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REVISED DRAFT MODEL LAW ON FACTORING

Introduction

1. This document contains the draft Model Law on Factoring (MLF), as approved by the Model Law on Factoring Working Group at its 6th session (November 2022) and updated by the UNIDROIT Secretariat.
2. There are two types of changes to the MLF tracked in this document:
 - i. Changes agreed by the Working Group at its 6th session.
 - ii. Changes made by the Secretariat, as requested by the Working Group following its 6th session. These changes were made in consultation with the Working Group Chair.
3. This document contains several footnotes inserted by the Secretariat, which may require further consideration by the Working Group. These footnotes identify issues that arose while the Secretariat was attempting to implement the policy decisions made by Working Group at its 6th session.

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DRAFT MODEL LAW ON FACTORING

CHAPTER I

SCOPE AND GENERAL PROVISIONS

Article 1 – Scope of application

1. This Law applies to transfers of receivables.
2. Nothing in this Law affects the rights and obligations of a person under other laws governing the protection of parties to transactions made for personal, family or household purposes.
3. Nothing in this Law overrides a provision of any other law that limits the transfer of specific types of receivable.
- ~~4. Nothing in this Law affects the rights and obligations of any person under the law governing negotiable instruments.¹~~

Article 2 – Definitions

1. For the purposes of this Law:
 - (a) “Competing claimant” means a person with rights in a receivable that may be in competition with the rights of a transferee of the receivable.
 - (b) “Debtor” means a person who owes payment of a receivable.
 - (c) “Default” means the failure of a person who owes an obligation secured by a security transfer to pay or otherwise perform that obligation and any other event that constitutes default under the terms of an agreement between the transferor and the transferee.
 - (d) “Future receivable” means a receivable that arises or is acquired after the time a transfer agreement is entered into, whether or not the contract giving rise to the receivable has been entered into at that time.
 - (e) “Judgment creditor” means [to be specified by the enacting State].
 - (f) “Proceeds” of a receivable means any:
 - (i) money;
 - (ii) negotiable instrument; or
 - (iii) right to payment of funds credited to an authorised account with an authorised ~~with a deposit-taking institution bank account,~~

¹ The Working Group decided to delete this article, and perhaps address the exclusion of Negotiable Instruments in the definition of receivable (WG6 Report, paragraph 10). The Secretariat suggests that perhaps in dealing with the priority under two conflicting laws, it would be preferable to retain Article 1(4) rather than deal with the issue in the GTE.

that is received in respect of the receivable, whether in total or partial payment ~~or other satisfaction~~² of the receivable. It includes proceeds of proceeds.

(g) “Receivable” means a contractual right to payment of a sum of money arising from one or more of the following:

- (i) the supply or lease of goods or services;
- (ii) the assignment or licence of intellectual property;
- (iii) the provision or processing of data; or~~or~~
- (iv) the payment obligation for a credit card transaction.

If a receivable is consolidated or refinanced, the resulting right to payment is also a receivable. ~~It receivable does not cease to be a receivable as defined by this section if it is consolidated or refinanced by the parties to it.~~

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

(i) “Security transfer” means a transfer of a receivable by agreement, or the creation of a right in a receivable by agreement, 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.³

(j) “Transfer” of a receivable means:

- (i) an outright transfer of the receivable by agreement; and
- (ii) a security transfer of the receivable.

Where the context requires, “transfer” also means the rights of a transferee arising from a transfer.

(k) “Transfer agreement” means an agreement providing for the transfer of a receivable that meets the requirements in Article 5(2~~±~~).⁴

(l) “Transferee” means a person to whom or in whose favour a receivable is transferred.

(m) “Transferor” means a person who transfers a receivable.

² As the definition of proceeds now only captures monetary obligations, the Secretariat suggests that these words are no longer necessary.

