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Draft Technical Legislative Guide on the Implementation of a Security Rights Registry

Note by the Secretariat

Addendum

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IV. Registration information

A. General remarks

1. Information required in an initial notice

1. The *Secured Transactions Guide* recommends that the following information and only the following information needs to be provided in an initial notice for the registration to be effective: (a) the identifier and address of the grantor; (b) the identifier and address of the secured creditor or its representative; (c) a description of the encumbered asset; (d) the duration of the registration, if the enacting State chooses the option in its secured transactions law of allowing the registrant to select the period of effectiveness of the notice; and (e) the maximum monetary amount for which the secured creditor may enforce the security right, if the enacting State chooses to require this information in its secured transactions law (see *Secured Transactions Guide*, chap. IV, paras. 65-97, and rec. 57). The regulation should restate and supplement this recommendation (see draft Registry Guide, rec. 21). The following paragraphs discuss each of the elements of the required content of a notice.

2. As already discussed (see A/CN.9/WG.VI/WP.52/Add.2, paras. 1-2, 7 and 9), the registrant must enter the required information in the designated field or space in the prescribed form of notice (see draft Registry Guide recs. 9 and 21). If the registrant enters, for example, the identifier of the grantor in the secured creditor field, this would not be a ground for the registry to reject the notice. However, the registration of the notice may be ineffective with the result that the security right to which it relates is not made effective against third parties. However, this would not be a ground for the rejection of the notice. In addition, the identifiers of the grantor and the secured creditor should be established on the basis of current and official documents, and should be their identifiers at the time of registration. Moreover, their addresses should be their current addresses known to the registrant at the time of registration.

(a) Grantor information

(i) General

3. As already explained (see A/CN.9/WGVI/WP.52/Ad.2, paras. 38-43), the *Secured Transactions Guide* recommends that information contained in notices should be indexed by reference to the grantor's identifier. In order to ensure that a search of the registry discloses all security rights that may have been granted by a person, the *Secured Transactions Guide* also provides explicit guidance on what constitutes the correct identifier of the grantor (see *Secured Transactions Guide*, recs. 58-60). The regulation should provide detailed guidance so as to ensure that a registrant can be confident that its registration will be legally effective and searchers can confidently rely on a search result (see draft Registry Guide, recs. 22-24).

4. It is not uncommon for a person to create a security right in its assets to secure an obligation owed by a third-party debtor (including a third-party guarantor of the obligation owed by the grantor). Since the function of registration is to disclose the possible existence of a security right in the assets described in the notice, the regulation should make it clear that the information required is the identifier and

address of the grantor that owns, or has rights in, the encumbered assets, and not the information of the third-party debtor of the secured obligation (or a mere guarantor of the obligation owed by the debtor).

5. In addition, where there is more than one grantor, the regulation should specify that their identifiers and addresses must be entered in the designated field or space on the notice separately for each grantor. This is necessary since the identifier of the grantor is the search criterion by which notices are retrieved by searchers (see A/CN.9/WG.VI/WP.52/Add.4, paras. 31-36). To facilitate the registration process, the prescribed form of notice should be designed so as to enable the identifiers and addresses of multiple grantors to be entered separately on the same notice. While the registrant could achieve the same result by registering separate notices for each grantor, this is a more cumbersome process since the registrant will need to re-enter all the other information required on a notice on each separate notice.

(ii) *Natural persons versus legal persons*

6. The *Secured Transactions Guide* provides separate recommendations with respect to determining the identifier of the grantor depending on whether the grantor is a natural or a legal person or other entity (see *Secured Transactions Guide*, recs. 59-60). It follows that notices will be indexed or otherwise organized in the registry record according to distinct criteria depending on the category of grantor.

7. This approach has implications for the registration and search process. In order to ensure that the information in a notice is properly entered in the registry record so as to be retrievable by a searcher, the regulation should make it clear that a registrant must enter the identifier and address of the grantor in the fields designated for entering information relating to that category of grantor. To achieve this result, the prescribed form of notice, as well as the form of search request, should provide separate and distinct fields for entering the identifier and address of grantors in each category (see forms in A.CN.9/WG.VI/WP.52/Add.6).

(iii) *Grantor identifier for natural persons*

8. The *Secured Transactions Guide* recommends that, if the grantor is a natural person, the identifier of the grantor for the purposes of an effective registration should be the name of the grantor as it appears in a specified official document (see *Secured Transactions Guide*, rec. 59). In order to implement this recommendation, the regulation should specify the types of official document that the enacting State regards as authoritative sources of the grantor's name. The following table illustrates the type of approach that might be taken, although each enacting State will need to determine in accordance with its own naming conventions what types of official document or other source are most appropriate (see draft Registry Guide, rec. 22).

