same time, avoiding having a negative effect on the secured creditor's remedies and the potential net realization value of the encumbered assets.
4. The notice must be given to:
 - (a) The grantor, the debtor and any other person that owes performance of the secured obligation;
 - (b) Any person with rights in the encumbered asset that, more than [to be specified] days before the sending of the notice by the secured creditor to the grantor, notifies in writing the secured creditor of those rights;
 - (c) Any other secured creditor that, more than [a short period of time to be specified] days before the notice is sent to the grantor, registered a notice with respect to a security right in the encumbered asset that is indexed under the identifier of the grantor; and
 - (d) Any other secured creditor that was in possession of the encumbered asset at the time when the enforcing secured creditor took possession of the asset.
5. The notice must be given in writing at least [a short period of time, such as fifteen days, to be specified by the enacting State] days before extrajudicial disposition takes place and must contain an accounting of the amount then owed and a reference to the right of the debtor or the grantor to obtain the release of the encumbered assets from the security right as provided in article 84.
6. The notice must be in a language that is reasonably expected to inform its recipients about its contents. It is sufficient if the notice to the grantor is in the language of the security agreement being enforced.

**Article 94. Distribution of proceeds
of disposition of an encumbered asset**

1. In the case of extrajudicial disposition of an encumbered asset:
 - (a) The enforcing secured creditor must apply the net proceeds of its enforcement after deducting costs of enforcement to the secured obligation;
 - (b) Except as provided in subparagraph 1(c) of this article, 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 the subordinate competing claimant's claim, to the extent of the amount of that claim, and any balance remaining must be remitted 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, in accordance with generally applicable procedural rules, pay the surplus to a competent judicial or other authority or to a public deposit fund for distribution.

2. Distribution of the proceeds realized by a judicial disposition or other officially administered enforcement process is to be made pursuant to [the general rules of the enacting State governing execution proceedings], but in accordance with the provisions of this Law on priority.

3. The debtor and any other person that owes payment of the secured obligation remain liable for any shortfall owing after application of the net proceeds of enforcement to the secured obligation.

**Article 95. Acquisition of an encumbered
asset in satisfaction of the secured obligation**

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 proposal must be sent to:

(a) The grantor, the debtor and any other person that owes payment or other performance of the secured obligation, including a guarantor;

(b) Any person with rights in the encumbered asset that, more than [a short period of time such as fifteen days to be specified by the enacting State] days before the proposal is sent by the secured creditor to the grantor, has notified in writing the secured creditor of those rights;

(c) Any other secured creditor that, more than [a short period of time such as fifteen days to be specified by the enacting State] days before the proposal is sent by the secured creditor to the grantor, registered a notice with respect to a security right in the encumbered asset indexed under the identifier of the grantor; and

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

3. The proposal must specify the amount owed as of the date the proposal is sent and the amount of the obligation that is proposed to be satisfied by acquiring the encumbered asset.

4. The secured creditor may acquire the encumbered asset as provided in paragraph 1 of this article, unless the secured creditor receives an objection in writing from any person entitled to receive such a proposal within [a short period of time such as fifteen days to be specified by the enacting State] days, after the proposal is sent.

5. In the case of a proposal for the acquisition of the encumbered asset in partial satisfaction, affirmative consent by each addressee of the proposal is necessary.

6. The grantor may make such a proposal and if the secured creditor accepts it, the secured creditor must proceed as provided in paragraphs 2-5 of this article.

Article 96. Rights acquired through judicial disposition

If a secured creditor disposes of an encumbered asset through a judicial or other officially administered process, the rights acquired by the transferee are determined by [the general rules of the enacting State governing execution proceedings].

Article 97. Rights acquired through extrajudicial disposition

1. If a secured creditor sells or otherwise disposes of an encumbered asset without applying to a court or other authority, in accordance with this Law, a person that acquires the grantor's right in the asset takes the asset subject to rights that have priority as against the security right of the enforcing secured creditor, but free of rights of the enforcing secured creditor and any competing claimant whose right has a lower priority than that of the enforcing secured creditor.
2. The rule provided in paragraph 1 of this article applies to rights in an encumbered asset acquired by a secured creditor that has acquired the asset in total or partial satisfaction of the secured obligation.
3. If a secured creditor leases an encumbered asset without applying to a court or other authority, in accordance with this Law, a lessee is entitled to the benefit of the lease during its term, except as against rights that have priority over the right of the enforcing secured creditor.
4. If the secured creditor sells or otherwise disposes of or leases the encumbered asset not in accordance with articles 78-102, a good faith acquirer or lessee of the encumbered asset acquires the rights or benefits described in article 97.

Article 98. Intersection of movable and immovable property enforcement regimes

1. The secured creditor may elect to enforce a security right in an attachment to immovable property in accordance with articles 78-102 or [the law of the enacting State governing enforcement of encumbrances on immovable property].
2. If an obligation is secured by both a movable asset and immovable property of a grantor, the secured creditor may elect to enforce:
 - (a) The security right in the movable asset under the provisions of this Law on the enforcement of a security right in a movable asset and the encumbrance on the immovable property under [the law of the enacting State governing enforcement of encumbrances on immovable property]; or
 - (b) Both rights under [the law of the enacting State governing enforcement of encumbrances on immovable property].

Article 99. Enforcement of a security right in an attachment

1. A secured creditor with a security right in an attachment to immovable property is entitled to enforce its security right only if it has priority as against competing rights in the immovable property.
2. A creditor with a competing right in the immovable property that has lower priority than the security right of the enforcing secured creditor is entitled to pay off

the obligation secured by the security right of the enforcing secured creditor in the attachment.

3. The enforcing secured creditor is liable for any damage to the immovable property caused by the act of removal other than any diminution in its value attributable solely to the absence of the attachment.
4. A secured creditor with a security right in an attachment to a movable asset is entitled to enforce its security right in the attachment.
5. A creditor with a competing right in the movable asset that has higher priority than the security right of the enforcing secured creditor is entitled to take control of the enforcement process, as provided in article 89.
6. A creditor with a competing right in the movable asset that has lower priority than the security right of the enforcing secured creditor is entitled to pay off the obligation secured by the security right of the enforcing secured creditor in the attachment.
7. The enforcing secured creditor is liable for any damage to the movable asset caused by the act of removal other than any diminution in its value attributable solely to the absence of the attachment.

**Article 100. Application of the chapter on
enforcement to an outright transfer of a receivable**

Articles 78-102 do not apply to the collection or other enforcement of a receivable assigned by an outright transfer with the exception of:

- (a) Articles 78 and 79 in the case of an outright transfer with recourse; and
- (b) Article 101.

Article 101. Enforcement of a security right in a receivable

1. In the case of a receivable assigned by an outright transfer, subject to articles 71-77, the assignee has the right to collect or otherwise enforce the receivable.
2. In the case of a receivable assigned otherwise than by an outright transfer, the assignee is entitled, subject to articles 71-77, to collect or otherwise enforce the receivable after default, or before default with the agreement of the assignor.
3. The assignee's right to collect or otherwise enforce a receivable includes the right to collect or otherwise enforce any personal or property right that secures payment of the receivable.

**Article 102. Distribution of proceeds of
disposition where the encumbered asset is a receivable**

1. In the case of collection or other enforcement of a receivable, the enforcing secured creditor must apply the net proceeds of its enforcement after deducting costs of enforcement to the secured obligation.
2. The enforcing secured creditor must pay any surplus remaining to the competing claimants that, prior to any distribution of the surplus, notified the

enforcing secured creditor of the competing claimant's claim, to the extent of that claim, and any balance remaining must be remitted to the grantor.
