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Draft Guide to Enactment of the UNCITRAL Model Law on Secured Transactions

Note by the Secretariat

Addendum

Contents

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Chapter IV. The registry system

Article 28. Establishment of the Registry

1. Article 28 is based on recommendations 1 (f), of the Secured Transactions Guide and 1 of the Registry Guide. It provides for the establishment by the enacting State of a public registry to give effect to the provisions of the Model Law relating to the registration of notices with respect to security rights (the "Registry"). In particular, under article 18 of the Model Law, a non-possessory security right in an encumbered asset is effective against third parties, as a general rule, only if a notice with respect to the security right is registered in the Registry (see Secured Transactions Guide, chap. III, paras. 29-46 and the Registry Guide, paras. 20-25). Under article 29 of the Model Law, the time of registration is also, again as a general rule, the basis for determining the order of priority between a security right and the right of a competing claimant (see Secured Transactions Guide, chap. V, paras. 42-50, and the Registry Guide, paras. 36-46).

2. Depending on its drafting conventions, an enacting State may decide to incorporate the provisions relating to the registry system in its secured transactions law implementing the Model Law, in a separate law or other legal instrument, or in a combination thereof. To preserve flexibility for enacting States, all the relevant registry-related provisions are collected in a set of rules presented after article 28 of the Model Law and called the "Model Registry Provisions".[1]

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

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

5. The scope of application of the Model Law is limited to consensual security rights and outright transfers of receivables (see arts. 1 and 2, subpara. (kk)). Some States provide for the registration of notices of rights in movable assets created by law, such as preferential claims and the rights acquired by creditors who obtain judgments and take steps to have the judgment enforced (see art. 37 of the Model

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[1] A reference to an article in this chapter is a reference to an article of the Model Registry Provisions, unless otherwise indicated.

Law), the rights of holders of non-consensual non-possessory security rights, or the non-possessory ownership rights of commercial consignors or long-term lessors (see Registry Guide, paras. 40, 46, 50 and 51). If the enacting State follows this approach, it will need to specify whether registration is necessary for the creation or third-party effectiveness of these other rights and the priority effect of registration, including priority as against rights within the scope of the Model Law.

Model Registry Provisions

Section A. General rules

Article 1. Definitions and rules of interpretation

6. Article 1 contains definitions of key terms used in the Model Registry Provisions. These terms are derived in part from the Registry Guide (see Registry Guide, paras. 8 and 9). If the enacting State decides to incorporate the Model Registry Provisions in its enactment of the Model Law, these definitions should be included in the provision implementing article 2 of the Model Law. In general, the definitions are self-explanatory. Where elaboration is needed, it is provided in the commentary on the relevant articles below.

Article 2. Grantor's authorization for registration

7. Article 2 is based on recommendations 71 of the Secured Transactions Guide (see chap. IV, para. 106) and 7 (b), of the Registry Guide (see para. 101). Paragraph 1 provides that the registration of an initial notice is ineffective unless authorized by the grantor in writing (the rule is formulated in the negative, as the effectiveness of a registration is also subject to other requirements). To ensure that this rule does not interfere with the efficiency of the registration process, paragraph 6 confirms that the authorization is to be given off-record; and that the Registry is not entitled to require evidence of the existence of the grantor's authorization as part of the registration process.

8. Paragraphs 4 and 5 confirm that: (a) the grantor's authorization need not be obtained before registration; and (b) the conclusion of a written security agreement with the grantor automatically constitutes authorization without the need to include an express authorization clause. Thus, the post-registration conclusion of a security agreement will constitute retrospective "ratification" of an initially unauthorized registration to the extent of the assets described in the security agreement. If the initial security agreement between the parties covers a narrower range of encumbered assets than that described in the registered notice, the registration would still be unauthorized to the extent of those additional assets. However, if the parties were to later conclude a new security agreement covering the additional assets, this would constitute retroactive authorization.