Grantor status	Grantor identifier
Born in enacting State and birth registered in enacting State	Name on birth certificate or equivalent official document
Born in enacting State but birth not registered in enacting State	(1) Name on current passport (2) If no passport, name on equivalent official document such as an identification card or driver's licence
Not born in enacting State but naturalized citizen of enacting State	Name on citizenship certificate
Not born in enacting State and not a citizen of enacting State	(1) Name on current passport issued by the State of which the grantor is a citizen (2) If no current foreign passport, name on birth certificate or equivalent official document issued at grantor's birth place
None of the above	Name on any two official documents issued by the enacting State, if those names are the same (for example, a social security, health insurance or tax card)

9. It is equally important to have clear rules specifying what components of the name in the official document are required to be entered in the prescribed notice (for example, family name, followed by the first given name, followed by the second given name) and to provide separate designated fields in the prescribed notice for entering each component. In deciding what components are required, the enacting State should take into account local naming conventions as well as the extent to which locally issued official documents specify the different components of the name. Guidance should also be provided for exceptional situations. For example, where the grantor's name consists of a single word, the regulation should provide that that word should be entered in the family name field and the registry system should be designed so as not to reject notices that have nothing entered in the given name field (see draft Registry Guide, rec. 22, option A).

10. The enacting State may wish to consider whether there should be electronic matching of names entered in registered notices against names in other databases. In this regard, two issues should be considered. The first issue is the responsibility of the registry. The registry would be responsible for ensuring that the database to which it has connected is current, complete and accurate. Otherwise, it would be providing a disservice and exposing itself to liability. The second issue is the legal effect of offering matching services. One option would be for the regulation to provide that a matched record is legally sufficient to identify the grantor. Under this approach, electronic matching would shift the legal responsibility to correctly identify the grantor from the registrant to the registry, thereby exposing the registry to potential liability. The other option would be to provide that this is just a service without any legal effect and it is the responsibility of the registrant who relies on electronic matching to ensure that the grantor identifier in the external data base is correct. This latter approach more closely accords with the recommendations of the *Secured Transactions Guide*.

11. In some States, many persons may have the same name, with the result that a search may disclose multiple grantors all having the same name. To accommodate this scenario, the *Secured Transactions Guide* recommends that, where necessary, information in addition to the name of the grantor (such as the grantor's birth date or personal identification or other card number issued by the enacting State) must be included in the notice to uniquely identify the grantor (see *Secured Transactions Guide*, rec. 59). A State wishing to implement this additional recommendation should specify in the regulation the type of additional information, as well as whether it must be included for the registration to be effective or whether inclusion is at the option of the registrant (see draft Registry Guide, rec. 22, option B).

12. Whether an enacting State should provide for the inclusion in a notice of an identity card or other official card number issued by that State as additional information depends on three principal considerations. First, whether the registry system under which the identity card numbers are issued is sufficiently universal and reliable to ensure that each natural person is assigned a permanent unique number. Second, whether the public policy of the enacting State permits the public disclosure of the identity card or other card number that it assigns to its citizens and/or residents. Third, whether there is a reliable documentary record or other source by which third-party searchers can objectively verify whether a particular number relates to the particular grantor. If these three conditions are met, the use of State-issued identity card or other official card numbers would be an ideal way to uniquely identify grantors. However, as mentioned above, the approach recommended in the *Secured Transactions Guide* is that additional information, whether in the form of an identity card number or otherwise, may be required only where necessary to uniquely identify a grantor (see *Secured Transactions Guide*, rec. 59) and only as a requirement in addition to entering the name of the grantor (see draft Registry Guide, option B).

13. In view of the conflict-of-laws recommendations of the *Secured Transactions Guide* (such as, for example, recommendation 203, which provides that the law applicable to the creation, third-party effectiveness and priority of a security right in a tangible asset is the law of the State in which the tangible asset is located), the law of the enacting State (including its registry regulation) could apply to a security right created by a foreign grantor. Thus, the regulation requires the entry of a State-issued identity card or other official card number to uniquely identify a grantor, it will still be necessary for the regulation to address cases where the grantor is not a citizen or resident of the enacting State, or, for any other reason, has not been issued a number. The enacting State might, for example, provide in the regulation that the number of the grantor's foreign passport or the number in some other foreign official document is a sufficient substitute.

