



**Factoring Model Law Working Group**

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**PROPOSED CHAPTER V OF THE DRAFT MODEL LAW ON FACTORING  
PRIORITY OF A TRANSFER**

1. This document contains an preliminary draft of the fifth chapter of the draft Model Law on Factoring (MLF), which provides the proposed priority rules for the instrument. The purpose of this text is to provide a starting point for the Working Group to discuss the MLF's priority rules at its fifth session.
2. As consistent with the Working Group's approach in preparing a draft MLF that is based on, and generally consistent with the UNCITRAL Model Law on Secured Transactions (MLST), this document is based upon the priority rules of the MLST (Chapter V).<sup>1</sup> Chapter V of the MLST provides a complete system of priority rules, including in relation to proceeds.<sup>2</sup> The proposed adaptations of the MLST have been marked up in this document for consideration by the Working Group. The Secretariat has also added footnotes that provide additional analysis and identify specific issues that the Working Group may wish to discuss.
3. Many of the rules in Chapter V of the MLST govern matters that are not relevant to factoring. As such, the Secretariat has recommended that 11 of the 23 articles in Chapter V of the MLST not be included in the MLF.<sup>3</sup> The Secretariat has also suggested that the Working Group discuss whether four other articles are necessary.<sup>4</sup>
4. Article 36 of this chapter relates to 'transfers competing with preferential claims'. The Working Group has not yet had a policy discussion regarding how the MLF should deal with preferential claims. In discussing Article 36, the Working Group is invited to consider (i) how the MLF should generally deal with preferential claims, and (ii) whether the MLST approach should be adopted by the MLF, under which implementing States can list certain preferential claims and set out the extent to which they would have priority over consensual transfers.
5. This initial text was prepared intersessionally by the Secretariat, with assistance from Mr Bruce Whittaker (University of Melbourne, Member of the MLF Working Group) and Mr Marek Dubovec (University of Arizona, Member of the MLF Working Group).

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<sup>1</sup> United Nations Conference on International Trade Law, *UNCITRAL Model Law on Secured Transactions* (2016), Chapter V, pages 41-52, available [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-08779_e_ebook.pdf) (accessed 19 April 2022).

<sup>2</sup> The MLST provides a more comprehensive set of priority rules than the Receivables Convention, and thus provides a better starting text for the development of the MLF priority rules. See [UNIDROIT 2021 – Study LVIII A – W.G. 4 – Doc. 2](#), paras 44 - 45.

<sup>3</sup> Articles 31, 33, 34, 38, 39, 40, 41, 42, 46, 50 and 51.

<sup>4</sup> Articles 30, 43, 47 and 48.

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## CHAPTER V

### PRIORITY OF A ~~SECURITY RIGHT~~ TRANSFER<sup>5</sup>

#### A. GENERAL RULES

##### Article 29<sup>6</sup> – Competing ~~security rights~~ transfers created by the same ~~grantor~~ transferor<sup>7</sup>

[Subject to articles ~~f~~33, 38, 39 and 41-43],<sup>8</sup> priority between competing ~~security rights~~ transfers created by the same ~~transferor~~ grantor in ~~of~~ the same ~~encumbered asset~~ receivable is determined ~~according to the following rules: As between transfers security rights that were made effective against third parties by registration of a notice in the Registry, priority is determined by the order of registration, without regard to the order of creation of the transfers security rights;~~<sup>9</sup>

~~(a) — As between security rights that were made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of third-party effectiveness; and~~

~~(b)(a) — As between a security right that was made effective against third parties by registration and a security right that was made effective against third parties otherwise than by registration of a notice in the Registry, priority is determined by the order of registration or third-party effectiveness, whichever occurs first.~~<sup>10</sup>

##### Article 30 – Competing ~~security rights~~ transfers created by different ~~transferor~~ grantors

~~Subject to [article 26 of the Model Registry Provisions], p~~ Priority between competing ~~transfers~~ security rights created by different ~~grantors~~ transferors in the same ~~encumbered asset~~ receivable is determined according to article 29.<sup>11</sup>

##### ~~Article 31 — Competing security rights in the case of a change in the method of third-party effectiveness~~

<sup>5</sup> Technically, the term 'transfer' is not quite the equivalent of a 'security right' under the MLST, as a security right is a property interest, whereas a transfer is a process (that gives rise to a property interest acquired by the transferee). Strictly speaking, the equivalent of 'security right' for the MLF would be 'the rights of a transferee of a receivable'. However, this formulation is somewhat long, technical and might cause confusion. On this basis, the Secretariat suggests that the term 'transfer' in this context would be sufficient.

