



Facilitating Open Account – Receivables Finance

CIRCULAR 5363

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### Model Law on Factoring

As discussed during our recent Annual Meeting, the UNIDROIT is coming close to the end of the drafting process regarding the Factoring Model Law (FML). The purpose of the Model Law is to provide an instrument for States that want to introduce a new factoring law or update their existing laws. You will find attached to this circular the draft FML. We would like to have our members together with the support from your internal or external legal counsel review it in order to provide feedback. We ask that all submissions be received here by us no later than **Friday 21 October**. Please send all submissions to the Secretariat at [fci@fci.nl](mailto:fci@fci.nl). Upon receipt of your feedback, the FCI Legal Committee will review all submissions to better understand any and all concerns that you have raised, which will be discussed with the UNIDROIT during its next Working Group meeting scheduled for the 28-30 November.

#### About the FML Project

The FML was first initiated in 2018 by the World Bank representatives who recognized the importance of a standalone Model Law on Factoring, especially for those emerging markets who are considering to introduce factoring in their countries. FCI sent a letter that same year to the UNIDROIT Secretary General, Mr. Ignacio Tirado to offer FCI's full support and backing. We were very pleased to see it launched and the FCI Legal Committee members and myself have been involved in the project since day one.

You know this model law has its origins dating back to when FCI was created. The very first attempt at developing a global legal framework on cross border factoring was initiated in 1964 with the founding of Factors Chain, which named the first agreement after our founding member, Shield Factors, UK (hence the Shield Agreement was introduced and Freddy Salinger, a significant architect in the earlier projects at the UNIDROIT and UNCITRAL was employed there). Shield Factors (later to be acquired by HSBC) together with five others in Northern Europe and the US would create FCI in 1968, and the association would a few years later develop the Code of International Factoring. The Code in part inspired the UNIDROIT to develop the Ottawa Convention on International Factoring in 1988 (to which my predecessor, Mr. Jeroen Kohnstamm was quite involved) and later the UNCITRAL Receivables Convention released in 2001 (to which Freddy Salinger from the FCI Legal Committee played an instrumental role in its development) and of course most recently the creation of the UNCITRAL Model Law on Secured Transactions. All of these many historical initiatives were for the purpose in great part to support the growth of factoring around the world. However, the absence of a global model law on factoring was a detriment to the long-term health and success of our industry, hence we are pleased to have reached this milestone.

#### FCI

Keizersgracht 559  
1017 DR Amsterdam  
The Netherlands

T: +31 (0)20 627 03 06  
E: [fci@fci.nl](mailto:fci@fci.nl)  
W: [www.fci.nl](http://www.fci.nl)

Chamber of Commerce 40537377  
VAT: NL801484169B01

## **About the UNIDROIT**

Established in 1926 as an auxiliary organ of the League of Nations, the UNIDROIT is an intergovernmental organization whose objective is to harmonize international private law across countries through uniform rules, international conventions, the production of model laws, sets of principles, guides and guidelines. In 1988 the UNIDROIT Convention on International Factoring was adopted in Ottawa, Canada. The Factoring Convention entered into force in 1995 and has been ratified by 9 States. However, international factoring represents less than 20% of global factoring volume, whereas domestic factoring accounts for 80%. Despite the growing importance of factoring globally, no intergovernmental organisation had adopted a factoring model law to assist States in undertaking reforms to improve their domestic legal frameworks, that is until today!

## **About the IFC/World Bank**

In December 2018, the World Bank suggested that the UNIDROIT develop a Model Law on Factoring as part of a proposal for the UNIDROIT 2020-2022 Work Programme. Their proposal highlighted three reasons why a UNIDROIT Model Law on Factoring should be developed:

- i. The use of factoring as an important form of financing increasing access to credit;
- ii. Ongoing constraints in access to credit as a limit on economic growth, particularly in developing countries and emerging markets; and
- iii. The gap that currently exists in international rules and standards regarding factoring.

The proposal noted that existing instruments largely focus on international or cross-border transactions and do not provide sufficient guidance to States to develop functional domestic factoring frameworks. At its 98th session in May 2019, the UNIDROIT Governing Council approved the project for the 2020-2022 Triennial Work Programme as a high priority project.

