



General Assembly

Distr.: Limited
1 October 2014

Original: English

**United Nations Commission
on International Trade Law**
Working Group VI (Security Interests)
Twenty-sixth session
Vienna, 8-12 December 2014

Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
Chapter IV. The registry system	3
A. General rules	3
Article 26. Establishment of the security rights registry	3
Article 27. Public access to registry services	3
Article 28. Grantor's authorization for registration	3
Article 29. A security right notice may relate to more than one security right	4
Article 30. Time when a security right notice may be registered	4
Article 31. Time of effectiveness of a registered security right notice	4
Article 32. Period of effectiveness of a registered security right notice	5
Article 33. Organization of information in registered security right notices	6
Article 34. Information required in an initial security right notice	6
Article 35. Impact of a change of the grantor's identifier	6
Article 36. Impact of errors in required information	7
Article 37. Impact of a transfer of an encumbered asset	7
Article 38. Secured creditor's authorization	9



Article 39. Compulsory registration of an amendment or cancellation security right notice.	10
B. Asset-specific rules.	11
Article 40. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration	11
Chapter V. Priority of a security right	11
A. General rules	11
Article 41. Competing security rights	11
Article 42. Buyers or other transferees, lessees and licensees of an encumbered asset	12
Article 43. Buyer or other transferees, lessees or licensees of an encumbered asset in the case of specialized registration	13
[Article 44. Insolvency representative [and creditors in the grantor's insolvency]].	14
Article 45. Preferential claims	14
[Article 46. Other statutory claims]	15
Article 47. Rights of judgement creditors.	15
Article 48. Non-acquisition security rights competing with acquisition security rights	16
Article 49. Competing acquisition security rights	17
Article 50. Acquisition security rights competing with the rights of judgement creditors	18
Article 51. Proceeds	18
Article 52. Subordination	18
Article 53. Extent of priority	19
Article 54. Irrelevance of knowledge of the existence of a security right	19
B. Asset-specific rules.	19
Article 55. Negotiable instruments	19
Article 56. Rights to payment of funds credited to a bank account	20
Article 57. Money	21
Article 58. Negotiable documents and tangible assets covered.	21
Article 59. Certain licensees of intellectual property.	22
Article 60. Acquisition security rights in intellectual property	22
Article 61. Non-intermediated securities	23

Chapter IV. The registry system

A. General rules

Article 26. Establishment of the security rights registry

The security rights registry is established for the registration of security right notices in accordance with this Law and [the enacting State to include a reference to a regulation or law].

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, depending on the legislative policy and drafting technique of the enacting State, the registration-related rules may be included partly in the secured transactions law and partly in administrative rules (a Regulation), or in separate laws (see Registry Guide, subpara. 9 (m)). The Working Group may also wish to consider which of the definitions of the Registry Guide may need to be added to article 2.]

Article 27. Public access to registry services

1. The security rights registry is open to the public in accordance with this Law and [the enacting State to include a reference to a regulation or law].
2. Any person may submit a security right notice to the security rights registry for registration or submit a search request in accordance with [the enacting State to include a reference to a regulation or law].

Article 28. Grantor's authorization for registration

1. Registration of an initial security right notice is ineffective unless authorized by the grantor in writing, before or after registration.
2. Registration of an amendment security right notice is ineffective unless authorized by the grantor in writing, before or after registration, only if the amendment notice:
 - (a) Adds a description of new encumbered assets;
 - [(b) Increases the maximum amount for which the security right to which the registration relates may be enforced;]
 - (c) Adds a new grantor in which event the authorization of the new grantor is required unless the new grantor is a transferee of an encumbered asset described in a previously registered security right notice to which the amendment notice relates;
 - (d) [...].
3. [Unless otherwise agreed,] a security agreement in accordance with article 5, paragraph 1, or a written agreement that amends the security agreement, is sufficient to constitute authorization by the grantor for the registration of an initial or amendment security right notice covering the assets described therein.
4. Evidence of the existence of the authorization of the grantor is not required for the registration of that notice.

[Note to the Working Group: The Working Group may wish to note that the registration of an amendment security right notice that adds encumbered assets or increases the maximum amount may affect intervening secured creditors, and therefore takes effect only when the registration of the amendment security right notice (not the initial security right notice) becomes effective (see article 31, para. 3 below). The Working Group may also wish to note that: (a) if an amendment security right notice adds encumbered assets that are the proceeds of encumbered assets described in a previously registered security right notice, there is no need to obtain the grantor's additional authorization, as the security right extends to proceeds by law (see article 8, para. 1); and (b) if the proceeds are cash proceeds or are sufficiently described in a previously registered security right notice, there is no need to register an amendment notice (see article 8, para. 2). The Working Group may also wish to note that the bracketed text in paragraph 3 of this article, which was included at the request of the Working Group for further consideration (see A/CN.9/796), may not be necessary in view of the new text of article 3 on party autonomy.]

Article 29. A security right notice may relate to more than one security right

A single security right notice may relate to one or more than one security right created by the grantor in favour of the same secured creditor whether they arise under one or more than one security agreement between the same parties.