It should also be noted that the MLF Working Group has not yet made a decision as to whether the MLF should use the verb 'assign' or 'transfer' or 'factor'. This matter should be discussed further at the Working Group's fifth session. See UNIDROIT 2022, Study LVIII A – W.G.4 – Doc 6, para 101, available <https://www.unidroit.org/wp-content/uploads/2022/04/Study-LVIII-A-%E2%80%93-W.G.4-%E2%80%93-Doc.-6-Report.pdf> (accessed 19 April 2022).

<sup>6</sup> The article numbers in this document are based on Chapter V of the MLST. They will be updated once the Working Group has approved Chapter V of the MLF and it is incorporated into the body of the draft instrument (following the Working Group's fifth session).

<sup>8</sup> All cross-references will need to be updated after the Working Group's fifth session.

<sup>9</sup> The Working Group may wish to discuss whether the language 'without regard to the order of transfers' is necessary to retain, as this outcome is clear from the first part of Article 29.

<sup>10</sup> The MLF Working Group has previously decided that the MLF will be based on a registration system and that third party effectiveness will be established by registration. On this basis, it is suggested that these additional rules from the MLST governing security rights that have third-party effectiveness otherwise than by registration can be removed from the MLF.

<sup>11</sup> The Working Group may wish to discuss whether Article 30 is applicable in the factoring context and whether it is necessary to retain in the MLF.

~~———— The priority of a security right is not affected by a change in the method by which it is made effective against third parties, provided that there is no time when the security right is not effective against third parties.<sup>12</sup>~~

**Article 32 – ~~Competing security right~~transfers in proceeds<sup>13</sup>**

~~Subject to article 41,<sup>14</sup> a~~A security right in~~transfer of transferee's interest in~~ proceeds of an encumbered asset~~of a receivable~~ that is effective against third parties under article 19] has the same priority over the interest of a competing ~~security right~~transferee<sup>15</sup> ~~of the receivables~~ as the ~~security right~~transferee's interest in the ~~encumbered asset~~ receivable from which the proceeds arose.

**Article 33 — ~~Competing security rights in tangible assets commingled in a mass or transformed into a product~~<sup>16</sup>**

~~1 — If two or more security rights in the same tangible asset extend to a mass or product as provided in article 11 and each security right is effective against third parties as provided in article 20, the priority of each security right in the mass or product is the same as the priority that each security right in that tangible asset had immediately before the tangible asset became part of the mass or product.~~

~~2. — If more than one security right extends to the same mass or product under article 11 and each was a security right in a separate tangible asset at the time of commingling or transforming, the secured creditors are entitled to share in the mass or product according to the ratio that the obligation secured by each security right bears to the sum of the obligations secured by all the security rights.~~

~~3. — For the purposes of paragraph 2, the obligation secured by a security right that extends to the mass or product is subject to any limitation on the security right under article 11.~~

**Article 34 — ~~Security rights competing with rights of buyers or other transferees, lessees or licensees of an encumbered asset~~<sup>17</sup>**

<sup>12</sup> As consistent with the suggested drafting of Article 29, it is proposed that third party effectiveness under the MLF will be determined solely by registration. On this basis, there is no need for Article 31 as it governs issues related to other methods of establishing third party effectiveness under the MLST.

<sup>13</sup> For reference, the definition of 'proceeds' in the Article 2 of the draft MLF is:

(-) "Proceeds" of a receivable means any:

- (i) money;
- (ii) receivable;
- (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. It includes proceeds of proceeds.*

<sup>14</sup> It is proposed that Article 41 be deleted (see below). As such, this reference would not be necessary.

