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**Factoring Model Law Working Group**

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## **DRAFT MODEL LAW ON FACTORING**

1. This document contains the draft Model Law on Factoring (MLF). The draft MLF is composed of eight 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
- Chapter VI – Rights and Obligations of the Parties
- Chapter VII – Collection and Enforcement
- Chapter VIII – Conflict of Laws
- Chapter IX - Transition
- Annexe A – Registry Provisions (prepared by registrations subgroup)

2. The draft MLF has tracked changes that implement the decisions made by the Working Group at its fourth session (1 – 3 December 2021). Footnotes in this document identify issues that the Working Group may wish to discuss further.

3. The draft MLF should be considered in conjunction with the Issues Paper (UNIDROIT 2022 – Study LVIII A – W.G.5 – Doc. 2).

4. The preliminary draft text of Chapter V (Priority rules) is contained in a separate document (UNIDROIT 2022 – Study LVIII A – W.G.5 – Doc. 4) for the Working Group's consideration.

5. Chapter IX (Transition) has been prepared intersessionally by the Secretariat, based on the work undertaken by the transition subgroup and the discussions of the Working Group at WG4.

6. The Secretariat is grateful for the assistance that Mr Marek Dubovec (University of Arizona, Member of the MLF Working Group), Mr Neil Cohen (Brooklyn Law School, Member of the MLF Working Group) and Mr Bruce Whittaker (University of Melbourne, Member of the MLF Working Group) provided in the preparation of this document.

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## PRELIMINARY DRAFT MODEL LAW ON FACTORING<sup>1</sup>

### 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.*]<sup>2</sup>
3. Nothing in this Law affects the rights and obligations of a ~~transferor or a debtor~~ person<sup>3</sup> 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.*]<sup>4</sup>

##### Article 2 – Definitions

1. For the purposes of this Law:
  - (-) “Debtor” means a person who owes payment of ~~the a~~ receivable ~~],~~ including a guarantor or other person secondarily liable for payment of the receivable].<sup>5</sup>
  - ~~(-) “Future receivable” means a receivable that arises after the time a transfer agreement is entered into, whether the contract giving rise to the receivable;~~

<sup>1</sup> The Working Group has yet to agree upon the formal title of the instrument. While there is value in retaining the term ‘factoring’ on the basis that factoring practices is largely what the law intends to regulate, it has also been suggested that because (i) the instrument does not define factoring and (ii) covers financing methods beyond the traditional notion of factoring (such as securitisation), it would be inappropriate to include the term ‘factoring’ in the title. The Working Group may wish to give this issue further consideration at its fifth session. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 100.

<sup>2</sup> The Working Group has decided that the MLF should apply to cash proceeds (including proceeds or proceeds) and that the definition of proceeds should be modelled on Article 19(1) of the MLST (see the definition of ‘proceeds’ in Article 2 below; [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraphs 75 - 78). The draft MLF provides various rules regarding the treatment of proceeds (see Chapter II Article 7, Chapter III Article 11, and Chapter VIII Article 5). However, it does not currently contain a general rule. The Working Group may wish to discuss whether there needs to be a reference to proceeds in Article 1. See the “Proceeds” section of the Issues Paper for further discussion of this issue.

<sup>3</sup> See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 54.

<sup>4</sup> The Working Group has previously decided that the MLF will not apply to negotiable instruments. However, the MLF may need to clarify what will occur when there is a conflict between the MLF and another domestic law regulating negotiable instruments. As negotiable instruments are only covered by the MLF as proceeds, it may be unnecessary to include this provision. At its fifth session, the Working Group deferred their decision on this paragraph graph until its fifth session (see [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), para 54).

<sup>5</sup> At WG4, the Working Group tentatively favoured not including guarantors in the definition of ‘debtor’, but deferred the decision for discussion at its fifth session. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 88.

~~(i) — is in [existence/effect] at the time the transfer agreement is entered into; or only comes into [existence/effect] after that time.~~

OR

(-) “Default” means the failure of a transferor under a security transfer to pay or otherwise perform a payment or other obligation secured by the security transfer and any other event that constitutes default under the terms of an agreement between the transferor and the transferee.

“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.~~

(-) “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 claimant]<sup>6</sup> have been satisfied.