(iv) *Grantor identifier for legal persons*

14. For grantors that are legal persons, the *Secured Transactions Guide* recommends that the correct identifier for the purposes of effective registration is the name that appears in the document constituting the legal person (see *Secured Transactions Guide*, rec. 60). The regulation should restate and supplement this rule. In particular, the regulation should be drafted to make it clear that the relevant constituting document includes any type of instrument (whether it be a private contract, a statute or a decree) that is the legal source of the grantor's status as a

legal person according to the law under which it was constituted (see draft Registry Guide, rec. 23).

15. Virtually all States maintain a public commercial or corporate register for recording information about legal persons constituted under the law of that State including their names. In many States, upon registration in that record, a unique and reliable registration number is assigned to the legal person. If the enacting State is concerned that multiple legal persons may share a common name, the regulation could specify the inclusion of that number in the notice as additional information to be used to uniquely identify the grantor (see Registry Guide, rec. 23, option B).

16. The name of a grantor that is a legal person typically includes generic abbreviations (such as S.A., “Ltd”, “Inc”, “Incorp”, “Corp”, “Co”) or terms (such as Société Anonyme, “Limited”, “Incorporated”, “Corporation”, “Company”) indicative of the type of body corporate or other legal person. The regulation should make it clear whether these abbreviations or terms are an optional component of the grantor’s identifier in the sense that a search with or without them, or using an erroneous version of them, would still retrieve the relevant registration. The optional approach would protect registrants that do not enter the correct generic abbreviation or term or fail to enter it at altogether. However, it could reduce transparency for third-party searchers since a search result would disclose all grantors that are legal persons, regardless of their type, that share the same specific name.

17. Depending on the law applicable to the constitution of the grantor, the document or other instrument constituting it as a legal person may contain inconsistent variations of the name (for example, referring to it in different places as “The ABC inc.” or “ABC Inc.” or “ABC”). Ideally, the regulation would provide guidance on which part of the constituting document is to be treated as the authoritative source of the grantor’s name for registration purposes. Supplementary rules would need to be developed to accommodate cases where the legal person was constituted in a foreign State, in particular, whether the name or registration number that appears on the public record of a foreign State may be used as the identifier of the legal person in the enacting State.

(v) *Special cases*

18. The regulation will also need to set out additional guidelines on the required grantor identifier where the grantor does not fit into either the natural person or the legal person categories (see draft Registry Guide, rec. 24). The issue here is not whether the grantor has the legal capacity to create a security right, but rather how its identifier should be entered in a notice. The following table sets out examples of the types of situation that will need to be addressed, together with examples of possible identifiers. Enacting States may wish to consider selecting and adapting these examples to their own laws.

Grantor status	Grantor identifier
Insolvency estate acting through an insolvency representative	Name of the insolvent person, entered in accordance with the rules applicable for grantors who are natural or legal persons, as the case may be, with the specification in a separate designated field that the grantor is insolvent
Syndicate or joint venture	Name of the syndicate or joint venture as stated in any document constituting it, entered in the field designated for entering the identifier of a legal person
Trustee or representative of an estate	Name of the trustee or the representative of the, entered estate in accordance with the rules applicable for grantors who are natural or legal persons, as the case may be, with the specification in a separate field that the grantor is acting for a trust or is the representative of an estate
Other entity	Name of the entity as designated in any document constituting it, entered in accordance with the rules applicable for grantors who are legal persons

19. In the case of sole proprietorships, even though the business may be operated under a different business name and style than that of the proprietor, the regulation should provide that the grantor's identifier is the name of the proprietor entered in accordance with the rules applicable for grantors who are natural persons. The name of the sole proprietorship is unreliable and may be changed at will by the proprietor. However, the name of the sole proprietorship may be entered as an additional grantor in the notice.

20. As noted above, systems for electronic registration of notices should be designed to allow registrants to select from a category field with the appropriate designation (for example, insolvency estate, syndicate or joint venture, trust or estate, etc.) instead of entering the designation in the name field of the grantor. Alternatively, the notice may include a field or item in which the registrant must enter the appropriate designation.

(vi) *Address of the grantor*

21. Under the *Secured Transactions Guide*, the address of the grantor is part of the required content of the notice (see *Secured Transactions Guide*, rec. 57, subpara. (a)). This approach helps to uniquely identify the grantor where necessary as, for example, where the grantor's name is common (see *Secured Transactions Guide*, rec. 59). The grantor's address is relevant for the purpose of sending copies of registered notices to the grantor (see *Secured Transactions Guide*, recommendation 55, subparas. (c) and (d)) and enables third-party searchers to contact the grantor for further information. Accordingly, the registrant should enter the current known address of the grantor. However, the grantor's address is not part of the grantor's identifier in the sense of being a search criterion. The regulation should restate and, where necessary, supplement these recommendations. In

addition, the registry system should be designed to prompt registrants to enter an address into a field separate from the one for the grantor identifier.