9. Paragraph 2 requires the grantor's authorization for the registration of an amendment notice that adds encumbered assets to those described in the initial registered notice or any amendment notice. The grantor's authorization is not needed if the amendment notice adds assets that are covered by a security agreement between the parties, since, as already explained (see para. 8 above), under paragraph 5, the conclusion of a security agreement automatically constitutes

authorization. Moreover, as also explained (see para. 8 above), authorization may be given under paragraph 4 before the registration of a notice. Consequently, the subsequent conclusion of a security agreement covering the additional assets would constitute retroactive authorization for the registration of the amendment notice.

10. It should be noted that there is no need to register an amendment notice (and thus no need to obtain the authorization of the grantor) with respect to "additional assets" that are proceeds of encumbered assets described in a prior registered notice if the proceeds are: (a) of a type that fall within the existing description (for example, the description covers "all tangible assets" and the grantor exchanges one type of tangible asset for another (see Secured Transactions Guide, rec. 39)); or (b) "cash proceeds", that is, money, receivables, negotiable instruments or funds credited to a bank account (see art. 19, para. 1, of the Model Law).

11. Paragraph 2 contains language within square brackets, which will be necessary if the enacting State implements article 6, paragraph 3 (d) of the Model Law. Under that bracketed language, the grantor's written authorization must also be obtained for the registration of an amendment notice to increase the maximum amount set out in a registered notice for which the security right to which the registration relates may be enforced. This provision is only needed in systems that require this information to be set out in the security agreement and in the registered notice (see art. 8, subpara. (e), of the Model Registry Provisions and art. 6, para. 3 (d) of the Model Law). In States that adopt this approach, a separate authorization from the grantor is not needed if the grantor has agreed to the new amount in a security agreement, since the conclusion of a security agreement automatically constitutes retrospective authorization under paragraph 5, even if the agreement is concluded after the registration of the amendment notice (see para. 8 above).

12. Where an amendment notice seeks to add a new grantor, paragraph 3 generally requires the additional grantor's written authorization to be obtained in conformity with the general rule in paragraph 1 and in the same manner. The exception expressed in the bracketed wording in paragraph 3 is intended for enacting States that decide to implement option A or option B of article 26. It creates an exception to the requirement to obtain the grantor's written authorization where the new grantor is a buyer of an encumbered asset from the grantor and the purpose of the amendment is to enable the secured creditor to protect its priority status as against secured creditors and buyers that acquire rights in the encumbered asset from that buyer in accordance with these options. It should be noted that, if the identifier of a grantor changes after the registration of a notice, the grantor's authorization is likewise not required for the registration of an amendment notice to disclose its new identifier for the purposes of protecting the priority of the related security right against secured creditors and buyers who deal with the grantor after its identifier has changed pursuant to article 25. In this latter scenario, the purpose of registering the amendment notice is not to add a new grantor in the strict sense contemplated by paragraph 3 but rather to update the registry record in relation to the identifier of the grantor of record.

13. The registration of a notice, whether or not authorized by the grantor, is effective against third parties only to the extent that the assets described in the registered notice are actually covered by a security agreement between the parties. However, third parties have no means of obtaining this information with a search of the public registry record. Consequently, the grantor's ability to sell, or create a

security right in, the assets described in a registered notice will be impaired, even if those assets are not subject to a security right, because of the priority risk for subsequent secured creditors and buyers posed by the potential existence of a security right. If the grantor did not authorize the registration of the notice, or only authorized the registration of a notice covering a narrower range of encumbered assets, or has withdrawn an initial authorization, article 20 provides a procedure by which the grantor can compel the secured creditor to register a cancellation or amendment notice, as the case may be, to reflect the terms of the actual security agreement, if any, between the parties.

14. While this point is not directly relevant to the issue of the grantor's authorization in article 2, it should be noted that registration of an amendment notice may affect intervening competing claimants, if it: (a) adds encumbered assets; (b) increases the maximum amount; or (c) adds a new grantor. Thus, it takes effect only from the time when the registration of the amendment notice (not the initial notice) becomes effective (see art. 13, para. 1).