## **The Factoring Model Law Working Group**

As consistent with the Institute's established working methodology, the FML is being developed by a Working Group composed of international legal experts. The Working Group is chaired by the Member of the Governing Council Professor Henry Gabriel (who spoke in person during the 54<sup>th</sup> FCI Annual Meeting in June about the FML project) and is composed of the following experts:

- i. Henry Gabriel (Chair) (United States)
- ii. Giuliano Castellano (Italy)
- iii. Neil Cohen (United States)
- iv. Michel Deschamps (Canada)
- v. Alejandro Garro (Argentina)
- vi. Louise Gullifer (United Kingdom)
- vii. Megumi Hara (Japan)
- viii. Cathy Walsh (Canada)
- ix. Bruce Whittaker (Australia)

FCI was initially invited as an observer and was represented at every meeting by three members of the FCI Legal Committee including Ulrich Brink (Germany), Edward Wilde (UK) Jin Saibo (China) including myself. We are very close to the finish line and the UNIDROIT would like the members to use this time to provide important feedback to the Working Group in order to perfect the document. Once it has been edited and updated based on your feedback, it will be presented to the members of the UNIDROIT Governing Council in their May 2023 meeting for final approval. We look forward to hearing from all of you on this very important project.

Yours sincerely,  
FCI  
The Secretariat



Peter Mulroy



**EN**

**Model Law on Factoring  
Online Consultation**

UNIDROIT 2022  
Study LVIII A  
English only  
July 2022

**DRAFT MODEL LAW ON FACTORING**

**Online consultation (July – October 2022)**

1. The International Institute for the Unification of Private Law (UNIDROIT) is currently undertaking an online public consultation on the draft Model Law on Factoring (available in Annexe A to this document). The purpose of this document is to (i) introduce the Model Law on Factoring project, (ii) explain the purpose and scope of the public consultation, and (iii) provide a general overview of the draft Model Law on Factoring.

**I. DEVELOPMENT OF THE MODEL LAW ON FACTORING**

2. In December 2018, as a proposal for the 2020-2022 UNIDROIT Work Programme, the World Bank Group suggested that UNIDROIT develop a Model Law on Factoring (MLF).<sup>1</sup> The proposal submitted by the World Bank Group was supported by industry. At its 98<sup>th</sup> session in May 2019, the UNIDROIT Governing Council approved the project for the 2020-2022 Triennial Work Programme as a high priority project.<sup>2</sup>

3. The Model Law on Factoring has a dual purpose:

- i. The MLF will provide an instrument for States that want to introduce a new factoring law or update their existing laws but are not yet in a position to undertake a comprehensive secured transactions law reform based on the instruments developed by the United Nations Commission on International Trade Law (UNCITRAL).
- ii. The MLF will provide model provisions for States that have already reformed their secured transactions law but wish to consider implementing additional specific rules to improve their legal framework for factoring.

4. The instrument will consist of a set of black letter rules, that will eventually be accompanied by a Guide to Enactment that sets out the instrument's core concepts, origin and context, and that explains how the rules are to be implemented.

5. As consistent with the Institute's established working methodology, the MLF is being developed by a Working Group composed of international legal experts representing different legal

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<sup>1</sup> [UNIDROIT 2019 C.D. \(98\) 14 rev.2](#), p.17.

<sup>2</sup> [UNIDROIT 2019 C.D. \(98\) 17](#), p. 36.

systems and is chaired by UNIDROIT Governing Council member Professor Henry Gabriel.<sup>3</sup> In addition, several international, regional and private organisations with expertise in factoring are participating in the Working Group as observers.<sup>4</sup> The Working Group has held five sessions between July 2020 and May 2022.<sup>5</sup> The Working Group has also held a number of intersessional and informal meetings and created several subgroups to work on specific legal issues.<sup>6</sup>

6. At the close of its fifth session in May 2022, the Working Group decided that the draft MLF was sufficiently developed to undertake public consultations and referred the draft instrument to the UNIDROIT Governing Council for consideration. At its 101<sup>st</sup> session in June 2022, the Governing Council approved the draft MLF for the purposes of launching a public consultation on the draft instrument, and mandated the Secretariat to facilitate such consultation.