³ The WG discussed whether “security transfer” should be redrafted to reflect the approach in Article 2(a) of the Receivables Convention (WG6 Report, paragraphs 22 – 24). The WG may wish to further discuss whether the following drafting would be preferable, or whether the current drafting should be retained:

“Security transfer” means a transfer of a receivable by agreement 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. The creation of rights in a receivable by agreement to secure payment or other performance of an obligation is deemed to be a transfer.

⁴ The WG agreed to delete “that meets the requirements of Article 5(1)” from this article (WG6 Report, paragraph 26). The Secretariat suggests it might be preferable to retain the cross-reference to Article 5 in the definition, and instead slightly amend the language in Article 5(2). This reflects the discussion of the Working Group.

(n) “Writing” includes an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.⁵

Article 3 – Party autonomy

1. With the exception of Articles [4, 5, [8](#), 33(3), 37(1) and 38-55], 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.

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.

⁵ The WG requested that the Secretariat add a definition of “signature”, based on the relevant UNCITRAL texts. It is understood that an implementing State’s definition of “signed” should also apply under the MLF. As such, the Secretariat suggests that it maybe be counterproductive to include a separate definition here. Instead, it is recommended that the WG consider addressing this issue in the GTE, which should say that the enacting State should rely on its existing law for signatures and if it does not have one, for electronic signatures.

CHAPTER II

~~EFFECTIVENESS OF TRANSFERS OF RECEIVABLES BETWEEN THE PARTIES~~

Article 5 – Requirements for the transfer of a receivable

1. A receivable may be transferred by a transfer agreement if the transferor has rights in the receivable or the power to transfer it.
2. An agreement is only a transfer agreement ~~effective as a transfer agreement~~⁶ if it:
 - a. is ~~in evidenced by a~~ writing ~~that is~~⁷ signed by the transferor;
 - b. identifies the transferor and the transferee; and
 - c. describes the receivable in a manner that reasonably allows its identification.
3. A description of receivables in a transfer agreement ~~will be~~^{is} sufficient 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.
2. ~~A receivable may be transferred by a transfer agreement if the transferor has rights in the receivable or the power to transfer it.~~
4. 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.
5. A transfer agreement may provide for the transfer of a future receivable, but the transfer is effective only when the transferor acquires rights in the receivable or the power to transfer it.

Article 6 – Proceeds

The right of the transferee of a receivable extends to its identifiable proceeds.

Article 7 – Personal or property rights securing or supporting payment of a receivable

1. A transferee of a receivable has the benefit of any personal or property right that secures or supports payment of the receivable without a new act of transfer. If the transferee would have the benefit of that right under the law governing it only with a new act of transfer, the transferor is obliged to transfer the benefit of that right to the transferee.
2. A transferee has the benefit of a right under paragraph 1 notwithstanding any agreement between the transferor and the debtor or other person granting the right that secures or supports

⁶ The Secretariat suggests that this language change might be preferable to amending the definition of "transfer agreement".

⁷ The Secretariat recommends this small, non-substantive grammatical change.

payment of the receivable that limits in any way the transferor's right to transfer the receivable or the ability of the transferee to have the benefit of that right.

Article 8 – Contractual limitations on the transfer of receivables

1. A transfer of a receivable is effective notwithstanding any agreement between the debtor and a transferor limiting in any way a transferor's right to transfer the receivable.
2. Neither a transferor nor a transferee is liable for breach of an agreement referred to in paragraph 1, and the debtor may not avoid the contract giving rise to the receivable on the sole ground of the breach. A person that is not a party to an 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
EFFECTIVENESS OF TRANSFERS OF RECEIVABLES
AGAINST THIRD PARTIES

Article 9 – Registration

A transfer of a receivable is effective against third parties only if a notice with respect to the transfer is registered in the Registry.

Article 10 – Proceeds

If a transfer of a receivable is effective against third parties, the transferee's right to any proceeds of that receivable under Article 6 is also effective against third parties.

Article 11 – Continuity in third-party effectiveness upon a change of the applicable law to this Law

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

CHAPTER IV
THE REGISTRY SYSTEM

Article 12 – The Registry

The rules relating to registrations and searches in the Registry are set out in Annexe A.

