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PRELIMINARY DRAFT MODEL LAW ON FACTORING

1. This document contains the preliminary draft Model Law on Factoring (MLF). The preliminary draft MLF is composed of seven chapters and an annexe:

Chapter I – Scope and general provisions

Chapter II – Transfers of receivables

Chapter III – Making a transfer of a receivable effective against third parties

Chapter IV – The registration system (prepared by registration subgroup)

Chapter VI – Rights and Obligations of the Parties

Chapter VII – Collection and Enforcement

Chapter VIII – Conflict of Laws

Annexe A – Registry Provisions (prepared by registrations subgroup)

2. This preliminary draft MLF should be considered in conjunction with the Issues Paper (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 2) and the Comparison Table (UNIDROIT 2021 – Study LVIII A – W.G.4 – Doc. 4). The articles in this preliminary draft MLF are identical to the first two columns in the Comparison Table (aside from Annexe A, which is not in the Comparison Table).

3. The provisions prepared by the registration subgroup in Chapter IV and Annexe A are marked up from the corresponding provisions in the UNCITRAL Model Law on Secured Transactions (MLST) and contain comments inserted by the registration subgroup.

4. This document should be considered to be a 'preliminary' draft as it has not yet been approved by the MLF Working Group.

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PRELIMINARY DRAFT MODEL LAW ON FACTORING

CHAPTER I

SCOPE AND GENERAL PROVISIONS

Article 1 – Scope of application

1. This Law applies to [transfers/assignments] of receivables.
2. [*Application to proceeds – to be discussed.*]
3. Nothing in this Law affects the rights and obligations of a transferor or a debtor under other laws governing the protection of parties to transactions made for personal, family or household purposes.
4. Nothing in this Law overrides a provision of any other law that limits the transfer of specific types of receivable.
5. Nothing in this Law affects the rights and obligations of any person under the law governing negotiable instruments.

Article 2 – Definitions

1. For the purposes of this Law:
 - (-) “Debtor” means a person who owes payment of the receivable, including a guarantor or other person secondarily liable for payment of the receivable.
 - (-) “Future receivable” means a receivable that arises after the time a transfer agreement is entered into, whether the contract giving rise to the receivable:
 - (i) is in [existence/effect] at the time the transfer agreement is entered into; or
 - (ii) only comes into [existence/effect] after that time.

OR

“Future receivable” means a receivable that arises after the time a transfer agreement is entered into, whether or not the contract giving rise to the receivable is in [existence/effect] at that time.

OR

“Future receivable” means a receivable that arises after the time a transfer agreement is entered into. This includes a receivable that arises under a contract that is not in [existence/effect] at that time.

- (-) “Proceeds” of a receivable means whatever is received in respect of the receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods.
- (-) “Receivable” means a contractual right to payment of a sum of money:
 - (i) Arising from a contract for the supply or lease of goods or services [other than a contract for the sale or lease of immovable property]

- (ii) Arising from a contract for the sale, lease or licence of industrial or other intellectual property or proprietary information; or
 - (iii) Representing the payment obligation for a credit card transaction.
- [others]

(-) "Transfer" of a receivable means:

- (i) an outright transfer of the receivable by agreement; and
- (ii) A transfer of the receivable by agreement, or the creation of an interest in the receivable by agreement, in either case to secure payment or other performance of an obligation, regardless of the way in which the parties have described the transaction, the status of the transferor [or transferee] or the nature of the secured obligation.

(-) "Transfer agreement" means an agreement providing for the transfer of a receivable that:

- (i) is [in/evidenced by] a writing that is signed by the transferor;
- (ii) identifies the transferor and the transferee; and
- (iii) describes the receivable in a manner that reasonably allows its identification.

(-) "Transferee" means a person to whom or in whose favour a receivable is transferred.

(-) "Transferor" means a person who transfers a receivable.

(-) "Writing" includes an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

Article 3 – Party autonomy

1. With the exception of Articles [...], the provisions of this Law may be derogated from or varied by agreement.
2. An agreement referred to in paragraph 1 does not affect the rights or obligations of any person who is not a party to the agreement.
3. Nothing in this Law affects any agreement to use alternative dispute resolution, including arbitration, mediation, conciliation and online dispute resolution.

Article 4 – General standards of conduct

A person must exercise its rights and perform its obligations under this Law in good faith and in a commercially reasonable manner.

Article 5 – International origin and general principles

1. [In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith.]

2. [Questions concerning matters governed by this Law that are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.]

CHAPTER II

TRANSFERS OF RECEIVABLES

Article 6 – Requirements for the transfer of a receivable

1. A receivable may be transferred by a transfer agreement, provided that the transferor has rights in the receivable or the power to transfer it.
2. A transferor may transfer:
 - (a) a part of or an undivided interest in receivables;
 - (b) a generic category of receivables; and
 - (c) [all of its receivables.]
3. A transfer agreement may provide for the transfer of a future receivable, but the transfer occurs only when the transferor acquires rights in the receivable or the power to transfer it.
4. Without limiting paragraph (iii) of the definition of “transfer agreement” in Article 2, a description of receivables in a transfer agreement will be sufficient for the purposes of Article 2 paragraph (iii) if it indicates that the receivables consist of all of the transferor’s receivables, or all of the transferor’s receivables within a generic category.

Article 7 – Proceeds

1. The right of the transferee of a receivable extends to the receivable’s identifiable proceeds.

Article 8 – Contractual limitations on the transfer of receivables

1. A transfer of a receivable is effective notwithstanding any agreement [between the initial or any subsequent transferor and the debtor or any transferee] limiting in any way the transferor’s right to transfer the receivable.
2. Neither a transferor nor a transferee is liable to any person for breach by the transferor of an agreement referred to in paragraph 1, and the other party to the agreement may not avoid the contract giving rise to the receivable or the transfer agreement on the sole ground of the breach of that agreement. A person that is not a party to the agreement referred to in paragraph 1 is not liable for the transferor’s breach of the agreement on the sole ground that it had knowledge of the agreement.

Article 9 – Personal or property rights securing or supporting payment of a receivable

1. A transferee of a receivable has the benefit of any personal or property right that secures or supports payment of the receivable without a new act of transfer. If that right is transferable under

the law governing it only with a new act of transfer, the transferor is obliged to transfer the benefit of that right to the transferee.

2. A right is transferred under paragraph 1 notwithstanding any agreement, between the transferor and the debtor or other person granting that right, that limits in any way the transferor's right to transfer the receivable or the right that secures or supports payment of the receivable.

CHAPTER III

MAKING A TRANSFER OF A RECEIVABLE EFFECTIVE AGAINST THIRD PARTIES

Article 10 – Registration

1. A transfer of a receivable is only effective against third parties if a notice with respect to the transfer is registered in the Registry.
2. If the third-party effectiveness of a transfer lapses, third-party effectiveness may be re-established in accordance with paragraph 1, but the transfer is effective against third parties only as of that time.

Article 11 – Proceeds

[To be discussed.]

Article 12 – Continuity in third-party effectiveness upon a change of the applicable law to this Law

1. If a transfer is effective against third parties under the law of another State and this Law becomes applicable, the transfer remains effective against third parties under this Law if it is made effective against third parties in accordance with this Law before the earlier of:
 - (a) the time when third-party effectiveness would have lapsed under the law of the other State; and
 - (b) the expiry of [a short period of time to be specified by the enacting State] after this Law becomes applicable.
2. If a transfer continues to be effective against third parties under paragraph 1, the time of third-party effectiveness is the time when it was achieved under the law of the other State.

CHAPTER IV
THE REGISTRY SYSTEM

Article 13 – Establishment of the Registry

A registry is established to give effect to the provisions of this Law relating to the registration of notices with respect to security rights. The rules for the operation of the Registry [and the effect of registration or non-registration of a notice with respect to a receivable] are set out in [Annexe A].

Commentato [A1]: The text in article 28 of the MLST is not particularly helpful, as the provision itself cannot bring the registry into existence. It is proposed instead that a definition of Registry be included in article 2 of the Law, along these lines:

“Registry” means the registration system for this Law established by [the relevant authority in the enacting State].

Commentato [A2]: This article could be included in the body of the Law. The rest of the rules could be included in an annexe to the Law, or in the Guide to Enactment.