[Note to the Working Group: The Working Group may wish to consider whether in the text of this article or in the Guide to Enactment it should be pointed out that the registration of a single security right notice is sufficient to make effective against third parties a security right in encumbered assets that are not necessarily described in the security right notice, notably in cash proceeds (see article 16, subpara. 1 (b)).]

Article 30. Time when a security right notice may be registered

An initial or amendment security right notice may be registered at any time, including after the conclusion of the security agreement, or of any agreement amending the security agreement, to which the notice relates, provided that registration is authorized by the grantor in accordance with article 28 of this Law.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 67 of the Secured Transactions Guide and recommendation 13 of the Registry Guide.]

Article 31. Time of effectiveness of a registered security right notice

1. The registration of an initial or amendment security right notice is effective from the date and time when the information in the notice is entered into the registry record so as to be accessible to searchers of the public registry record.

[2. The date and time when the information in an initial or amendment security right notice is entered into the registry record so as to be accessible to searchers is indicated in the public registry record.]

[3. Information in initial or amendment security right notices is entered into the registry record as soon as practicable after the notices are submitted and in the order in which they were submitted.]

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

[5. The date and time when the information in any initial or amendment security right notice to which a cancellation security right notice relates is no longer accessible to searchers is indicated in the registry record.]

[Note to the Working Group: The Working Group may wish to consider whether paragraphs 2, 3 and 5 of this article that appear within square brackets should be deleted, while the Guide to Enactment could explain that these matters should be addressed in the annex to the draft Model Law.]

Article 32. Period of effectiveness of a registered security right notice

Option A

1. A registered security right notice is effective for [a period of time, such as five years, to be specified by the enacting State].
2. The period of effectiveness of a registered security right notice may be extended by the registration of an amendment security right notice indicating this intent in the designated field of the notice within [a period of time, such as six months, to be specified by the enacting State] before its expiry.
3. The registration of an amendment security right notice in accordance with paragraph 2 of this article extends the period of effectiveness for [the period of time specified in paragraph 1 of this article] beginning from the time the current period would have expired if the amendment notice had not been registered.

Option B

1. A registered security right 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 a registered security right notice may be extended at any time before its expiry by the registration of an amendment security right notice that indicates in the designated field a new period of effectiveness.
3. The registration of an amendment security right notice in accordance with paragraph 2 of this article extends the period of effectiveness for the period of time indicated in the amendment notice beginning from the time the current period would have expired if the amendment notice had not been registered.

Option C

1. A registered security right 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, such as 20 years, to be specified by the enacting State].
2. The period of effectiveness of a registered security right notice may be extended within [a period of time, such as six months, to be specified by the

enacting State] before its expiry by the registration of an amendment security right notice that indicates in the designated field a new period of effectiveness not exceeding [the maximum period of time specified in paragraph 1 of this article].

3. The registration of an amendment security right notice in accordance with paragraph 2 of this article extends the period of effectiveness for the period of time specified in the amendment notice beginning from the time the current period would have expired if the amendment notice had not been registered.

Article 33. Organization of information in registered security right notices

The registry record is organized so that the information in a registered initial and in any associated registered security right notices can be retrieved by a search of the registry record that uses the identifier of the grantor or the registration number assigned to the initial notice as the search criterion.

Article 34. Information required in an initial security right notice

An initial security right notice must contain the following items of information set out in the designated field for each item:

(a) The identifier and address of the grantor [and any additional item of information that the enacting State may decide to permit or require to be entered to assist in uniquely identifying the grantor];

(b) The identifier and address of the secured creditor or its representative; [and]

(c) A description of the encumbered asset in a manner that reasonably allows its identification;

[(d) The period of effectiveness of the registration];¹ and

[(e) A statement of the maximum amount for which the security right to which the registered security right notice relates may be enforced.]²

[Note to the Working Group: The Working Group may wish to note that many modern registries provide for serial number registration of serial number assets and consider whether serial number registration should be addressed in the draft Model Law or discussed only in the Guide to Enactment (see Secured Transactions Guide, chap. IV, paras. 34-36 and Registry Guide, paras. 131-134).]

Article 35. Impact of a change of the grantor's identifier

1. If the grantor's identifier changes after a security right notice is registered and the secured creditor registers an amendment security right notice adding the new identifier of the grantor within [a short period of time, such as thirty days, to be specified by the enacting State] after the change, the security right to which the notice relates retains its third-party effectiveness and priority.

2. If the grantor's identifier changes after a security right notice is registered and the secured creditor registers an amendment security right notice adding the new

¹ This provision will be necessary, if the enacting State implements option B or C of article 32.

² If the enacting State includes in its law article 5, subparagraph 2 (e) of the draft Model Law.

identifier of the grantor after the expiration of the time period indicated in paragraph 1 of this article, the security right to which the security right notice relates is:

(a) Subordinate in priority to a competing security right with respect to which a security right notice is registered or which is otherwise made effective against third parties after the change in the grantor's identifier but before the registration of the amendment notice; and

(b) Ineffective against a person that buys, leases or licenses the encumbered asset after the change in the grantor's identifier but before the registration of the amendment notice.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that: (a) if the secured creditor registers the amendment security right notice during the "grace period" contemplated in paragraph 1 of this article, the third-party effectiveness and priority of its security right is preserved as against the categories of competing claimants described in this article even if they acquired their rights prior to the registration of the amendment security right notice; (b) while a secured creditor's failure to register an amendment security right notice adding the grantor's new identifier has the negative priority consequences against the categories of competing claimants described in this article, it does not prejudice the third-party effectiveness or priority of its security right as against other categories of competing claimants such as the grantor's insolvency representative; (c) while the "grace period" begins to run from the time of the name change regardless of whether or not the secured creditor actually knew about the name, later registration of a security right amendment notice change after the expiry of that grace period will still protect the secured creditor as against the categories of competing claimants described in this article if their rights arise after the registration; and (d) an amendment notice must be registered for the purposes of the rules stated in this article only if the name change would make the registration irretrievable by a searcher using the new name of the grantor as the search criterion.]