CHAPTER V

PRIORITY OF A TRANSFER

Article 13 – Competing transfers

Priority between competing transfers of the same receivable is determined by the order of registration [of notices relating to those transfers](#).⁸

Article 14 – Proceeds

The priority of a transfer extends to any proceeds to which the transferee has rights under Article 6.

Article 15 – Impact of the transferor’s insolvency on the priority of a transfer

A transfer that is effective against third parties at the time of the commencement of insolvency proceedings in respect of the transferor 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 applicable insolvency law.

[Article 16 – Transfers competing with claims arising by operation of law

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

- (a) [...];
- (b) [...].]

Article 17 – Transfers competing with rights of judgment creditors

1. The right of a ~~creditor that has obtained a judgment or provisional order~~ (“judgment creditor”) has priority over a transfer if, before the 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 receivable or the steps referred to in the relevant provisions of other law to be specified by the enacting State].

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

⁸ The WG decided to include additional language in Article 13, based on Article 29(a) of the MLST (see WG6 Report, paragraph 48). The Secretariat suggests that the matter is already dealt with in Article 19.

- (a) Before the 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 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 transferee received a notice from the judgment creditor that the judgment creditor had taken the steps referred to in paragraph 1.

Article 18 – Subordination

1. A person may at any time ~~modify in favour, or~~ 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 ~~modification or~~ subordination.
2. ~~A modification or s~~Subordination ~~under paragraph 1~~ does not affect the rights of competing claimants other than the person ~~modifying or~~ subordinating its priority and the beneficiary of the ~~modification or~~ subordination.

Article 19 – Future ~~advances~~ ~~receivables~~ and future ~~receivables~~ ~~advances~~

1. The priority of a transfer of a receivable ~~that is described in a notice registered in the Registry~~ is determined by the time of registration ~~of the notice relating to that transfer, regardless of~~ whether the receivable ~~arises or~~ is acquired by the transferor, ~~or comes into existence,~~ before or after the time of registration.
2. Subject to Article 17, the priority of a security transfer extends to all obligations secured by the transfer, including obligations incurred after the transfer became effective against third parties.

Article 20 – Irrelevance of knowledge

The priority of a transfer is not affected by any knowledge that the transferee may have of another transfer.

CHAPTER VI

RIGHTS AND OBLIGATIONS OF THE ~~PARTIES~~ TRANSFEROR, TRANSFEEE AND DEBTOR

SECTION I. TRANSFEROR AND TRANSFEEE

Article 21 – Rights and obligations of the transferor and the transferee

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

Article 22 – Representations of the transferor

1. The transferor of a receivable represents, ~~as~~ at the time of entry into the ~~conclusion of the~~ transfer agreement, that:
 - (a) The transferor has and/or will have 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 23 – Right to notify the debtor

1. The transferor, the transferee or both may send the debtor notification of a 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 27, but nothing in this Article affects any obligation or liability of the party in breach for any damages arising as a result of the breach.

Article 24 – Right to payment

As between the transferor and the transferee, whether or not notification of a transfer has been sent [to the debtor](#):

- (a) If payment with respect to the receivable is made to the transferee, the transferee is entitled to retain the payment;
- (b) If payment with respect to the receivable is made to the transferor, the transferee is entitled to be paid that amount by the transferor; and
- (c) If payment with respect to the receivable is made to another person over whom the transferee has priority, the transferee is entitled to be paid that amount by the other person.

~~2. In the case of a receivable that arose under a contract for the supply of goods, the transferee is entitled to any goods that may be returned in respect of the receivable.~~

~~3. A transferee may not retain more than the value of its right in the receivable.~~

SECTION II. DEBTOR

Article 25 – Principle of debtor protection

1. Except as otherwise provided in this Law, a transfer does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the contract giving rise to the receivable.
2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change without the consent of the debtor:
 - (a) The currency of payment specified in the contract giving rise to the receivable; or
 - (b) The State specified in the 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 26 – Notification of the debtor

1. A notification of a transfer and a payment instruction must be in writing.
2. A notification of a 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 the notification of the transfer or a payment instruction is in the language of the contract giving rise to the receivable.
3. A notification of a transfer or a payment instruction may relate to receivables arising after notification.