(-) “Proceeds” of a receivable means ~~whatever~~ any:

(i) money;

(ii) receivable;<sup>7</sup>

(iii) negotiable instrument; or

(iv) rights to payment of funds credited to a bank account,

that is received in respect of the receivable, whether in total or partial payment or other satisfaction of the receivable. ~~The term~~ It includes proceeds ~~whatever is received in respect of proceeds. The term does not include returned goods.~~<sup>8</sup>

(-) “Receivable” means a contractual right to payment of a sum of money:

(i) a ~~r~~ Arising from a contract for the supply or lease of goods or services<sup>9</sup> [other than a contract for the sale or lease of immovable property]

(ii) a ~~r~~ Arising from a contract for the [sale, lease or licence] of ~~industrial or other~~ intellectual property ~~or proprietary information~~; or<sup>10</sup>

(iii) r ~~R~~ Representing the payment obligation for a credit card transaction.

<sup>6</sup> The Working Group may wish to consider whether the term ‘third party’ can be used instead of ‘competing claimant’, or alternatively whether ‘competing claimant’ should be defined in Article 2.

<sup>7</sup> The Working Group may wish to discuss whether the MLF should cover receivables that are proceeds of a receivable.

<sup>8</sup> The Working Group may wish to discuss whether the MLF should cover receivables that are proceeds of a receivable.

<sup>9</sup> At WG4, the Working Group decided the MLF would not include a reference to “financial services” and agreed that the supporting guidance document to the MLF would explain the types of services that should be included in ‘supply of services’ and not that it should not extend to certain financial services, such as loans. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraphs 39 – 61.

<sup>10</sup> At WG4, the Working Group discussed the scope of this paragraph, especially in relation to software and databases. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraphs 42 – 49. Further analysis is available in Part IB of the Issues Paper (Treatment of Intellectual Property).

~~[others]~~

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

~~(-) “Security transfer” means a transfer of a receivable by agreement, or the creation of an interest in a 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.<sup>11</sup>~~

(-) “Transfer” of a receivable means:

(i) an outright transfer of the receivable by agreement; and

~~(ii) a security 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.<sup>12</sup>~~

<sup>11</sup> At WG4 the Working Group decided to include a definition of ‘security transfer’. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 113.

<sup>12</sup> At WG4 the Working Group decided to delete this paragraph, based on a proposal made by Sir Roy Goode. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 104.

### 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<sup>13</sup>

~~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,<sup>14</sup> 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.~~

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<sup>13</sup> At WG4, on the basis of a proposal by Sir Roy Goode, the Working Group decided to move the reference to international origin and the need to promote uniformity to the preamble, and delete the references to “good faith” from paragraph 1 and the entirety of paragraph 2. The Secretariat has retained Article 11 until a preamble has been drafted, after which it will be removed. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 105.

<sup>14</sup> The Working Group may wish to discuss whether this cross-reference is necessary.

### Article 99 – Personal or property rights securing or supporting payment of a receivable<sup>15</sup>

1. A transferee of a receivable has the benefit of any personal or property right that secures or [supports/[guarantees](#)]<sup>16</sup> 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.<sup>17</sup>
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.<sup>18</sup>

### Article 98 – Contractual limitations on the transfer of receivables<sup>19</sup>

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<sup>20</sup> 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.

## 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.

<sup>15</sup> At WG4, the Working Group decided to reverse the order of Chapter II Articles 8 and 9. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 97.

<sup>16</sup> At WG4, a member of the Working Group suggested that 'supports' should be changed to 'guarantees'. No decision was made regarding this issue. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 96.

<sup>17</sup> At WG4, the Working Group discussed whether Article 8(1) could be redrafted to better accommodate transfers involving a letter of credit or an independent guarantee. The Working Group may wish to consider whether to make the second sentence of Article 8(1) into a separate paragraph. Doing so would effectively mean the override in Article 8(2) would not apply to independent guarantees and letters of credit.

<sup>18</sup> At WG4, the Working Group deferred discussion on the drafting of this article to its fifth session. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 96.

<sup>19</sup> At WG4, the Working Group suggested that further intersessional work was required on this Article. The Working Group may wish to discuss whether the below proposed drafting would appropriately simply Article 9(1) to address the most likely scenario that will arise (an agreement between the initial creditor and the debtor of the receivable). Further analysis is available in 'anti-assignment clauses' section of the Issues Paper.

*A transfer of a receivable is effective notwithstanding any agreement ~~between the initial or any subsequent transferor and the debtor or any transferee~~ and transferor] limiting in any way the transferor's right to transfer the receivable.*<sup>19</sup>

<sup>20</sup> Article 9(2) appears to use the terms 'contract' and 'agreement' interchangeably. The Working Group may wish to address this drafting issue at WG5 or a later stage.



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.<sup>21</sup>

### **Article 11 – Proceeds**

If a transfer of a receivable is effective against third parties, the transferee's right to any proceeds of that receivable under article 7 is also effective against third parties. ~~[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.