<sup>15</sup> The Working Group may wish to discuss whether the words 'over the interest of a competing transferee' should be deleted. The purpose of Article 32 is to establish the time at which a transferee obtains priority over proceeds. The relative priority against competing complainants is dealt with elsewhere and thus this language may be superfluous.

<sup>16</sup> It is suggested that this article is not applicable to factoring and should not be included in the MLF.

<sup>17</sup> It is suggested that this article is not applicable to factoring and should not be included in the MLF.

1. — ~~If an encumbered asset is sold or otherwise transferred, leased or licensed while the security right in that asset is effective against third parties, the buyer or other transferee, lessee or licensee acquires its rights subject to the security right except as provided in this article.~~

2. — ~~A buyer or other transferee of an encumbered asset acquires its rights free of the security right, if the secured creditor authorizes the sale or other transfer of the asset free of the security right.~~

3. — ~~The rights of a lessee or licensee of an encumbered asset are not affected by a security right if the secured creditor authorizes the grantor to lease or license the asset unaffected by the security right.~~

4. — ~~A buyer of a tangible encumbered asset sold in the ordinary course of the seller's business acquires its rights free of the security right, provided that, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement.~~

5. — ~~The rights of a lessee of a tangible encumbered asset leased in the ordinary course of the lessor's business are not affected by the security right, provided that, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement.~~

6. — ~~Subject to the rights of a secured creditor with a security right in intellectual property in accordance with article 50, the rights of a non-exclusive licensee of an intangible encumbered asset licensed in the ordinary course of the licensor's business are not affected by the security right, provided that, at the time of the conclusion of the licence agreement, the licensee does not have knowledge that the licence violates the rights of the secured creditor under the security agreement.~~

7. — ~~If a buyer or other transferee of a tangible encumbered asset acquires its rights free of a security right, any subsequent buyer or other transferee also acquires its rights free of that security right.~~

8. — ~~If the rights of a lessee of a tangible encumbered asset or a licensee of an intangible encumbered asset are not affected by the security right, the rights of any sub-lessee or sub-licensee are also unaffected by that security right.~~

9. — ~~A buyer acquires its rights free of, and the rights of a lessee are not affected by, an acquisition security right in consumer goods unless the security right is made effective against third parties otherwise than under article 24 before the buyer or lessee acquires its rights in the goods.~~

### **Article 35 – Impact of the ~~grantor's~~ transferor's insolvency on the priority of a ~~security right~~ transfer**

A ~~security right~~ transfer that is effective against third parties under this Law at the time of the commencement of insolvency proceedings in respect of the ~~transferor~~ grantor remains effective against third parties and retains the priority it had before the commencement of the insolvency proceedings, unless another claim has priority pursuant to [the insolvency law to be specified by the enacting State].<sup>18</sup>

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<sup>18</sup> It may be difficult for a State to specify a law in situations where insolvency proceedings would be initiated under a law of the State that is different to the law governing the transfer of a receivable. The Working Group may wish to discuss whether the language 'to be specified by the enacting State' should be deleted.

### Article 36 – ~~Security rights~~ Transfers competing with preferential claims<sup>19</sup>

The following claims arising by operation of other law have priority over a ~~security right~~ transfers that is effective against third parties but only up to [the enacting State to specify the amount for each category of claim]:

- (a) [...];
- (b) [...].<sup>20</sup>

### Article 37 – ~~Security rights~~ Transfers competing with rights of judgment creditors

1. ~~Subject to article 40,~~<sup>21</sup> ~~the~~ The right of a creditor that has obtained a judgment or provisional order ("judgment creditor") has priority over a ~~security right~~ transfer if, before the ~~security right~~ transfer is made effective against third parties, the judgment creditor has [taken the steps to be specified by the enacting State for a judgment creditor to acquire rights in the ~~encumbered asset~~ receivable or the steps referred to in the relevant provisions of other law to be specified by the enacting State].

