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Report of Working Group VI (Security Interests) on the work of its twenty-first session (New York, 14-18 May 2012)

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-7	2
II. Organization of the session	8-13	3
III. Deliberations and decisions	14	4
IV. Registration of security right in movable assets	15-72	5
A. General	15	5
B. Terminology and recommendations (A/CN.9/WG.VI/WP.50 and Add.1) . . .	16-68	5
C. Examples of registration forms (A/CN.9/WG.VI/WP.50/Add.2)	69-72	16
V. Future work	73-76	17



I. Introduction

1. At its present session, Working Group VI (Security Interests) continued its work on the preparation of a text on the registration of security rights in movable assets, pursuant to a decision taken by the Commission at its forty-third session, in 2010.¹

2. At its forty-third session, in 2010 (New York, 21 June-9 July 2010), the Commission considered a note by the Secretariat on possible future work in the area of security interests (A/CN.9/702 and Add.1). The note discussed all the items discussed at an international colloquium on secured transactions (Vienna, 1-3 March 2010), namely registration of notices with respect to security rights in movable assets, security rights in non-intermediated securities, a model law on secured transactions, a contractual guide on secured transactions, intellectual property licensing and implementation of UNCITRAL texts on secured transactions.² The Commission agreed that all issues were interesting and should be retained on its future work agenda for consideration at a future session. However, in view of the limited resources available to it, the Commission agreed that priority should be given to registration of security rights in movable assets.³

3. The Commission's decision was based on its understanding that such a text would usefully supplement the Commission's work on secured transactions and provide urgently needed guidance to States with respect to the establishment and operation of security rights registries. In addition, it was stated that secured transactions law reform could not be effectively implemented without the establishment of an efficient, publicly accessible security rights registry. Moreover, it was emphasized that the UNCITRAL Legislative Guide on Secured Transactions (the "Secured Transactions Guide") did not address in sufficient detail, the various legal, administrative, infrastructural and operational questions that needed to be resolved to ensure the successful and efficient implementation of a registry.⁴ The Commission also agreed that, while the specific form and structure of the text could be left to the Working Group, the text could: (a) include principles, guidelines, commentary, recommendations and model regulations; and (b) draw on the Secured Transactions Guide, texts prepared by other organizations and national law regimes that introduced security rights registries similar to the registry recommended in the Secured Transactions Guide.⁵

4. At its eighteenth session (Vienna, 8-12 November 2010), the Working Group began its work on the preparation of a text on the registration of notices with respect to security rights in movable assets by considering a note by the Secretariat entitled "Registration of security rights in movable assets" (A/CN.9/WG.VI/WP.44 and Add.1 and 2). Having agreed that the Secured Transactions Guide was consistent with the guiding principles of UNCITRAL texts on e-commerce, the Working Group

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 268.

² The papers presented at the colloquium are available at www.uncitral.org/uncitral/en/commission/colloquia/3rdint.html.

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

⁴ *Ibid.*, para. 265.

⁵ *Ibid.*, para. 266.

also considered certain issues arising from the use of electronic communications in security rights registries to ensure that, like the Secured Transactions Guide, the text on registration would also be consistent with those principles (A/CN.9/714, paras. 34-47).

5. At its nineteenth session (New York, 11-15 April 2011), the Working Group considered a note by the Secretariat entitled “Draft Security Rights Registry Guide” (A/CN.9/WG.VI/ WP.46 and Add.1 to 3). At that session, differing views were expressed as to the form and content of the text to be prepared (A/CN.9/719, paras. 13-14), as well as with respect to the question whether the text should include model regulations or recommendations (A/CN.9/719, para. 46).

6. At its forty-fourth session (Vienna, 27 June-8 July 2011), the Commission emphasized the significance of the Working Group’s work in particular in view of efforts undertaken by States towards establishing a registry, as well as the potential beneficial impact of such a registry on the availability and the cost of credit. With respect to the form and content of the text to be prepared, the Commission agreed that the mandate of the Working Group, leaving the specific form and content of the text to the Working Group, did not need to be modified. It was further agreed that, in any case, the Commission would make a final decision once the Working Group had completed its work and submitted the text to the Commission.⁶

7. At its twentieth session (Vienna, 12-16 December 2011), the Working Group continued its work based on a note by the Secretariat entitled “Draft Security Rights Registry Guide” (A/CN.9/WG.VI/ WP.48/Add.3). The Working Group agreed that, as to the form of the text, it should be a guide (the “draft Registry Guide”) with commentary and recommendations along the lines of the Secured Transactions Guide (A/CN.9/740, para. 18). In addition, it was agreed that, where the draft Registry Guide offered options, examples of model regulations could be included in an annex to the draft Registry Guide. As to the presentation of the text, it was agreed that the draft Registry Guide should be presented as a separate, stand-alone, comprehensive text that would be consistent with the Secured Transactions Guide, and be tentatively entitled “Technical Legislative Guide on the Implementation of a Security Rights Registry” (A/CN.9/740, para. 30). As to future work, it was agreed that, while the draft Registry Guide was an important text that was urgently needed by States, it was premature to decide to submit it, in whole or in part, to the Commission for approval at its forty-fifth session (A/CN.9/740, para. 92). It was widely felt that the Working Group should be able to consider its future work at its twenty-first session, when it expected to have a more complete overview of all the material in the draft Registry Guide. The Working Group requested the Secretariat to prepare a revised version of the text reflecting the deliberations and decisions of the Working Group (A/CN.9/740, para. 13).