CHAPTER VI
RIGHTS AND OBLIGATIONS OF THE PARTIES

SECTION I. TRANSFEROR AND TRANSFEREE

Article 1 – Rights and obligations of the transferor and the transferee

1. The mutual rights and obligations of the transferor and the transferee arising from their agreement are determined by the terms and conditions set out in that agreement, including any rules or general conditions referred to therein.
2. The transferor and the transferee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

Article 2 – Representations of the transferor

1. The transferor of a receivable represents, as at the time of the transfer, that:
 - (a) The transferor has the right to transfer the receivable;
 - (b) The transferor has not previously transferred the receivable to another transferee; and
 - (c) The debtor does not and will not have any defences or rights of set-off.
2. The transferor does not represent that the debtor has, or will have, the ability to pay.

Article 3 – Right to notify the debtor

1. The transferor, the transferee or both may send the debtor notification of the transfer and a payment instruction, but after notification of the transfer has been received by the debtor only the transferee may send a payment instruction.
2. Notification of a transfer or payment instruction sent in breach of an agreement between the transferor and the transferee is not ineffective for the purposes of Article (7), but nothing in this Article affects any obligation or liability of the party in breach for any damages arising as a result of the breach.

Article 4 – Right to payment

1. As between the transferor and the transferee, whether or not notification of the transfer has been sent:
 - (a) If payment with respect to the receivable is made to the transferee, the transferee is entitled to retain the proceeds of payment [and goods returned in respect of the receivable];
 - (b) If payment in respect of the receivable is made to the transferor, the transferee is entitled to the proceeds [and also to goods returned to the transferor in respect of the receivable]; and
 - (c) If payment in respect of the receivable is made to another person over whom the transferee has priority, the transferee is entitled to payment of the proceeds of the payment [and to any asset returned to that person with respect to the receivable].
2. The transferee may not retain more than the value of its right in the receivable.

SECTION II. DEBTOR

Article 5 – Principle of debtor protection

1. Except as otherwise provided in this Law, a transfer does not [without the consent of the debtor,] affect the rights and obligations of the debtor, including the payment terms contained in the [original contract/contract giving rise to the receivable].
2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:
 - (a) The currency of payment specified in the [original contract/contract giving rise to the receivable]; or
 - (b) The State specified in the [original contract/contract giving rise to the receivable] in which payment is to be made to a State other than that in which the debtor is located.

Article 6 – Notification of the debtor

1. Notification of the transfer or a payment instruction is effective when received by the debtor if it [reasonably identifies the receivable and the transferee, and] is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the transfer or a payment instruction is in the language of the [original contract/contract giving rise to the receivable].
2. Notification of the transfer or a payment instruction may relate to receivables arising after notification.
3. Notification of a transfer constitutes notification of all prior transfers.

Article 7 – Debtor's discharge by payment

1. Until the debtor receives notification of the transfer, it is [entitled to be] discharged by paying in accordance with the [original contract/contract giving rise to the receivable].
2. After the debtor receives notification of the transfer, subject to paragraphs 3 to 8, the debtor is discharged only by paying the transferee or, if otherwise instructed in the notification [of the

transfer] or subsequently by the transferee in a writing received by the debtor, in accordance with that payment instruction.

3. If the debtor receives more than one payment instruction relating to a single transfer of the same receivable by the same transferor, the debtor is discharged by paying in accordance with the last payment instruction received from the transferee before payment.

4. If the debtor receives notification of more than one transfer of the same receivable made by the same transferor, it is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of a transfer by a person to whom the receivable has been transferred, it is discharged by paying in accordance with the notification of that transfer or, in the case of a series of such transfers, the last of those transfers.

6. If the debtor receives notification of the transfer of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this Article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of a transfer from the transferee, the debtor is entitled to request the transferee to provide within a reasonable period of time adequate proof of the transferee's claim to the receivable. Unless the transferee does so, the debtor is discharged by paying in accordance with this Article as if the notification had not been received. Adequate proof of a transfer includes but is not limited to any writing emanating from the transferor and indicating that the transfer has taken place.

8. This Article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund, discharges the debtor.

Article 8 – Defences and rights of set-off of the debtor

1. In a claim by the transferee against the debtor for payment of the [transferred] receivable, the debtor may raise against the transferee all defences and rights of set-off arising from the [original contract/contract giving rise to the receivable], or any other contract that was part of the same transaction, of which the debtor could avail itself as if the transfer had not been made and the claim were made by the transferor.

2. The debtor may raise against the transferee any other right of set-off, provided that was available to the debtor at the time it received the notification.

3. [Notwithstanding paragraphs 1 and 2, defences and rights of set-off that the debtor may raise pursuant to Article [9 or 10] against the transferor for breach of an agreement limiting in any way the transferor's right to transfer the receivable are not available to the debtor against the transferee.]

Article 9 – Agreement not to raise defences or rights of set-off

1. The debtor may agree with the transferor in a signed writing not to raise against the transferee the defences and rights of set-off that it could raise in accordance with Article (8). [Such

an agreement precludes the debtor from raising against the transferee those defences and rights of set-off].

2. The debtor may not waive defences:
 - (a) Arising from fraudulent acts of the transferee; or
 - (b) Based on the debtor's incapacity.
3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the transferee is determined by Article (10), paragraph 2.

Article 10 – Modification of the [original contract/contract giving rise to a receivable]

1. A modification of the [original contract/contract giving rise to a receivable] that is concluded before notification of the transfer between the transferor and the debtor and that affects the transferee's rights is effective as against the transferee, and the transferee acquires corresponding rights.
2. An agreement concluded after notification of the transfer between the transferor and the debtor that affects the transferee's rights is ineffective against the transferee unless:
 - (a) The transferee consents to it; or
 - (b) The receivable is not fully earned by performance and [either the modification is provided for in the [original contract/contract giving rise to the receivable] or,] in the context of [the original contract/that contract], a reasonable transferee would consent to the modification.
3. Paragraphs 1 and 2 do not affect any right of the transferor or the transferee arising from breach of an agreement between them.

Article 11 – Recovery of payments

Failure of the transferor to perform the [original contract/ contract giving rise to the receivable] does not entitle the debtor to recover from the transferee a sum paid by the debtor to the transferor or the transferee.

CHAPTER VII

COLLECTION AND ENFORCEMENT

A. OUTRIGHT TRANSFERS

Article 1 – Collection of payment under an outright transfer

1. The transferee under an outright transfer of a receivable is entitled to collect the receivable at any time after payment becomes due.
2. The transferee exercising the right to collect under paragraph 1 is also entitled to enforce any personal or property right that secures or supports payment of the receivable.

3. The right of the transferee to collect under paragraphs 1 and 2 is subject to Articles [**rights and obligations of debtors**].

B. SECURITY TRANSFERS

Article 2 – Collection of payment under a security transfer

1. After default, the transferee under a security transfer of a receivable is entitled to collect the receivable at any time after payment becomes due.
2. The transferee may exercise the right to collect under paragraph 1 before default if the transferor consents.
3. The transferor exercising the right to collect under paragraph 1 or 2 is also entitled to enforce any personal or property right that secures or supports payment of the receivable.
4. If a transfer of a right to payment of funds credited to a bank account has been made effective against third parties by registration of a notice, the transferee is entitled to collect or otherwise enforce its interest in the bank account only pursuant to an order of a court, unless the deposit-taking institution agrees otherwise.]

- [4/5]. The right of the transferee to collect under paragraphs 1 to [3/4] is subject to Articles [**rights and obligations of debtors**].

Article 3 – Right of the transferee to [dispose of/sell] a receivable

1. After default, the transferee under a security transfer is entitled to sell [or otherwise dispose of] the receivable either by applying or without applying to [a court or other authority to be specified by the enacting State].
2. If the transferee decides to exercise the right provided in paragraph 1 by applying to [a court or other authority to be specified by the enacting State], the method, manner, time, place and other aspects of the sale [or other disposition] are determined by [the rules to be specified by the enacting State].
3. If the transferee decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], the transferee may select the method, manner, time, place and other aspects of the sale [or other disposition], including whether to sell [or otherwise dispose of] receivables individually, in groups or altogether.
4. If the transferee decides to exercise the right provided in paragraph 1 without applying to [a court or other authority to be specified by the enacting State], the transferee must give notice of its intention to:
 - (a) The transferor [and any person who owes the [secured obligation/obligation that is secured by the security transfer];
 - (b) Any person with a right in the receivable that informs the transferee of that right in writing at least [a short period of time to be specified by the enacting State] before the notice is sent to the transferor; and

(c) Any other transferee that registered a notice with respect to a transfer of the receivable at least [a short period of time to be specified by the enacting State] before the notice is sent to the transferor.