Article 3. One notice sufficient for multiple security rights

15. Article 3 is based on recommendations 68 of the Secured Transactions Guide (see chap. IV, para. 101) and 14 of the Registry Guide (see paras. 125 and 126). It confirms that a single registered notice is sufficient to achieve the third-party effectiveness of security rights arising under one or more security agreements between the parties identified in the notice. This rule applies regardless of whether the agreements are related to one another or are separate and distinct, and regardless of whether the notice relates to security rights in the grantor's current assets or assets in which the grantor acquires rights only after the registration. This is consistent with the notice registration system contemplated by the Model Law, under which a registrant need only submit a standardized notice containing basic information about the parties and the encumbered assets rather than having to register the underlying security agreements giving rise to the security rights to which the registration relates (see arts. 8 and 17-19).

16. A single registration is effective for security rights arising under one or more security agreements between the parties identified in the notice only to the extent that the information in the registered notice corresponds to the content of the off-record agreements between those parties (see Registry Guide, para. 126). If, for example, the parties enter into a security agreement that extends to assets not covered by the description of the encumbered assets in the registered notice, a new initial notice (or an amendment to the existing notice) will have to be registered for the security right in the additional assets to be effective against third parties, and that notice will take effect against third parties only from the time of its registration (see art. 13, para. 1).

Article 4. Advance registration

17. Article 4 is based on recommendations 67 of the Secured Transactions Guide (see chap. IV, paras. 98-101) and 13 of the Registry Guide (see paras. 122-124). It confirms that a registration may be made before the conclusion of a security agreement to which the notice relates, or the creation of any security right contemplated by any such agreement.

18. Registration in advance of the conclusion of any security agreement between the parties is practically possible under the notice registration system contemplated by the Model Law because, as noted in relation to article 3 (see para. 15 above), the underlying security agreement does not have to be deposited with the Registry or tendered for scrutiny. Where priority among competing secured creditors is determined by the general order of registration or third-party effectiveness rule in article 29 of the Model Law, advance registration is useful because it enables a secured creditor to be sure of its priority ranking even before the security agreement with the grantor is formally concluded. However, for a security right to be effective against other classes of competing claimants, the security right must also have been created (see Registry Guide, paras. 20 and 123). Accordingly, advance registration does not protect a secured creditor against a competing claimant, other than a competing secured creditor that acquires rights in the encumbered assets before the security agreement is actually entered into and the other requirements for creation are satisfied.

19. If a security agreement is never concluded between the parties, or only covers a narrower range of assets than those described in the registered notice, advance registration may have a negative impact on the ability of the person identified in the notice as the grantor to sell or create a security right in the assets described in the notice. As noted in relation to article 2 (see para. 13 above), article 20 provides for a procedure to enable the grantor to obtain the compulsory amendment or cancellation of a registered notice in this scenario.

Section B. Access to registry services

Article 5. Conditions for access to registry services

20. Article 5 is based on recommendations 54, subparagraph (c), (f) and (g), and 55 (b), of the Secured Transactions Guide (see chap. IV, paras. 25-228) and 4, 6 and 9 of the Registry Guide (see paras. 95-97 and 103-105).

21. Paragraphs 1 and 3 confirm that the Registry is public in the sense that any person is entitled to register a notice of a security right or search the registry record subject only to meeting the conditions governing access. For both types of service, the user must submit the (paper or electronic) form of notice or search request prescribed by the registry and pay or make any arrangements to pay the prescribed fees, if any (see art. 33). Under paragraph 1 (b), a registrant, as opposed to a searcher, must identify itself to the Registry in the prescribed manner. This requirement is aimed at assisting the person identified in a registered notice as the grantor to determine the identity of the registrant in the event that the grantor did not authorize the registration (see Registry Guide, para. 96). This consideration must be balanced against the need to ensure efficiency and speed in the registration process. Accordingly, the evidence of identity required of a registrant should be that which is generally accepted as sufficient in day-to-day commercial transactions in the enacting State (for example, an identity card, driver's licence or other state-issued official document).