22. Some States do not require entry of the grantor's address where personal security concerns necessitate that an individual's address details not be disclosed in a publicly accessible record. Where this exception is recognized, the regulation may specify the entry of a post office box or similar non-residential mailing address. Alternatively, interested parties could contact the secured creditor (whose address must be entered in the notice) to obtain further information about the grantor.

23. The grantor's address plays less of a role in systems in which the grantor identifier is required to include additional information designed to uniquely identify the grantor (for example, a birth date or State-issued identity card number) as compared to systems in which the required identifier is only the grantor's name with the result that a search may disclose multiple security rights granted by different grantors that share the same name (see paras. 11 and 12 above).

2. Secured creditor information

24. The *Secured Transactions Guide* recommends that the identifier of the secured creditor or the secured creditor's representative, along with its address, be included in the notice submitted to the registry (see *Secured Transactions Guide*, rec. 57, subpara. (a)). The regulation should restate and, where necessary, supplement this recommendation (see draft Registry Guide, rec. 25).

25. The regulation should specify that the same identifier rules that apply to the grantor should apply also to the secured creditor or its representative. However, as explained below (see para. 46), since the identifier of the secured creditor or its representative is not a search criterion, strict accuracy is not as essential to the effectiveness of the registration. Accordingly, even if the regulation requires additional identifier information to be entered in order to uniquely identify the grantor (for example, birth date or a personal identification number), there is no need to extend this requirement to the secured creditor.

26. The regulation should make it clear that the registrant, who may be the secured creditor or its representative, may enter in the notice the identifier of the secured creditor or that of a trustee, agent or other representative. This approach is intended to facilitate, for example, syndicated lending, since only the identifier of the lead bank or its nominee need be entered in a notice. It is also intended to protect the privacy of the secured creditor. The rights of the grantor are not affected since the grantor is in a direct relationship with the secured creditor (or the lead bank in a syndicated loan agreement) and already knows the secured creditor's identity. The rights of third parties are not affected either as long as the person identified in the notice as the secured creditor is in fact authorized to act on behalf of the actual secured creditor in any communication or dispute connected to the security right.

3. Description of encumbered assets

(a) General

27. The *Secured Transactions Guide* recommends that a description of the encumbered assets covered by the security right to which the registration relates should be a required component of an effective notice (see *Secured Transactions*

Guide, rec. 57, subpara. (b)). This approach enables third parties dealing with a person's assets (such as prospective secured creditors, buyers, judgement creditors and the insolvency representative of that person) to determine which assets of that person may be encumbered by a security right. The *Secured Transactions Guide* also recommends that a description of the encumbered assets should generally be considered sufficient, for the purposes of both an effective security agreement and effective registration, as long as it reasonably allows identification of the encumbered assets (see *Secured Transactions Guide*, recs. 14, subpara. (d), and 63). Depending on the nature of the encumbered asset, the description may be specific or generic. For example, if the encumbered asset is a specific painting, the description in the notice would need to specify the title of the painting, the name of the painter and the year the painting was created. On the other hand, if the encumbered assets are generic categories of assets, such as all the inventory of an art gallery, it would be sufficient to describe them as "all paintings", "all works of art" or "all of the grantor's movable assets".

28. The regulation should restate and, where necessary, supplement this recommendation (see the draft Registry Guide, rec. 26). In particular, the regulation should explicitly state that the description of encumbered assets in a notice may be specific or generic as long as it reasonably allows their identification. The regulation should also clarify that a description that refers to all assets within a generic category or to all assets of a grantor is assumed to cover future assets within the specified category to which the grantor acquires rights during the duration of effectiveness of the notice. If the prescribed form of notice limits the number of characters that may be entered in the field for describing the encumbered assets and additional space is needed (for example, to identify the encumbered assets in more detail), the registry system should be designed to allow additional information to be provided in the form of an attachment or schedule to the notice. This is generally necessary only where the notice is in paper as opposed to electronic form, since the provision of sufficient space does not pose a practical problem in the latter case.

(b) Description of "serial number" assets

29. As already discussed (see A/CN.9/WG.VI/WP.52/Add.2, paras. 33-35), the *Secured Transactions Guide* discusses but makes no recommendation on the use of the serial number or other unique alphanumerical identifier constitute a separate identifier for the purposes of registration and searching (see *Secured Transactions Guide*, chap. IV, paras. 34-36).