Article 36. Impact of errors in required information

1. An incorrect statement of the grantor identifier in a security right notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor's correct identifier as the search criterion.
2. An incorrect or insufficient statement of the information required in a security right notice other than the grantor's identifier does not render the registration ineffective unless the error would seriously mislead a reasonable searcher.

Article 37. Impact of a transfer of an encumbered asset

Option A

1. If an encumbered asset covered by a registered security right notice is transferred after the notice is registered and the secured creditor registers an amendment security right notice adding the transferee's name as a new grantor within [a short period of time, such as thirty days, to be specified by the enacting

State] after the transfer, the security right to which the initial security right notice relates retains its third-party effectiveness and priority.

2. If the secured creditor registers an amendment notice adding the transferee's name as a new grantor after the expiration of the time period indicated in paragraph 1 of this article, the security right to which the notice relates is:

(a) Subordinate in priority to a competing security right with respect to which a security right notice is registered or which is otherwise made effective against third parties after the transfer but before the registration of the amendment security right notice; and

(b) Ineffective as against the right of a person that buys, leases or licenses the encumbered asset after its transfer but before the registration of the amendment security right notice.

Option B

1. If an encumbered asset covered by a registered security right notice is transferred after the notice is registered and the secured creditor registers an amendment security right notice adding the transferee's name as a new grantor within [a short period of time, such as thirty days, to be specified by the enacting State] after the transfer, the security right to which the initial security right notice relates retains its third-party effectiveness and priority.

2. If the secured creditor registers an amendment notice adding the transferee's name as a new grantor after expiration of the time period indicated in paragraph 1 of this article, starting when the secured creditor acquires knowledge about the transfer of the encumbered asset, the security right to which the notice relates:

(a) Is subordinate in priority to a security right with respect to which a security right notice is registered or which is otherwise made effective against third parties after the transfer but before the registration of the amendment notice; and

(b) Is ineffective as against a right of a person that buys, leases or licenses the encumbered asset after its transfer but before the registration of the amendment notice.

Option C

A security right to which the security right notice relates retains its third-party effectiveness and priority notwithstanding a transfer of the encumbered asset covered by the registered security right notice.

[Note to the Working Group: The Working Group may wish to consider whether it should be clarified in this article or in the Guide to Enactment that this article does not apply to outright transfers of receivables. Outright transfers of receivables fall within the scope of the Law and the transferee must register in order to make its right effective against third parties in the same way as a secured creditor that acquires a security right in receivables. The Working Group may also wish to note that the Guide to Enactment will clarify that, if a State adopts option C, it will not need to implement article 40, which includes the same rule with respect to transfers of intellectual property.]

Article 38. Secured creditor's authorization

1. The person named in the initial security right notice as the secured creditor may register an amendment or cancellation security right notice relating to that initial security right notice at any time.

Option A

2. The registration of an amendment or cancellation security right notice is effective regardless of whether it is authorized by the person named in the initial security right notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

Option B

2. The registration of an amendment or cancellation security right notice is effective regardless of whether it is authorized by the person named in the initial security right notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

3. The registration of an amendment or cancellation security right notice which is not authorized by the person named in the initial security right notice as the secured creditor does not affect the priority of the security right to which it relates as against the right of a competing claimant over which the security right had priority before the registration of the amendment or cancellation security right notice.

Option C

2. The registration of an amendment or cancellation security right notice is ineffective unless it is authorized by the person named in the initial security right notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

Option D

2. The registration of an amendment or cancellation security right notice is ineffective unless it is authorized by the person named in the initial security right notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

3. The registration of an amendment or cancellation security right notice which is not authorized by the person named in the initial security right notice as the secured creditor does not affect the priority of the security right to which it relates as against the right of a competing claimant which would have priority if the registration were treated as effective and which was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation security right notice, provided the competing claimant did not have knowledge that the registration of the security right notice was unauthorized at the time it acquired its right.

[Note to the Working Group: The Working Group may wish to note that the matter addressed in this article was not dealt with in the Secured Transactions Guide but it was discussed in the Registry Guide (paras. 258-268). The Working Group may also wish to consider whether options C and D of this article are

compatible with the Secured Transactions Guide (rec. 74) and the Registry Guide (rec. 20), according to which upon registration of a cancellation security right notice, information contained in a registered security right notice is to be removed from the public registry record and archived.]