[2. If a ~~security right~~ transfer is made effective against third parties before or at the same time the judgment creditor acquires its right in a ~~receivable~~ encumbered asset by taking the steps referred to in paragraph 1, the ~~security right~~ transfer has priority but that priority is limited to the greater of the credit extended by the ~~secured creditor~~ transferee:

- (a) Before the ~~secured creditor~~ transferee received a notice from the judgment creditor that the judgment creditor has taken the steps referred to in paragraph 1 or within [a short period of time to be specified by the enacting State] thereafter; or
- (b) Pursuant to an irrevocable commitment of the ~~secured creditor~~ transferee to extend credit in a fixed amount or an amount to be fixed pursuant to a specified formula, if the commitment was made before the ~~secured creditor~~ transferee received a notice from the judgment creditor that the judgment creditor had taken the steps referred to in paragraph 1.]<sup>22</sup>

### ~~Article 38 – Acquisition security rights competing with non-acquisition security rights~~<sup>23</sup>

#### ~~Option A~~

<sup>19</sup> The Working Group has not yet discussed the treatment of preferential claims under the MLF. There are two issues that require consideration: (i) whether the MLF should allow the prioritisation of preferential claims, and (ii) whether the MLF should follow the approach of the MLST in allowing implementing States to list certain preferential claims and the extent to which they would be recognised ahead of registered transfers. As a matter of policy, there are some types of preferential claims that implementing States may wish to protect, such as , claims of the grantor's employees for employment benefits, or tax claims. If the Working Group decides to retain Article 36, it is suggested that the supporting guidance document to be prepared for the MLF provide further explanation on this issue, as consistent with the MLST Guide to Enactment.

<sup>20</sup> [This footnote is taken from the MLST] This provision will not be necessary if the law of the enacting State does not recognise any preferential claims.

<sup>21</sup> It is proposed that Article 40 be deleted (see below). As such, this reference would not be necessary.

<sup>22</sup> The Working Group may wish to discuss whether paragraph 2 is needed. While the MLF governs both outright transfers and security transfers, in practice most transfers are outright. As such, this rule might be considered to add unnecessary complexity to the instrument.

<sup>23</sup> It is suggested that articles 38-42 are not applicable to factoring and should not be included in the draft MLF. These articles relate to acquisition security rights in equipment, consumer goods and IP (not receivables) and thus are not necessary.

~~1. — An acquisition security right in equipment, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor in the operation of its business, has priority over a competing non-acquisition security right created by the grantor, provided that:~~

~~(a) — The acquisition secured creditor is in possession of the equipment; or~~

~~(b) — A notice with respect to the acquisition security right is registered in the Registry before the expiry of [a short period of time to be specified by the enacting State] after the grantor obtains possession of the equipment or the agreement for the sale or licence of the intellectual property to the grantor has been concluded.~~

~~2. — An acquisition security right in inventory, or in intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business, has priority over a competing non-acquisition security right created by the grantor, provided that:~~

~~(a) — The acquisition secured creditor is in possession of the inventory; or~~

~~(b) — Before the grantor obtains possession of the inventory or the agreement for the sale or licence of the intellectual property to the grantor has been concluded:~~

~~(i) — A notice with respect to the acquisition security right is registered in the Registry; and~~

~~A non-acquisition secured creditor that has registered a notice in the Registry with respect to a non-acquisition security right created by the grantor in an asset of the same kind receives a notice from the acquisition secured creditor stating that it has or intends to obtain an acquisition security right in the asset described in the notice and describes the asset to reasonably allow its identification.~~

~~3. — An acquisition security right in consumer goods, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor for personal, family or household purposes, has priority over a competing non-acquisition security right created by the grantor.~~

~~4. — A notice, sent in accordance with paragraph 2 (b) (ii):~~

~~(-) — May cover acquisition security rights under multiple transactions between the same parties without the need to identify each transaction; and~~

~~(-) — Is sufficient only for security rights in inventory of which the grantor obtains possession or intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business which the grantor acquires not later than the expiry of [a period of time to be specified by the enacting State] after the notice is received.~~

#### *Option B*

~~0. — An acquisition security right in equipment, inventory, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor in the operation of its business or held by the grantor for sale or licence in the ordinary course of the grantor's business, has priority over a competing non-acquisition security right created by the grantor, provided that:~~