30. However, it would not be inconsistent with the *Secured Transactions Guide* for an enacting State in its secured transactions law to require a registrant to enter the serial number of specified categories of encumbered assets in a separate designated field, provided that the number reasonably allowed their identification (see *Secured Transactions Guide*, recs. 14, subpara. (d), 57, subpara. (b), and 63). If this approach is taken, it should be limited to high-value assets for which there is a significant resale market, since it would limit the ability of a secured creditor to make a security right fully effective against third parties in the grantor's future serial number assets through a single registration. The secured creditor would need to effect a new registration or amend the description of the encumbered assets in its existing registration to enter the serial number of each new asset as it is acquired by the grantor.

31. If the enacting State decides to adopt this approach, the regulation should make it clear that the entry of a serial number description in the designated field is not required where the relevant assets are held by the grantor as inventory. In the case of inventory, the entry of a generic description in the general field designated for entering a description of the encumbered assets is sufficient. This is because the so called “A-B-C-D problem”; see A/CN.9/WG.VI/WP.52/Add.2, para. 43) does not arise in the case of inventory, since buyers that acquire inventory from the original grantor in the ordinary course of the grantor’s business take the inventory free of the security right in any event (see *Secured Transactions Guide*, rec. 81, subpara. (a)).

(c) Description of proceeds

32. The *Secured Transactions Guide* recommends that a security right should automatically extend to any identifiable assets received in respect of the encumbered assets, unless otherwise agreed by the parties to the security agreement (see *Secured Transactions Guide*, Introduction, sect. B, “proceeds”, and rec. 19). Where the security right in the original encumbered assets was made effective against third parties by registration, the question arises as to whether the secured creditor needs to amend the description of the encumbered assets in the initial notice to include a description of the proceeds in order to ensure that its security right in the proceeds is effective against third parties.

33. When the proceeds consist of cash proceeds (for example, money or a right to payment), the *Secured Transactions Guide* recommends the automatic continuation of the third-party effectiveness of a prior registered security right in the original encumbered assets into the proceeds. The same is true where the proceeds are of a type that is already covered by the description of the original encumbered assets in the registered notice (for example, the description covers “all tangible assets” and the grantor trades in one item of equipment for another; see *Secured Transactions Guide*, rec. 39).

34. However, where the proceeds are not cash proceeds and are not otherwise encompassed by the description of the encumbered assets in the existing notice, the secured creditor must amend its registration 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 *Secured Transactions Guide*, rec. 40). An amendment is necessary because a third party otherwise would not be able to identify which categories of asset in the grantor’s possession might constitute the relevant proceeds.

(d) Description of encumbered attachments to immovable property

35. Like any other type of encumbered asset, a tangible asset that is or will be an attachment to immovable property needs to be described in a notice registered in the general security rights registry in a manner that reasonably allows its identification (see *Secured Transactions Guide*, recs. 14, subpara. (d), 57, subpara. (b), and 63)). While a generic description of the asset may be sufficient for this purpose, the registrant may also need to register in the immovable property registry in order to ensure that its security right is effective against third parties that acquire and register a right in the relevant immovable property. In an immovable property registry, registrations are normally indexed or otherwise organized by reference to

the specific parcel of land as opposed to the identifier of the grantor. Thus, if the notice is to be capable of also being registered in the immovable property registry, the description of the asset in the notice must include a reference to the specific immovable property identifier. In addition, the rules governing registrations in the immovable property registry may need to be revised to permit the registration of notices and the generic description of encumbered assets (see *Secured Transactions Guide*, chap. III, para. 104). Moreover, if the grantor of the security right in the asset is not the owner of the related immovable property, the notice may also need to identify the owner of the asset if such identification is necessary for the indexing of the notice in the immovable property registry.

4. Period of effectiveness of registered notice

36. As already discussed (A/CN.9/WG.VI/WP.52/Add.2 paras. 25-32), if a State chooses in its secured transactions law the option of allowing registrants to self-select the period of effectiveness of a registered notice, the regulation should reflect this approach (see *Secured Transactions Guide*, rec. 69, and draft Registry Guide, recs. 11 and 21, subpara. (a)(iv)). In addition, the registry system should be designed so as to permit the registrant to easily select and indicate in the notice the desired period without the risk of inadvertent error (for example, by limiting the choice to whole years from the date of registration).

5. Maximum amount for which the security right may be enforced

37. The *Secured Transactions Guide* anticipates that, to facilitate subsequent lending against the residual value of the encumbered asset, some States may require an indication in the notice of the maximum monetary amount for which the security right may be enforced (see *Secured Transactions Guide*, chap. IV, paras. 92-97, and rec. 57, subpara. (d); for a corresponding indication of that amount in the security agreement, see rec. 14, subpara. (d)).

