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

Note by the Secretariat

Addendum

Contents

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III. Registration

A. General remarks

1. Time of effectiveness of the registration of a notice

1. The *Secured Transactions Guide* recommends that the registration of a notice becomes effective only when the information contained in the notice is entered into the registry record so as to be available to searchers, rather than when the information contained in the notice is received by the registry (see *Secured Transactions Guide*, chap. IV, paras. 102-105, and rec. 70).

2. In view of the importance of the effective time of registration for determining the third-party effectiveness and priority of the security right to which it relates, this recommendation should be included in the regulation (see draft Registry Guide, rec. 11, subpara. (a)). In addition, the regulation should provide that the effective time of registration (that is, the date and time when the notice became searchable) should be indicated on the registry record relating to that notice (see draft Registry Guide, rec. 11, subpara. (b)).

3. As already mentioned, the *Secured Transactions Guide* recommends that the registry record should be computerized if possible. Where information contained in notices is entered into a computerized registry record, the registry software should be designed to ensure that the information becomes publicly searchable immediately or nearly immediately after it is entered. With modern advances in technology, this should not be a problem. As a result, any delay between the entry of the information in a notice into the record and the time when the information becomes available to searchers will be all but eliminated.

4. In registry systems that permit registrants to electronically transmit information directly to the registry, registrants will have control over the timing and efficiency with which their registrations become effective. However, in registry systems that permit or require registration information to be submitted using a paper form, registrants are dependent on the registry staff to enter the information found on the paper form into the registry record on their behalf. In view of the importance of the timing and order of registration to the third-party effectiveness and priority of a security right, the regulation should provide that the registry must enter information in paper notices into the registry record in the order in which they were submitted to the Registry (see draft Registry Guide, rec. 11, subpara. (c)).

5. In a hybrid registry system which permits notices to be submitted in both paper and electronic form, this recommendation would not necessarily ensure the priority of a secured creditor that submitted a paper notice to the registry before a competing secured creditor submitted a notice electronically. For example, the paper notice may be received at 08:00, and entered into the registry record by the registry staff and become searchable at 08:30, while a competing secured creditor may enter a notice electronically at 08:05 which may become searchable at 08:10. Assuming priority between them is determined by the general first-to-register rule, the latter would have priority since its notice was the first to become searchable and therefore the first to be registered. In systems that adopt a hybrid approach, registrants who elect to use paper notices should be alert to this potential disadvantage.

6. The regulation should require the registry to assign a unique registration number to an initial notice (see draft Registry Guide, rec. 12). This is necessary to ensure that any subsequent amendment or cancellation notice that relates to the security right to which the initial notice relates is associated with that initial notice in the registry record so as to be capable of being retrieved and included in a search result (for a discussion of the need for a registrant to provide the registration number of the initial notice to which the amendment or cancellation relates, see A/CN.9/WG.VI/WP.54/Add.4, paras. 4 and 24).

2. Period of effectiveness of the registration of a notice

7. The *Secured Transactions Guide* recommends that an enacting State may adopt one of two approaches to the period of effectiveness (or duration) of a registered notice (see *Secured Transactions Guide*, chap. IV, paras. 87-91, and rec. 69).

8. Under option A, all registered notices are subject to a uniform statutory period of effectiveness. It follows that, where the secured transaction to which the registered notice relates has a longer duration, the secured creditor must ensure that the period of effectiveness is renewed before the expiry of the statutory period. This approach provides certainty as to the period of effectiveness of a registered notice, but limits the flexibility of the registrant to match the period of effectiveness of the registered notice to the likely duration of the secured financing relationship.

9. Under option B, the registrant is permitted to self-select the desired period of effectiveness with the option to renew for an additional self-selected period by registering an amendment notice. In legal systems that adopt this approach, it may be desirable to base registration fees on a sliding tariff related to the duration selected by the registrant in order to discourage the selection of excessive terms that do not correspond to the expected duration of the underlying security agreements (with a cushion of extra time to allow for delays in payment of the secured obligation).