5. The notice referred to in paragraph 4 must be given at least [a short period of time to be specified by the enacting State] before the sale [or other disposition] takes place and must contain:

(a) A description of the receivables;

(b) A statement of the amount required at the time the notice is given to satisfy the [secured obligation/obligation secured by the security transfer], including interest and the reasonable cost of enforcement;

(c) A statement that the transferor or any other person with a right in the receivable is entitled to terminate the enforcement process as provided in Article [75]; and

(d) A statement of the date after which the receivable will be sold [or otherwise disposed of] or, in the case of a public [sale/disposition], the time, place and manner of the intended [sale/disposition].

6. The notice referred to in paragraph 4 must be in a language that is reasonably expected to inform the recipient about its content.

7. It is sufficient if the notice to the transferor referred to in paragraph 4 is in the language of the transfer agreement.

8. The notice referred to in paragraph 4 need not be given if the receivable is of a kind sold on a recognized market.

Article 4 – Distribution of the proceeds of a [sale/disposition] of a receivable and transferor's liability for any deficiency

1. If the transferee decides to exercise the right provided in Article [(3)] by applying to [a court or other authority to be specified by the enacting State], the distribution of the proceeds of sale [or other disposition] of a receivable is determined by [the provisions to be specified by the enacting State], but in accordance with the provisions of this Law on priority.

2. If the transferee decides to exercise the right provided in Article [(3)] without applying to [a court or other authority to be specified by the enacting State]:

(a) [Subject to Article [**preferential claims**],] the enforcing transferee must apply the proceeds of its enforcement to the [secured obligation/obligation secured by the transfer] after deducting the reasonable cost of enforcement;

(b) Except as provided in paragraph 2(c), the enforcing transferee must pay any surplus remaining to any subordinate competing claimant that, prior to any distribution of the surplus, notified the enforcing transferee of its claim, to the extent of the amount of that claim, and remit any balance remaining to the transferor; and

(c) Whether or not there is any dispute as to the entitlement or priority of any competing claimant under this Law, the enforcing transferee may pay the surplus to [a competent judicial or other authority or to a public deposit fund to be specified by the enacting State] for distribution in accordance with the provisions of this Law on priority.

3. The transferor remains liable for any amount owing after application of the net proceeds of enforcement to the [secured obligation/obligation secured by the transfer].

Article 5 – Post-default rights

1. After default, the transferor and the transferee under a security transfer are entitled to exercise:
 - (a) Any right under [the provisions of] this chapter; and
 - (b) Any other right provided in the transfer agreement or any other law, except to the extent it is inconsistent with the provisions of this Law.
2. The exercise of one post-default right does not prevent the exercise of another post-default right, except to the extent that the exercise of one right makes the exercise of another right impossible.
3. Before default, the transferor under a security transfer may not waive unilaterally or vary by agreement any of its rights under the provisions of this chapter.

CHAPTER VIII

CONFLICT OF LAWS

Definition of “priority”

“priority” means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination of [the nature of the right,] whether the right arises under an outright transfer or is a security right, and whether any requirements necessary to render the right effective against a competing claimant¹ have been satisfied.

Article 1 – Mutual rights and obligations of the parties

1. The law applicable to the mutual rights and obligations of the transferor and the transferee arising from their transfer agreement is the law chosen by them and, in the absence of a choice of law, the law governing the transfer agreement.
2. The law applicable to:
 - (a) The mutual rights and obligations of the debtor and the transferee;
 - (b) The conditions under which the transfer may be invoked against the debtor, including whether an agreement limiting the transferor’s right to transfer the receivable may be asserted by the debtor; and
 - (c) Whether the obligations of the debtor have been discharged, is the law governing the rights and obligations between the debtor and the transferor.

Article 2 – Effectiveness and priority of transfers

Except as provided in Articles [(3) and [MLST 97/98?]], the law applicable to the effectiveness and priority of a transfer of a receivable is the law of the State in which the transferor is located.

¹ To be defined.

Article 3 – Transfers of receivables relating to immovable property

Notwithstanding Article [(2)], in the case of a transfer of a receivable that either arises from the sale or lease of immovable property or is secured by immovable property, the law applicable to the priority of the transfer of the receivable as against the right of a competing claimant that is registrable in the immovable property registry in which rights in the relevant immovable may be registered is the law of the State under whose authority the immovable property registry is maintained.

Article 4 – Enforcement of transfers

The law applicable to issues relating to the enforcement of a transfer of a receivable is the law applicable to the priority of the transfer[, except as provided in Article [MLST 97]].

Article 5 – Proceeds

1. The law applicable to the effectiveness as between the transferor and the transferee of a transfer of proceeds is the law applicable to the effectiveness as between the transferor and the transferee of the transfer of the receivable from which the proceeds arose.
2. The law applicable to the third-party effectiveness and priority of a transfer of proceeds is the law applicable to the third-party effectiveness and priority of a transfer of a receivable of the same kind as the proceeds.

Article 6 – Meaning of “location” of the transferor

For the purposes of [the provisions of] this chapter, the transferor is located:

- (a) In the State in which it has its place of business;
- (b) If the transferor has a place of business in more than one State, in the State in which the central administration of the transferor is exercised; and
- (c) If the transferor does not have a place of business, in the State in which the transferor has his or her habitual residence.

Article 7 – Relevant time for determining location

1. Except as provided in paragraph 2, references to the location of the transferor in the provisions of this chapter refer:
 - (a) For issues relating to the effectiveness of the transfer as between the transferor and the transferee, to the location of the transferor at the time of the putative creation of the transfer; and
 - (b) For third-party effectiveness and priority issues, to the location of the transferor at the time the issue arises.
2. If the right of a transferee in a receivable is made effective against the transferor and third parties and the rights of all competing claimants are established before a change in the location of the transferor, references in the provisions of this chapter to the location of the transferor are references, with respect to third-party effectiveness and priority issues, to the location prior to the change.

Article 8 – Exclusion of *renvoi*

A reference in the provisions of this chapter to “the law” of a State as the law applicable to an issue refers to the law in force in that State other than its rules of private international law.

Article 9 – Overriding mandatory rules and public policy (*ordre public*)

1. The provisions of this chapter do not prevent a court from applying overriding mandatory provisions of the law of the forum that apply irrespective of the law applicable under the provisions of this chapter.
2. This Article does not permit a court to displace the provisions of this chapter dealing with the law applicable to the third-party effectiveness and priority of a transfer.

Article 10 – Commencement of insolvency proceedings does not affect the law applicable to a transfer

The commencement of insolvency proceedings in respect of the transferor does not displace the law applicable to a transfer under the provisions of this chapter.

Article 11 – Multi-unit States

[If the law applicable to an issue is the law of a State that comprises one or more territorial units each of which has its own rules of law in respect of that issue:

- (a) Any reference in the provisions of this chapter to the law of a State means the law in force in the relevant territorial unit; and
- (b) The internal conflict-of-laws rules of that State, or in the absence of such rules, of that territorial unit determine the territorial unit whose substantive law is to apply.]

[Transfers of rights to payment of funds credited to a bank account]**[Third-party effectiveness of a transfer by registration]**

ANNEXE A

REGISTRY PROVISIONS

Definition of “priority”

A. General rules

Article 1. Definitions ~~and rules of interpretation~~

For the purposes of these Provisions:

- (a) “Address” means:
- (i) A physical address or a post office box number, city, postal code and State; or
 - (ii) An electronic address;
- (b) “Amendment notice” means a notice submitted to the Registry ~~[in the prescribed registry notice form]~~ through the Registry’s website user interface to modify information contained in a ~~related~~ registered notice;
- (c) “Cancellation notice” means a notice submitted to the Registry ~~[in the prescribed registry notice form]~~ using a form available through the Registry’s website user interface to cancel the effectiveness of ~~the a registration of all related~~ registered notices;
- (d) “Designated field” means ~~[the space on the prescribed registry notice form]~~ a field in a form available through the Registry’s website user interface that is designated for entering a specified type of information;
- (e) “Initial notice” means a notice submitted to the Registry ~~[in the prescribed registry notice form]~~ using a form available through the Registry’s website user interface to achieve the third-party effectiveness of the ~~security right~~ transfer of a receivable to which the notice relates;
- (f) “Notice” means an initial notice, an amendment notice and a cancellation notice;
- ~~_____~~ (g) “Public registry record” means that part of the Registry record that is publicly accessible;
- ~~(h)~~ (g) “Registered notice” means a notice the information in which has been entered into the registry record;
- ~~(i)~~ (h) “Registrant” means a person who submits a notice to the Registry;
- ~~(j)~~ (i) “Registration” means the entry of information contained in a notice into the registry record;
- ~~(k)~~ (j) “Registration number” means the unique number assigned to an initial notice by the Registry and permanently associated with that notice and any related notice;

Commentato [A3]: Article 1 doesn’t appear to contain any rules of interpretation, only definitions.