4. In the case of a series of transfers of a receivable from a transferee to a subsequent transferee, notification of one transfer of a receivable constitutes notification of all previous transfers of the receivable.⁹

Article 27 – Debtor’s discharge by payment

1. Until the debtor receives notification of a transfer, the debtor is discharged by paying in accordance with the contract giving rise to the receivable.

2. After the debtor receives notification of a transfer pursuant to Article 26, subject to paragraphs 3 to 8 of this Article, the debtor is discharged only by paying the transferee or as otherwise instructed in the notification, subject to any payment instruction subsequently received by the debtor from the transferee.

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 by the same transferor, the debtor 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 transferee, the debtor is discharged by paying in accordance with that notification of that transfer or, in the case of a series of such transfers from a transferee to a subsequent transferee, the debtor is discharged by paying in accordance with the notification of 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 that the transfer from the initial transferor to the initial transferee and any intermediate transfer has been made. Unless Until 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 that indicates that the transfer has been made.

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

Article 28 – Defences and rights of set-off of the debtor

1. In a claim by the transferee against the debtor for payment of a receivable, the debtor may raise against the transferee all defences and rights of set-off arising from the contract giving rise to

⁹ The Secretariat suggests that Article 26(4) could be amended to reflect the language changes that the WG made to Article 27(5) (see WG6 Report, paragraph 83).

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 7 or 8 against the transferor for breach of an agreement limiting in any way the transferor's right to transfer the receivable are not available to the debtor against the transferee.]~~

Article 29 – Agreement not to raise defences or rights of set-off

1. A 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 28.

2. A 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^{iveness} of such a modification as against the transferee is determined by Article 30~~(2)~~.

Article 30 – Modification of the contract giving rise to a receivable

1. A modification of the contract giving rise to a receivable that is made between the transferor and the debtor before the debtor receives notification of the transfer and that affects the transferee's rights is effective as against the transferee, and the transferee acquires corresponding rights.

2. A modification that is made between the transferor and the debtor after the debtor receives notification of the transfer and 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 contract giving rise to the receivable or, in the context of that contract, a reasonable transferee would consent to the modification.

3. Paragraphs 1 and 2 do not affect any right of ~~the transferor or the~~ the transferee arising from breach of an agreement with the transferor ~~between them~~.

Article 31 – Recovery of payments

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

CHAPTER VII

COLLECTION AND ENFORCEMENT

~~A~~SECTION 1. OUTRIGHT TRANSFERS

Article 32 – 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~~ or after the 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 ~~25~~ to 31.

~~B~~SECTION 2. SECURITY TRANSFERS

Article 33 – Post-default rights

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

Article 34 – Collection of payment under a security transfer

1. After default, the transferee under a security transfer is entitled to collect the receivable at or after the ~~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 transfer~~ee~~ 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. The right of the transferee to collect under paragraphs 1 and 2 is subject to Articles 25 to 31.

Article 35 – Right of the transferee to sell a receivable

1. After default, the transferee under a security transfer is entitled to sell the receivable without applying to a court or other authority.
2. The transferee may select the method, manner, time, place and other aspects of the sale, including whether to sell receivables individually, in groups or altogether.
3. The transferee must give notice of its intention to [sell the receivable to](#):
 - (a) The transferor and any person who owes the obligation 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.
4. The notice must be given at least [a short period of time to be specified by the enacting State] before the sale 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 obligation secured by the security transfer, including interest and the reasonable cost of enforcement;
 - (c) A statement that the transferor, any person who owes the obligation secured by the transfer or any other person with a right in the receivable is entitled to terminate the enforcement process; and
 - (d) A statement of the date after which the receivable will be sold or, in the case of a public sale, the time, place and manner of the intended sale.
5. The notice must be in a language that is reasonably expected to inform the recipient about its content.
6. It is sufficient if the notice to the transferor is in the language of the transfer agreement.
7. The notice need not be given if the receivable is of a kind sold on a recognised market.