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<sup>21</sup> The Working Group may wish to discuss whether it is necessary to retain Article 10(2) in the MLF.

## CHAPTER IV THE REGISTRY SYSTEM

### Article 13 – Establishment of the Registry

The rules for the operation of the Registry [and the effect of registration or non-registration of a notice with respect to a receivable]<sup>22</sup> are set out in [Annexe A].

## CHAPTER VI RIGHTS AND OBLIGATIONS OF THE PARTIES

### SECTION I. TRANSFEROR AND TRANSFEREE

#### Article ~~1~~14 – 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.<sup>23</sup>
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~~15 – 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~~16 – 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.

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<sup>22</sup> The Working Group is invited to consider whether this bracketed language is necessary.

<sup>23</sup> The Working Group may wish to discuss the relationship between Article 14 and Article 31(1), noting that Article 31(1) refers to the 'transfer agreement' between the transferor and the transferee.

### Article 4-17 – 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 5-18 – Principle of<sup>24</sup> 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].<sup>25</sup>
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 6-19 – 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.<sup>26</sup>

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<sup>24</sup> The Working Group may wish to discuss whether the words 'principle of' could be deleted.

<sup>25</sup> The Working Group may wish to discuss whether the phrase [without the consent of the debtor' should be deleted.

<sup>26</sup> At the fourth session, Sir Roy Goode submitted a comment on this paragraph, suggesting that it was problematic because notification was likely to refer to different receivables. During the meeting it was suggested that this paragraph might not be necessary because priority would be determined by registration, not by notification. The Working Group did not reach a decision on the matter. The Secretariat notes that there is an equivalent provision in the MLST (Article 62(4)), even though priority under the MLST is also based on registration rather than notification. On this basis, it is suggested that it might be prudent to retain this paragraph. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 106.

### Article 207 – 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 pursuant to Article 19,<sup>27</sup> 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,<sup>28</sup> 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~~<sup>29</sup> 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 and priority<sup>30</sup> 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.<sup>31</sup>
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.

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<sup>27</sup> The Working Group may wish to consider whether ‘pursuant to Article 19’ should be added to this paragraph, as Article 19 specifies when a notification is effective and only such a notification would trigger the consequences set out in Article 20.

<sup>28</sup> The Working Group may wish to discuss whether the phrase ‘in a writing received by the debtor’ could be replaced with ‘in a payment instruction’.

<sup>29</sup> See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraphs 90 – 91.

<sup>30</sup> At WG4, the Working Group suggested that the proof that needs to be provided to the debtor should demonstrate not only that the transferee has a claim to the receivable, but also that its claim has priority over other claims. The Working Group may wish to give this matter further consideration, as including ‘and priority’ would suggest that junior secured parties should not be entitled to collect receivables. If that change is made, the Working Group may wish to consider whether changes should also be made to the final sentence of this paragraph. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 91.

<sup>31</sup> At WG4, it was suggested that this paragraph had been drafted for a scenario with a single transfer, not a chain of transfers, and suggested addressing this matter at a subsequent meeting. It was also suggested that this paragraph should be expanded to allow the debtor to request information about the transferor. The Working Group may wish to consider these issues further.

**Article 218 – 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.]<sup>32</sup>

**Article 229 – 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)~~23, paragraph 2.

**Article 23~~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.

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<sup>32</sup> The Working Group may wish to discuss whether Article 21(3) is redundant on the basis that Article 9 renders an anti-assignment clause wholly null.

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 ~~24~~<sup>11</sup> – 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<sup>33</sup>

### COLLECTION AND ENFORCEMENT

#### A. OUTRIGHT TRANSFERS

##### Article ~~25~~ – 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 ~~26~~<sup>2</sup> – 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.]<sup>34</sup>~~

<sup>33</sup> The Working Group may wish to consider whether this Chapter needs to retain the references to judicial enforcement (this issue was not discussed at WG4).

<sup>34</sup> At WG4, the Working Group decided to delete this paragraph on the basis that the Working Group decided to exclude bank deposits from the definition of 'receivable'. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 111.

~~[4/5]. The right of the transferee to collect under paragraphs 1 to [3/4] is subject to Articles [rights and obligations of debtors].~~<sup>35</sup>

### Article ~~273~~ – Right of the transferee to [dispose of/sell]<sup>36</sup> 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].<sup>37</sup>
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.

<sup>35</sup> At WG4, it was suggested that this paragraph was redundant, on the basis that collection rights are always subject to the rights of debtors, whether pre or post-default.