Commentato [A4]: This terminology (and the equivalent terminology in the following three definitions) is intended to be a better reflection of the way in which users will in fact enter data into the Registry system.

[(k)] “Registry” means the ~~Registry~~ registration system established under article [28... Establishment of the Registry] of the Law;² and

[(m)] “Registry archive” means that part of the Registry record that has been removed from the public registry record and archived;

[(n)] “Registry record” means the information in all registered notices stored by the Registry. ~~The registry record consists of the record that is publicly accessible (the public registry record) and the record that has been removed from the public registry record and archived (the registry archives).~~

Article 2. Grant~~Transferor~~’s authorization for registration

1. Registration of an initial notice ~~with respect to a security right in an asset of a grantor~~ transferor is ineffective unless authorized by that ~~grantor~~ the transferor in writing.

2. Registration of an amendment notice that adds receivables ~~encumbered assets [or increases the maximum amount for which the security right may be enforced]³~~ or extends the period of effectiveness of the registration of a notice is ineffective unless authorized by the ~~grantor~~ transferor in writing.

3. [With the exception of an amendment notice to add a transferee of an ~~encumbered asset~~ receivable as a ~~grantor~~ transferor in accordance with article ~~206~~ of these Provisions, registration]⁴ [Registration] of an amendment notice that adds a ~~grantor~~ transferor is ineffective unless authorized by the additional ~~grantor~~ transferor in writing.

~~42.~~ Authorization may be given before or after the registration of an initial or amendment notice.

~~53.~~ A written ~~security transfer~~ agreement is sufficient to constitute authorization by the ~~grantor~~ transferor for the registration of an initial or amendment notice covering an ~~encumbered asset~~ receivable described in that ~~security transfer~~ agreement.

~~[46. The Registry [may/must] not require evidence of the existence of the grantor’s transferor’s authorization.]~~

Article 3. One notice sufficient for multiple security rights~~transfers~~

The registration of a single notice may relate to ~~security rights created by the grantor in favour of the secured creditor~~ transfers under one or more than one ~~security transfer~~ agreement.

Article 4. Advance registration

² [If a State incorporates the Model Registry Provisions in its enactment of the Model Law, it will not need to define the term “Registry” in this article. If a State incorporates the Model Registry Provisions in another statute or other type of legal instrument, it will need to include this definition in that other statute or instrument]

³ This wording will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law.

⁴ This wording will be necessary if the enacting State implements option A or option B of article 26 of the Model Registry Provisions.

Commentato [A5]: These words do not appear to be needed.

Commentato [A6]: The text we retain here will depend on the approach the Working Group decides to take to article 20 below.

Commentato [A7]: In order to limit the Registry Rules to core provisions, most of the articles that issue directions to the Registry have been removed. They can instead be explained in the Guide to Enactment.

Commentato [A8]: Again, these words do not appear to be necessary.

A notice may be registered before ~~the creation of a security right~~~~occurrence of a transfer~~ or the conclusion of a ~~security transfer~~ agreement to which the notice relates.

B. Access to registry services

Article 5. Conditions for access to registry services

1. Any person may submit a notice to the Registry, if that person:
 - (a) Uses the ~~[prescribed registry notice form/form made available for that purpose on the Registry website]; [and]~~
 - (b) Identifies itself in the ~~[prescribed manner/manner required by the Registry];~~ and
 - (c) Has paid or arranged to pay the prescribed fee].⁵
2. A person may submit an amendment or cancellation notice if that person also satisfies [the secure access requirements to be specified by the Registry].
3. Any person may submit a search request to the Registry if that person:

- (a) Uses the ~~[prescribed registry search request form/form made available for that purpose on the Registry website];~~ and
- (b) Has paid or arranged to pay the prescribed fee].⁶

~~4. [If access to registry services is refused, the Registry must communicate the reason to the registrant or searcher without delay.]~~

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

1. The Registry must ~~reject not permit~~ the registration of:
 - (a) A notice if no information is entered in one of the mandatory designated fields ~~or if information entered in one of the mandatory designated fields is illegible;~~ or
 - (b) An amendment notice to extend the period of effectiveness of the registration of a notice if it is not submitted within the period referred to in article [142], paragraph 2 ~~of these Provisions.~~

~~2. The Registry must ~~reject not accept~~ a search request if no information is entered in one of the fields designated for entering a search criterion or if information entered in one of the fields designated for entering a search criterion is illegible.~~

~~3. Except as provided in paragraph 1 and 2, the Registry may not reject the registration of a notice or a search request.~~

~~4. [If the registration of a notice or a search request is rejected, the Registry must communicate the reason to the registrant or searcher without delay.]~~

⁵ This provision will be necessary if the enacting State implements option A of article 33 of the Model Registry Provisions.

⁶ This provision will be necessary if the enacting State implements option A of article 33 of the Model Registry Provisions.

Commentato [A9]: See the comment on page 1 in relation to article 1(b).

Commentato [A10]: “prescribed manner” suggests that the requirements will be set out in a form of subordinate legislation. That may not be the case.

Commentato [A11]: Again, see the comment on page 1 in relation to article 1(b).

Commentato [A12]: See the comment at the top of this page in relation to previous article 2(6). The content of this article can be discussed in the Guide to Enactment instead (in any event, this would happen automatically in an electronic register that provides for direct data entry by the user).

Commentato [A13]: Illegibility of entered text will not be possible in an electronic registry system where notices are entered (ie typed) directly into the Registry website.

Commentato [A14]: This is slightly more intuitive terminology for an electronic Registry with direct data entry by the user.

Commentato [A15]: See the comment in relation to article 6(1)(a).

Commentato [A16]: Again, this can be discussed in the Guide to Enactment.

Commentato [A17]: Again, this can be discussed in the Guide to Enactment. In any event, a registrant or searcher on an electronic register will find out in real time if there is a problem with their registration or search request, as the system will simply not accept it.

Article 7. Information about the registrant's identity and No scrutiny of the form or contents of a notice by the Registry

1. The Registry must maintain information about a registrant's identity submitted in accordance with article 5, paragraph 1 (b), of these Provisions, and must, upon request, provide that information to the person identified in a registered notice as the grantor.

2. The Registry may not require verification of the information about a registrant's identity submitted in accordance with article 5, paragraph 1 (b), of these Provisions.

3. The Registry may not scrutinize the form or content of a notice or a search request other than to the extent authorized in articles 5 and 6 of these Provisions.¹

Commentato [A18]: Again, this can all be covered in the Guide to Enactment.

C. Registration of a notice

Article 78. Information required in an initial notice

An initial notice must contain the following information in the relevant designated field:

(a) The identifier and address of the ~~grantor~~ **transferor** in accordance with article ~~9-8~~ of these Provisions [and any additional information that the enacting State may decide to require to be entered to assist in uniquely identifying the ~~grantor~~ **transferor**];

(b) The identifier and address of the ~~secured creditor~~ **transferee** or its representative in accordance with article ~~10-9~~ of these Provisions; [and]

(c) A description of the ~~encumbered assets~~ **receivables** in accordance with article ~~11-10~~ of these Provisions; [and]

[(d) The period of effectiveness of the registration in accordance with article ~~14-2~~ of these Provisions];⁷ [and]

~~[(e) A statement of the maximum amount for which the security right may be enforced].⁸~~

Commentato [A19]: The Working Group has already decided that this should not be a feature of the MLF system.

Article 98. ~~Grantor~~ **Transferor's identifier**

1. Where the person to be identified in an initial or amendment notice as the ~~grantor~~ **transferor** is a natural person, the ~~grantor~~ **transferor's** identifier is the name ~~or other identifier~~ of that person as it appears in [the relevant official document to be specified by the enacting State; if the enacting State specifies more than one document, it must designate the order in which each document should be used to determine that person's name ~~or other identifier~~].²

Commentato [A20]: Some States have been using State-issued identity card numbers in registration systems. The Guide to Enactment could perhaps contain an explanation of the pros and cons of this, along the lines of par 179 of the Guide to Enactment for the MLST.

⁷ This provision will be necessary if the enacting State implements option B or option C of article 14 of the Model Registry Provisions.

⁸ This provision will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law.