Article 36 – Distribution of the proceeds of collection or sale of a receivable and liability for any deficiency

1. If the transferee exercises the right provided in Article 34 or 35:
 - (a) [Subject to Article 16,] the transferee must apply the proceeds of its collection or sale to the obligation secured by the transfer after deducting the reasonable cost of collection or sale;
 - (b) Except as provided in paragraph 1(c), the transferee must pay any surplus to any subordinate competing claimant that, prior to any distribution of the surplus, notified the 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 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.

2. The transferor and any person who owes the obligation secured by the security transfer remains liable for any amount owing after application of the net proceeds of collection or sale to the obligation secured by the transfer.

~~Article 36 – Post-default rights~~

~~1. After default, the transferor and the transferee under a security transfer are entitled to exercise:~~

~~(a) Any right under this chapter; and~~

~~(b) Any other right provided in the transfer agreement or any other law, except to the extent it is inconsistent with this Law.~~

~~2. The exercise of one post-default right does not prevent the exercise of another post-default right, except to the extent that the exercise of one right makes the exercise of another right impossible.~~

~~3. Before default, the transferor under a security transfer and any person who owes the obligation secured by the security transfer may not waive unilaterally or vary by agreement any of their rights under this chapter.~~

CHAPTER VIII

CONFLICT OF LAWS

Article 37 – Mutual rights and obligations of the ~~parties~~transferor, transferee and debtor

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 on 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 38 – Effectiveness and priority of transfers

Except as provided in Article 39, 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 39 – ~~Priority of t~~Transfers of receivables relating to secured by a right in immovable property

Notwithstanding Article 38, in the case of a transfer of a receivable that is secured by a right in immovable property, the law applicable to the priority of the transfer of the receivable as against the right of a competing claimant that is registrable in the immovable property registry in which rights in the relevant immovable may be registered is the law of the State under whose authority the immovable property registry is maintained.

Article 40 – 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.

Article 41 – Proceeds

1. The law applicable to the effectiveness as between the transferor and the transferee of a transfer~~ee's right in-of~~ proceeds is the law applicable to the effectiveness as between the transferor and the transferee of the transfer of the receivable from which the proceeds arose.

2. The law applicable to the third-party effectiveness and priority of a transfer~~ee's right in-of~~ proceeds is the law applicable to the third-party effectiveness and priority of an interest in an asset

[of the same kind as the proceeds.](#) ~~the law applicable to the third party effectiveness and priority of a transfer of a receivable.~~

Article 42 – Meaning of “location” of the transferor

For the purposes 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 43 – Relevant time for determining location

1. Except as provided in paragraph 2, references to the location of the transferor in 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 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 44 – Exclusion of *renvoi*

A reference in 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 45 – 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. [The law of the forum determines when a court may or must apply or take into account overriding mandatory provisions of another law.](#)
3. [A court may exclude the application of a provision of the law applicable under the provisions of this chapter only if and to the extent that the result of its application would be manifestly incompatible with fundamental notions of public policy ~~\(ordre public\)~~ of the forum.](#)

4. The law of the forum determines when a court may or must apply or take into account the public policy (~~ordre public~~) of a State other than the State the law of which would be applicable under the provisions of this chapter.

1.5. This Article does not prevent an arbitral tribunal from applying or taking into account public policy (~~ordre public~~), or from applying or taking into account overriding mandatory provisions of a law other than the law applicable under the provisions of this chapter, if the arbitral tribunal is required or entitled to do so.

2.6. 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 46 – 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 this chapter.

Article 47 – 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 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

Article 48 – 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].