Article 39. Compulsory registration of an amendment or cancellation security right notice

1. The secured creditor must register an amendment or cancellation security right notice, as the case may be, if:

(a) The registration of an initial or amendment security right notice has not been authorized by the grantor at all or the security right notice contains information that exceeds the scope of the grantor's authorization;

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

(c) The security agreement to which the registered security right notice relates has been revised in a way that makes some or all of the information contained in the security right notice incorrect or insufficient and the grantor has not otherwise authorized the registration; or

(d) The security right to which the security right notice relates has been extinguished by payment or other performance of the secured obligation or otherwise and there is no further commitment by the secured creditor to extend credit secured by the encumbered assets to which the security right notice relates.

2. If the secured creditor does not comply with a written request from the grantor to register an amendment or cancellation security right notice within [a short period of time, such as fifteen days, to be specified by the enacting State] after receipt of the grantor's request, the grantor is entitled to seek the registration of an amendment or cancellation security right notice, as the case may be, through [a summary judicial or administrative procedure to be specified by the enacting State].

3. The grantor is entitled to seek the registration of an amendment or cancellation security right notice, as the case may be, in accordance with the procedure referred to in paragraph 2 of this article even before the expiry of the time period specified therein, provided that [the enacting State should introduce appropriate measures to protect the secured creditor].

4. An amendment or cancellation security right notice, as the case may be, ordered to be registered in accordance with the procedure referred to in paragraph 2 of this article is registered by

Option A

[the registrar to be specified by the enacting State] as soon as practicable after the security right notice is submitted to the registry for registration with a copy of [the relevant judicial or administrative order to be specified by the enacting State] attached.

Option B

[the judicial or administrative officer to be specified by the enacting State] who ordered the security right notice to be registered as soon as practicable after the issuance of [the relevant judicial or administrative order to be specified by the enacting State] with a copy thereof attached.

[Note to the Working Group: The Working Group may wish to consider that some modern secured transactions laws provide for the registration of other types of notices (e.g. enforcement notices and notices of preferential claims) and consider whether registration of such notices should be foreseen in the draft Model Law or discussed only in the Guide to Enactment (see Registry Guide, paras. 51 and 52).]

B. Asset-specific rules**Article 40. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration**

A security right in intellectual property to which the security right notice relates retains its third-party effectiveness and priority notwithstanding a transfer of the encumbered intellectual property covered by the registered security right notice. [If the security right is registered in [enacting State to specify the relevant intellectual property registry, if any] article 42, paragraph 3, of this Law applies.]

[Note to the Working Group: The Working Group may wish to note that, while this article is based on recommendation 244 of the Intellectual Property Supplement, its formulation has been aligned with the formulation of option C of article 37 of the draft Model Law. The Working Group may also wish to note that the Guide to Enactment will explain that, if a State adopts option C of article 37, it will not need to implement this article. Finally, the Working Group may wish to consider the bracketed text, which is intended to ensure that this article will not inadvertently override the special priority rules applying to security rights notice of which is registered in an intellectual property registry, if any.]

Chapter V. Priority of a security right**A. General rules****Article 41. Competing security rights**

1. Subject to articles 42-51 of this Law, priority among competing security rights created by the same grantor in the same encumbered asset is determined according to the order of third-party effectiveness or advance registration in accordance with the provisions of chapter IV of this Law.

[2. 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 during which the security right is not effective against third parties.]

[3. The priority of a security right extends to all encumbered assets described in the initial registered security right notice, irrespective of whether they are acquired by the grantor or come into existence before or after the time of registration.

4. The time when third-party effectiveness is achieved or the time advance registration takes place with respect to a security right in an encumbered asset in accordance with the provisions of chapter IV of this Law is also the time third-party effectiveness is achieved or advance registration takes place with respect to a security right in its proceeds.]

[Note to the Working Group: The Working Group may wish to note that paragraph 1 of this article reflects in general terms recommendation 76 of the Secured Transactions Guide, and refers to third-party effectiveness (which requires creation and a third-party effectiveness act) and advance registration (i.e. before the creation of the security right or conclusion of the security agreement and thus before third-party effectiveness is achieved). In this regard, the Working Group may wish to consider whether in all the articles of this chapter or in the Guide to Enactment it should be clarified that, upon creation, a security right that has become the subject of advance registration has the same priority as a security right that has been made effective against third parties. The Working Group may also wish to note that the Guide to Enactment will explain that paragraph 1 deals with: conflicts of priority: (a) among security rights that were made effective against third parties by registration; (b) among security rights that were made effective against third parties otherwise than by registration; and (c) among security rights that were made effective against third parties by registration and security rights that were made effective against third parties otherwise than by registration (always in the security rights registry). The Working Group may wish to note that paragraph 2 of this article may need to be coordinated with articles 17 and 18 and article 24 (see A/CN.9/WG.VI/WP.61). The Working Group may also wish to consider whether paragraphs 3 and 4 are necessary and should be retained or whether they should be deleted and the matters addressed therein discussed in the Guide to Enactment.]

**Article 42. Buyers or other transferees,
lessees and licensees of an encumbered asset**

1. If an encumbered asset is sold or otherwise transferred, leased or licensed and a security right in that asset is effective against third parties at the time of the sale or other transfer, lease or licence, a 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 a 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 article 59 of this Law, 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 takes that asset free of that security right.