38. The aim of this approach is illustrated by the following example. An enterprise has an asset with an estimated market value of \$100,000. The enterprise applies for a revolving line of credit facility to a maximum amount of up to \$50,000 (including capital, interest and costs). The creditor is willing to extend the loan on the condition that it obtains a security right in the asset. The grantor is agreeable but since the maximum loan amount specified in the security agreement and in the notice is only \$50,000 and the asset has a value of \$100,000, the grantor may wish to reserve the ability to obtain another secured loan from another creditor later by giving a security right in the same asset relying on the residual value of the asset. Ordinarily, the first-to-register priority rule would deter this subsequent creditor from giving a loan for fear that the first lender could later extend loans beyond the initial \$50,000 for which it would have priority under the general first-to-register rule. By imposing a requirement to specify the maximum value for which the security right may be enforced, the subsequent creditor in this example can be assured that the first-registered secured creditor cannot enforce its security right for an amount greater than \$50,000 (including capital, interest and costs), leaving the residual value available to satisfy its own claim should the grantor default.

39. In those States that adopt this option, the regulation should make it clear that the maximum amount and the relevant currency must be entered in the designated field of the notice. Each State has to determine whether the amount may be entered

in numbers, letters or both. Possibly, the registry could be designed to accept letters or digits in all fields, except the fields for the maximum amount and the duration of registration in which only digits should be accepted. Some States allow the registrant to indicate or select from a menu the relevant currency in which the loan has been made. In those States, the legal consequences of a difference in the maximum amount specified in the notice and the amount actually owed need to be addressed. If the maximum amount specified in the notice is higher than the amount actually owed at the time of enforcement, the secured creditor is entitled to enforce its security right only up to the amount actually owed. In the contrary case where the maximum amount specified in the notice is lower than the amount actually owed, the secured creditor can enforce its security right only up to the maximum amount specified in the notice (and has the remedies of an unsecured creditor for the outstanding balance). However, if there is no other competing claimant, the secured creditor would be able to enforce its security right up to the amount actually owed.

40. At the same time, the *Secured Transactions Guide* recognizes that an equally valid approach is to avoid stating in the notice such a maximum amount so as to facilitate the extension of credit by the initial secured creditor. This approach is based on the assumptions that: (a) the first-registered secured creditor is either the optimal long-term financing source or will be more likely to extend financing, especially to small, start-up businesses, if it knows that it will retain its priority with respect to any financing to be provided to the grantor in the future; (b) the grantor will not have sufficient bargaining power to require the first-registered secured creditor to enter a realistic maximum amount in the notice (instead the secured creditor will insist that an inflated amount be included to cover all possible future extensions of credit and the grantor will not usually be in a position to refuse); and (c) a subsequent creditor to whom the grantor applies for financing may be able to negotiate a subordination agreement with the first-registered security creditor for credit extended on the basis of the current amount of residual value in the encumbered asset. In States that adopt this approach, the regulation would not include a rule requiring inclusion of the maximum amount in the registered notice (see draft Registry Guide, rec. 21, subpara. (a)(v)).

41. Thus, the *Secured Transactions Guide* acknowledges that both approaches have merit and recommends that States adopt the policy that is most consistent with efficient financing practices in each State and, in particular, with the credit market practices that underlie each approach. As already mentioned, the regulation should adopt an approach that corresponds to the approach taken in the secured transactions law of the enacting State.

6. Incorrect or insufficient information

(a) Grantor information

42. The *Secured Transactions Guide* recommends that registration of a notice is effective only if it provides the grantor's correct identifier or, in the case of an incorrect statement, if the notice would be retrieved by a search of the registry record under the correct identifier (see *Secured Transactions Guide*, chap. IV, paras. 66-77, and rec. 58). The regulation should restate this recommendation (see draft Registry Guide, rec. 27, subpara. (a)).

43. As a result, an error in the grantor's identifier submitted by the registrant could render an initial notice or a notice that amends the grantor identifier ineffective, with the result that the third-party effectiveness of the security right would not be achieved. The test should not be based on whether the error appears to be minor or trivial in the abstract, but whether it would cause the information in the registry record not to be retrieved by a search of the registry record under the grantor's correct identifier. This is because the grantor's identifier is the search criterion for retrieving information submitted in a notice and entered in the registry record. The test is an objective one, since: (a) even if a searcher knew that a security existed and had been registered, the search would still be ineffective if the relevant notice could not be retrieved by a search of the registry record under the correct grantor identifier; and (b) the registration is ineffective regardless of whether a person challenging the effectiveness of the registration suffered any actual prejudice as a result of the error.