II. Organization of the session

8. The Working Group, which was composed of all States members of the Commission, held its twenty-first session in New York from 14 to 18 May 2012. The session was attended by representatives of the following States members of the

⁶ Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 225.

Working Group: Austria, Benin, Brazil, Cameroon, Canada, Chile, China, Colombia, El Salvador, France, Gabon, Germany, India, Israel, Italy, Japan, Kenya, Mexico, Nigeria, Norway, Paraguay, Philippines, Poland, Republic of Korea, Russian Federation, South Africa, Thailand, Turkey, Uganda, United States of America and Venezuela (Bolivarian Republic of).

9. The session was attended by observers from the following States: Belgium, Croatia, Ghana, Guatemala, Indonesia, Iraq, Kuwait, Saudi Arabia and Switzerland. The session was also attended by observers from the Holy See and the European Union.

10. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: The World Bank;

(b) *International non-governmental organizations invited by the Commission*: American Bar Association (ABA), Commercial Finance Association (CFA), International Insolvency Institute (III), National Law Centre for Inter-American Free Trade (NLCIFT), New York City Bar (NYCBAR), New York State Bar Association (NYSBA), the European Law Students' Association (ELSA) and Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ).

11. The Working Group elected the following officers:

Chairman: Mr. Rodrigo LABARDINI FLORES (Mexico)

Rapporteur: Ms. Liv Johanne RO (Norway)

12. The Working Group had before it the following documents: A/CN.9/WG.VI/WP.49 (Annotated Provisional Agenda), A/CN.9/WG.VI/WP.50 and Addenda 1-2 (Draft Technical Legislative Guide on the Implementation of a Security Rights Registry), A/CN.9/WG.VI/WP.48 and Addenda 1-2 (Draft Security Rights Registry Guide).

13. The Working Group adopted the following agenda:

1. Opening of the session and scheduling of meetings.
2. Election of officers.
3. Adoption of the agenda.
4. Registration of security rights in movable assets.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

14. The Working Group considered a note by the Secretariat entitled "Draft Technical Legislative Guide on the Implementation of a Security Rights Registry" (A/CN.9/WG.VI/WP.50 and Add.1-2). The deliberations and decisions of the Working Group are set forth below in chapters IV and V. The Secretariat was

requested to prepare a revised version of the text reflecting the deliberations and decisions of the Working Group.

IV. Registration of security right in movable assets

A. General

15. Recalling its decision that the text to be prepared should take the form of a guide such as the Secured Transactions Guide (A/CN.9/740, para. 18), the Working Group decided to begin its deliberations with the terminology and recommendations of the draft Registry Guide (A/CN.9/WG.VI/WP.50 and Add.1). As to the question whether the draft Registry Guide should include examples of model regulations, the Working Group decided to postpone its consideration until it had completed its review of the recommendations.

B. Terminology and recommendations (A/CN.9/WG.VI/WP.50 and Add.1)

16. With respect to the term “amendment”, it was agreed that the deletion of information contained in a notice should be qualified so as not to amount to cancellation of the notice. It was also agreed that the term “cancellation” should also be explained.

17. With respect to the term “grantor”, it was agreed that, to avoid any confusion in view of the fact that that term was explained differently in the Secured Transactions Guide, the meaning of that term in the draft Registry Guide should be qualified by reference to instances when reference was made to a notice. The suggestion was made that the term “secured creditor” should also be explained along the lines of the explanation of the term “grantor” by referring to the person identified in the notice as secured creditor, as at the time of registration there might be no actual secured creditor (or grantor). In view of the fact that that meaning was assigned to the term “registrant”, it was agreed that the matter should be postponed until the Working Group had completed its consideration of the recommendations of the draft Registry Guide and determined which term to use.

18. With respect to the term “registration” the suggestion was made that reference should also be made to amendments. However, it was agreed that such a reference was not necessary as the term “notice” included an initial, amendment or cancellation notice.

19. With respect to the term “registration number”, it was agreed that the reference to “any related subsequent notice” was unnecessary and should be deleted.

20. With respect to the term “registry record”, differing views were expressed as to whether it meant information in all notice or just a particular notice. The Working Group deferred making a decision until it had considered the relevant recommendations of the draft Registry Guide (see para. 68 below).

21. Subject to the above-mentioned changes (see paras. 16-20 above), the Working Group approved the substance of the terminology.