10. Enacting States should incorporate one or the other of these options in their secured transactions law and in the regulation (see draft Registry Guide, rec. 13, options A and B). Alternatively, enacting States could adopt a third option, which is a hybrid of the first two options. Under this approach, the registrant would be entitled to select the period of effectiveness of the registered notice subject to a maximum limit, so as to discourage the selection of excessive terms (see *Secured Transactions Guide*, chap. IV, para. 88, and draft Registry Guide, rec. 13, option C).

11. If a State adopts option A, it needs to design its registry system to allow the registrant to reduce the legal period of effectiveness of a registered notice if the actual duration of their security agreement is less than the specified statutory period. This is because a registrant is obligated, in any event, to register a cancellation notice once the secured obligation is satisfied and the security agreement is terminated (see A/CN.9/WG.VI/WP.54/Add.4, paras. 38-41).

12. In States that implement options B or C, the period of effectiveness of the registered notice is a mandatory component of the information required to be included in a notice with the result that a notice would be rejected if it did not indicate its period of effectiveness in the designated field (see A/CN.9/WG.VI/WP.54/Add.3, para. 14).

13. Where option B or C is selected by an enacting State, it may be desirable to design the prescribed notice form in a way that permits the registrant to easily indicate the desired period without the risk of inadvertent error, for example, by limiting the choice to whole years from the date of registration.

14. Whether a State adopts option A, B or C, the general law of the enacting State for calculating time periods will apply to the calculation of the period of effectiveness of a registered notice, unless the secured transactions law provides otherwise. For example, the general law of the enacting State may provide that where the calculation is from the day of registration or from the anniversary of the day of registration, a year runs from the beginning of that day.

15. Regardless of the approach an enacting State may take to determining the period of effectiveness of a registration, under the recommendations of the *Secured Transactions Guide*, the third-party effectiveness of a security right is lost once the registration expires unless: (a) the security right is made effective against third parties prior to the lapse by some other permitted method permitted for that type of encumbered asset (see *Secured Transactions Guide*, rec. 46); or (b) an amendment notice is registered extending the period of effectiveness of the registration. While the third-party effectiveness of that security right could be re-established by registering a new notice, the security right would take effect against third parties only from the time of the new registration. Consequently, it would as a general rule be subordinate to prior registered secured creditors and secured creditors that earlier made their security rights effective against third parties by a method other than registration (see *Secured Transactions Guide*, recs. 47 and 96 and A/CN.9/WG.VI/WP.54/Add.4, paras. 25-27).

3. Time when a notice may be registered

16. The *Secured Transactions Guide* recommends that it should be possible for a notice to be registered before the creation of the security right or the conclusion of a security agreement; this is often referred to as “advance registration” (see *Secured Transactions Guide*, chap. IV, paras. 98-101, and rec. 67). This rule may apply to an initial or amendment notice (as, in principle, an initial or an amendment notice may be pre-registered) but not to a cancellation notice (as normally the negotiations have to be concluded unsuccessfully for a cancellation notice to be registered). This rule typically would be stated in the secured transactions law. However, depending on the drafting conventions in the enacting State, it may be included in the regulation (see draft Registry Guide, rec. 14).

17. As already explained (see A/CN.9/WG.VI/WP.54, para. 27), registration does not create and is not necessary for the creation of a security right (see also *Secured Transactions Guide*, rec. 33). Consequently, until the security agreement is actually entered into and the other requirements for the creation of a security right are satisfied, the secured creditor may be defeated by a competing claimant, such as a buyer that acquires rights in the encumbered assets in the period between advance registration and the creation of the security right. However, registration will generally ensure that the secured creditor, once the security right is created, has priority over another secured creditor that registers subsequently, regardless of the order of creation of the competing security rights (A/CN.9/WG.VI/WP.54, para. 33).

18. If the negotiations are aborted after the registration is effected or for some other reason no security agreement is ever entered into between the parties, the creditworthiness of the person named as grantor in the registration may be adversely affected by the existence of the registration unless it is cancelled. To address this concern, the *Secured Transactions Guide* recommends that, if the potential secured creditor does not cancel its registration, the enacting State should establish a summary judicial or administrative procedure to enable the grantor to have the registration cancelled in the event the registrant fails or refuses to do so itself (see *Secured Transactions Guide*, rec. 72, subpara. (a), recs. 54, subpara. (d), and 72, subparas. (b) and (c), and A/CN.9/WG.VI/WP.52/Add.4, paras. 38-41, and draft Registry Guide, rec. 33).