22. If access to registry services is refused, paragraph 4 requires the Registry to communicate the specific reason (for example, the user failed to use the prescribed form or to pay the prescribed fee). The reasons must be communicated without

delay. What this means in practice depends on the mode by which the notice or search request is submitted to the Registry. If the system is designed to enable users to submit notices and search requests through electronic means of communication directly to the Registry, the system can and should be programmed to automatically communicate the reason during the registration process and display the reason on the registrant's screen. In the case of notices and search requests submitted in paper form, the registry staff will need a reasonable period of time to examine the notice or search request and prepare and communicate a formal response.

23. In order to facilitate access to registry services and avoid unnecessary refusals, the Registry should be organized to accept all modes of payment in common commercial use in the enacting State. However, controls will need to be introduced to avoid the risk of staff embezzlement of cash payments and to ensure the confidentiality of financial information submitted by users (see Registry Guide, para. 138). To facilitate efficient access by frequent users (such as financial institutions, automobile dealers or other suppliers of goods on credit, lawyers and other intermediaries), users should be given the option of setting up a pre-payment account that enables them to deposit funds on an ongoing basis to pay for their ongoing requests for services.

24. To limit the risk of the registration of amendment and cancellation notices not authorized by the person identified as the secured creditor, paragraph 2 requires persons who submit an amendment or cancellation notice to satisfy the secure access requirements specified by the Registry. For example, the Registry might require registrants to set up a password-protected account when submitting an initial notice, and then require all amendment and cancellation notices to be submitted through that account. Alternatively, the system might be designed to assign a unique user code to registrants upon registration of an initial notice and then require entry of that code on all amendment and cancellation notices submitted for registration. Secured access measures of this kind ensure that only the initial registrant and those to whom the registrant chooses to disclose the password or code are able to register an amendment or cancellation notice (with respect to the effectiveness of the registration of unauthorized amendment or cancellation notices, see art. 21).

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

25. Article 6 is based on recommendations 8 and 10 of the Registry Guide (see paras. 97-99 and 106). Paragraph 1 obligates the Registry to reject the registration of a notice submitted for registration if no information, or only illegible information, has been entered in one or more of the mandatory designated fields in the notice. As all mandatory fields must be completed for a registered notice to be effective, this provision ensures that the information in submitted notices that clearly do not satisfy the minimum requirements for effectiveness are never entered into the registry record. On the other hand, even if all the mandatory fields in a submitted notice contain legible information and the notice is therefore accepted for registration, it does not follow that the registration is effective if the information that is entered, while being legible, is erroneous or incomplete (with respect to whether and to what extent an error or omission in the information contained in a registered notice renders the registration ineffective, see art. 24; with respect to whether and to what extent a secured creditor is obligated to update the record

where the information in a registered notice becomes inaccurate as a result of post-registration events, see arts. 25 and 26).

26. Paragraph 2 obligates the Registry to reject a search request if no information, or only illegible information, has been entered in one of the designated fields for entering a search criterion. Since searchers are entitled to search by either the identifier of the grantor or the registration number assigned to the initial notice (see art. 22), it is sufficient if legible information is entered into at least one of the search criterion fields. The fact that at least one of these fields contains legible information does not necessarily mean that a search result will be accurate since the criterion entered by the searcher may be erroneous or incomplete. To avoid any arbitrary decisions on the part of the Registry, paragraph 3 confirms that the Registry may not reject the registration of a notice or search request where the registrant or searcher satisfies the access conditions set out in paragraphs 1 and 2 respectively.