Recommendation 1: The registry

22. The Working Group approved the substance of recommendation 1 unchanged.

Recommendation 2: Appointment of the registrar

23. The Working Group approved the substance of recommendation 2 unchanged.

Recommendation 3: Duties of the registry

24. For pedagogical purposes, the Working Group agreed that, even though recommendation 3 did not add anything new to the draft Registry Guide, it should be retained as an indicative list of the duties of the registry. It was also agreed that subparagraph (d) should be aligned with recommendation 70 of the Secured Transactions Guide (and refer to the date and time when information in a notice became available to searchers) and subparagraph (i) should be aligned with recommendation 55, subparagraph (e) of the Secured Transactions Guide (and require that a copy of the notice be sent only to the registrant that submitted the notice). A number of drafting suggestions were made and referred to the Secretariat. Subject to those changes, the Working Group approved the substance of recommendation 3.

Recommendation 4: Public access to the registry services

25. The Working Group approved the substance of recommendation 4 unchanged.

Recommendation 5: Operating days and hours of the registry

26. It was agreed that recommendation 5 should be revised to ensure that it did not inadvertently imply that a registry should maintain a physical office. It was also agreed that the bracketed language in subparagraph (d), referring to the circumstances in which a suspension of the registry services would be justified, should be deleted and the matter could be discussed in the commentary by reference to an indicative list of circumstances. It was also agreed that the commentary should discuss the potential liability of the registry (rather than that of the individual registry staff) referring the matter to national law. Subject to those changes, the Working Group approved the substance of recommendation 5.

Recommendation 6: Access to registration services

27. The Working Group agreed that only subparagraphs (a) (i) to (iii) and (b) (i) to (iii) should be retained in recommendation 6, as the rest of the text in recommendation 6 did not set out conditions for access to registration services, but rather conditions for effectiveness of a registration or grounds for rejection of a notice, a matter addressed in recommendation 9 (see para. 30 below). Subject to that change, the Working Group approved the substance of recommendation 6.

Recommendation 7: Access to searching services

28. The Working Group agreed that the only condition for a searcher to gain access to the searching services of a registry should be the payment or arrangement for payment of fees, if any. It was also agreed that the commentary should explain that any further requirements not addressed in the Secured Transactions Guide

(for example, identification of the searcher) should be left to national law. Subject to those changes, the Working Group approved the substance of recommendation 7.

Recommendation 8: Authorization

29. The Working Group agreed that the commentary to recommendation 8 (and any other relevant recommendation) should explain which part of the recommendation included a direction to the registry and which part summarized or paraphrased the recommendations of the Secured Transactions Guide, providing background information. Subject to those changes in the commentary, the Working Group approved the substance of recommendation 8 unchanged.

Recommendation 9: Rejection of a registration or search request

30. It was agreed that only subparagraphs (d) to (e) dealt with grounds for the rejection of a registration request and should be retained, while subparagraphs (a) to (c) dealt with conditions for access to registration services and were covered in recommendation 6 (see para. 27 above). It was also agreed that the grounds for the rejection of a registration request should be treated differently from the grounds for the rejection of a search request. In that connection, it was agreed that, once a person had gained access to searching services, if a searcher did not indicate the appropriate search criterion, the search would not produce a correct result, but it would not be rejected. Moreover, it was agreed that subparagraph (f) should be limited to circumstances where only the required information was illegible. Subject to those changes, the Working Group approved the substance of recommendation 9.

Recommendation 10: Date and time of registration

31. It was agreed that recommendation 10 should set out first the rule contained in subparagraph (c) as it stated the premise of the recommendation that was based on recommendation 70 of the Secured Transactions Guide. In addition, it was agreed that subparagraph (a) should be revised to refer also to the date and time when the information in a notice became available to searchers, namely the point of reference for determining priority under the Secured Transactions Guide. Moreover, it was agreed that subparagraph (b) should appear next to direct the registry that information in notices should be entered into the record in the order they were received. It was also agreed that the commentary should clarify that, in a hybrid system, according to recommendation 10 and in view of the policy of the Secured Transactions Guide in favour of an electronic registry (recommendation 54, subparagraph (j)), the notice that would become available to searchers first (for example, the electronic notice that would be submitted directly, even if it were submitted after the paper notice) would have priority. Subject to those changes, the Working Group approved the substance of recommendation 10.