<sup>36</sup> The Working Group may wish to consider whether this Article needs to refer to 'sale or other disposal', or whether it can be limited to 'sales' only (this issue was not discussed at WG4).

<sup>37</sup> The Working Group may wish to discuss whether this paragraph is necessary.

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 284 – 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 [(273)] 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.<sup>38</sup>
2. If the transferee decides to exercise the right provided in Article [(273)] 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 295 – 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.<sup>39</sup>
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.

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<sup>38</sup> The Working Group may wish to discuss whether this paragraph is necessary.

<sup>39</sup> The Working Group may wish to discuss whether Article 29(1) and (2) are necessary.



## CHAPTER VIII

### CONFLICT OF LAWS

#### Article ~~1~~30 – 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 a limitation agreement limiting on<sup>40</sup> 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 ~~3~~12 – Effectiveness and priority of transfers

Except as provided in Articles [~~(3)~~32 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.

#### Article ~~3~~32 – Transfers of receivables relating to immovable property

Notwithstanding Article [~~(312)~~], 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.<sup>41</sup>

#### Article ~~3~~34 – 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 ~~3~~45 – 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.

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<sup>40</sup> The Working Group may wish to discuss whether this suggested language is clearer.

<sup>41</sup> As receivables arising from a contract for the sale or lease of immovable property are excluded from the definition of 'receivable' under Article 2(1), the Working Group may wish to discuss whether Article 32 is necessary.

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 356 – 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 367 – 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 378 – 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 389 – 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 3910 – 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 ~~40~~<sup>41</sup> – 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.]

## CHAPTER IX

### TRANSITION<sup>42</sup>

#### Article ~~41~~<sup>40</sup> – Amendment and repeal of other laws

1. [The laws to be specified by the enacting State] are repealed.
2. [The laws to be specified by the enacting State] are amended as follows [the text of the relevant amendments to be specified by the enacting State].

#### Article ~~42~~<sup>40</sup> – General applicability of this Law

1. For the purposes of the provisions of this chapter:
  - (a) “Prior law” means the law applicable under the conflict-of-laws rules of [the enacting State] that applied to prior ~~security rights~~transfers immediately before the entry into force of this Law; and
  - (b) “Prior ~~security right~~transfer” means a right created by an agreement entered into before the entry into force of this Law that is a ~~security right~~transfer within the meaning of this Law and to which this Law would have applied if it had been in force when the right was created.<sup>43</sup>
2. Except as otherwise provided in this chapter, this Law applies to all ~~security rights~~transfers, including prior ~~security rights~~transfers within its scope.<sup>44</sup>

<sup>42</sup> Chapter IX of the draft MLF is based on the corresponding provisions of Chapter IX of the MLST (Articles 101 – 106). The transition subgroup recommended that the MLF transition rules should be consistent with the parallel provisions of the MLST, unless there is an exceedingly persuasive justification for a difference. See [UNIDROIT 2021 – Study LVIII A – W.G. 3 – Doc. 5](#), paragraph 10.

<sup>43</sup> The definition of ‘transfer’ in Article 2(1) of the draft MLF does not refer to a ‘right’, instead it describes an action: ‘an outright transfer of the receivable by agreement’. The Working Group is invited to consider an alternative definition: ‘an action that occurred before the entry into force of this Law that would constitute a transfer of a receivable within the meaning of this Law and to which this Law would have applied if it had been in force when the action occurred.’

<sup>44</sup> If the Working Group decides to change the definition of ‘prior transfer’ in Article 42(1)(b), it may wish to consider whether this provision should also be altered. An alternative formulation could be: ‘this Law applies to all transfers of receivables, including prior transfers.’

**Article ~~43~~<sup>103</sup> – Applicability of prior law to matters that are the subject of proceedings commenced before the entry into force of this Law**

1. Subject to paragraph 2, prior law applies to a matter that is the subject of proceedings before a court or arbitral tribunal commenced before the entry into force of this Law.
2. If any step<sup>45</sup> has been taken to enforce a prior ~~security right~~<sup>transfer</sup> before the entry into force of this Law, enforcement may continue under prior law or may proceed under this Law.<sup>46</sup>

**Article ~~44~~<sup>104</sup> – Applicability of prior law to the creation of a prior ~~security right~~<sup>transfer</sup><sup>47</sup>**

1. Prior law determines whether a prior ~~security right~~<sup>transfer</sup> was created.<sup>48</sup>
2. A prior ~~transfer~~<sup>security right</sup> remains effective between the parties notwithstanding that its creation did not comply with the creation requirements of this Law.<sup>49</sup>