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

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

28. Article 7 is based on recommendations 54 (d), and 55 (b), of the Secured Transactions Guide (see chap. IV, paras. 15-17 and 48) and 7 of the Registry Guide (see paras. 100 and 102). Paragraph 1 obligates the Registry to maintain the identity information submitted by registrants in compliance with article 5, paragraph 1 (b), and to provide that information upon request to the person identified in the registered notice as the grantor. While this information does not form part of the public or archived registry record, it nonetheless must be preserved by the Registry in a manner that enables it to be retrieved in association with the registered notice to which it relates. This is consistent with the rationale for obtaining and preserving this information which is to assist the grantor in identifying the registrant in cases where the registration of the notice was not authorized by the grantor (see para. 21 above). In order to ensure that this objective is balanced against the need to facilitate efficiency of the registration process, paragraph 2 provides that the Registry may not require further verification of the identity information provided by a registrant under article 5, paragraph 1 (b). With the same objective in mind, paragraph 3 generally prohibits the Registry from scrutinizing the form or content of notices and search requests submitted to it except to the extent needed to give effect to articles 5 and 6.

Section C. Registration of a notice

Article 8. Information required in an initial notice

29. Article 8 is based on recommendations 57 of the Secured Transactions Guide (see chap. IV, para. 65) and 23 of the Registry Guide (see paras. 157-160). It sets out the items of information required to be entered in the appropriate designated fields in an initial notice submitted to the Registry for registration. The items of information specified in subparagraphs (a), (b) and (c) are the subject of articles 9, 10 and 11, and the reader is generally referred to the commentary on those articles. It should be noted that where a notice relates to more than one grantor or secured creditor, the required information should be entered separately for each grantor or secured creditor.

30. Subject to its privacy laws, the enacting State may decide to require "additional information" (such as the birth date of the grantor or an identification number issued by the enacting State) to be entered to assist in uniquely identifying a grantor where there is a risk that many persons may have the same name (see bracketed text in art. 8, subpara. (a)). If this approach is adopted, the form of notice prescribed by the enacting State should provide a separate designated field for entering the "additional information". The enacting State should also specify the type of additional information to be included and make its inclusion mandatory in the sense that it must be entered in the relevant field for a notice to be accepted by the Registry. It will also be necessary to address cases in which the grantor is not a citizen or resident of the enacting State, or for any other reason has not been issued an identification number. Subject to privacy considerations, the enacting State might, for example, provide that the number of the grantor's foreign passport or some other foreign official document is a sufficient substitute (on all these points, see Registry Guide, rec. 23 (a)(i), and paras. 167-169, 171, 181-183, 226, as well Annex II, Examples of registry forms).

31. Subparagraph (d) appears within square brackets, as an indication of the duration of registration on an initial notice is required only if the enacting State adopts options B or C of article 14 (see paras. 50-52 below; see also Registry Guide, paras. 199-204). Subparagraph (e) also appears within square brackets, as an indication of the maximum amount for which the security right may be enforced is required only if the enacting State implements the approach set out in article 6, paragraph 3 (d), of the Model Law, which also appears within square brackets (see para. A/CN.9/WG.VI/WP.71/Add.1, para. 54).

Article 9. Grantor identifier

32. Article 9 is based on recommendations 59 and 60 of the Secured Transactions Guide (see chap. IV, paras. 68-74), as well as recommendations 24 and 25 of the Registry Guide (see paras. 161-183). It provides that the identifier of the grantor is its name. It then sets out separate rules for determining the name of the grantor depending on whether the grantor is a natural person or a legal person or other entity.

33. If the grantor is a natural person, paragraph 1 provides that the grantor's name is the name that appears in the official document specified by the enacting State as the authoritative source. Since not all grantors may possess a common official

document (e.g., an identity card or driver's licence), the enacting State will need to specify alternative official documents as authoritative sources and specify the hierarchy of authoritativeness among them (for examples of possible approaches, see Registry Guide, paras. 163-168).

34. As already noted (see para. 30 above), the enacting State may require the entry of a State-issued identity or other official number as additional information to assist in uniquely identifying a grantor. It may also decide to make this number an alternative grantor identifier. Since the grantor identifier is the criterion used to search the registry record, this approach is only feasible if there is a reliable record or other objective source that third-party searchers can consult to determine a person's official number, If this approach is adopted, it will also be necessary for the enacting State to address cases in which the grantor is not a citizen or resident of the enacting State, or for any other reason has not been issued an identification number. The enacting State might, for example, provide that the number in some other foreign official document is a sufficient substitute provided again that the relevant number is accessible to third-party searchers. Otherwise, the name of the foreign grantor will have to be used as the grantor identifier (see Registry Guide, paras. 168 and 169).