44. The *Secured Transactions Guide* does not include a recommendation as to the impact of an error in additional grantor information that does not constitute the grantor's identifier, for example, an error in the address of the grantor or in the grantor's birth date (unless this additional information is necessary to uniquely identify the grantor, in which case, what has already been mentioned above about an error in the grantor's identifier applies to such additional information). Guidance on this issue should be included in the regulation (see draft Registry Guide, rec. 27, subpara. (b)). By analogy to the general test recommended in the *Secured Transactions Guide* for errors in the entry of secured creditor information, the regulation should specify that an error in the additional grantor information that does not constitute an identifier does not render a registered notice ineffective unless it would seriously mislead a reasonable searcher (see *Secured Transactions Guide*, rec. 64). For example, if the search result discloses numerous grantors, all having the same name as the person in whom the searcher is interested, but the error in the additional grantor information is so acute as to make a reasonable searcher believe that the grantor named in the notice is not the relevant person, a notice indicating that grantor may be found to be ineffective.

45. In addition, the *Secured Transactions Guide* does not deal with the situation where a notice lists more than one grantor but an error occurs in the identifier of only one of the grantors listed in the notice. In this case, by analogy to the recommendation of the *Secured Transactions Guide* with respect to an error in the description of only some of the encumbered assets (see *Secured Transactions Guide*, rec. 65), the regulation should provide that such an error would not render the registered notice ineffective with respect to the other grantors that were sufficiently identified (see draft Registry Guide, rec. 27, subpara. (c)). In line with the *Secured Transactions Guide*, the same rule should be restated in the regulation for notices that describe multiple encumbered assets but an error is made in the description of only one or some of them (see draft Registry Guide, rec. 27, subpara. (c)).

(b) Secured creditor information

46. As the secured creditor information is not an indexing or search criterion, the *Secured Transactions Guide* recommends that an error by the registrant in the identifier or address of the secured creditor or its representative renders the registration ineffective only if it would seriously mislead a reasonable searcher

(see *Secured Transactions Guide*, rec. 64). For example, if the secured creditor is identified in the notice as bank AAA, and the search of the registry returns a result that names a different person as the secured creditor, the registered notice may not be ineffective (bank AAA may have changed its name, merged with another bank or been sold). Still, substantial accuracy is always important, since searchers rely on the identifier and address information of the secured creditor or its representative in the registry record for the purposes of sending notices under the secured transactions law (such as a notice of an extrajudicial disposition of an encumbered asset; see *Secured Transactions Guide*, recs. 149-151). Moreover, the grantor may need to rely on this information to submit a written request to the secured creditor for the cancellation or the amendment of a certain notice (*Secured Transactions Guide*, rec. 72, subpara. (a)).

(c) Asset description

(i) General

47. Under the *Secured Transactions Guide*, a registrant's failure to include an asset or certain type of asset in a notice means that the third-party effectiveness of the security right in any omitted asset or type of asset may not be achieved. However, the *Secured Transactions Guide* recommends that a minor error in the description of the encumbered asset does not render the registered notice ineffective unless it would seriously mislead a reasonable searcher (see *Secured Transactions Guide*, rec. 64). In addition, under the *Secured Transactions Guide*, a registrant's failure to meet the "seriously misleading" test means that the registration is ineffective only to the extent of the erroneously described or omitted assets and the security right continues to be effective against third parties with respect to other assets that were sufficiently described (see *Secured Transactions Guide*, rec. 65). The regulation should include corresponding recommendations (see draft Registry Guide, rec. 27, subparas. (b) and (c)).

(ii) Serial number assets

48. As already mentioned, serial number assets may need to be described in a notice by reference to the serial number and the type of asset, if this is necessary to allow their reasonable identification (see *Secured Transactions Guide*, recs. 14, subpara. (d), 57, subpara. (d), and 63). If that is the case, an error in the serial number and type of asset should be treated in the same way as any other error in the description of the asset. This generally means that a minor error in the serial number does not render the registered notice ineffective unless it would seriously mislead a reasonable searcher (see *Secured Transactions Guide*, rec. 64 and draft Registry Guide, rec. 27, subpara. (b)).

49. As also already mentioned (see A/CN.9/WG.VI/WP.52/Add.2, paras. 33-35), in States that adopt a secured transactions law that requires the serial number of specified assets to be entered and indexed as a separate search criterion in order for the security right to be fully effective and take priority over specified classes of third-party competing claimants, an analogy could be made to the recommendation of the *Secured Transactions Guide* applicable to the incorrect or insufficient grantor identifier in the notice. Accordingly, a notice with the incorrect serial number would only be effective if it could be retrieved by a search of the registry record under the correct serial number (see *Secured Transactions Guide*, rec. 58).