**Article ~~45~~<sup>105</sup> – Transitional rules for determining the third-party effectiveness of a prior ~~security right~~<sup>transfer</sup>**

1. A prior ~~transfer~~<sup>security right</sup> that was effective against third parties under prior law at the time this Law entered into force continues to be effective against third parties under this Law until the earlier of:
  - (a) The time it would have ceased to be effective against third parties under prior law; and
  - (b) The expiration of [a period of time to be specified by the enacting State]<sup>50</sup> after the entry into force of this Law.
2. If the third-party effectiveness requirements of this Law are satisfied before the third-party effectiveness of a prior ~~transfer~~<sup>security right</sup> ceases in accordance with paragraph 1, the prior ~~transfer~~<sup>security right</sup> continues to be effective against third parties under this Law from the time when it was made effective against third parties under prior law.
3. If the third-party effectiveness requirements of this Law are not satisfied before the third-party effectiveness of a prior ~~transfer~~<sup>security right</sup> ceases in accordance with paragraph 1, the prior

<sup>45</sup> There may be some uncertainty as to what constitute 'any step' in this provision. Does this refer only to formal legal steps such as bringing an action against the debtor on the receivable, or does it also cover less formal actions such as notifying the debtor to pay the transferee? This uncertainty also exists in the MLST, so it may be that the MLF does not need to address this issue.

<sup>46</sup> At WG4, the Working Group decided to include this provision. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 72.

<sup>47</sup> The Working Group may wish to discuss whether the language of Article 44 could be improved in relation to the 'creation' of a prior transfer.

<sup>48</sup> This provision may need to be reformulated to better suit the language used throughout the draft MLF. The MLF does not refer to 'the creation of rights'. An alternative formulation could be 'the prior law determines whether a prior transfer is effective between the parties.'

<sup>49</sup> As consistent with the footnote for Article 44(1) above, because the MLF doesn't talk about creation of transfers, the Working Group is invited to consider whether this provision should be changed to 'A prior transfer remains effective between the parties to *notwithstanding whether it would be effective between the parties under this Law.*'

<sup>50</sup> At WG4, the Working Group decided that the supporting documentation to the MLF should recommend a transition period of one year. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraphs 69 – 70.

~~transfer~~~~security right~~ is effective against third parties only from the time it is made effective against third parties under this Law.

4. A written agreement between a ~~grantor and a secured creditor creating~~ ~~transferor and a transferee for~~ a prior ~~transfer~~~~security right~~ is sufficient to constitute authorization by the ~~grantor~~~~transferor~~ for the registration of a notice covering the ~~assets~~ ~~receivables~~ described in that agreement under this Law.

5. If a prior ~~transfer~~~~security right~~ referred to in paragraph 2 was made effective against third parties by the registration of a notice under prior law, the time of registration under prior law is the time to be used for the purposes of applying the priority rules of this Law that refer to the time of registration of a notice of a ~~transfer~~~~security right~~.

#### **Article ~~46~~~~106~~ – Application of prior law to the priority of a prior ~~security right~~~~transfer~~ as against the rights of competing claimants arising under prior law<sup>51</sup>**

1. The priority of a prior ~~security right~~~~transfer~~<sup>52</sup> as against the rights of a competing claimant is determined by prior law if:

(a) The ~~security right and the~~ ~~transfer was made, and the~~ rights of all competing claimants arose before the entry into force of this Law; and

(b) The priority status of ~~the prior transfer~~<sup>53</sup> ~~nor the rights of any of the competing claimants~~ ~~has none of these rights has~~ changed since the entry into force of this Law.

2. For the purposes of paragraph 1 (b), the priority status of a prior ~~security right~~~~transfer~~ has changed only if:

(a) It was effective against third parties when this Law entered into force but ceased to be effective against third parties; or

(b) It was not effective against third parties under prior law when this Law entered into force, and only became effective against third parties under this Law.

#### **Article ~~47~~~~107~~ – Entry into force of this Law**

This Law enters into force [on the date or according to mechanism to be specified by the enacting State].

<sup>51</sup> The proposed drafting of this article is based on the draft statutory language prepared by the transition subgroup, which was subsequently adopted by the Working Group. See [UNIDROIT 2021 – Study LVIII A – W.G. 3 – Doc. 5](#), Annex C, paragraph 11, [Unidroit 2022 – Study LVIII A – W.G.4 – Doc. 6](#) paragraph 71.

<sup>52</sup> The Working Group may wish to give this provision further consideration in light of the suggested changes to the definition of ‘prior transfer’.

<sup>53</sup> The Working Group may wish to give this provision further consideration in light of the suggested changes to the definition of ‘prior transfer’.