8. If the rights of a lessee of a tangible encumbered asset or 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 the security right.

Article 43. Buyers or other transferees, lessees or licensees of an encumbered asset in the case of specialized registration

1. A security right in an asset that is made effective against third parties by registration in [the enacting State to specify the specialized registration system, if any] has priority over:

(a) A security right in the same asset which is made effective against third parties by any other method or with respect to which advance registration has taken place in accordance with chapter IV of this Law, regardless of the order of registration; and

(b) A security right in the same asset that is subsequently registered in [the enacting State to specify the specialized registration system, if any].

2. If an encumbered asset is sold or otherwise transferred, leased or licensed and, at the time of the transfer, lease or licence, a security right in that asset is effective against third parties by registration in [the enacting State to specify the specialized registration system, if any], the buyer or other transferee or lessee acquires its rights subject to the security right, except as provided in paragraphs 2-8 of article 42.

3. If a security right in an asset has not been made effective against third parties by registration in [the enacting State to specify the specialized registration system, if any], a buyer or other transferee acquires its rights free of the security right and a lessee's or licensee's rights are unaffected by the security right.

[Note to the Working Group: Although subparagraph 1 (b) of this article is based on recommendation 70, subparagraph (b) of the Secured Transactions Guide, the Working Group may wish to consider whether it should be retained as the priority of rights registered in a specialized registry is a matter for the relevant specialized registration law. The Working Group may wish to consider whether words along the lines of the following: "or with respect to which advance registration has taken place in accordance with chapter IV of this chapter" should be added to all priority rules next to the words "a security right that is effective

against third parties” to indicate that, upon its subsequent creation, the third-party effectiveness and priority of a security right that has become the subject of advance registration goes back to the time of advance registration.]

**[Article 44. Insolvency representative
[and creditors in the grantor’s insolvency]**

A security right that is effective against third parties retains the third-party effectiveness and priority it had before the commencement of insolvency proceedings with respect to the grantor over the rights of the grantor’s insolvency representative [and the creditors in the grantor’s insolvency].]

[Note to the Working Group: The Working Group may wish to consider the reference to the grantor’s creditors in insolvency within square brackets which is intended to address situations in which, under insolvency law, the insolvency representative does not represent the mass of creditors. The Working Group may also wish to note that the Guide to Enactment will explain that this rule is subject to any insolvency law rules with respect to issues, such as avoidance and statutory preferential claims (which in federal States have priority over security rights by definition as insolvency law is federal law and secured transactions law is state law).]

Article 45. Preferential claims

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

- (a) [...];
- (b) [...].³

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that: (a) this article applies outside insolvency, while a similar rule is recommended in the Secured Transactions Guide with respect to preferential claims in the case of the grantor’s insolvency (see rec. 239); (b) a notice with respect to preferential claims may be registered in the security rights registry; (c) in the case of enforcement, if a preferential creditor does not take over the enforcement process, its claim will have to be paid ahead of the claims of secured creditors; and (d) secured creditors should obtain representations from grantors about debts to preferential creditors and otherwise address the possible existence of such claims. The Guide to Enactment will also explain that the enacting State will need to consider whether any preferential claims will be applicable only if the grantor is insolvent and thus be set out in insolvency law or whether they will also apply outside of insolvency and thus be listed also in secured transactions law. The Working Group may also wish to consider whether preferential creditors should be included in the definition of the term “competing claimant” (creditors with a right in an encumbered asset, such as judgement creditors, are included).]

³ The enacting State will not need this article if it does not have any preferential claims.

[Article 46. Other statutory claims

1. The right of a creditor that has provided services with respect to an encumbered asset has priority over a security right that is effective against third parties up to the value of the asset in the possession of that creditor and up to the reasonable value of the services rendered.
2. The right of an unpaid [supplier] [seller] of tangible assets under other law to reclaim them has priority over a security right in the assets, unless it was made effective against third parties before the [supplier] [seller] exercised its reclamation right.
3. [...].⁴

[Note to the Working Group: The Working Group may wish to note that this article refers to statutory rights under other law and, to the extent it deals with rights that have by law priority over security rights, this article may be merged with article 45. Noting that supply contracts may include service contracts that provide also for the supply of goods (that is the reason for the inclusion in paragraph 2 of the word “supplier” which is broader than the word “seller”), the Working Group may also wish to consider whether to refer to supplier claims so as to preserve the priority of supplier reclamation claims existing under other law. Alternatively, the Working Group may wish to consider whether this article should be deleted and the matter addressed in the Guide to Enactment.]

Article 47. Rights of judgement creditors

1. Subject to article 50 of this Law, a security right that is effective against third parties has priority over the rights of an unsecured creditor that has obtained a judgement or provisional order (“judgement creditor”), unless, before the security right is made effective against third parties or becomes the subject of advance registration in accordance with the provisions of chapter IV of this Law, the judgement creditor [the enacting State to specify the steps necessary for a judgement creditor to acquire rights in the encumbered asset or to refer to the relevant provisions of other law with respect to judgements or provisional court orders].
2. The priority of the security right extends to credit disbursed by the secured creditor:
 - (a) Before the expiry of [the enacting State to specify a short period of time, such as 30 days] after the judgement creditor notified the secured creditor that it had taken the steps referred to in paragraph 1 of this article; 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 judgement creditor notified the secured creditor that it had taken the steps referred to in paragraph 1 of this article.