50. In legal systems that adopt this latter approach, the regulation will also need to address the consequences of an error in the entry of one but not both the grantor identifier and the serial number. The regulation should provide that both would need to be entered correctly in the notice for the registration of that notice to be effective. As a result, should there be an error in either the grantor identifier or the serial number resulting in the notice not being retrievable by a search using the correct grantor identifier or the correct serial number, the registration of that notice would be ineffective or result in lower priority for the relevant security right as against certain classes of competing claimants specified in the secured transactions law (e.g. transferees or lessees of the encumbered assets from the original grantor).

(iii) *Period of effectiveness of registration*

51. The *Secured Transactions Guide* recommends that an incorrect statement in the notice as to the period of effectiveness of the registration should not render the registration ineffective (see *Secured Transactions Guide*, rec. 66). The regulation should include a corresponding recommendation (see draft Registry Guide, rec. 27, subpara. (e)). However, this recommendation is subject to the important caveat that protection should be given to third parties that relied on such a statement (for the protection of the grantor against an unauthorized statement in the notice of the maximum amount, see paras. 55 and 56 below).

52. Accordingly, where the registrant enters a longer duration than intended, the protection of third parties is not as relevant as they would not be prejudiced by relying on the incorrect statement. The registered notice will still alert them to the possibility that a security right may exist and that they can take steps to protect themselves against that risk. As there would be nothing on the registry record to indicate that the secured creditor intended to enter a shorter term, third-party searchers would not in any way be misled by the secured creditor's error in entering a longer term. Consequently, the error in the period of effectiveness of the registered notice should not render the registration ineffective. However, in cases where the security right referred to in the notice has, in fact, been extinguished (for example, by payment of the secured obligation and termination of any credit commitment), the grantor would be able to request the secured creditor to amend or cancel the notice to reflect the correct duration. If the secured creditor failed to do so within a number of days specified in the secured transactions law after receipt of the grantor's written request, the grantor could seek the amendment or cancellation of the notice through a summary judicial or administrative procedure (see *Secured Transactions Guide*, rec. 72, subparas. (a) and (b)).

53. However, where the statutory period of effectiveness or the period that the registrant entered is shorter than the actually intended period of effectiveness, the registration will lapse at the end of the specified period and the security right will no longer be effective against third parties, unless it was made effective prior to the lapse by some other method (see *Secured Transactions Guide*, rec. 46). As mentioned, while the secured creditor can re-establish third-party effectiveness by registering a new notice, its security right will take effect against third parties only from the time of the new registration (see *Secured Transactions Guide*, recs. 47 and 96).

(iv) *Maximum monetary amount and impact of error*

54. For States that elect to require the maximum amount for which the security right may be enforced to be entered in the notice, the *Secured Transactions Guide* recommends that an incorrect statement in the registered notice of the maximum amount should not render the notice ineffective (see *Secured Transactions Guide*, rec. 66). The regulation should include a corresponding recommendation (see draft Registry Guide, rec. 27, subpara. (e)).

55. However, this is subject to the caveat that third parties that relied on the incorrect statement of the maximum monetary amount in the registered notice should be protected. Thus, where the maximum amount indicated in the notice is greater than the maximum amount agreed in the security agreement or the amount actually owed, there is no need to protect a third party since its decision to advance funds normally will be based on the amount indicated in the notice. It should be noted that the grantor would also be protected in this situation since it could request the secured creditor or, if the secured creditor failed to act in a timely manner, a judicial or administrative body through a summary proceeding, to amend the notice to correct the amount so that the grantor could obtain financing against the residual value of the encumbered asset (see *Secured Transactions Guide*, rec. 72).

56. However, where the maximum amount indicated in the notice is less than the maximum amount agreed to in the security agreement or the amount actually owed, a third party that relied on the maximum amount specified in the notice (in advancing secured credit on the assumption that it could enforce its security right against any residual value in the asset in excess of the amount indicated in the notice) should be protected. Similarly, a judgement creditor, who took enforcement action in the belief that the excess value of the asset above that stated in the notice would be available to satisfy its judgement claim, should also be protected. The way to protect the interests of third parties is to limit the right of the secured creditor to enforce its security right as against the third party up to the maximum amount erroneously stated by the secured creditor in the registered notice (as to the rights of the creditor to claim the amount actually owed, see para. 39 above).

B. Recommendations 21-27

[Note to the Working Group: The Working Group may wish to consider recommendations 21-27, as reproduced in document A/CN.9/WG.VI/WP.52/Add.5. The Working Group may also wish to note that, for reasons of economy, the recommendations are not inserted in here at this stage but will be inserted in the final text.]