⁹ Some States may prefer to use a different identifier for some individuals—for example, if the State has a national identification system for its citizens. See the discussion of this in the Guide to Enactment.

2. [The enacting State should specify which components of the ~~grantor's~~ **transferor's name or other identifier** determined in accordance with paragraph 1 must be entered in an initial or amendment notice].

3. [The enacting State should specify the manner in which the ~~grantor's~~ **name or other identifier** is determined if the **name or other identifier** is legally changed after the issuance of the relevant document referred to in paragraph 1.]

4. Where the person to be identified in an initial or amendment notice as the ~~grantor~~ **transferor** is a legal person, the ~~grantor~~ **transferor's** identifier is the **name or other identifier** of that person as it appears in **or is determined by** [the relevant document, law or decree to be specified by the enacting State] ~~constituting that person~~.¹⁰

~~5. [The enacting State should specify whether additional information must be entered in an initial or amendment notice in special cases, such as where the grantor transferor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]~~

Article 9~~10~~. Secured creditor **Transferee's identifier**

1. Where the person to be identified in an initial or amendment notice as the ~~secured creditor~~ **transferee** is a natural person, the ~~secured creditor~~ **transferee's** identifier is the **name or other identifier** of that person as it appears in [the relevant official document to be specified by the enacting State; if the enacting State specifies more than one document, it must designate the order in which each document should be used to determine that person's **name or other identifier**].

2. Where the person to be identified in an initial or amendment notice as the ~~secured creditor~~ **transferee** is a legal person, the ~~secured creditor~~ **transferee's** identifier is the **name or other identifier** of that person as it appears in [the relevant document, law or decree to be specified by the enacting State] constituting that person.

~~3. [The enacting State should specify whether additional information must be entered in an initial or amendment notice in special cases, such as where the secured creditor transferee is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]~~

Article 1~~10~~. Description of ~~encumbered assets~~ **transferred receivables**

1. [The ~~encumbered assets~~ **transferred receivables** must be described in an initial ~~or amendment~~ notice in a manner that reasonably allows their identification].

2. A description that indicates that the ~~encumbered assets~~ **transferred receivables** consist of all of the ~~grantor's movable assets~~ **transferor's receivables**, or of all of the ~~grantor's movable assets~~ **transferor's receivables** within a generic category, satisfies the standard in paragraph 1.

Commentato [A21]: This won't always be right (eg if the transferor is a company incorporated outside the jurisdiction but registered for business in the State).

Commentato [A22]: This provision is of lesser importance (and was in any event in square brackets).

Commentato [A23]: This has been deleted for the same reason as previous article 9(5).

Commentato [A24]: The Guide to Enactment could explain how a Registry might be able to facilitate the process of describing receivables through the use of drop-down menus.

Commentato [A25]: The Working Group may wish to consider how this will work for receivables financings where (for example) the financier will only be buying receivables that fit within the financier's eligibility criteria from time to time. Will it be necessary in these circumstances for the eligibility criteria to be set out in the notice?

¹⁰ Again, some may prefer to use a different identifier for some legal persons – for example, if the State has a national identification system for companies registered in the State.. See the discussion of this in the Guide to Enactment

Article 12. Language of information in a notice

1. With the exception of the names and addresses of the grantor and the secured creditor or its representative, the information contained in an initial or amendment notice must be expressed in [the language or languages to be specified by the enacting State].

2. The information contained in an initial or amendment notice must be expressed in the character set prescribed and publicized by the Registry.

Commentato [A26]: The courts of an enacting State are probably unlikely to hold that a registration is valid if it is written in a language that is not an official language of the State.

Commentato [A27]: The Registry itself will enforce this rule, as it will only allow data to be uploaded if it is expressed in a character set that the Registry recognises.

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

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

2. The Registry must enter information in an initial or amendment notice into the public registry record without delay after the notice is submitted and in the order in which each notice is submitted.

3. The Registry must record the date and time when the information in an initial or amendment notice is entered into the registry record so that it is accessible to searchers of the public registry record.

Commentato [A28]: This will not be needed if the registry is electronic, and data that a registrant enters into the website is automatically uploaded into the system (ie without manual intervention). This can be explained in the Guide to Enactment.

Commentato [A29]: Again, an electronic registry should do this automatically. This can be explained in the Guide to Enactment.

— Option A¹¹

24. The registration of a cancellation notice is effective from the date and time when the information in the notice to which it relates is no longer accessible to searchers of the public registry record.

5. The Registry must record the date and time when the information in the initial or amendment notice to which a cancellation notice relates is no longer accessible to searchers of the public registry record.

Commentato [A30]: Similar to previous para 3 of this article, this should happen automatically in an electronic registry system. This can be explained in the Guide to Enactment.

— Option B¹²

5. The Registry must record the date and time when the information in a cancellation notice is entered into the registry record so that it is accessible to searchers of the public registry record.

Commentato [A31]: If we are going with option A in para 2 (previously para 4), this is no longer needed.

Article 132. Period of effectiveness of the registration of a notice

— Option A

1. The registration of an initial notice is effective for [a period of time to be specified by the enacting State].

¹¹ This provision will be necessary if the enacting State implements option A or option B of article 21 of the Model Registry Provisions.

¹² This provision will be necessary if the enacting State implements option B of paragraph 4 of this article.

~~2. The period of effectiveness of the registration of an initial notice may be extended within [a period of time to be specified by the enacting State] before its expiry by the registration of an amendment notice providing for an extension.~~

~~3. The period of effectiveness of the registration of an initial notice may be extended more than once.~~

~~4. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period referred to in paragraph 1 beginning from the time when the current period would have expired if the amendment notice had not been registered.~~

Option B

1. The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field of the notice.

2. The period of effectiveness of the registration of an initial notice may be extended at any time before its expiry by the registration of an amendment notice that indicates a new period in the designated field.

3. The period of effectiveness of the registration of an initial notice may be extended more than once.

4. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period indicated in the amendment notice beginning from the time when the current period would have expired if the amendment notice had not been registered.

Option C

1. The registration of an initial notice is effective for the period of time indicated by the registrant in the designated field of the notice, not exceeding [a maximum period of time to be specified by the enacting State].

2. The period of effectiveness of the registration of an initial notice may be extended within [a period of time to be specified by the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated field a new period not exceeding the maximum period of time referred to in paragraph 1.

3. The period of effectiveness of the registration of an initial notice may be extended more than once.

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

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

~~1. Without delay after the registration of a notice, the Registry must send to the person identified in the notice as the secured creditor at its address set out in the notice a copy of the information in the registered notice, indicating:~~

Commentato [A32]: It is suggested that the Model Law adopt option C from this provision in the MLST, as a balanced compromise between options A and B.

Commentato [A33]: The Guide to Enactment could include some guidance on what an appropriate period might be (5-10 years?).

(a) The date and time recorded by the Registry in accordance with article 13, paragraph 3, of these Provisions; and

(b) The registration number assigned to the initial notice by the Registry in accordance with article 28, paragraph 1, of these Provisions.

2. Within [a period to be specified by the enacting State] after the person identified in a registered notice as the secured creditor receives a copy of the information in the notice in accordance with paragraph 1, that person must send it to the person identified in the notice as the grantor:

(a) At the address set out in the notice; or

(b) If that person knows that the address has changed, at the most recent address if known or reasonably available to that person.

3. The failure of a person to comply with its obligation in accordance with paragraph 2 does not affect the effectiveness of the registration of the related notice.

4. A person that fails to comply with its obligation in accordance with paragraph 2 is liable to the person identified in the notice as the grantor only for [a nominal amount to be specified by the enacting State] and any actual loss or damage proven to have resulted from that failure.

D. Registration of an amendment or cancellation notice

Article 16. Right to register an amendment or cancellation notice

1. Subject to paragraph 2, only the person identified in a registered initial notice as the secured creditor may register an amendment or cancellation notice relating to that notice.

2. After registration of an amendment notice changing the person identified in an initial or amendment notice as the secured creditor, only the person identified in the amendment notice as the new secured creditor may register an amendment or cancellation notice.

Article 13~~7~~. Information required in an amendment notice

1. An amendment notice must contain in the relevant designated field:

(a) The registration number of the initial notice to which it relates; and

(b) The information to be added or changed.

2. An amendment notice may modify one or more than one item of information in the notice to which it relates.

Article 18. Global amendment of secured creditor information

Option A

Commentato [A34]: This is another example of a provision that imposes obligations on the Registry, rather than regulate the rights and obligations of users of the registry system. Rather than keep it here, it could be discussed in the Guide to Enactment. Indeed, the Guide to Enactment could recommend that the Registry send the copy to not only the transferee, but to the transferor as well (using the contact information that was provided by the transferee in the registration).