⁴ If a State decides to list any additional claims that have priority over a security right, they should be limited both in type and amount, and described in a clear and specific way in this article.

[*Note to the Working Group: The Working Group may wish to note that this article is intended to reflect recommendation 84 of the Secured Transactions Guide. Noting that the term “judgement creditor” is defined in paragraph 1 of this article, the Working Group may wish to consider including instead in article 2 a definition of this term along the following lines: “‘Judgement creditor’ means an unsecured creditor that has obtained a judgement or provisional court order against the grantor and [the enacting State to specify the steps necessary for a judgement creditor to acquire rights in the encumbered asset or to refer to the relevant provisions of other law with respect to judgements or provisional court orders]”. In this respect, the Working Group may wish to note that, in some States, these steps involve registration of a notice in the security rights registry, seizure of assets or service of a garnishment order, matters that may be usefully clarified in the Guide to Enactment. In States that require registration about these enforcement steps, judgement creditors have the same priority rights as secured creditors, that is, in other words, the general first-to-register priority rule applies. The Working Group may also wish to consider whether the secured creditor should lose its priority under subparagraph 2 (b) of this article only if it received the notification and, if so, whether this matter should be clarified in subparagraph 2 (b) of this article or in the Guide to Enactment.*]

**Article 48. Non-acquisition security rights competing
with acquisition security rights⁵**

Alternative A⁶

1. Except as provided in article 43 of this Law:
 - (a) An acquisition security right in a tangible asset other than inventory or consumer goods has priority as against a competing non-acquisition security right created by the grantor, provided that:
 - (i) The acquisition secured creditor is in possession of the asset; or
 - (ii) A security right notice with respect to the acquisition security right is registered in accordance with the provisions of chapter IV of this Law within [a short period of time, such as thirty days, to be specified by the enacting States] after the grantor obtains possession of the asset;
 - (b) An acquisition security right in inventory has priority over a competing non-acquisition security right created by the grantor, provided that:
 - (i) The acquisition secured creditor is in possession of the inventory; or

⁵ This section includes the unitary-approach recommendations of the *Secured Transactions Guide*. If a State prefers to adopt the non-unitary approach recommendations, it may wish to consider implementing instead recommendations 187-202 of the *Secured Transactions Guide*. [In particular, States may wish to consider doing so if they have implemented regional legislation along the Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (the “Late Payment Directive”), article 9 of which, provides that “Member States shall provide in conformity with the applicable national provisions designated by private international law that the seller retains title to goods until they are fully paid for if a retention of title clause has been expressly agreed between the buyer and the seller before the delivery of the goods”.]

⁶ A State may adopt alternative A or alternative B of this article.

- (ii) Before the grantor obtains possession of the inventory:
- a. A security right notice with respect to the acquisition security right registered in accordance with the provisions of chapter IV of this Law; and
 - b. A notice that is sent by the acquisition secured creditor is received by the non-acquisition secured creditor that has registered a security right notice in accordance with the provisions of chapter IV of this Law with respect to a security right created by the grantor in inventory of the same kind, stating that the acquisition secured creditor has or intends to acquire an acquisition security right and describing the inventory sufficiently to enable the non-acquisition secured creditor to identify the inventory that is the object of the acquisition security right; and
 - (c) An acquisition security right in consumer goods has priority over a competing non-acquisition security right created by the grantor in the same goods.
2. A notice that is sent pursuant to subparagraph 1(b)(ii)b. of this article, may cover acquisition security rights under multiple transactions between the same parties without the need to identify each transaction and is sufficient only for security rights in tangible assets of which the grantor obtains possession within [a period of time, such as five years, to be specified by the enacting State] after the notice is received.

Alternative B

Except as provided in article 43 of this Law:

- (a) An acquisition security right in a tangible asset other than consumer goods has priority as against a competing non-acquisition security right created by the grantor, provided that:
- (i) The acquisition secured creditor is in possession of the asset; or
 - (ii) A security right notice with respect to the acquisition security right is registered in accordance with the provisions of chapter IV of this Law within [a short period of time, such as thirty days, to be specified by the enacting State] after the grantor obtains possession of the asset; and
- (b) An acquisition security right in consumer goods has priority over a competing non-acquisition security right created by the grantor in the same goods.

[Note to the Working Group: The Working Group may wish to note that subparagraph (b)(ii)b. of this article refers to a notice received by an earlier registered inventory financier and consider whether the receipt rule should apply to any notice sent to a person under the draft Model Law.]

Article 49. Competing acquisition security rights

1. Subject to paragraph 2 of this article, the priority between competing acquisition security rights is determined according to article 41 of this Law.
2. An acquisition security right of a seller or lessor that was made effective against third parties within the period specified in article 48, subparagraph (a) (ii), of this Law has priority over a competing acquisition security right of a secured creditor other than a seller or lessor.

Article 50. Acquisition security rights competing with the rights of judgement creditors

An acquisition security right that is made effective against third parties within the period specified in article 48, subparagraph (a) (ii), of this Law has priority over the rights of a judgement creditor that would otherwise have priority under article 47 of this Law.