35. Paragraph 2 requires the enacting State to indicate which components of the name of a grantor who is a natural person must be entered in the registered notice. The enacting State will need to specify, for example, whether only the given and family name of the grantor is required or whether a middle name or initial must also be included. It will also need to address the scenario where the grantor's name consists of a single word, for example, by providing that that word should be entered in the family name field and by ensuring that the registry system is designed so as not to reject notices that have nothing entered in the other name fields (see Registry Guide, para. 165).

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

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

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

Article 10. Secured creditor identifier

39. Article 10 is based on recommendations 57 (a) of the Secured Transactions Guide (see chap. IV, para. 81) and 27 of the Registry Guide (see paras. 184-189). It largely replicates the rules in article 9 for determining the identifier of the grantor.

Unlike under article 9 (read together with art. 8, subpara. (a)), however, under article 10 (read together with art. 8, subpara. (b)), the registrant may enter the name of a representative of the secured creditor (e.g. a service provider or an agent of a syndicate of lenders). This approach is intended to protect the privacy of the actual secured creditor and facilitate the efficiency of arrangements such as syndicated loans where there are multiple secured lenders whose identity may change over time. This approach does not have a negative impact on the grantor, who would typically know the identity of the actual secured creditor from their dealings, or third parties, as long as the representative is authorized to act on behalf of the actual secured creditor (see Registry Guide, paras. 186 and 187). It should also be noted that, as the security right is created by an off-record security agreement, the entry of the name of a representative as the secured creditor on a registered notice does not make the representative the actual secured creditor.

Article 11. Description of encumbered assets

40. Article 11 is based on recommendations 63 of the Secured Transactions Guide (see chap. IV, paras. 82-86) and 28 of the Registry Guide (see paras. 190-192). The test for the adequacy of a description of the encumbered assets in a registered notice in paragraph 1 parallels the test for the adequacy of a description of the encumbered assets in a security agreement (see art. 9 of the Model Law). The description in a registered notice need not be identical to the description in any related security agreement so long as it reasonably allows identification of the relevant encumbered assets in accordance with the test in paragraph 1. On the other hand, a description in a registered notice that satisfies this test will not make a security right effective against third parties to the extent that the description includes assets that are not covered by any related security agreement, since the requirements for the effective creation of a security right will not have been satisfied.

41. Paragraph 2 confirms that a description in a registered notice that refers to all of the grantor's movable assets or to all of the grantor's assets within a specified generic category (for example, all receivables owing to the grantor) satisfies the test in paragraph 1 that the description reasonably allow identification of the encumbered assets. It follows that a generic description will be sufficient even if any related security agreement only covers a specific asset within that broad generic category (for example, the description in the registered notice refers to all "tangible assets of the grantor", whereas the security agreement only covers a specific tangible asset). However, the effectiveness of the registration in this scenario is dependent on the authorization of the grantor pursuant to article 2; if the grantor only authorized a registration covering a specific asset, the registration will only be effective with respect to that asset. Moreover, the grantor is entitled, pursuant to article 20, paragraph 1, to compel the secured creditor to register an amendment notice that narrows the description of the assets in the registered notice to correspond to the encumbered assets actually covered by the security agreement between them unless the grantor separately authorized the secured creditor to register a broader description (see para. 8 above) and has not withdrawn that authorization.

42. The secured transactions laws of some States adopt special alphanumerical ("serial number") rules for describing specified classes of high-value assets that have a significant resale market. In States that adopt this approach, entry of the

serial number in its own designated field is required in the sense of being necessary to preserve the priority of the security right as against specified classes of third parties that acquire rights in the asset. Enacting States that are interested in adopting this approach are referred to the discussion in the Registry Guide (for the rationale for, and the advantages and disadvantages of this, approach, see Registry Guide, paras. 131-134; for the consequences of a failure of entering the serial number or an error in entering the serial number, see Registry Guide, paras. 193 and 213; and for the registry design and registry provisions needed to implement this approach, see Registry Guide, para. 266). It should be noted that even in legal systems that do not adopt this approach, a registrant may wish to include the serial number in the description it enters in the notice as a convenient method of describing the encumbered asset in a manner that reasonably allows its identification (see Registry Guide, paras. 194 and 212).