4. Sufficiency of a single notice

19. In a notice registration system of the kind contemplated by the *Secured Transactions Guide* (see *Secured Transactions Guide*, chap. IV, paras. 10-14, and rec. 57, as well as A/CN.9/WG.VI/WP.54/Add.1, paras. 9-17 and draft Registry Guide, rec. 21), there is no reason why a single notice should not be sufficient to give third-party effectiveness to present or future security rights arising under multiple security agreements between the same parties covering the assets described in the notice (see *Secured Transactions Guide*, rec. 68). Requiring a one-to-one relationship between each notice and each security agreement would generate unnecessary costs and undermine the ability of the secured creditor to flexibly respond to the grantor's evolving financing needs without having to fear a loss of the priority position it holds under the initial registration. Accordingly, the *Secured Transactions Guide* recommends that the registration of a single notice should be sufficient to achieve the third-party effectiveness of one or more than one security right, whether they exist at the time of registration or are created later and whether they arise from one or more than one security agreements between the same parties (see *Secured Transactions Guide*, rec. 68). This rule typically would be stated in the secured transactions law. However, depending on the drafting conventions in the enacting State, it may be included or reiterated in the regulation (see draft Registry Guide, rec. 13).

20. It should be emphasized that a registration achieves the third-party effectiveness of security rights arising under multiple security agreements only to the extent that the description of the encumbered assets in the notice corresponds to their description in any new or amended security agreement (see *Secured Transactions Guide*, rec. 63). Otherwise, the registration would not serve the function of alerting third-party searchers to the potential existence of a security right. Accordingly, to the extent that any security agreement concluded between the parties covers additional assets that were not described in the initial notice, a new notice or an amendment of the initial notice would be needed and the third-party effectiveness and priority of the security right in these additional assets would date only from the time of registration of the new notice or the amendment.

5. Grantor-based organization and retrieval of registered notices

21. Registrations in an immovable registry are typically organized and retrieved by reference to an alphanumerical or similar identifier for the particular immovable (for example, its civic address). The same approach is usually taken for

asset-specific movables registries such as ship or aircraft registries. For example, the international registry established under the Cape Town Convention and Aircraft Protocol uses the serial number assigned by the manufacturer of the aircraft object as the principal indexing and search criterion.

22. In contrast to this approach, the *Secured Transactions Guide* recommends that the primary indexing criterion for the purposes of searching and retrieving registered notices should be the identifier of the grantor (see *Secured Transactions Guide*, chap. IV, paras. 31-36, and rec. 54. subpara. (h)). This recommendation is based on two considerations. First, most categories of movable asset do not have a sufficiently unique identifier to enable useful asset-based searching. Second, grantor-based indexing and searching enables a security right in the grantor's future assets and circulating pools of revolving assets, such as inventory and receivables, to be made effective against third parties by a single one time registration (see *Secured Transactions Guide*, rec. 68). To implement this recommendation, enacting States should incorporate it in the regulation (see draft Registry Guide, rec. 14).

23. Although the *Secured Transactions Guide* refers to the indexing of information in the registry record, indexing as a technical matter is not the only mode of organizing information in a data base so as to make it searchable. Accordingly, the regulation should be drafted to allow flexibility at this level in the design of the registry (see draft Registry Guide, rec. 16).

6. Serial number-based organization and retrieval of registered notices

24. Grantor-based indexing and searching has a drawback in a specific transactional context often referred to as the "A-B-C-D problem". Suppose, for example, that B, after granting a security right in its automobile in favour of A, sells the automobile to C, who in turn proposes to sell or grant security in it to D. Assuming D is unaware that C acquired the asset from the original grantor B, D will search the registry using C's identifier as the search criterion. Unless A amended its registration to add C as an additional grantor or registered a new registration notice naming C as the grantor, D's search will not retrieve the registered notice relating to the security right granted by B in favour of A (on the question whether a secured creditor should be obligated to amend its registration to add a transferee from the original grantor as a new grantor, see A/CN.9/WG.VI/WP.54/Add.4, paras. 9-12). Yet under the recommendations of the *Secured Transactions Guide*, the security right granted by B will generally follow the automobile into the hands of D (see *Secured Transactions Guide*, recs. 79 and 81).