[Note to the Working Group: The Working Group may wish to consider whether this article should be merged with article 47.]

Article 51. Proceeds⁷

Alternative A

1. A security right in proceeds of a tangible asset other than inventory or consumer goods has the same priority as the acquisition security right in that asset.
2. A security right in proceeds of inventory has the same priority as the acquisition security right in that inventory, except where the proceeds take the form of receivables, negotiable instruments, rights to payment of funds credited to a bank account or rights to receive the proceeds under an independent undertaking.
3. A security right in proceeds has the same priority as the security right in that inventory, provided that the acquisition secured creditor notifies non-acquisition secured creditors that, before the proceeds arose, the acquisition secured creditor registered a security right notice with respect to assets of the same kind as the proceeds in accordance with the provisions of chapter IV of this Law.

Alternative B

Notwithstanding article 48 of this Law, the priority of an acquisition security right in a tangible asset that is effective against third parties does not extend to its proceeds.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, as the draft Model Law does not deal with insolvency-related matters, no article has been included in the draft Model Law to deal with the application of these special priority rules in the case of insolvency (rec. 186 of the Secured Transactions Guide). However, there is nothing in these articles to imply that insolvency law will not operate against the background of secured transactions law and thus that these provisions will not apply to acquisition security rights in the case of insolvency.]

Article 52. Subordination

1. A person may at any time subordinate its priority under this Law in favour of any existing or future competing claimant without the need for the beneficiary to 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.

⁷ A State may adopt alternative A of this article, if it adopts alternative A of article 49, or alternative B of this article if it adopts alternative B of article 48.

[Note to the Working Group: The Working Group may wish to consider whether a subordination agreement has to be in writing or may also be oral. The Working Group may also wish to consider whether the Guide to Enactment should explain whether, if third-party effectiveness of the security right has been established by registration of a security right notice, an amendment security right notice may be registered to reflect the new order of priority. The Working Group may also wish to note that the Guide to Enactment will explain that a subordination agreement may be between a secured creditor and a grantor, between two or more secured creditors, or between a secured creditor and another competing claimant (e.g. a judgement creditor or an insolvency representative). The Guide to Enactment will also discuss circular priority problems that may result from subordination agreements. The Working Group may wish to consider that the rule that an agreement cannot affect third parties is not enough to cover unilateral subordination and thus paragraph 2 of this article is necessary and should be retained.]

Article 53. Extent of priority

[1.] Subject to article 47 of this Law, 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 the security right is limited to the maximum amount set out in the security right notice registered in accordance with the provisions of chapter IV of this Law.]⁸

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 97 and 98 of the Secured Transactions Guide. The Working Group may also wish to consider whether paragraph 2 of this article should be included in article 40.]

Article 54. Irrelevance of knowledge of the existence of a security right

Subject to articles 42, paragraphs 4-6, 55, subparagraph 2 (b), 56, paragraph 6, 59, paragraph 1, and 61, subparagraph 7 (b), of this Law knowledge of the existence of a security right on the part of a competing claimant does not affect its priority.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, although knowledge of the existence of a security right does not affect priority, knowledge that a transaction violates the rights of a secured creditor may affect priority.]

B. Asset-specific rules

Article 55. Negotiable instruments

1. [Except as provided in paragraph 2 of this article], a security right in a negotiable instrument that is made effective against third parties by possession of

⁸ If the enacting State implements article 34, subparagraph (e), it may wish to include in this article paragraph 2.

the instrument has priority over a security right in a negotiable instrument that is made effective against third parties by any other method.

2. A security right in a negotiable instrument that is made effective against third parties by a method other than possession of the instrument is subordinate to the rights of a secured creditor, buyer or other transferee acquiring its rights by agreement that:

(a) Qualifies as a protected holder [the enacting State may wish to use any other term used in its law]; or

(b) Takes possession of the negotiable instrument and gives value [the enacting State may wish to use any other term used in its law] in good faith and without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 101 and 102 of the Secured Transactions Guide. The words added at the beginning of paragraph 1 of this article within square brackets are intended to avoid a potential inconsistency between paragraph 1 (possession beats any other possible method) and paragraph 2 (possession does not beat protected holder or a secured creditor, buyer or other consensual transferee that takes in good faith). The Working Group may wish to note that the reference to “good faith” in subparagraph 2 (b) may be redundant and inconsistent with the agreement of the Working Group that reference to good faith should only be made to reflect an objective standard of conduct and not what a person knew, a matter covered sufficiently in subparagraph 2 (b) (see A/CN.9/802, para. 31). Depending on its decision as to whether reference should be made in articles 32 and 69 on non-intermediated securities, reference may need to be made in this article and in a new article on the third-party effectiveness of security rights in negotiable instruments to endorsement in pledge of a negotiable instrument.]

Article 56. 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 that is made effective against third parties by a method other than registration of a security right notice in accordance with the provisions of chapter IV of this Law has priority over a competing security right made effective against third parties by such registration.

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

3. 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 control agreements is determined on the basis of the time of conclusion of the control agreements.

4. A security right in a right to payment of funds credited to a bank account of the depositary bank has priority over a competing security right made effective by any method other than by the secured creditor becoming the account holder.