Commentato [A35]: Under a modern electronic registry system, an amendment or cancellation notice will only be able to be uploaded into the registry system if the person lodging the notice is able to enter the password or other security keys that were issued to the transferee when the initial notice was registered. This means that an amendment or cancellation notice can only be registered by that transferee or a person authorized by them, and that a provision along these lines is not necessary.

The Guide to Enactment could explain that this places the onus on transferors to ensure that they store the passwords etc in a secure manner.

~~A person may register a single amendment notice to amend its identifier, its address or both in multiple registered notices in which that person is identified as the secured creditor.~~

Option B

~~The Registry must amend the identifier, address or both of a person identified as the secured creditor in multiple registered notices upon the request of that person.~~

Article 19. Information required in a cancellation notice

~~A cancellation notice must contain in the relevant designated field the registration number of the initial notice to which it relates.~~

Article 14~~20~~. Compulsory registration of an amendment or cancellation notice

1. The ~~secured creditor~~transferee must register an amendment notice deleting ~~encumbered assets described~~receivables from a description of transferred receivables in a registered notice if:

(a) The ~~grantor~~transferor has not authorized the registration of a notice in relation to those ~~assets~~receivables and the ~~secured creditor~~transferee has been informed by the ~~grantor~~transferor that it will not authorize that registration;

(b) ~~The transferor authorized the registration of a notice covering those receivables but the authorization has been withdrawn and no transfer agreement covering those receivables has been concluded~~security transfer agreement to which the registered notice relates has been revised to release ~~remove those assets~~receivables from the security right~~transfer agreement and the grantor~~transferor ~~has not otherwise authorized the registration of a notice covering those assets~~receivables; or

(c) ~~The transfer agreement to which the registered notice relates has been revised to remove those receivables from the transfer agreement and the transferor has not otherwise authorized the registration of a notice covering those receivables~~grantor ~~transferor~~ ~~authorized the registration of a notice covering those assets~~receivables but the authorization has been withdrawn and no security transfer agreement covering those assets ~~receivables has been concluded.~~

[2. ~~The secured creditor must register an amendment notice reducing the maximum amount specified in a registered notice if:~~

~~(a) The grantor has authorized the registration of a notice only in the reduced amount and the secured creditor has been informed by the grantor that it will not authorize the registration of a notice in the higher amount; or~~

~~(b) The security agreement to which the registered notice relates has been revised to reduce the maximum amount specified in that agreement and the grantor has not otherwise authorized the registration of a notice in that amount.]¹³~~

Commentato [A36]: This is not a core provision. Instead, the Guide to Enactment could explain how an electronic registry system can be structured to allow a transferee to amend multiple registered notices at the same time without the need for specific legislative backing (eg by providing that a transferee can only access the registry through an account, and including this functionality as one of the account management tools).

Commentato [A37]: With an electronic registry and direct user data entry, this should not be needed, as the registry software should only allow a cancellation notice to be uploaded into the system if it contains the registration number of the relevant notice (plus the relevant password etc – see the comment above on previous article 16).

Commentato [A38]: The order of paras (b) and (c) has been reversed, so that all of (a), (b) and (c) are in a more logical order

¹³ This provision will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law and articles 8, subparagraph (e), and 24, paragraph 7, of the Model Registry Provisions.

~~{3.}2.~~ The ~~secured creditor~~**transferee** must register a cancellation notice if:

(a) The registration of the initial notice was not authorized by the ~~grantor~~**transferor** and:

~~_____ (i) The secured creditor~~**transferee** has been informed by the ~~grantor~~**transferor** that it will not authorize the registration of the initial notice; or

~~_____ (ii) The grantor~~**transferor** requests the registration of the cancellation notice in accordance with paragraph ~~{5.}~~

(b) The ~~transfer authorised the~~ registration of the initial notice ~~was authorized by the grantor~~**transferor** but the authorization has been withdrawn and no ~~security~~**transfer** agreement has been concluded; or

(c) ~~The security right~~**All receivables** to which the initial notice relates ~~have been transferred back to the transferor or, in the case of a transfer of a receivable by the creation of an interest in it as contemplated by paragraph (ii) of the definition of "transfer" in article 2, that interest~~ has been extinguished.

~~{4.}3.~~ The ~~secured creditor~~**transferee** may not charge or accept a fee or expense for complying with its obligation in accordance with ~~paragraph 1—(a), 1—(b), {2—(a)}, {3—(a)} or {3}2(a) or 2—(b)~~.

~~{5.}4.~~ If the conditions set out in paragraph 1, ~~{2} or {3}~~**or 2** have been met, the ~~grantor~~**transferor** may request the ~~secured creditor~~**transferee** in writing, reasonably identifying itself and the related initial ~~or amendment~~ notice to register the appropriate amendment or cancellation notice. The ~~secured creditor~~**transferee** may not charge or accept any fee or expense for complying with the ~~grantor's~~**transferor's** request.

~~{6.}5.~~ If the ~~secured creditor~~**transferee** does not comply with the ~~grantor's~~**transferor's** request made in accordance with paragraph ~~{5} 4~~ within [a short period of time to be specified by the enacting State] after its receipt, the ~~grantor~~**transferor** may ~~seek an order for the registration of an~~**request the Registry to register the** amendment or cancellation notice. ~~The Registry, upon receipt of such a request, must notify the transferee that the Registry will register the amendment or cancellation notice, unless a court order to maintain the notice is served on the Registry within [a short period of time to be specified by the enacting State] after the Registry notifies the transferee through [a summary judicial or administrative procedure to be specified by the enacting State].~~

~~{7.}6.~~ Where an ~~If no~~ order for the registration of an amendment ~~or cancellation to maintain a~~ notice is issued ~~served on the Registry~~ in accordance with paragraph ~~5{6}~~, the Registry must register the ~~amendment or cancellation~~ notice without delay ~~[upon receipt of a request with a copy of the relevant order] [upon the issuance of the relevant order].~~

Article ~~2+15.~~ Effectiveness of the registration of an amendment or cancellation notice not authorized by the ~~secured creditor~~transferee****

Commentato [A39]: This does not appear to be necessary.

Commentato [A40]: These changes reflect the fact that a "transfer" may include the creation of an interest in it by way of security, even if no transfer is involved *stricto sensu*.

Commentato [A41]: This drafting suggests a change from the approach taken in the MLST, by placing the onus on the transferee to obtain a court order in order to keep the notice in the Registry, rather than requiring the transferor to obtain a court order in order to have it removed.

This reflects the fact that transferees are likely to be financial institutions that have systems in place with which they can manage the processes required to obtain these court orders (as opposed to the small businesses that will be selling their receivables to the financiers). It is also consistent with the approach taken successfully in some PPSA jurisdictions such as New Zealand.

~~Option A~~

~~The registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions~~ **who is identified in the initial notice as the transferee.**

~~Option B~~

~~1.— Subject to paragraph 2, the registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.~~

~~2.— The unauthorized registration of an amendment or cancellation notice does not affect the priority of the security right to which the notice relates as against the right of a competing claimant which arose before the registration and over which the security right had priority before the registration.~~

~~Option C~~

~~The registration of an amendment or cancellation notice is ineffective unless authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.~~

~~Option D~~

~~1.— Subject to paragraph 2, the registration of an amendment or cancellation notice is ineffective unless authorized by the person entitled to register an amendment or cancellation notice in accordance with article 16 of these Provisions.~~

~~2.— The unauthorized registration of an amendment or cancellation notice is effective against a competing claimant whose right was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, provided that the competing claimant did not have knowledge that the registration was unauthorized at the time it acquired its right.~~

E. Searches**Article 16~~22~~. Search criteria**

A search of the public registry record may be conducted according to:

- (a) The identifier of the ~~grantor~~ **transferor**; or
- (b) The registration number of the initial notice.

Article 17~~23~~. Search results

1. Upon submission of a search request, the Registry must provide a search result that indicates the date and time when the search was performed and:

Commentato [A42]: As discussed above in relation to (now deleted) article 16, an amendment or cancellation notice will only be able to be registered if the registrant is able to enter the correct password etc. That will be within the transferee's control. This means that option A is the appropriate option for this clause, so that the risk of a registration of an unauthorized amendment or cancellation notice will lie with the transferee.

Option A

(a) Sets out all information in each registered notice that contains information matching the search criterion ~~exactly~~; or

(b) Indicates that no registered notice contains information matching the search criterion ~~exactly~~.