25. In response to the "A-B-C-D problem", some secured transactions laws provide for supplementary asset-based indexing and searching. As a practical matter, this approach is feasible only for types of movable assets for which unique and reliable serial numbers or equivalent alphanumerical identifiers are available. For example, the automotive industry assigns a unique alphanumerical identifier, commonly referred to as a vehicle identification number, to identify individual motor vehicles according to a system based on standards issued by the International Organization for Standardization (ISO). In regimes that enable searchers to retrieve registered notices using a unique alphanumerical number of this kind, a prospective transferee in the position of D is protected, since a search by that number will disclose all security rights granted in the particular motor vehicle by any owner in

the chain of title. Other types of assets for which some regimes have adopted this approach include trailers, mobile homes, aircraft frames and engines, railway rolling stock, boats and boat motors.

26. The *Secured Transactions Guide* discusses but makes no recommendation on the question of using the serial number or equivalent alphanumerical identifier of an asset as an indexing and search criterion (see *Secured Transactions Guide*, chap. IV, paras. 34-36). The disadvantage of this approach is that it may reduce the ability of the parties to create an effective security right in future assets to the extent that the registrant must continuously amend its registered notice to add the serial number or other identifier of assets that are acquired by the grantor after the registration of the initial notice. Accordingly, in States that have implemented this approach, it is limited to assets that, in addition to having a unique identifier, have a high resale value and a significant resale market (for example, in addition to motor vehicles, trailers, mobile homes, aircraft frames and engines, railway rolling stock, boats and boat motors).

27. In addition, under the secured transactions law of States that have adopted this approach, serial number registration is required for the purposes of achieving third-party effectiveness and priority only as against those classes of competing claimants that are most potentially prejudiced by the so-called "A-B-C-D problem" (notably, transferees of the encumbered assets). As against other classes of competing claimants, for example, the grantor's judgment creditors or insolvency administrator, registration of a notice that does not include entry of the serial number in the designated field is still effective against third parties so long as the notice otherwise sufficiently describes the encumbered asset. Furthermore, the entry of the serial number is not required at all 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 "A-B-C-D problem" 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)).

7. Preserving the integrity and security of the registry record

28. As already mentioned (see A/CN.9/WG.VI/WP.54/Add.1, para. 38), for the purposes of establishing public trust in the security of the registry record, the *Secured Transactions Guide* recommends that, while the day-to-day operation of the registry may be delegated to a private authority, the State retains the responsibility to monitor the operation of the registry, and retains ownership of the registry record, and, if necessary, the registry infrastructure (see A/CN.9/WG.VI/WP.54/Add.1, para. 38). Other steps to ensure the integrity and security of the registry record include: (a) the obligation of the registry to request and maintain the identity of the registrant (see A/CN.9/WG.VI/WP.54/Add.1, paras. 56 and 57); (b) the obligation of the registry send promptly copies of registered notices to the registrant (see paras. 38-40 below); (c) the obligation of the registrant to send promptly copies of registered notices to the person named as the grantor in a registered notice (see paras. 41 and 42 below); and (d) the elimination of any discretion on the part of registry staff to reject users' access to the registry services (see A/CN.9/WG.VI/WP.54/Add.1, paras. 55-58).

29. Additional measures to ensure that the integrity of the registry record is preserved include the following. First, the regulation should make it clear that the registry staff may not alter or remove information in registered notices, except as specified in the law and the regulation (see draft Registry Guide, rec. 17) and that any changes can only be made by registration of an amendment notice in accordance with the regulation (see draft Registry Guide, rec. 19). Nonetheless, enacting States may wish to consider whether the registry should be authorized to directly correct information in a registered notice where the notice was submitted by the registrant in paper form and the registry failed to accurately or completely enter the information on the paper form into the registry record. If this approach is adopted, a notice of the correction should be promptly sent to the registrant. Alternatively, the enacting State could require the registry to notify the registrant of its error and the registrant could then submit an amendment notice free of charge (for a discussion of the liability of the enacting State for loss or damage caused to the registrant or, for example, to another secured creditor that registered before the notice was amended, see paras. 34-37 below).