Article 49 – 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 50 – General applicability of this Law

1. For the purposes of this chapter:
 - (a) “Prior law” means the law applicable under the conflict-of-laws rules of [the enacting State] that applied to prior transfers immediately before the entry into force of this Law; and
 - (b) “Prior transfer” means a right created by an agreement entered into before the entry into force of this Law that is a 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.
2. Except as otherwise provided in this chapter, this Law applies to all transfers, including prior transfers within its scope.

Article 51 – 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 has been taken to collect or enforce a prior transfer before the entry into force of this Law, collection or enforcement may continue under prior law or may proceed under this Law.

Article 52 – Applicability of prior law to effectiveness of a prior transfer between the parties

1. Prior law determines whether a prior transfer is effective between the parties.
2. A prior transfer remains effective between the parties even if it would not otherwise be effective between the parties under this Law.

Article 53 – Transitional rules for determining the third-party effectiveness of a prior transfer

1. A prior transfer 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] 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 ceases in accordance with paragraph 1, the prior transfer 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 ceases in accordance with paragraph 1, the prior transfer 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 transferor and a transferee for a prior transfer is sufficient to constitute authorisation by the transferor for the registration of a notice covering the receivables described in that agreement under this Law.
5. If a prior transfer 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.

Article 54 – Application of prior law to the priority of a prior transfer as against the rights of competing claimants arising under prior law

1. The priority of a prior transfer as against the rights of a competing claimant is determined by prior law if:
 - (a) 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 neither the prior transfer nor the rights of any of the competing claimants has changed since the entry into force of this Law.
2. For the purposes of paragraph 1 (b), the priority status of a prior 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 55 - Transitional rules for the rights and obligations of the debtor

If a contract giving rise to a receivable was entered into before the entry into force of this Law, the following matters are determined by the law applicable under the conflict-of-laws rules of [the enacting State] that applied immediately before the entry into force of this Law:

- a. Article 8(2)
- b. Article 25
- c. Article 26
- d. Article 27
- e. Article 28
- f. Article 29
- g. Article 30
- h. Article 31.

~~Article 54-55 — 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].~~

ANNEXE A

REGISTRY PROVISIONS

A. GENERAL RULES

Clause 1 – Definitions

For the purposes of this Annexe:

- (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 to modify information contained in a registered notice;
- (c) “Cancellation notice” means a notice submitted to the Registry to cancel the effectiveness of a registered notice;
- (d) “Designated field” means a field in a form available through the Registry’s electronic user interface that is designated for entering a specified type of information;
- (e) “Initial notice” means a notice submitted to the Registry 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 12 of the Law;
- (m) “Registry record” means the information in all registered notices stored by the Registry.

Clause 2 – Transferor’s authorisation for registration

1. Registration of an initial notice is ineffective unless authorised 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 authorised by the transferor in writing.

3. Registration of an amendment notice that adds a transferor is ineffective unless authorised by the additional transferor in writing.
4. Authorisation may be given before or after the registration of an initial or amendment notice.
5. A written transfer agreement is sufficient to constitute authorisation by the transferor for the registration of an initial or amendment notice covering a receivable described in that transfer agreement.

Clause 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.

Clause 4 – Advance registration

A notice may be registered before a transfer or the entry into of a transfer agreement to which the notice relates.

B. ACCESS TO REGISTRY SERVICES

Clause 5 – Conditions for access to registry services

1. Any person may submit a notice to the Registry, if that person:
 - (a) Uses the form made available for that purpose through the Registry's electronic user interface;
 - (b) Identifies itself in the manner specified by the Registry; and
 - (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 specified by the Registry.
3. Any person may submit a search request to the Registry if that person:
 - (a) Uses the form made available for that purpose through the Registry's electronic user interface; and
 - (b) Has paid or arranged to pay the prescribed fee.

Clause 6 – ~~Rejection~~Acceptance of the registration of a notice or a search request

1. The Registry must not ~~permit~~accept the registration of:
 - (a) A notice if no information is entered in one of the mandatory designated fields; 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 clause 12(2).
2. The Registry must not accept a search request if no information is entered in one of the fields designated for entering a search criterion.