Recommendation 11: Period of effectiveness of registration

32. The Working Group agreed that all options of recommendation 11 should be retained and the commentary should explain that the option chosen by an enacting State should correspond to its secured transactions law. With respect to option A, it was agreed that, while it could be discussed in the commentary, the possibility of the parties reducing the legal period of effectiveness by agreement should not be recommended, as it would result in additional expense for the design of the registry

and the registration could be cancelled if the debt was paid before the expiry of the legal period of effectiveness. With respect to option B, it was agreed that the commentary should explain that it was consistent with the approach recommended in the Secured Transactions Guide (recommendation 69) and did not necessarily mean that a registration would remain effective indefinitely, as the period of effectiveness would be indicated in the notice and, if the debt were paid, the registration could be cancelled. It was also agreed that the requirement for the registrant to indicate in the notice the period of effectiveness of the registration should be treated as a mandatory requirement with the result that a notice would be rejected if it did not indicate the period of effectiveness. At the same time, it was agreed that the commentary could discuss the possibility of designing the registry to automatically include a certain period of effectiveness if the registrant failed to do so. Subject to those changes in the commentary, the Working Group approved the substance of recommendation 11 unchanged.

Recommendation 12: Time when a notice may be registered

33. The Working Group agreed that the commentary should explain that recommendations 12 and 13 did not deal with issues related to the operation of the registry but rather set out legal rules for instructive purposes. Subject to that clarification in the commentary, the Working Group approved the substance of recommendation 12 unchanged.

Recommendation 13: Sufficiency of a single notice

34. Subject to the above-mentioned clarification in the commentary (see para. 33), the Working Group approved the substance of recommendation 3 unchanged.

Recommendation 14: Indexing of information in the registry record

35. It was agreed that subparagraph (b) should be retained outside of square brackets but revised to state the rule that a search would only be possible by the grantor's identifier and not by the secured creditor's identifier. It was also agreed that the commentary could explain that a secured creditor should be able to search by its own name (establishing its identity) and the registry should be able to search by the name of the secured creditor to make a global amendment. Subject to those changes, the Working Group approved the substance of recommendation 14.

Recommendation 15: Integrity of the registry record

36. The Working Group approved the substance of recommendation 15 unchanged.

Recommendation 16: Amendment of information in the registry record

37. It was agreed that recommendation 16 should be revised to provide that the registry should allow the amendment of information in the registry record further to the registration of an amendment notice or according to a judicial or administrative order. It was also agreed that the commentary should clarify that only the secured creditor had the right to effect an amendment, while the grantor could seek an amendment according to recommendation 32. Subject to those changes, the Working Group approved the substance of recommendation 16.

Recommendation 17: Removal of information from the registry record

38. It was agreed that the second sentence of recommendation 17 should be revised to clarify that it dealt with compulsory cancellation according to recommendation 32. Subject to that change, the Working Group approved the substance of recommendation 17.

Recommendation 18: Archival of information removed from the registry record

39. It was agreed that recommendation 18 should be revised to clarify that the purpose of the retrieval of information was to allow that information to be searched. In addition, it was agreed that the time of archival should be left to the discretion of each enacting State. Moreover, it was agreed that the commentary should discuss the various purposes of archiving information (for example, establishing priority in the case of a prolonged court or insolvency proceeding, or for the purposes of tax or money-laundering legislation). Subject to those changes, the Working Group approved the substance of recommendation 18.

Recommendation 19: Responsibility with respect to the information in a notice

40. It was agreed that the commentary should clarify that, consistent with recommendation 54, subparagraph (d) of the Secured Transactions Guide, the registry did not have to verify the accuracy, completeness or sufficiency of information in a notice but it could do so as long as, with the exception of the circumstances described in recommendation 9, it did not reject an inaccurate, incomplete or insufficient notice and was not held liable. In addition, it was agreed that the commentary should clarify that the key objective of recommendation 19 was to state that it was the responsibility of the registrant, and not of the registry, to ensure that information in a notice was accurate, complete and legally sufficient. Subject to those clarifications in the commentary, the Working Group approved the substance of recommendation 19 unchanged.

Recommendation 20: Language of a notice

41. It was agreed that recommendation 20 should distinguish between the language in which information in a notice should be expressed that should be indicated in the registry regulations, and a publicly available set of characters that did not necessarily need to be included in the registry regulations but could be simply published and thus more easily revised by the registry. Subject to those changes, the Working Group approved the substance of recommendation 20.

Recommendation 21: Information required in an initial notice

42. It was agreed that the need for the registrant to enter the required information in the appropriate field of the notice was an important issue and should be dealt with in a separate subparagraph. In addition, it was agreed that recommendation 25 should be aligned with recommendation 21, subparagraph (a) (ii) that referred to the secured creditor “or its representative”. In that connection, it was agreed that the commentary should clarify the reasons why recommendation 57 of the Secured Transactions Guide referred to the secured creditor’s representative. It was also agreed that the commentary should clarify that, in the case of multiple grantors or secured creditors, their identifiers and addresses should be entered in the

appropriate field for grantor or secured creditor information. Subject to those changes, the Working Group approved the substance of recommendation 21.