## ANNEXE A

## REGISTRY PROVISIONS

~~Definition of “priority”~~

## A. GENERAL RULES

## Article 1 – Definitions

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/~~ using a form available through the Registry’s ~~website~~ [electronic](#) user interface<sup>54</sup> to modify information contained in a 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~~ [electronic](#) user interface<sup>54</sup> to cancel the effectiveness of a registered notice;
- (d) “Designated field” means ~~[the space on the prescribed registry notice form/~~ a field in a form available through the Registry’s ~~website~~ [electronic](#) user interface<sup>54</sup> 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~~ [electronic](#) user interface to achieve the third-party effectiveness of the 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) “Registered notice” means a notice the information in which has been entered into the registry record;
- (i) “Registrant” means a person who submits a notice to the Registry;
- (j) “Registration” means the entry of information contained in a notice into the registry record;
- (k) “Registration number” means the unique number assigned to an initial notice by the Registry and permanently associated with that notice and any related notice;
- ~~[(l) “Registry” means the registration system established under article ~~[... Establishment of the Registry]~~ 13 of the Law;]~~
- [(m)] “Registry archive” means that part of the Registry record that has been removed from the public registry record and archived;

<sup>54</sup> At its fourth meeting, the Working Group agreed to use the term “electronic user interface” rather than “website user interface” as it was a more technologically neutral term and would better accommodate future technological developments. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 12.

[(n)] “Registry record” means the information in all registered notices stored by the Registry.

### **Article 2 – Transferor’s authorization for registration**

1. Registration of an initial notice is ineffective unless authorized by the transferor in writing.
2. Registration of an amendment notice that adds receivables or extends the period of effectiveness of the registration of a notice is ineffective unless authorized by the transferor in writing.
3. [With the exception of an amendment notice to add a transferee of receivable as a transferor in accordance with article 20, registration] [Registration] of an amendment notice that adds a transferor is ineffective unless authorized by the additional transferor in writing.<sup>55</sup>
4. Authorization may be given before or after the registration of an initial or amendment notice.
5. A written transfer agreement is sufficient to constitute authorization by the transferor for the registration of an initial or amendment notice covering a receivable described in that transfer agreement.

### **Article 3 – One notice sufficient for multiple transfers**

The registration of a single notice may relate to transfers under one or more than one transfer agreement.

### **Article 4 – Advance registration**

A notice may be registered before a transfer or the conclusion of a 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~~ [front-end user interface](#)]<sup>56</sup> made available for that purpose ~~on~~ [through](#)<sup>57</sup> the Registry’s [electronic user interface website](#)]; [~~and~~]
  - (b) Identifies itself in the [~~prescribed manner/manner~~ required by the Registry]; and

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<sup>55</sup> [The decision as to what text to retain here will depend on the approach the Working Group decides to take to article 20 below.](#)

<sup>56</sup> The Working Group has not yet agreed on the terminology that should be used here. It should be noted, if the Working Group decides to not use the word “form” here, that its use may also need to be reconsidered elsewhere, such as in various definitions in article 1. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraphs 14 – 15.

<sup>57</sup> It is suggested that this change be made for consistency. See for example the definitions in articles 1(b) to (e) of the Annexe.

- (c) Has paid or arranged to pay the prescribed fee.
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]~~ front-end user interface<sup>58</sup> made available for that purpose ~~on~~ through the Registry's electronic user interface website]; and
- (b) Has paid or arranged to pay the prescribed fee.

#### **Article 6 – Rejection of the registration of a notice or a search request**

1. The Registry must not permit the registration of:
- (a) A notice if no information is entered in one of the mandatory designated [fields]<sup>59</sup>; 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 12, paragraph 2.
2. The Registry must not accept a search request if no information is entered in one of the [fields]<sup>60</sup> designated for entering a search criterion.

### **C. REGISTRATION OF A NOTICE**

#### **Article 7 – 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 transferor in accordance with article 8 ~~– [and any additional information that the enacting State may decide to require to be entered to assist in uniquely identifying the transferor];~~<sup>61</sup>
- (b) The identifier and address of the transferee or its representative in accordance with article 9; [and]
- (c) A description of the receivables in accordance with article 10; and
- [(d) The period of effectiveness of the registration in accordance with article 12.

#### **Article 8 – Transferor's identifier**

1. Where the person to be identified in an initial or amendment notice as the transferor is a natural person, the 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

<sup>58</sup> See the comment above in relation to Article 5(1)(b) of the Annexe.