~~(a) — The acquisition secured creditor is in possession of the equipment or inventory; or~~

~~(a) — A notice with respect to the acquisition security right is registered in the Registry before the expiry of [a short period of time to be specified by the enacting State] after the~~

~~grantor obtains possession of the equipment or inventory, or the agreement for the sale or licence of the intellectual property to the grantor has been concluded.~~

~~2. — An acquisition security right in consumer goods, or in intellectual property or rights of a licensee under a licence of intellectual property primarily used or intended to be used by the grantor for personal, family or household purposes, has priority over a competing non-acquisition security right created by the grantor.~~

### **Article 39 — Competing acquisition security rights**

~~1. — Subject to paragraph 2, priority between competing acquisition security rights is determined according to article 29.~~

~~2. — An acquisition security right of a seller or lessor, or of a licensor of intellectual property made effective against third parties not later than the expiry of the period specified in article 38, paragraph 1 (b), has priority over a competing acquisition security right.~~

### **Article 40 — Acquisition security rights competing with the rights of judgment creditors**

~~— An acquisition security right that is made effective against third parties not later than the expiry of the period specified in article 38, paragraph 1 (b), has priority over the rights of a judgment creditor that would otherwise have priority under article 37.~~

### **Article 41 — Competing security rights in proceeds of an asset subject to an acquisition security right<sup>24</sup>**

#### *Option A*

~~1. — Subject to paragraph 2, a security right in proceeds of an asset that is the subject of an acquisition security right has the same priority over a competing security right that the acquisition security right in the asset from which the proceeds arose has under article 38.~~

~~2. — Where the proceeds arose from inventory, or from intellectual property or rights of a licensee under a licence of intellectual property held by the grantor for sale or licence in the ordinary course of the grantor's business, the security right in the proceeds has the same priority over a competing security right that:~~

~~A non-acquisition security right in an asset of the same kind as the proceeds has under article 29 if the proceeds take the form of receivables, negotiable instruments, or rights to payment of funds credited to a bank account; and~~

~~(a) — The acquisition security right in the asset from which the proceeds arose has under article 38 if the proceeds take any other form, provided that before the proceeds arose a secured creditor that has registered a notice in the Registry with respect to a non-acquisition security right created by the grantor in an asset of the same kind as the proceeds receives a notice from the acquisition-secured creditor stating that it has or intends to obtain a security right in assets of that kind and describes those assets sufficiently to enable them to be identified.~~



*Option B*

~~A security right in proceeds of an asset that is the subject of an acquisition security right has the same priority over a competing security right that a nonacquisition security right in the asset from which the proceeds arose has under article 29.~~

**Article 42 — Acquisition security rights extending to a mass or product competing with non-acquisition security rights in the mass or product**

~~Subject to article 38, an acquisition security right in a tangible asset that extends to a mass or product and is effective against third parties has priority over a non-acquisition security right granted by the same grantor in the mass or product.~~

**Article 43 — Subordination<sup>25</sup>**

1. A person may at any time subordinate the priority of its rights under this Law in favour of any existing or future competing claimant. The beneficiary need not be a party to the subordination.
2. Subordination does not affect the rights of competing claimants other than the person subordinating its priority and the beneficiary of the subordination.

**Article 44 — Future advances and future ~~encumbered assets~~ receivables<sup>26</sup>**

1. Subject to article 37,<sup>27</sup> the priority of a security ~~right~~ transfer extends to all secured obligations, including obligations incurred after the ~~security right~~ transfer became effective against third parties.
2. The priority of a ~~security right~~ transfer covers all ~~encumbered assets~~ receivables described in a notice registered in the Registry, whether they are acquired by the ~~transferor~~ grantor or come into existence before or after the time of registration.<sup>28</sup>

**Article 45 — Irrelevance of knowledge ~~of the existence of a security right~~**

Knowledge of the existence of a ~~security right~~ transfer on the part of a ~~secured creditor~~ transferee does not affect the priority of the ~~security right~~ transfer under this Law.<sup>29</sup>

<sup>25</sup> While Article 43 adopts the right policy approach to subordination, the Working Group may wish to discuss the utility of including Article 43 in the MLF.