Option B

(a) Sets out all information in each registered notice that contains information matching the search criterion:

(i) Exactly; or

(ii) Where the search criterion is the grantor identifier, closely [under criteria to be specified by the enacting State]; or

(b) Indicates that no registered notice contains information matching the search criterion:

(i) Exactly; or

(ii) Where the search criterion is the grantor identifier, closely [under criteria to be specified by the enacting State].

2. Upon request by a searcher, the Registry must issue an official search certificate setting out the search result and certifying that it was issued by the Registry.

23. A written search result that purports to have been issued by the Registry is proof of its contents in the absence of evidence to the contrary.

F. Errors and post-registration changes

Article 1824. Registrant errors in required information

1. An error in the ~~grantor~~-transferor's identifier entered in an initial or amendment notice does not render the registration of the notice ineffective if the information in the notice would be retrieved by a search of the public registry record using the ~~grantor's~~ transferor's correct identifier as the search criterion.

[2. An error in the grantor identifier entered in an initial or amendment notice does not render the registration of the notice ineffective if the information in the notice would be retrieved as a close match [under criteria to be specified by the enacting State] by a search of the public registry record using the grantor's correct identifier as the search criterion, unless the error would seriously mislead a reasonable searcher.]¹⁴

[3.] An error in the grantor identifier that renders the registration of a notice ineffective with respect to that grantor in accordance with paragraph 1 or 2 does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice.

[4.]². An error in information required to be entered in an initial or amendment notice other than the ~~grantor's~~ transferor's identifier

Commentato [A43]: The Guide to Enactment should explain that even an "exact match" system has some flexibility (eg by ignoring spaces, not being case-sensitive, ignoring diacritical marks etc).

Commentato [A44]: It is recommended that the Model Law's Registry operate on an exact match system. The Guide to Enactment could explain, however, that even an exact match system can have some inbuilt flexibility (eg by ignoring spaces or diacritical marks).

Commentato [A45]: This should be self-evident.

¹⁴ This provision will be necessary if the enacting State implements option B of article 23 of the Model Registry Provisions.

does not render the registration ineffective unless the error would seriously mislead a reasonable searcher.

~~[[5.] An error in the description of an encumbered asset that renders the registration of a notice ineffective with respect to that asset in accordance with paragraph 4 does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described in the notice.]~~

Commentato [A46]: Again, this should be self-evident.

~~[[6.] Notwithstanding paragraph [4], an error in the period of effectiveness of registration specified in an initial or amendment notice does not render the registration of the notice ineffective, except to the extent that third parties relied on the erroneous information in the registered notice.]¹⁵~~

Commentato [A47]: It is not clear what this provision achieved. By definition, the registration period is whatever the initial notice says it is, so it is difficult to see how there could be an error.

~~[[7.] Notwithstanding paragraph [4], an error in the maximum amount stated in an initial or amendment notice does not render the registration ineffective, but the priority of the security right is limited to the maximum amount stated in the notice or in the security agreement, whichever is lower.]¹⁶~~

It may be that the paragraph was referring to the prospect that a notice might specify a period that exceeded the statutory maximum. If that is the case, then the Guide to Enactment could explain that this should not be possible with a correctly-configured electronic register.

Article 1925. Post-registration change of grantor transferor's identifier

1. Subject to paragraphs 2 [and 3], the third-party effectiveness and priority of a ~~security right~~transfer that was made effective against third parties by registration of a notice are not affected by a change in the identifier of the ~~grantor~~transferor after the notice is registered.

2. If the identifier of the ~~grantor~~transferor changes after a notice is registered, a competing ~~security right created~~transfer made by the ~~grantor~~transferor that was made effective against third parties after the change has priority over the ~~security right~~transfer to which the notice relates, unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice disclosing the new identifier of the ~~grantor~~transferor is registered:

(a) Before the expiry of [a short period of time to be specified by the enacting State] after the change; or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the competing ~~security right~~transfer is made effective against third parties.

3. If the identifier of the ~~grantor~~transferor changes after a notice is registered, a buyer to whom the ~~encumbered asset~~receivable is sold after the change acquires its rights ~~free of the security right~~in priority to the transfer to which the notice relates, unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice disclosing the new identifier of the ~~grantor~~transferor is registered:

¹⁵ This provision will be necessary if the enacting State implements option B or option C of article 14 of the Model Registry Provisions.

¹⁶ This provision will be necessary if the enacting State implements article 6, paragraph 3 (d), of the Model Law and article 8, subparagraph (e), of the Model Registry Provisions.

(a) Before the expiry of the period referred to in paragraph 2 (a); or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the buyer acquires its rights in the ~~asset~~receivable.

4. Paragraphs 2 and 3 do not apply if the information in the notice referred to in paragraph 1 would be retrieved by a search using the new identifier of the grantor ~~transferor~~ as a search criterion.¹⁷

Article 206. Post-registration transfer of an encumbered ~~asset~~ transferred receivable

Option A

1. ~~Subject to paragraphs 2 and 3, the third-party effectiveness and priority of a security right in an encumbered asset that was made effective against third parties by registration of a notice are not affected by a sale of the encumbered asset after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.~~

2. ~~If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 34 of the Law, a competing security right created by the buyer that is made effective against third parties after the sale has priority over the security right to which the notice relates, unless the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice is registered adding the buyer as a new grantor:~~

~~— (a) Before the expiry of [a short period of time to be specified by the enacting State] after the sale; or~~

~~— (b) After the expiry of the period referred to in paragraph 2 (a) but before the competing security right is made effective against third parties.—~~

3. ~~If an encumbered asset covered by a registered notice is sold to a buyer that acquires its rights subject to the security right to which the notice relates under article 34 of the Law, a subsequent buyer to whom the initial buyer sells the encumbered asset acquires its rights free of the security right to which the notice relates, unless it is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the initial buyer as a new grantor is registered:~~

~~— (a) Before the expiry of the period referred to paragraph 2 (a); or~~

~~— (b) After the expiry of the period referred to in paragraph 2 (a) but before the subsequent buyer acquires its rights in the encumbered asset.~~

4. ~~The third-party effectiveness and priority of a security right in intellectual property that was made effective against third parties by registration of a notice are not affected by a sale of the intellectual property after the notice is registered to a buyer that~~

Commentato [A48]: This article may need to be refined further in due course, to better reflect the fact that the primary focus of the Law (unlike the MLST) is on **outright** transfers of receivables, rather than transfers by way of security (even though both are to be covered).

¹⁷This provision will be necessary if the enacting State implements option B of article 23, paragraph 1, of the Model Registry Provisions.

~~acquires its rights subject to the security right under article 34 of the Law.~~

Option AB

1. Subject to paragraphs 2 to 4, the third-party effectiveness and priority of a ~~security right in an encumbered asset~~ **transfer of a receivable** that was made effective against third parties by registration of a notice are not affected by a sale of the ~~encumbered asset~~ **receivable** after the notice is registered to a buyer that acquires its rights subject to the ~~security right~~ **transfer** under article ~~[34—TBC]~~ of the Law.

2. If ~~an encumbered asset~~ **a receivable** covered by a registered notice is sold to a buyer that acquires its rights subject to the ~~security right~~ **transfer** to which the notice relates under article ~~[34—TBC]~~ of the Law, a competing ~~security right created~~ **transfer** by the buyer that is made effective against third parties after the ~~secured creditor~~ **transferee** acquires knowledge of the sale and the identifier of the buyer has priority over the ~~security right~~ **transfer** to which the notice relates, unless ~~the security right to which the notice relates is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the buyer as a new grantor~~ **transferor** is registered:

(a) Before the expiry of [a short period of time to be specified by the enacting State] after the ~~secured creditor~~ **transferee** acquires the relevant knowledge; or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the competing ~~security right~~ **transfer** is made effective against third parties.

3. If ~~an encumbered asset~~ **a receivable** covered by a registered notice is sold to a buyer that acquires its rights subject to the ~~security right~~ **transfer** to which the notice relates under article ~~[34—TBC]~~ of the Law, a subsequent buyer to whom the ~~encumbered asset~~ **receivable** is sold after the ~~secured creditor~~ **transferee** acquires knowledge of the sale and the identifier of the buyer acquires its rights free of the ~~security right~~ **transfer** to which the notice relates, unless ~~it is made effective against third parties by a method other than registration of a notice, or an amendment notice adding the identifier of the initial buyer as a new grantor~~ **transferor** is registered:

(a) Before the expiry of the period referred to in paragraph 2 (a); or

(b) After the expiry of the period referred to in paragraph 2 (a) but before the subsequent buyer acquires its rights in the ~~encumbered asset~~ **receivable**.