C. REGISTRATION OF A NOTICE

Clause 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 clause 8;
- (b) The identifier and address of the transferee or its representative in accordance with clause 9;
- (c) A description of the receivables in accordance with clause 10; and
- (d) The period of effectiveness of the registration in accordance with clause 12.

Clause 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 for other identifier of that person, to be specified by the enacting State] 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. [If the enacting State specifies more than one relevant official document, it should designate the order in which each document should be used to determine that person's name or other identifier]

~~3. [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. 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, to be specified by the enacting State] as it appears in or is determined by [the relevant document, law or decree to be specified by the enacting State].

4. [The enacting State should specify which components of the transferor's name or other identifier determined in accordance with paragraphs 1 and 3 must be entered in an initial or amendment notice].¹⁰

~~53.~~ [The enacting State should specify the manner in which the transferor's name or other identifier is determined if the name or other identifier is legally changed after the issuance of the relevant document, law or decree referred to in paragraphs 1, 2 or 3.]

~~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].~~

¹⁰ The Secretariat understands that this rule is also intended to apply to legal persons, not only natural persons. To achieve this, the Secretariat has switched the order of paragraphs 3 and 4 and added additional language to the new paragraph 4 ensuring that the rule applies to both natural persons (under paragraph 1) and legal persons (under new paragraph 3).

Clause 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 should 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].

Clause 10 – Description of receivables

1. The receivables must be described in an initial or amendment notice in a manner that reasonably allows their identification.
2. A description that indicates that the 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.

Clause 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.

Clause 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

Clause 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 [registered](#) notice to which it relates.

Clause 14 – Compulsory registration of an amendment or cancellation notice

1. The transferee must register an amendment notice deleting receivables from a description of receivables in a registered notice if:
 - (a) The transferor has not authorised the registration of a notice in relation to those receivables and the transferee has been informed by the transferor that it will not authorise that registration;
 - (b) The transferor authorised the registration of a notice covering those receivables but the authorisation has been withdrawn and no transfer agreement covering those receivables has been entered into; 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 authorised 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 authorised by the transferor and the transferee has been informed by the transferor that it will not authorise the registration of the initial notice;
 - (b) The transferor [or](#) authorised the registration of the initial notice but the authorisation has been withdrawn and no transfer agreement has been entered into; or
 - (c) All receivables to which the initial and any amendment notice relate have been paid in full or have been transferred back to the transferor or, in the case of a security transfer of a receivable, that security transfer 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].

6. Where an order for the registration of an amendment or cancellation notice is issued in accordance with paragraph 5, the Registry must register the notice without delay upon receipt of a request with a copy of the relevant order.

Clause 15 – Effectiveness of the registration of an amendment or cancellation notice not authorised by the transferee

The registration of an amendment or cancellation notice is effective regardless of whether it is authorised by the transferee.

E. SEARCHES

Clause 16 – Search criteria

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

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

Clause 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:

- (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 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

Clause 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.

Clause 19 – Post-registration change of transferor’s identifier

1. Subject to paragraphs 2, 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.

G. ORGANISATION OF THE REGISTRY AND THE REGISTRY RECORD**Clause 20 – 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.

Clause 21 – Integrity of information in the registry record

1. Except as provided in clauses 22 and 23, 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.

Clause 22 – 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 clause 12, or upon the registration of a cancellation notice, including any cancellation notice registered in accordance with clause 14(2) or (6).
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.

Clause 23 – Correction of errors made by the Registry

1. 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 without delay to restore the erroneously removed information. 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.
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 competing claimant did not have knowledge of the erroneous removal of the information at the time it acquired its right.

Clause 24 – 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].

Clause 25— Registry fees

1. Fees may be charged for Registry services in the amounts to be specified by [the authority to be specified by the enacting State].
2. [The authority to be specified by the enacting State] may modify the fee schedule from time to time.