<sup>26</sup> As the MLF applies to future receivables, it is suggested that this article be retained. However, it is suggested that the Working Group consider reversing the order of paragraphs 1 and 2, to reflect that the MLF is concerned primarily with outright transfers of receivables (paragraph 2), while also governing security transfers (paragraph 1).

<sup>27</sup> If the Working Group decides to delete Article 37(2), then this cross-reference should be eliminated too as substantively nothing in article 37 would limit the priority with respect to future obligations.

<sup>28</sup> The Working Group may wish to discuss whether the drafting of Article 44(2) could be improved. The Working Group may wish to consider the following alternative formulation: 'The priority of a transfer of a receivable that is described in a notice registered in the Registry is determined in accordance with this Chapter, whether the receivable is acquired by the transferor or comes into existence before or after the time of registration.'

<sup>29</sup> The drafting of this article is somewhat unclear. It is suggested that the Working Group consider adopting a slightly different formulation: 'The priority of a transfer under this Law is not affected by any knowledge that the transferee may have of another transfer.' This suggested reformulation would also address another issue concerning art. 37(2) where notice of a competing claim of a judgment creditor does affect priority. The proposed

## B. ASSET-SPECIFIC RULES

### Article 46 — Negotiable instruments<sup>30</sup>

1. — ~~A security right in a negotiable instrument that is made effective against third parties by possession of the instrument has priority over a security right in the instrument that is made effective against third parties by registration of a notice in the Registry.~~

2. — ~~A buyer or other consensual transferee of an encumbered negotiable instrument acquires its rights free of a security right that is made effective against third parties by registration of a notice in the Registry if the buyer or other transferee:~~

~~Qualifies as a [protected holder] [other type of holder to be specified by the enacting State]; or~~

~~[Takes possession of the negotiable instrument and gives value] [takes any other act to be specified by the enacting State] without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement.~~

### [Article 47 — Rights to payment of funds credited to a bank account<sup>31</sup>

1. A [security right]<sup>32</sup> in a right to payment of funds credited to a bank account made effective against third parties by the ~~secured creditor~~transferee becoming the account holder has priority over a competing ~~security right~~transfer that is made effective against third parties by any other method.

2. A security right in a right to payment of funds credited to a bank account with respect to which the secured creditor is the deposit-taking institution has priority over a competing security right made effective against third parties by any method, except a security right that is made effective against third parties by the secured creditor becoming the account holder.

3. A security right in a right to payment of funds credited to a bank account made effective against third parties by a control agreement has priority over a competing security right except:

(a) A security right of the deposit-taking institution; or

(b) A security right that is made effective against third parties by the secured creditor becoming the account holder.

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language 'knowledge of another transfer' would take care of that as a judgment creditor does not acquire its rights by a "transfer".

<sup>30</sup> The Working Group has previously decided that the MLF will not apply to negotiable instruments. On this basis, it is suggested that Article 46 should not be included in the MLF.

<sup>31</sup> The Working Group may wish to discuss whether it's necessary to include Article 47 in the MLF. The Working Group has previously decided that the MLF will apply to bank accounts only as proceeds of a receivable (see (iv) of the definition of 'proceeds' in Article 2 of the draft MLF), but will not apply to bank accounts as receivables themselves. Conversely, under the MLST bank accounts can be either original encumbered assets or proceeds of a security right in other property. As the MLF only considers bank accounts as proceeds, the Working Group may wish to discuss whether the MLF needs these specific priority rules for bank accounts. The MLST Guide to Enactment provides that 'according to article 19, paragraph 1, a security right in proceeds in the form of a right to payment of funds credited to a bank account is automatically effective against third parties if the security right in the original encumbered asset is effective against third parties.' On this basis, the Secretariat suggests that it might not be necessary to include Article 47.

<sup>32</sup> If the Working Group decides to retain Article 47, enacting States should be invited to insert the proper designation for whatever security right is reorganised by their system.

4. The order of priority among competing security rights in a right to payment of funds credited to a bank account that are made effective against third parties by the conclusion of control agreements is determined on the basis of the time of conclusion of the control agreements.