Recommendation 22: Grantor identifier (natural person)

43. It was agreed that the bracketed text in subparagraph (a), alternative A of recommendation 22 should be deleted and alternative A should be presented as option A. It was widely felt that such an approach would bring recommendation 22 more in line with recommendation 59 of the Secured Transactions Guide. In addition, it was agreed that subparagraph (a), alternative B should be redrafted along the following lines “the name of the grantor and any other information specified by the registry to uniquely identify the grantor, such as the birth date or the personal identification number, if any” and alternative B should be presented as option B. It was generally thought that such an approach would facilitate unique identification of the grantor, provide for certainty and, at the same time, flexibility to the extent it left the matter to the discretion of each enacting State. Moreover, it was agreed that: (a) in subparagraph (d) (iii), reference should be made to high-level official documents, such as an identification card or a driver’s licence; (b) in subparagraph (d) (vi), reference should be made to “two of the following officials documents, provided that the names contained therein are the same”, leaving it to the enacting State to specify those documents (e.g., social security or health insurance card). It was widely felt that such an approach would ensure that there would be no inconsistency between those two subparagraphs and, at the same time, combine certainty with flexibility.

44. As a matter of drafting, it was suggested that reference to the grantor being a natural person could be included in the chapeau of recommendation 22 and deleted from all subparagraphs. In addition, it was agreed that the commentary should explain that, in view of the conflict-of-laws recommendations of the Secured Transactions Guide, the law of the enacting State (including its registry regulations) could apply to a security right created by a foreign grantor. Moreover, it was agreed that the commentary should clarify that the identifier of the grantor should be established on the basis of current, official documents of the enacting State. It was also agreed that the commentary should explain that recommendation 22 dealt with the effectiveness, and not grounds for rejection, of a registration.

45. Subject to the above-mentioned changes (see paras. 43 and 44 above), the Working Group approved the substance of recommendation 22.

Recommendation 23: Grantor identifier (legal person)

46. The Working Group agreed that options A and B of recommendation 23 should be retained but revised along the following lines: “Option A: the name of the legal person that [appears] [is designated] in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person. Option B: the name of the legal person that [appears] [is designated] in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person and any other information specified by the registry to uniquely identify the grantor”. As to alternatives A and B, the Working Group agreed that they should be placed in the commentary as illustrations that would provide guidance but avoid a prescriptive approach, since the exact description of the type of body corporate involved in each

case would differ from State to State. Subject to those changes, the Working Group approved the substance of recommendation 23.

Recommendation 24: Grantor identifier (other)

47. The Working Group agreed that the heading of recommendation 24 should be revised to refer to special cases, since the term “other” indicated that the grantor meant might not be a natural or a legal person and thus might not have power to create a security right. In that connection, it was noted that recommendation 24 did not deal with the issue of who could be a grantor or had the power to create a security right (which was a matter for other law), but rather with the identifier of specific grantors. In addition, it was agreed that recommendation 24 should be retained, as it dealt with the grantor identifier in some important cases. It was also agreed, however, that recommendation 24 should be placed within square brackets and understood as setting out examples for enacting States to select and adapt them to their own laws, as the treatment of those cases differed from State to State. It was widely felt that flexibility was advisable, since certain examples (such as estates and trusts) were not common to all legal systems. Subject to those changes, the Working Group approved the substance of recommendation 24.

48. As to the way in which the agreed upon approach could be implemented, a number of suggestions were made. One suggestion was that three categories of cases should be distinguished; one category would include cases in which the grantor acted on behalf of the debtor (insolvency representative); a second category would include cases in which the grantor was a participant in a syndicate or venture; and a third category would include cases in which the grantor was a different entity. Another suggestion was that only subparagraphs (e) to (f) might be retained if properly revised. Yet another suggestion was that, in line with the approach followed in recommendations 22 and 23, reference should be made in recommendation 24 to identification numbers. The Working Group referred that matter to the Secretariat as a matter of drafting.

Recommendation 25: Secured creditor identifier

49. It was agreed that reference should be made in recommendation 25 to the secured creditor “or its representative”. It was widely felt that such an approach would be consistent with recommendation 21, subparagraph (a) (ii) of the draft Registry Guide and recommendation 57 of the Secured Transactions Guide. In addition, it was agreed that the reference to “a kind of person” in subparagraph (c) should be reviewed. Moreover, it was agreed that the commentary should clarify that the identifier for the secured creditor should simply be the name without any additional information (since, for example, registration numbers were irrelevant to the identification of legal persons). It was also agreed that the commentary to chapter IV should discuss the legal consequences of an incorrect statement of the grantor’s identifier (recommendation 58) and the secured creditor’s identifier (recommendation 64). Subject to those changes, the Working Group approved the substance of recommendation 25.

Recommendation 26: Description of encumbered assets

50. It was agreed that subparagraph (a) should be revised along the following lines “when encumbered assets are described in a notice, they should be described in a

manner that reasonably allows their identification”. It was widely felt that that change would avoid giving the impression that all amendment notices needed to include a description of encumbered assets. In addition, it was agreed that subparagraph (b) should be divided into two parts, one referring to all, present and future, assets within a generic category of movable assets, and another referring to all, present and future, movable assets of the grantor. Moreover, it was agreed that the commentary should discuss in detail the description of serial-number assets. Subject to those changes, the Working Group approved the substance of recommendation 26.