30. Second, to protect the registry record against the risk of physical damage or destruction, the enacting State should maintain back-up copies of the registry record (see *Secured Transactions Guide*, chap. IV, paras. 54, and rec. 54, subparas. (f)).

31. Third, the potential for registry staff corruption should be minimized by: (a) designing the registry system to make it impossible for registry staff to alter the time and date of registration or any information entered by a registrant; (b) instituting financial controls that strictly monitor staff access to cash payments of fees and to the financial information submitted by clients who use other modes of payment; and (c) designing the registry system to ensure that the archived copy of cancelled registrations preserves the original data submitted.

32. Fourth, it should be made clear to registry staff and registry users, inter alia, that the registry staff is not allowed to give legal advice on the legal requirements for effective registration and searching or on the legal effects of registrations and searches. However, registry staff should be able to give practical advice with respect to the registration and search process (see paras. 34-36 below).

33. Finally, as already discussed (see A/CN.9/WG.VI/WP.54/Add.1, paras. 55-58 and 62-65), the registry should be designed, if possible, to enable registrants and searchers to directly submit information for registration and conduct a search directly and electronically as an alternative to having registry staff do this on their behalf (see *Secured Transactions Guide*, rec. 54, subpara. (j)). Under this approach, users bear sole responsibility for any errors or omissions they make in the registration or search process and carry the burden of making the necessary corrections or amendments (see draft Registry Guide, rec. 7, and A/CN.9/WG.VI/WP.54/Add.1, para. 61). Consequently, the potential for corruption or misconduct on the part of the registry staff is greatly minimized since their duties are essentially limited to managing and facilitating electronic access by users, processing fees, overseeing the operation and maintenance of the registry system and gathering statistical data.

8. Liability of the registry

34. The *Secured Transactions Guide* recommends that the secured transactions law should provide for the allocation of legal responsibility for loss or damage caused by an error in the administration or operation of the registration and searching system (see *Secured Transactions Guide*, rec. 76).

35. As noted earlier, users bear sole legal responsibility for any errors or omissions in the registration information or search requests they submit to the registry and carry the burden of making the necessary corrections or amendments (see draft Registry Guide, rec. 7, and A/CN.9/WG.VI/WP.54/Add.1, para. 61). Where notices and search requests are directly submitted by users electronically without the interposition of registry staff, the potential liability of the enacting State should, therefore, be limited to system malfunction, since any other error would be attributable to the registrant (see *Secured Transactions Guide*, rec. 56). However, where a notice or search request was submitted using a paper form, the enacting State will need to address the existence or the extent of its potential liability for the refusal or failure of the registry to correctly enter registration information into the registry record or to correctly carry out a search request where the notice or search request was submitted using a paper form.

36. While it should be made clear that registry staff are not allowed to give legal advice, the enacting State will additionally need to address whether and to what extent it should be liable if registry staff provide incorrect or misleading information on the requirements for effective registration and searching or on the legal effects of registrations and searches.

37. To the extent they accept legal responsibility for loss or damage caused by system malfunction or registry staff error or misconduct, some States allocate part of the registration and search fees collected by the registry into a compensation fund to cover possible claims whereas in other States, claims are paid out of general revenue.

9. Registry's duty to send a copy of the registered notice to the registrant

38. As noted earlier, the registration of a notice becomes effective when the information contained in the notice is entered into the registry record so as to be available to searchers. In view of the importance of the effective time of registration to the third-party effectiveness and priority of a security right, the *Secured Transactions Guide* recommends that a registrant should be able to obtain a record of a registration as soon as the information contained in a notice is entered into the registry record and should be informed by the registry of any changes to an initial registration (see *Secured Transactions Guide*, chap. IV, paras. 49-52, and rec. 55, subparas. (d) and (e)). Accordingly, the regulation should provide that the registry must promptly transmit a copy of a registered notice (whether it is an initial or an amendment or cancellation notice) to the registrant, indicating the date and time when it became effective (see draft Registry Guide, rec. 18).