5. A deposit-taking institution's right under other law to set off obligations owed to it by the ~~transferor~~ grantor against the ~~transferor~~ grantor's right to payment of funds credited to a bank account maintained with the deposit-taking institution has priority as against a security right in the right to payment of funds credited to the bank account, except a security right that is made effective against third parties by the secured creditor becoming the account holder.

6. A transferee of funds from a bank account pursuant to a transfer initiated or authorized by the ~~transferor~~ grantor acquires its rights free of a security right in the right to payment of funds credited to the bank account, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

7. Paragraph 6 does not adversely affect the rights of transferees of funds from bank accounts under [the relevant law to be specified by the enacting State].]

### Article 48 – Money<sup>33</sup>

1. A transferee that obtains possession of money that is subject to a security right acquires its rights free of the security right, unless that person has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

2. This article does not adversely affect the rights of persons in possession of money under [the relevant law to be specified by the enacting State].

### ~~Article 49 – Negotiable documents and tangible assets covered by negotiable documents<sup>34</sup>~~

~~1. Subject to paragraph 2, a security right in a tangible asset made effective against third parties by possession of the negotiable document covering that asset has priority over a competing security right made effective against third parties by any other method.~~

~~2. Paragraph 1 does not apply to a security right in a tangible asset other than inventory if the security right of the secured creditor not in possession of the negotiable document was made effective against third parties before the earlier of:  
The time that the asset became covered by the negotiable document; and  
The time of conclusion of an agreement between the grantor and the secured creditor in possession of the negotiable document providing for the asset to be covered by a negotiable document so long as the asset became so covered within [a short period of time to be specified by the enacting State] from the date of the agreement.~~

~~3. A transferee of an encumbered negotiable document that obtains possession of the document under [the relevant law to be specified by the enacting State under which certain~~

<sup>33</sup> The Working Group may wish to discuss whether Article 48 is necessary. The draft MLF applies to 'money' as 'proceeds' of a receivable (see (i) in the Article 2 definition of 'proceeds' in the draft MLF). If the Working Group decides that Article 48 should be included in the MLF, it will require further editing to adapt its language to ensure consistency with the language used in the draft MLF.

<sup>34</sup> It is suggested that this article is not applicable to factoring and should not be included in the MLF.

~~transferees of negotiable documents acquire their rights free of competing claims] acquires its rights free of a security right in the negotiable document and the tangible assets covered thereby that is made effective against third parties by any other method.~~

#### **Article 50—Intellectual property<sup>35</sup>**

~~Article 34, paragraph 6, does not affect any rights that a secured creditor may have as an owner or licensor of intellectual property under [the relevant law relating to intellectual property to be specified by the enacting State].~~

#### **Article 51—Non-intermediated securities<sup>36</sup>**

~~1. A security right in certificated non-intermediated securities made effective against third parties by the secured creditor's possession of the certificate has priority over a competing security right created by the same grantor in the same securities made effective against third parties by registration of a notice in the Registry.~~

~~2. A security right in uncertificated non-intermediated securities made effective against third parties by [a notation of the security right] [entry of the name of the secured creditor as the holder of the securities] in the books maintained for that purpose by or on behalf of the issuer has priority over a security right in the same securities made effective against third parties by any other method.~~

~~3. A security right in uncertificated non-intermediated securities made effective against third parties by the conclusion of a control agreement has priority over a security right in the same securities made effective against third parties by registration of a notice in the Registry.~~

~~4. The order of priority among competing security rights in uncertificated non-intermediated securities made effective against third parties by the conclusion of control agreements is determined on the basis of the time of conclusion of the control agreements.~~

~~5. This article does not adversely affect the rights of holders of non-intermediated securities under [the relevant law relating to the transfer of securities to be specified by the enacting State].~~

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<sup>35</sup> It is suggested that this article should not be included in the MLF. The MLF applies to receivables arising from the contract for the sale, lease or licence of Intellectual Property. However, this article relates to situations in which a transferee is an owner or licensor of Intellectual Property itself.

<sup>36</sup> It is suggested that this article should not be included in the MLF.