43. If proceeds of an encumbered asset are not in the form of money, receivables, negotiable instruments or rights to payment of funds credited to a bank account or are not already covered by the description of the encumbered assets in a registered notice, the secured creditor must register an amendment notice to add a description of the proceeds within a short period of time after the proceeds arise in order to preserve the third-party effectiveness and priority of its security right in the proceeds from the date of the initial registration (see art. 19, para. 2, of the Model Law). An amendment is necessary because otherwise a search result would not disclose the potential existence of a security right in the assets constituting the proceeds (see Registry Guide, paras. 195-197).

44. It should be noted that the inclusion of a description of an encumbered asset in a registered notice does not imply or represent that the grantor has or will have rights in that asset (see art. 6, para. 1, of the Model Law). That is to say, the Registry only provides for the disclosure of potential security rights in assets, not ownership or other rights. Whether the grantor owns or has rights in the relevant asset is determined by other law.

Article 12. Language of information in a notice

45. Article 12 is based on recommendation 22 of the Registry Guide (see paras. 153-156; the Secured Transactions Guide includes a discussion of this matter in chapter IV, paras. 44-46, but does not include a recommendation). Paragraph 1 requires the information contained in a notice to be expressed in the language or languages to be specified by the enacting State with the exception of the names and addresses of the grantor and the secured creditor or its representative. Typically, the enacting State will require registrants to use its officially recognized language or languages. As the names and addresses of the grantor and the secured creditor or its representative generally need not be translated (see para. 46 below), registrants will only need to translate the description of the encumbered assets (as the other items of information required to be entered in a notice may be expressed by numbers). Where the description of the encumbered assets is not expressed in the required language or languages, the registration of the notice would likely seriously mislead a reasonable searcher and thus would be ineffective (see art. 24, para. 4).

46. Paragraph 2 requires all information in a notice to be in the character set prescribed and publicized by the Registry. Where the names and addresses of the grantor and secured creditor or its representative are expressed in a character set

different from the character set used in the language or languages recognized by the enacting State, guidance will need to be given on how the characters are to be adjusted or transliterated to conform to the language of the Registry (see Registry Guide, para. 155). If the information in a notice submitted to the Registry is not in the character set prescribed and publicized by the Registry, the notice will be rejected as illegible under article 6, paragraph 1 (a) (for the same rule with respect to search requests, see art. 6, para. 2).

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

47. Article 13 is based on recommendations 70 of the Secured Transactions Guide (see paras. 102-105) and 11 of the Registry Guide (see paras. 107-112). Paragraph 1 provides that the registration of an initial or amendment notice submitted to the Registry becomes effective only once the information in the notice is entered into the public registry record so that it is accessible to searchers (see the definition of the term "registry record" in art. 1, subpara. (l)). If the registry system is designed to enable users to submit information in a notice to the Registry through electronic means of communication directly without the intervention of registry staff, there will be little or no delay between the time when the information in a notice is submitted to the Registry and the time when it becomes available to searchers. But in systems that permit or require the use of paper notice forms, there will inevitably be some time lag since the registry staff must enter the information on the paper notice form into the registry record on behalf of registrants. In view of the importance of the timing and order of registration to the third-party effectiveness and priority of a security right, paragraph 2 obligates the Registry to enter the information into the registry record without delay after the initial or amendment notice is submitted and in the order in which it was submitted. For the same reason, paragraph 3 requires the Registry to record the date and time when the information in the initial or amendment notice was entered in the public registry record so as to be accessible to searchers and to make this information available to searchers of the public registry record.