39. If the registry needs to send a paper copy of registered notices by ordinary mail to the registrant, this will delay the ability of the registrant to act with confidence on the third party effectiveness and priority of its security right. Accordingly, the registry should be designed, if possible, to automatically generate an electronic copy of a registered notice. If the system permits notices to be

submitted by the registrant electronically, the system should be designed to automatically transmit the electronic copy of the registered notice to the registrant using their common electronic interface. Even if the registrant submitted a paper notice, the registry system should be designed to permit electronic transmission of the copy, for example, by electronic mail attachment, to the registrant.

40. A registrant would want to receive a copy of a registered amendment or cancellation notice in order to be able to take prompt steps to protect its position in the event that the registration was unauthorized or erroneous. There are effective steps that can be taken to protect a registrant against the risk of fraudulent amendments or cancellations by a third party (for a discussion of the effectiveness of amendment or cancellation notices not authorized by the secured creditor, see A/CN.9/WG.VI/WP.54/Add.4, paras. 28-37).

10. Secured creditor's duty to send a copy of the registered notice to grantor

41. As already noted (see A/CN.9/WG.VI/WP.54/Add.1, para. 60), a secured creditor must obtain the written authorization of the grantor, in the security agreement or in a separate agreement, to effect a registration. To enable the person named as grantor in a registered notice to verify that the registration was in fact authorized, and that the registration information corresponds to the scope of the authorization, the *Secured Transactions Guide* recommends that the secured creditor must send a copy of the registered notice to the grantor (see *Secured Transactions Guide*, rec. 55, subpara. (c)). This recommendation should be reflected in the regulation (see draft Registry Guide, rec. 18, subpara. (b)).

42. Placing the obligation on the secured creditor, rather than the registry, to send a copy of the notice to the grantor is intended to avoid creating an additional burden for the registry which could negatively affect its efficiency. On the assumption that in most cases registrations will be made in good faith and will be authorized, the failure of the secured creditor to meet this obligation is not a pre-condition to the effectiveness of the registration. Rather, it results only in nominal penalties and liability to compensate the grantor for any actual damage resulting from the failure (see *Secured Transactions Guide*, chap. IV, para. 51, and rec. 55, subpara. (c), and paras. 41 and 42 above).

11. Amendment of information in the public registry record

43. The *Secured Transactions Guide* recommends that a secured creditor may amend information in a registered notice by registering an amendment notice at any time (see *Secured Transactions Guide*, chap. IV, paras. 110-116, and rec. 73). The *Secured Transactions Guide* also recommends that a grantor may, in certain circumstances, seek an amendment through a judicial or administrative process (see *Secured Transactions Guide*, chap. IV, paras. 107 and 108, and rec. 72). In view of the importance of these recommendations, the regulation may restate them and, in addition, set out the information that an amendment notice should contain (see draft Registry Guide, rec. 19 and paras. 50-53 below).

12. Removal of information from the public registry record and archival

44. The *Secured Transactions Guide* recommends that information contained in a registered notice should be removed promptly from the public record once the

period of effectiveness of the notice expires or a cancellation notice is registered; the information must then be archived so as to be capable of retrieval if necessary (see *Secured Transactions Guide*, chap. IV, para. 109, and rec. 74). If cancelled or expired notices remained publicly searchable, this might create legal uncertainty for third party searchers, impeding the ability of the grantor to grant a new security right in or deal with the assets described in the notice. Archival in a manner that permits retrieval is nonetheless required since expired or cancelled notices may need to be retrieved in the future, for example, in order to determine the time of registration or the scope of the encumbered assets in a subsequent priority dispute between the registrant and a competing claimant. The regulation should include rules implementing these recommendations (see draft Registry Guide, recs. 20 and 21).

45. The regulation should also specify a minimum period of time for which archived notices must be preserved (for example, twenty years) (see draft Registry Guide, rec. 21). The length of the archival period may be influenced by the length of the prescription or limitation period under the law of the enacting State for initiating claims. For example, with respect to security rights, if the law provides that no action may be brought later than fifteen years from the date of extinguishment of the security right or termination of the security agreement, the registry regulation could provide for a co-extensive archival period. In deciding the appropriate period, the enacting State should also consider whether the law permits an extension of the prescription period and whether the registry should then be obligated to keep the information in its archives for a period equivalent to any permitted extension.