<sup>59</sup> At WG4, the Working Group queried whether the term "field" be replaced by a more generic term. The Working Group is invited to give further consideration to this issue at its fifth session. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 15.

<sup>60</sup> See comments in relation to Article 6(1)(a) of the Annexe.

<sup>61</sup> At WG4, the Working Group decided to delete this additional language and address the matter in the future enactment guide for the registry. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 16.



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. [The enacting State should specify which components of the 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 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 transferor is a legal person, the 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]].<sup>62</sup>

### **Article 9 – Transferee’s identifier**

1. Where the person to be identified in an initial or amendment notice as the transferee is a natural person, the 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 transferee is a legal person, the transferee’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~~.<sup>63</sup>

### **Article 10 – Description of ~~transferred~~<sup>64</sup> receivables**

1. The ~~transferred~~–receivables must be described in an initial notice in a manner that reasonably allows their identification.

2. A description that indicates that the ~~transferred~~–receivables consist of all of the transferor’s receivables, or of all of the transferor’s receivables within a generic category, satisfies the standard in paragraph 1.

### **Article 11 – 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 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.

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<sup>62</sup> 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.

<sup>63</sup> At WG4, the Working Group agreed that the identifiers for transferees should be broad enough to accommodate natural as well as legal persons, and that the wording of Article 9 should be amended in accordance with the changes made to draft Article 8. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 17.

<sup>64</sup> At WG4, the Working Group decided to delete the word “transferred” from Article 10 on the basis that it should also apply to future receivables. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 19.

### **Article 12 – Period of effectiveness of the registration of a notice**

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.

## **D. REGISTRATION OF AN AMENDMENT OR CANCELLATION NOTICE**

### **Article 13 – 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 14 – Compulsory registration of an amendment or cancellation notice**

1. The transferee must register an amendment notice deleting receivables from a description of transferred receivables in a registered notice if:
  - (a) The transferor has not authorized the registration of a notice in relation to those receivables and the transferee has been informed by the 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; 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.
2. The transferee must register a cancellation notice if:
  - (a) The registration of the initial notice was not authorized by the transferor and the transferee has been informed by the transferor that it will not authorize the registration of the initial notice;

- (b) The transfer authorised the registration of the initial notice but the authorization has been withdrawn and no transfer agreement has been concluded; or
- (c) All receivables to which the initial notice relates have been [paid in full or have been](#)<sup>65</sup> 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.
3. The 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) or 2(b)].
4. If the conditions set out in paragraph 1 or 2 have been met, the transferor may request the transferee in writing, reasonably identifying itself and the related initial notice to register the appropriate amendment or cancellation notice. The transferee may not charge or accept any fee or expense for complying with the transferor’s request.
5. If the transferee does not comply with the transferor’s request made in accordance with paragraph 4 within [a short period of time to be specified by the enacting State] after its receipt, the transferor may [seek an order for the registration of an amendment or cancellation notice through \[a summary judicial or administrative procedure to be specified by the enacting State\]](#). ~~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.~~
6. ~~Where an~~ [If no order for the registration of an amendment or cancellation notice is served on the Registry](#) issued in accordance with paragraph 5, the Registry must register the ~~amendment or cancellation~~ notice without delay [\[upon receipt of a request with a copy of the relevant order/upon the issuance of the relevant order\]](#).<sup>66</sup>

### **Article 15 – Effectiveness of the registration of an amendment or cancellation notice not authorized by the transferee**

The registration of an amendment or cancellation notice is effective regardless of whether it is authorized by the ~~person who is identified in the initial notice as the~~ transferee<sup>67</sup>.

## **E. SEARCHES**

### **Article 16 – Search criteria**

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

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

### **Article 17 – 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:

<sup>65</sup> See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 23.

<sup>66</sup> At WG4, the Working Group decided to return the language of Article 14 to that used in the MLST. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 23.

<sup>67</sup> See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 24.

- (a) Sets out all information in each registered notice that contains information matching the search criterion; or
- (b) Indicates that no registered notice contains information matching the search criterion.

2. A ~~written~~<sup>68</sup> 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 18 – Registrant errors in required information

1. An error in the 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 transferor’s correct identifier as the search criterion.
2. An error in information required to be entered in an initial or amendment notice other than the transferor’s identifier does not render the registration ineffective unless the error would seriously mislead a reasonable searcher.

### Article 19 – Post-registration change of transferor’s identifier

1. Subject to paragraph [s] 2 [and 3], the third-party effectiveness and priority of a transfer that was made effective against third parties by registration of a notice are not affected by a change in the identifier of the transferor after the notice is registered.
2. If the identifier of the transferor changes after a notice is registered, a competing transfer made by the transferor that was made effective against third parties after the change has priority over the transfer to which the notice relates, unless an amendment notice disclosing the new identifier of the 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 transfer is made effective against third parties.