Recommendation 27: Incorrect or insufficient information

51. It was agreed that reference to amendment notices in paragraph (a) should be limited to those notices that related to the amendment of the grantor identifier, as not all amendment notices would require the grantor’s correct identifier. In addition, it was agreed that the Registry Guide should use the terms effectiveness of a “registration” or a “registered notice” in a consistent manner. Moreover, it was agreed that a new subparagraph should be added to indicate that, in the case of multiple grantors, an error in the identifier of one of the grantors would not render the registration ineffective with respect to other grantors correctly identified. Subject to those changes, the Working Group approved the substance of recommendation 27.

Recommendation 28: Information required in an amendment notice

52. It was agreed that subparagraph (b) should be retained within square brackets. It was widely felt that subparagraph (b) could be enacted by a State if, pursuant to recommendation 62 of the Secured Transactions Guide, it chose the relevant approach in its secured transactions law (see Secured Transactions Guide, chap. IV, paras. 78-80). It was also agreed that subparagraph (b) should be revised to state that an amendment notice that disclosed a transfer of the encumbered assets should indicate the identifier and address of the transferee as an additional grantor (without replacing the identifier and address of the transferor as the original grantor). It was further agreed that the impact of such an approach would need to be fully elaborated in the commentary.

53. In addition, it was agreed that subparagraph (c) should be deleted and the matter it addressed should only be discussed as a possible option in the commentary. It was generally thought that an approach along the lines of subparagraph (c) could not be recommended, in view of the fact that recommendation 94 of the Secured Transaction Guide did not foresee registration of a notice with respect to a subordination agreement. Moreover, it was agreed that subparagraph (e) should be revised to ensure that an amendment could refer to one function or to multiple functions. It was also agreed that the commentary should indicate that one function might exclude another (for example, when the secured creditor changed its identifier, the secured creditor could no longer change the description of the encumbered assets). As to who would be authorized to register an amendment notice, it was agreed that the commentary should refer to recommendation 8.

54. It was also agreed that that the commentary might explain that sequential numbering of amendment notices would not be necessary as all amendment notices would be assigned a time and date according to recommendation 10. Furthermore, it

was agreed that the commentary should explain that: (a) an amendment changing the identifier of the grantor would be indexed by adding the new grantor identifier as if it were a new grantor; (b) in such a case, a search under either the old identifier or the new identifier of the grantor would reveal the registration; and (c) that approach would not cause any confusion as the notices would be indexed in a sequential order.

55. Subject to the above-mentioned changes (see paras. 52-54), the Working Group approved the substance of recommendation 28.

Recommendation 29: Global amendment of secured creditor information in multiples notices

56. It was agreed that recommendation 29 should be revised to also allow the registrant to make such a global amendment directly, if the registry was so designed (which should be discussed in the commentary). It was also stated that, in the case of a global amendment, to protect the secured creditor from fraudulent amendments, the registry should be able to request and verify the identity of the registrant (defined as “the person identified in the notice as the secured creditor”). Subject to those changes, the Working Group approved the substance of recommendation 29 and decided to retain the text without square brackets.

Recommendation 30: Information required in a cancellation notice

57. It was agreed that the heading of recommendation 30 (and other relevant recommendations) might be reviewed to reflect that recommendation 30 dealt also with the time when a cancellation notice could be registered. It was also agreed that the commentary should explain the reasons for not requiring the grantor’s identifier to be included in a cancellation notice, without discrimination to a paper or electronic registration system. Subject to those changes, the Working Group approved the substance of recommendation 30.

Recommendation 31: Copy of notice

58. It was agreed that subparagraphs (a) and (b) should be aligned with recommendation 55, subparagraph (d) of the Secured Transactions Guide, but also formulated as recommendations rather than legal provisions dealing with obligations or liability. With respect to subparagraph (c), it was agreed that the registrant should send a copy of the notice to the grantor a short time after the registrant received such a copy from the registry. It was widely felt that the time the information was entered into the registry record could not function as a starting point for that period as it might not be known to the registrant. It was also agreed that the bracketed text in subparagraph (c) should be deleted, since sending copies of registered notices to grantors was generally considered to be a fundamental feature of the notice-registration system and an important protective measure for grantors. As to the placement of recommendation 31 in the text, it was suggested that subparagraphs (a) and (b) should be placed in a recommendation dealing with the duties of the registry (e.g., recommendation 3) and subparagraph (c) in chapter V dealing with the obligations of the secured creditor. While there was some support for that suggestion, it was agreed that recommendation 31 was appropriately placed in chapter IV dealing with registration information. For reasons of consistency, it was suggested that reference should be made to the term “record of

the registration” rather than “copy of the notice”. Noting that both terms were used in the recommendations of the Secured Transactions Guide, the Working Group referred the matter to the Secretariat as a matter of drafting. Subject to those changes, the Working Group approved the substance of recommendation 31.