13. Language of notices and search requests

46. While the *Secured Transactions Guide* does not make any specific recommendation with regard to the language to be used in submitting registration information and search requests to the registry, the commentary addresses the need for enacting states to address this issue in the registry regulation (see *Secured Transactions Guide*, chap. IV, paras. 44-46). Accordingly, it should be addressed in the regulation (see draft Registry Guide, rec. 22).

47. Regardless of the language used in the underlying security documentation, the regulation typically would require registration information and search requests to use the official language or languages of the State under whose authority the registry is maintained. While the enacting State could also authorize the use of other languages, this would undermine the efficiency and transparency of the registry record unless the typical searcher in the enacting State could reasonably be expected to understand that other language.

48. The only exception to this rule should be where the grantor's legal name, for example a business incorporated under foreign law, is expressed in a language that is different from that used by the registry. To address cases where the language in which the name is expressed uses a set of characters different from the characters used in the language or languages of the registry, it will be necessary for the regulation to provide guidance on how the characters are to be adjusted or transliterated to conform to the language of the registry. The same considerations apply to the secured creditor's name.

49. Where the grantor is a legal person and the law under which it is constituted allows the use of alternative linguistic versions of its name, the regulation should specify that all versions of the name must be entered as separate grantor identifiers, subject to the rules prescribed by the regulation regarding how names expressed in a foreign set of characters are to be adjusted or transcribed to conform to the language or languages of the registry. This is necessary to protect third parties that deal or have dealt with the grantor under any one of the alternative versions of its name and would therefore search the registry using that version.

B. Recommendations 11-22

[*Note to the Working Group: The Working Group may wish to consider recommendations 11-22, as reproduced in document A/CN.9/WG.VI/WP.54/Add.5. The Working Group may also wish to note that, for reasons of economy, the recommendations are not inserted here at this stage but will be inserted in the final text.*]

IV. Registration of initial notices

A. General remarks

1. Introduction

50. The *Secured Transactions Guide* recommends (see *Secured Transactions Guide*, chap. IV, paras. 65-97, and rec. 57) that the following information and only the following information must be provided in an initial notice for the registration to be accepted by the registry: (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 period of effectiveness 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 (see paras. 7-15 above); 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 A/CN.9/WG.VI/WP.54/Add.3, paras. 15-19). The regulation should restate and supplement this recommendation (see draft Registry Guide, rec. 23). The following paragraphs discuss each of the elements of the required content of a notice.

51. As already discussed (see A/CN.9/WG.VI/WP.54/Add.1, para. 57), the registrant must enter the required information in the designated field or space in the prescribed form of notice for entering that kind of information (see draft Registry Guide recs. 7 and 23). 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.

2. Grantor information

(a) General

52. As already explained (see paras. 21-23 above), the *Secured Transactions Guide* recommends that registered notices should be indexed and organized so as to be retrievable by a searcher using the grantor's identifier as the search criterion. In line with the recommendations of the *Secured Transactions Guide* (see *Secured Transactions Guide*, recs. 58-60), the regulation should provide detailed guidance on what constitutes the correct identifier of the grantor so as to ensure that a registrant can be confident that its registration will be effective and that searchers can confidently rely on a search result (see draft Registry Guide, paras. 54-68 and recs. 24-26 below). The regulation should also provide guidance on the consequences of incorrect or insufficient statements with respect to the grantor identifier (see A/CN.9/WG.VI/WP.54/Add.3, paras. 20-23, and rec. 29, subpara. (a) below).

53. 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, registrants should understand that the grantor information required is the identifier and address of the grantor that owns, or has rights in, the encumbered assets, and not that of the third-party debtor of the secured obligation (or a mere guarantor of the obligation owed by the debtor). Where there is more than one grantor, the regulation should specify that their identifiers and addresses must be entered in the designated fields or spaces on the notice separately for each grantor. This is necessary to ensure that a search of the registry record using the identifier of any one of the grantors will retrieve the registered notice (see A/CN.9/WG.VI/WP.54/Add.3, paras. 20-23). 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 on the same notice (see examples of registry forms in A/CN.9/WG.VI/WP.54/Add.6). While the registrant could achieve the same result by registering separate notices for each grantor, this is a more cumbersome process since the registrant would need to re-enter all the other information required on a notice on each separate notice.