5. A security right in a right to payment of funds credited to a bank account that is made effective 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.
6. A depositary bank'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 depositary bank 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.
7. A transferee of funds from a bank account pursuant to a transfer initiated or authorized by the grantor takes 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.
8. Paragraph 6 of this article does not adversely affect the rights of transferees of funds from bank accounts under other law.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will clarify that this article will apply to a priority conflict between a security right in a right to payment of funds credited to a bank account as original collateral and a security right in a right to payment of funds credited to a bank account as proceeds which, according to article 16, paragraph 1 (A/CN.9/WG.VI/WP.61), is automatically effective if the security right in the original collateral is effective against third parties.]

Article 57. Money

1. A person that obtains possession of money that is subject to a security right takes the money 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 other law.

Article 58. Negotiable documents and tangible assets covered

1. A security right in a negotiable document and the tangible assets covered thereby that is made effective against third parties in accordance with chapter III of this Law is subordinate to any superior rights acquired by a transferee of a negotiable document under the law relating to negotiable documents.
2. Subject to paragraph 3 of this article, 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 another method.
3. Subject to article 24, paragraph 4, the rule in paragraph 2 of this article 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, such as 30 days, to be specified by the enacting State] from the date of the agreement.

Article 59. Certain licensees of intellectual property

Article 42, paragraph 6, of this Law does not affect the rights of a secured creditor under the law relating to intellectual property.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will refer, with respect to this and the following article, to the discussion of rights of licensees in the Intellectual Property Supplement (see paras. 193-212) and explain in particular that the ordinary course of business approach is not drawn from intellectual property law, which does not distinguish in this respect between an exclusive and non-exclusive licence but rather focuses on whether a licence is authorized or not (see Intellectual Property Supplement, para. 200).]

Article 60. Acquisition security rights in intellectual property

1. The provisions of this Law on an acquisition security right in a tangible asset also apply to an acquisition security right in intellectual property or a licence of intellectual property.
2. For the purpose of applying these provisions:
 - (a) Intellectual property or a licence of intellectual property:
 - (i) Held by the grantor for sale or licence in the ordinary course of the grantor's business is treated as inventory; and
 - (ii) Used or intended to be used by the grantor for personal, family or household purposes is treated as consumer goods; and
 - (b) Any reference to:
 - (i) Possession of the encumbered asset by the secured creditor does not apply;
 - (ii) The time of possession of the encumbered asset by the grantor refers to the time the grantor acquires the encumbered intellectual property or licence of intellectual property; and
 - (iii) The time of the delivery of the encumbered asset to the grantor refers to the time the grantor acquires the encumbered intellectual property or licence of intellectual property.

[Note to the Working Group: The Working Group may wish to consider the formulation and placement of this article in the draft Model Law. Paragraph 1 might be included in article 1 on scope (A/CN.9/WG.VI/WP.61) and paragraph 2 might be included in article 2 on definitions.]

Article 61. Non-intermediated securities

- [1. A security right in certificated non-intermediated securities made effective against third parties by endorsement of the certificate in a manner indicating the intention to create and make effective against third parties a security right has priority over a security right in the same securities made effective against third parties by any other method.]⁹
2. A security right in certificated non-intermediated securities made effective against third parties by delivery of the certificate to the secured creditor has priority over a security right in the same securities made effective against third parties by registration of a security right notice in accordance with the provisions of chapter IV of this Law.
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 security right notice in accordance with the provisions of chapter IV of this Law.
4. Priority among security rights in uncertificated non-intermediated securities made effective against third parties by the conclusion of control agreements is determined according to the temporal order in which the control agreements were concluded.
5. A security right in uncertificated non-intermediated securities made effective against third parties by a notation of the security right or registration of the name of the secured creditor as the holder of the securities 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.

Option A

6. If encumbered non-intermediated securities are sold or otherwise transferred and a security right in those securities is effective against third parties at the time of the transfer, the buyer or other transferee acquires them subject to the security right.
7. Notwithstanding paragraph 6 of this article, a transferee acquires the encumbered securities free of the security right if:
- (a) The secured creditor authorized the sale or other transfer free of the security right; or
 - (b) At the time of the sale or other transfer, the buyer or other transferee had no knowledge that the sale or other transfer violated the right of the secured creditor under the security agreement.
8. Paragraphs 6 and 7 of this article do not adversely affect the rights of the holders of non-intermediated securities under other law relating to the transfer of securities.

⁹ This rule is to be enacted only by States that have adopted article 1, subparagraph 1 (c).

Option B

6. A security right in non-intermediated securities is subordinate to any superior rights acquired by a buyer or other transferee of the securities under other law relating to the transfer of securities.

[Note to the Working Group: The Working Group may wish to note that: (a) paragraph 6 of option A parallels general rules of the draft Model Law and may thus not be necessary; (b) paragraph 7 of option A parallels the rule applicable to transferees of money and may need to be repeated with respect to transferees of non-intermediated securities; and (c) option B parallels the rule applicable to negotiable documents. The Working Group may also wish to note that, depending on the approach taken with respect to paragraph 1 of this article (i.e. whether para. 1 is retained or deleted and the matter discussed in the Guide to Enactment), the same approach may need to be followed with respect to negotiable instruments and negotiable documents.]