Recommendation 32: Compulsory amendment or cancellation

59. It was agreed that recommendation 32 should be preceded by a new recommendation that would reflect the principle that in the circumstances described in recommendation 32 (e.g., payment of the secured obligation and extinction of the security right), the secured creditor was obliged to amend or cancel the registration and would be able to charge any fees agreed upon with the grantor. In addition, it was agreed that, if the secured creditor failed to comply, the grantor could seek a compulsory amendment or cancellation under recommendation 32. With respect to subparagraph (a) (i), it was agreed that the bracketed text should be retained and reformulated along the following lines: “or the security agreement has been revised in such a way as to make the notice inaccurate”. It was also agreed that the bracketed text in subparagraph (a) (iii) should be retained outside square brackets. While some doubt was initially expressed, it was agreed that subparagraph (b) was appropriate and the secured creditor should not be entitled to charge any fees if it failed to comply with its obligations and the legitimate request of the grantor to amend or cancel the registration (which should not apply where the secured creditor had not violated its obligations and the grantor’s request was inappropriate).

60. With respect to subparagraph (e), it was agreed that: (a) the chapeau should be reformulated along the following lines: “the amendment or cancellation notice pursuant to this recommendation is registered by”; (b) alternatives A and B should be retained, and alternative C should be deleted. It was widely felt that an amendment or cancellation order should be registered either by the registry or by a judicial or administrative officer, but not by the grantor. It was also agreed that the recommendations should include one additional form for the notice to implement a judicial or administrative order that should include all the elements required for a notice to be effective. Finally, it was agreed that the commentary should clarify: (a) that, if a security agreement had been concluded but its effectiveness was the subject of a dispute between the secured creditor and the grantor, the grantor could seek to amend or cancel the registration through a summary judicial or administrative proceeding; (b) that recommendation 32, which reiterated the principle reflected in recommendations 16 and 17, was not inconsistent with recommendation 67 (advance registration) of the Secured Transactions Guide; (c) whether the grantor could claim damages for breach of contract or tort by the secured creditor was a matter of other law; and (d) examples of proceedings referred to in recommendation 32.

61. Subject to the above-mentioned changes (see paras. 59 and 60), the Working Group approved in principle the substance of recommendation 32.

Recommendation 33: Search criteria

62. It was agreed that recommendation 33 was important, since it provided that: (a) a registry should be designed to allow searches by the grantor’s identifier or the registration number; (b) a searcher could conduct a search by using one of those two search criteria. In addition, it was agreed that, while a prudent searcher would

use the correct grantor identifier, search variations should be possible. It was widely felt, for example, that the indication of the kind of body corporate involved (e.g., Limited, Incorporated) would not be necessary. However, differing views were expressed as to whether a search by the grantor's family name only should be possible. Moreover, it was agreed that the commentary should discuss the possibility of searches by serial number for certain types of asset. Subject to those changes, the Working Group approved the substance of recommendation 33.

Recommendation 34: Search results

63. It was agreed that subparagraph (a) should be revised to state that a search result should indicate not only the current information with respect to a registered notice but also relevant past information, while the commentary should discuss all possible options. With respect to subparagraph (b), it was agreed that the first bracketed text ("exactly matched the search criterion") should be retained outside square brackets and the second bracketed text ("closely matched the search criterion") should be deleted and discussed in the commentary. It was widely felt that exact matches provided certainty as to the effectiveness of a registration and the reliability of a search. It was also agreed that, if alternative B in recommendation 23 was followed by a State, search results should match the name of the grantor with or without the abbreviation.

64. As to a search logic that would allow close matches to be retrieved, it was generally thought that, while modern search algorithms could be designed to limit the number of close matches, such design presented problems, such as the following: (a) not all closely matching notices would be retrieved, as it required addressing a complex question of defining "close matches" and resulted in legal uncertainty; (b) the list of closely matching notices could be long, a fact that might lead to additional searches and result in high fees for the user and administrative burden on the registry; (c) allowing search results to retrieve close matches might have a negative impact on what constituted a sufficient grantor identifier for a registration to be effective (see recommendation 58 of the Secured Transactions Guide).

65. As to subparagraph (c), it was agreed that it should be revised as recommendation 33 dealt with search criteria and not search requests. Moreover, it was agreed that subparagraphs (d) and (e) should be deleted and discussed in the commentary as the law recommended in the Secured Transactions Guide did not include relevant provisions and, in any case, the admissibility of a search certificate as evidence and its evidentiary value were matters of law other than secured transactions law.

66. Subject to the above-mentioned changes (see paras. 63-65 above) the Working Group approved the substance of recommendation 34.