(b) Grantor identifier for natural persons versus legal persons

54. 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 registered notices will need to be indexed or otherwise organized in the registry record according to distinct criteria depending on the category of grantor.

55. This approach has implications for the registration and search process. In order to ensure that the information in a notice is 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 designated fields for entering the identifier and address of

grantors in each category (see the examples of registry forms in A/CN.9/WG.VI/WP.54/Add.6).

(c) Grantor identifier for natural persons

56. 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, as well as the hierarchy among those official documents. The following table illustrates the type of approach that might be taken, although enacting States will need to determine in accordance with its own naming conventions what types of official document are most appropriate taking into account their local naming conventions (see draft Registry Guide, rec. 24).

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)

57. The regulation should specify the components of the grantor's name that 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 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. 24, subpara. (b)).

58. The enacting State may wish to consider whether during the registration process the registry should provide electronic verification of names entered in registered notices against names in other databases maintained by the enacting State. In this regard, two issues should be considered. The first is that the registry should not attempt to provide this service unless it is confident that the database to which it has connected is current, complete and accurate. Otherwise, it would be providing a disservice and possibly 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 database is correct. This latter approach more closely accords with the recommendations of the *Secured Transactions Guide*.

59. 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 official number issued by the enacting State) must be included in the notice to uniquely identify the grantor (see *Secured Transactions Guide*, rec. 59). The *Secured Transactions Guide*, however, does not recommend that this additional information be used as search criteria. 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 accepted by the registry or whether inclusion is at the option of the registrant (see draft Registry Guide, rec. 23, subpara. (a) (i)).

60. Whether an enacting State should provide for the inclusion in a notice of an identity or other official number issued by that State as additional information depends on three principal considerations. First, whether the registry system under which the identity 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 or other 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 or other official 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, rec. 23, subpara. (a) (i)), and, in any case, not as a search criterion (see draft Registry Guide, rec. 34).

61. 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, where the enacting State requires the entry of a State-issued identity or other official number to uniquely identify a grantor, it will 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.

(d) Grantor identifier for legal persons

62. 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 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. 25).

63. 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 some 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. 25, option B). In States that require this additional information, the regulation should provide guidance for cases where the grantor is a legal person constituted under the law of a foreign State since the commercial or corporate record of the foreign State may not have an equivalent number system.

64. 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 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.

65. 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.

(e) Special cases

66. 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. 26). 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 will need to consider whether and how to adapt these examples to their context.

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, estate, 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 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

67. In the case of a sole proprietorship, even though the business may be operated under a different business name and style than the name 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 usually may be changed at will by the proprietor. While a registrant may enter the name of the sole proprietorship in the notice as an additional grantor, it is the name of the proprietor that is the required identifier.

68. In the above-mentioned table, where the grantor is an insolvency estate acting through an insolvency representative, registrants must, in addition to entering the name of the insolvent person in the appropriate grantor field, also specify in a separate field that the grantor is insolvent. Similarly, where the grantor is a trustee

or representative of an estate, registrants must, in addition to entering the name of the trustee or representative in the grantor field, specify in a separate field that the grantor is acting for a trust or is the representative of an estate. Accordingly, the prescribed form of notice will need to include a separate designated field to for this additional information.

(f) Address of the grantor

69. 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)). The grantor's address is relevant for the purpose of sending copies of registered notices to the grantor (see *Secured Transactions Guide*, rec. 55, subparas. (c) and (d)). Accordingly, the registrant should enter the current known address of the grantor. The grantor's address is not part of the grantor's identifier in the sense of being a search criterion and the prescribed form of notice should designate a field for entering the grantor's address that is separate from the field designated for entering the grantor's identifier. The regulation should restate and, where necessary, supplement these recommendations.

70. 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.

71. The inclusion of the grantor's address in the notice also helps to uniquely identify the grantor in States where many people are likely to share the same common name with the result that a search may disclose multiple security rights granted by different grantors with the same name (see *Secured Transactions Guide*, rec. 59). The grantor's address plays less of a role at this level in systems in which the registrant is required to include additional information designed to uniquely identify the grantor, such as, for example, a birth date or State-issued official identity number (see paras. 59-61 above).