4. If there are one or more subsequent sales of ~~an encumbered asset~~ **a receivable** before the ~~secured creditor~~ **transferee** acquires knowledge of the sale and the identifier of the buyer, the obligation to register an amendment notice under paragraphs 2 and 3 is satisfied if the ~~secured creditor~~ **transferee** registers an amendment notice adding the identifier of the most recent buyer of which it has knowledge as a new ~~grantor~~ **transferor**.

~~5.—The third-party effectiveness and priority of a security right in intellectual property that was made effective against third parties~~

by registration of a notice are not affected by the sale of the intellectual property after the notice is registered to a buyer that acquires its rights subject to the security right under article 34 of the Law.

OR

Option B⁶

The third-party effectiveness and priority of a security right in an encumbered asset **transfer of a receivable** that is made effective against third parties by registration of a notice are not affected by a sale of the asset after the notice is registered to a buyer that acquires its rights subject to the security right ~~under article [34]~~ **TBC** of the Law.

G. Organization of the Registry and the registry record

Article 21⁷. The registrar

The [appropriate authority to be specified by the enacting State] has the power to appoint and dismiss the registrar, and to determine the registrar's duties and monitor their performance.

~~Article 28. Organization of information in the registry record~~

1. The Registry must assign a registration number to an initial notice and organize the registry record so that all registered amendment and cancellation notices that contain that number are associated with the initial notice in the registry record.

2. The Registry must organize the registry record so that the information in a registered initial notice and in any associated registered notice can be retrieved.

~~Option A¹⁸~~

as an exact match by a searcher of the registry record that uses the correct identifier of the grantor as the search criterion.

~~Option B¹⁹~~

as an exact match or as a close match by a searcher of the registry record that uses the correct identifier of the grantor as the search criterion.

~~Option A²⁰~~

3. The Registry must organize the registry record so that a person may register a single amendment notice to amend its identifier, address or both in multiple registered notices in which that person is identified as the secured creditor.

¹⁸ This provision will be necessary if the enacting State implements option A of article 23, paragraph 1, of the Model Registry Provisions.

¹⁹ This provision will be necessary if the enacting State implements option B of article 23, paragraph 1, of the Model Registry Provisions.

²⁰ This provision will be necessary if the enacting State implements option A of article 18 of the Model Registry Provisions.

~~Option B²¹~~

~~3. The Registry must organize the registry record so that it may amend the identifier, address or both of a person identified as the secured creditor in multiple registered notices upon the request of that person.~~

~~4. Upon registration of an amendment or cancellation notice, the Registry may not amend or remove information contained in any associated registered notice from the registry record.~~

Article 229. Integrity of information in the registry record

1. Except as provided in articles ~~30-23~~ and ~~31-24~~ of these Provisions, the Registry may not amend or remove information contained in a registered notice from the registry record.

2. The Registry must preserve all information contained in the registry record and reconstruct the registry record in the event of loss or damage.

Article ~~2330~~. Removal of information from the public registry record and archival~~Option A~~

1. The Registry must remove information in a registered notice from the public registry record upon the expiry of the period of effectiveness of the registration of a notice in accordance with article ~~142~~ of these Provisions, or upon the registration of a cancellation notice in accordance with article ~~19~~, including any cancellation notice registered in accordance with article ~~2014~~, paragraph ~~3-2~~ or ~~76~~, of these Provisions.²²

~~Option B~~

~~1. The Registry must remove information in a registered notice from the public registry record upon the expiry of the period of effectiveness of the registration of a notice in accordance with article 14 of these Provisions.²³~~

2. Except as provided in paragraph 1, the Registry may not remove information contained in a registered notice from the public registry record.

3. The Registry must archive information removed from the public registry record in accordance with paragraph 1 for [a period of time to be specified by the enacting State that is at least co-extensive with its prescription period for rights arising from a ~~security agreement~~ **agreements** under contract or property law] in a manner that enables the information to be retrieved by the Registry ~~in accordance with article [29] of these Provisions.~~

Commentato [A49]: Rather than include this in the Law, this can all be explained in the Guide to Enactment.

²¹ This provision will be necessary if the enacting State implements option B of article 18 of the Model Registry Provisions.

²² This provision will be necessary if the enacting State implements option A or B of article 21 of the Model Registry Provisions.

²³ This provision will be necessary if the enacting State implements option C or D of article 21 of the Model Registry Provisions.

Article 2431. Correction of errors made by the Registry

1. Without delay after discovering that it ~~{made an error or omission in entering into the public registry record the information contained in a notice submitted for registration or}~~²⁴ erroneously removed from the public registry record information contained in a registered notice, the Registry must

~~Option A~~

~~{register a notice to correct the error or omission, or} restore the erroneously removed information, and send a copy of the information in the registered notice to the persons identified in the notice as the ~~secured creditor~~ transferor and the transferee.~~

~~Option B~~

~~inform the person identified in the registered notice as the secured creditor to enable that person to {register a notice to correct the error or omission or} restore the erroneously removed information.~~

~~Option A~~

~~2. The registration of a notice referred to in paragraph 1 is effective as of the time the information in the notice becomes accessible to searchers of the public registry record.~~

~~Option B~~

~~2. The registration of a notice referred to in paragraph 1 is effective as of the time the information in the notice becomes accessible to searchers of the public registry record.~~

~~3. Notwithstanding paragraph 1, the security right to which the notice relates has the priority it would otherwise have had over the right of a competing claimant but for {the Registry's error or omission or} the Registry's erroneous removal of the information.~~

~~Option C~~

~~2. The registration of a notice referred to in paragraph 1 is effective as of the time it would have been effective if {the error or omission had never been made or} the information had never been erroneously removed.~~

~~Option D~~

2. The registration of a notice referred to in paragraph 1 is effective as of the time it would have been effective if ~~{the error or omission had never been made or}~~ the information had never been erroneously removed.

3. Notwithstanding paragraph 1, ~~the security right~~ a transfer to which the notice relates is subordinate to the right of a competing

Commentato [A50]: This is consistent with the approach that is proposed for current article 14.

²⁴ This wording will not be necessary if the enacting State implements an electronic Registry in which registrants enter information directly into the registry record.

claimant that acquired a right in the ~~encumbered asset~~ **transferred receivable** in reliance on a search of the public registry record made before the notice was registered, provided the competing claimant did not have knowledge of ~~[the error or omission or]~~ the erroneous removal of the information at the time it acquired its right.

Article ~~3225~~ **2625**. Limitation of liability of the Registry

Option A

1. ~~Any liability that the Registry may have in accordance with other law is limited to loss or damage caused by:~~

~~— (a) An error or omission in a search result issued to a searcher or in a copy of information in a registered notice sent to a secured creditor in accordance with article 15, paragraph 1;~~

~~— (b) [An error or omission in entering or failing to enter information in a notice submitted to the Registry into the public registry record or] the erroneous removal of information in the registered notice from the public registry record;~~

~~— (c) The failure of the Registry to send a copy of a registered notice to the person identified in the notice as the secured creditor in accordance with article 15, paragraph 1, or article 31, paragraph 1, of these Provisions; and~~

~~— (d) The provision of false or misleading information to a registrant or searcher.~~

2. ~~Any liability under paragraph 1 is limited to [a maximum amount to be specified by the enacting State].~~

Option B

Any liability that the Registry may have in accordance with other law for loss or damage caused by an error or omission in the administration or operation of the Registry is limited to [a maximum amount to be specified by the enacting State].

Option C

~~The Registry is not liable for loss or damage caused to a person by an error or omission in the administration or operation of the Registry.~~

Article ~~2633~~ **2633**. Registry fees

Option A

1. Fees may be charged for ~~[the Registry services and in the amounts to be specified by the enacting State].~~

2. The [authority to be specified by the enacting State pursuant to article ~~[2721]~~ of these Provisions] may modify the fee schedule from time to time.

3. The Registry must publicize the fee schedule.

4. ~~The Registry may enter into an account agreement with any person to facilitate the registration process, including the payment of registry fees.~~

Option B

Commentato [A51]: The Working Group may wish to consider whether this article should specify that the fees must be set on a cost-recovery basis, or whether this should be stated in the Guide to Enactment..

Commentato [A52]: As this is a mechanical provision, it might be possible to delete it from here and discuss it in the Guide to Enactment instead.

———The Registry may not charge any fee for its services.