~~3. If the identifier of the transferor changes after a notice is registered, a buyer to whom the receivable is sold after the change acquires its rights in priority to the transfer to which the notice relates, an amendment notice disclosing the new identifier of the 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 buyer acquires its rights in the receivable.<sup>69</sup>~~

<sup>68</sup> At WG4, the Working Group agreed to delete the word ‘written’ from Article 17 in order to avoid ambiguity in whether this would require a search result to be issued in paper form. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 25.

<sup>69</sup> At WG4, the Working Group decided to delete Article 19(3). See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 26.

## **[Article 20 – Post-registration transfer of a transferred receivable**

### **Option A**

~~1. Subject to paragraphs 2 to 4, the third-party effectiveness and priority of a transfer of a receivable that was made effective against third parties by registration of a notice are not affected by a sale of the receivable after the notice is registered to a buyer that acquires its rights subject to the transfer.~~

~~2. If a receivable covered by a registered notice is sold to a buyer that acquires its rights subject to the transfer to which the notice relates, a competing transfer by the buyer that is made effective against third parties after the transferee acquires knowledge of the sale and the identifier of the buyer has priority over the transfer to which the notice relates, unless an amendment notice adding the buyer as a new transferor is registered:~~

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

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

~~3. If a receivable covered by a registered notice is sold to a buyer that acquires its rights subject to the transfer to which the notice relates, a subsequent buyer to whom the receivable is sold after the transferee acquires knowledge of the sale and the identifier of the buyer acquires its rights free of the transfer to which the notice relates, unless an amendment notice adding the identifier of the initial buyer as a new 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 receivable.~~

~~4. If there are one or more subsequent sales of a receivable before the 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 transferee registers an amendment notice adding the identifier of the most recent buyer of which it has knowledge as a new transferor.~~

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### **OR**

### **Option B**

The third-party effectiveness and priority of a 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**~~transfer.~~<sup>70</sup>

<sup>70</sup> At WG4, the Working Group indicated a preference for Option B and decided to place Article 20 in brackets for further discussion. The Working Group is invited to further consider this issue at its fifth session. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 27.

## **G. ORGANIZATION OF THE REGISTRY AND THE REGISTRY RECORD**

### **Article 21 – 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 22 – Integrity of information in the registry record**

1. Except as provided in articles 23 and 24, 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 23 – Removal of information from the public registry record and archival**

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 12, or upon the registration of a cancellation notice, including any cancellation notice registered in accordance with article 14, paragraph 2 or 6, of these Provisions.
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 agreements under contract or property law] in a manner that enables the information to be retrieved by the Registry.

### **Article 24 – Correction of errors made by the Registry**

1. ~~Without delay after discovering~~ If the Registry discovers that it erroneously removed from the public registry record information contained in a registered notice, a notice must be registered by the Registry ~~must~~ register a notice without delay to restore the erroneously removed information, ~~and~~ The Registry must send a copy of the information in the registered notice to the persons identified in the notice as the transferor and the transferee.<sup>71</sup>
2. The registration of a notice referred to in paragraph 1 is effective as of the time it would have been effective if the information had never been erroneously removed.
3. Notwithstanding paragraph 1, a transfer to which the notice relates is subordinate to the right of a competing claimant that acquired a right in the transferred receivable in reliance on a search of the public registry record made before the notice was registered, provided the

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<sup>71</sup> At WG4, the Working Group decided to revise Article 24 by putting the language in the passive rather than active sense. This drafting is offered so that the Working Group can compare the two at its fifth session, and decide which works better. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 29.

competing claimant did not have knowledge of the erroneous removal of the information at the time it acquired its right.

### **Article 25 – Limitation of liability of the Registry**

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].

### **Article 26 – Registry fees**

1. Fees may be charged for Registry services in the amounts to be specified by the enacting State.
2. The [authority to be specified by the enacting State pursuant to article 21 ~~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.<sup>72</sup>~~

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<sup>72</sup> At WG4, the Working Group decided to retain paragraphs 1 and 2 to establish a legislative basis for fees but that paragraphs 3 and 4 should be deleted and these matters should be addressed in the registry guide to enactment. The Working Group further agreed that the need to keep fees low and for the registry to operate on a cost-recovery basis should also be addressed in the registry guide to enactment and not the MLF itself. See [UNIDROIT 2022 – Study LVIII A – W.G.4 – Doc. 6](#), paragraph 31.