Recommendation 35: Fees for registry services

67. It was agreed that, consistent with recommendation 54, subparagraph (i) of the Secured Transactions Guide, any fees charged should be commensurate to the services provided by the registry. It was widely felt that using registration fees as a source of revenue for the State was detrimental to the availability and the cost of credit. It was also agreed that all options should be retained in recommendation 35

and additional options could be discussed the commentary. After discussion, the Working Group approved the substance of recommendation 35 unchanged.

68. After completing its discussion of the recommendations, the Working Group went back to consider the term “registry record” (see para. 20 above). It was agreed that the term should refer to the information in all registered notices. In addition, it was agreed that the commentary should: (a) explain the importance of the record including all relevant information for the determination of priority; (b) consider different drafting options; and (c) explain the difference between the terms “registry record” and “database”. Subject to those changes, the Working Group approved the substance of the term “registry record”.

C. Examples of registration forms (A/CN.9/WG.VI/WP.50/Add.2)

69. The Working Group next considered examples of registration forms. At the outset, it was agreed that those forms should be revised to reflect the decisions of the Working Group with respect to the relevant recommendations. In addition, it was agreed that it would be useful to prepare further forms, such as a form to implement a judicial or an administrative order to amend or cancel a registration, and schedule forms for additional information.

70. With regard to form A (example of initial notice), it was agreed that: (a) in the chapeau, the phrase in square brackets (“in the case of a fully electronic registry”) should be deleted as the forms should apply to both paper and electronic notices; (b) schedule forms for additional information would apply to paper notices, as information could easily be added in an electronic notice; (c) in sections A.1 and 4, and B.1, reference to father’s, mother’s and spouse’s name should be deleted; (d) in section A.1, the phrase in square brackets (“as it appears in the identity card, if issued by the enacting State”) should be deleted; (e) in section A.2, the phrase in square brackets (“as it appears in the document constituting the legal person or other entity”) should be revised to reflect the decisions of the Working Group with respect to recommendation 23; (f) in section A, tax, voter or other number should be added to identification number and the commentary should explain that such identification numbers could vary from State to State; (g) section A.3 should be revised to implement the decisions of the Working Group with respect to recommendation 24; (h) in sections B.1 and B.2, reference to identification numbers should be deleted as they were not part of the identifier of the secured creditor; (i) section C.2 should be identified as a non-mandatory field; and (j) as access information was not required in a notice (see recommendation 57 of the Secured Transactions Guide and recommendation 21 of the Registry Guide), section G should be placed at the end of the form or in a footnote to inform registrants that they would need to provide some kind of identification to access the registry.

71. It was agreed that the changes made to form A, to the extent relevant, should also be reflected in forms B and C. In addition, it was agreed that forms B and C should be revised to reflect the changes agreed upon by the Working Group at the present session. Moreover, it was agreed that a number of other changes approved by the Working Group would need to be implemented by the Secretariat. It was also agreed that the commentary should address the situation in which one of several

secured creditors might mistakenly use form C (cancellation notice) instead of form B (amendment notice) to delete its name from the notice.

72. Subject to the above mentioned changes (see paras. 69-71), the Working Group approved the substance of the examples of the registration forms.

V. Future work

73. Having generally agreed that the draft Registry Guide should be finalized and submitted to the Commission for adoption at its forty-sixth session in 2013, the Working Group considered its future work. At the outset, the Working Group noted that, at its forty-third session in 2010, the Commission had agreed that all topics before the Commission at that time were interesting and should be retained on its future work agenda for consideration at a future session (see para. 2 above).

74. The suggestion was made that a simple, short and concise model law on secured transactions could usefully complement the Secured Transactions Guide and would be extremely useful in addressing the needs of States and in promoting implementation of the Secured Transactions Guide. In that connection, the concern was expressed that a model law might be too prescriptive limiting the flexibility of States to address the relevant issues in an appropriate way that would fit their needs and suit their legal traditions.

75. However, it was widely felt that a model law based on the general recommendations of the Secured Transactions Guide would provide urgently needed guidance to States in enacting or revising their secured transactions laws. In addition, it was generally viewed that a model law was sufficiently flexible and could be adapted to the various legal traditions, while at the same time serving as a starting point for the implementation of the recommendations of the Secured Transactions Guide. In that connection, it was widely felt that such an approach should assist States in capacity-building, while the draft Registry Guide would assist States with the establishment and operation of a security rights registry. Moreover, there was broad support for the view that such a model law would assist States in addressing urgent issues relating to access to credit and financial inclusion, in particular for small- and medium-size enterprises. It was also agreed that the topic of security rights in non-intermediated securities merited further consideration and attention.

76. After discussion, the Working Group agreed to propose to the Commission that the mandate be given to the Working Group to develop a model law on secured transactions based on the general recommendations of the Secured Transactions Guide and consistent with all the texts prepared by UNCITRAL on secured transactions. The Working Group also agreed to propose to the Commission that the topic of security rights in non-intermediated securities should be retained on its future work agenda and be considered at a future session.