48. Paragraph 4 deals with the time of effectiveness of the registration of a cancellation notice. Option A provides that the registration of a cancellation notice is effective once the information in the registered notices to which the cancellation notice relates is no longer publicly searchable. Option A should be adopted by enacting States that adopt option A or B of article 21, since in States that adopt one of these options the Registry is obligated to remove information in a registered notice from the public registry record and archive it upon registration of a cancellation notice pursuant to option A of article 30. Option B provides that the registration of a cancellation notice becomes effective once the information in the registered notices to which the cancellation notice is entered into the registry record so as to be accessible to searchers. Accordingly, option B should be adopted by enacting States that adopt option C or D of article 21, since in States that adopt this approach the Registry is obligated to retain the information in all registered notices, including cancellation notices, on the public registry record until the registration lapses pursuant to option B of article 30.

49. Option A and option B of paragraph 5 require the Registry to record the date and time of effectiveness of the registration of a cancellation notice as determined by option A and option B of paragraph 4 respectively. Accordingly, enacting States

that adopt option A of paragraph 4 should adopt option A of paragraph 5, while enacting States that adopt option B of paragraph 4 should adopt option B of paragraph 5.

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

50. Article 14 is based on recommendations 69 of the Secured Transactions Guide (see chap. IV, paras. 87-91) and 12 of the Registry Guide (see paras. 113-121, 240 and 241). It offers enacting States a choice of three different approaches to the determination of the initial period of effectiveness (or duration) of the registration of a notice. If option A is enacted, an initial notice (and any associated amendment notice) is effective for the period stipulated by the enacting State. If option B is enacted, registrants are permitted to choose the desired period of effectiveness. If option C is enacted, registrants are likewise permitted to choose the period of effectiveness but only up to the maximum number of years stipulated by the enacting State.

51. All options permit registrants to extend (and re-extend) the period of effectiveness of a notice before its expiry by the registration of an amendment notice. Under option A, the duration of the registration would be extended for an equivalent period. Under option B or option C the registrant is permitted to choose the further period of effectiveness, but only up to the maximum number of years stipulated by the enacting State in the case of option C.

52. If option B or option C is enacted, the period of effectiveness of a registered notice is a mandatory component of the information required to be included in a notice submitted to the registry (see art. 8, subpara. (d)). States that adopt either of these options will also need to indicate on the prescribed notice form how registrants must enter the desired period of effectiveness. The notice form might be designed to enable registrants to simply enter the desired number of whole years. Alternatively, the notice form might permit registrants to enter the specific day, month and year on which the registration is to expire unless renewed.

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

53. Article 15 is based on recommendations 55 subparagraphs (c), (d) and (e) of the Secured Transactions Guide (see chap. IV, paras. 49-53) and 18 of the Registry Guide (see paras. 145-149). Paragraph 1 obligates the Registry to send a copy of the information in a registered notice to the person identified in the notice as the secured creditor without delay after the registration becomes effective. This enables that person to verify whether the registration was correct and authorized (for the effectiveness of unauthorized registrations, see art. 21; see also Registry Guide, paras. 249-259; for the liability of the Registry for failure to send a copy of a notice, see art. 32).

54. In order to enable the person identified as the grantor in a registered notice to take the steps necessary correct the registry record if the registration was wholly or partially unauthorized (see art. 20), paragraph 2 obligates the person identified as the secured creditor in the copy of the registered notice sent to it by the Registry pursuant to paragraph 1 to forward it to the person identified in the notice as the grantor. The secured creditor has to comply with this obligation before the expiry of the period specified by the enacting State after it receives the notice. The copy must

be sent to the grantor at its address set forth in the registered notice or at the grantor's new address, if the secured creditor knows that the grantor has changed its address and knows or could reasonably discover that address.

55. Paragraphs 3 and 4 confirm that non-compliance by the secured creditor with its obligation under paragraph 2 does not by itself affect the effectiveness of its registration but only exposes the secured creditor to liability to the grantor for a nominal amount (to be specified by the enacting State) and any actual loss or damage caused by the non-compliance.