7. It is anticipated that the Model Law on Factoring will be finalised and published in 2023.

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<sup>3</sup> The Working Group is composed of the following experts: (i) Henry Gabriel (Chair) (United States), (ii) Giuliano Castellano (Italy), (iii) Neil Cohen (United States), (iv) Michel Deschamps (Canada), (v) Marek Dubovec (Slovakia), (vi) Alejandro Garro (Argentina), (vii) Louise Gullifer (United Kingdom), (viii) Megumi Hara (Japan), (ix) Cathy Walsh (Canada) and (x) Bruce Whittaker (Australia).

<sup>4</sup> The following organisations are observing the MLF Working Group: (i) The World Bank Group, (ii) UNCITRAL, (iii) the Kozolchyk National Law Centre (NatLaw), (iv) the European Bank for Reconstruction and Development (EBRD), (v) the Organization of American States (OAS), (vi) the African Export-Import Bank (AFREXIMBANK) (vii), the Organisation for the Harmonisation of Business Law in Africa (OHADA) and (viii) Industry Groups; (a) Factors Chain International (FCI), (b) World of Open Account (WOA), (c) Secured Finance Network (SFN) and (d) the International Chamber of Commerce Banking Commission (ICC).

<sup>5</sup> The first session took place via videoconference between 1 and 3 July 2020 and was attended by 32 participants. The second session took place via videoconference between 14 and 16 December 2020 and was attended by 30 participants. The third session took place via videoconference between 26 and 28 May 2021 and was attended by 32 participants. The fourth session took place in hybrid format between 1 and 3 December 2021 and was attended by 30 participants. The fifth session took place in hybrid format between 16 and 18 May 2022 and was attended by 35 participants. The working documents and reports from the Working Group sessions are available at <https://www.unidroit.org/work-in-progress/factoring-model-law/>.

<sup>6</sup> On 11 February 2020, in the margins of the International Secured Transactions Coordination Conference in Cartagena, Colombia, UNIDROIT held a short planning meeting for the Working Group. During the planning meeting, the Working Group identified an initial list of issues for discussion at the first Working Group meeting. During its first session, the Working Group established a subgroup to consider issues relating to conflicts of laws, which met several times in 2020. At its third session, the Working Group established a subgroup to develop the MLF's registry rules and an additional subgroup to consider transition issues. Both the registration subgroup and the transition subgroup met several times during 2021 and reported back to the Working Group at its fourth session. Finally, the Working Group held an intersessional meeting on 20 September 2021 to further define the scope of the MLF.

## II. PUBLIC CONSULTATIONS

8. UNIDROIT is conducting a three-month consultation on the draft Model Law on Factoring between July and October 2022.

9. The purpose of the consultation is to:

- i. Raise awareness about the instrument.
- ii. Ensure that the instrument is well suited to application in different contexts, including both civil law and common law jurisdictions as well as developing economies, emerging markets, and developed economies.
- iii. Seek feedback from parties engaged in factoring on whether the instrument sufficiently addresses issues that arise under existing legal frameworks and will improve factoring arrangements in States that implement the Model Law.
- iv. Solicit comments on the drafting of the instrument itself.

10. The public consultation has three aspects:

- i. The launch of a dedicated webpage on the UNIDROIT website that allows interested parties to access the draft Model Law on Factoring and facilitate the submission of comments (<https://www.unidroit.org/instruments/factoring/model-law-online-consultation/>).
- ii. The circulation of the draft Model Law on Factoring directly to interested parties, including UNIDROIT stakeholders,<sup>7</sup> project stakeholders<sup>8</sup> and industry stakeholders<sup>9</sup>.
- iii. The organisation of one or more consultation events to discuss the content of the draft instrument with stakeholders.

11. The online consultation will be open for 12 weeks **from 29 July until 21 October 2022**.

12. Comments on the draft MLF can be submitted to the UNIDROIT Secretariat at [MLFconsultation@unidroit.org](mailto:MLFconsultation@unidroit.org).

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<sup>7</sup> UNIDROIT Member States, Governing Council Members the UNIDROIT Correspondents.

<sup>8</sup> Relevant international, regional and intergovernmental and nongovernmental organisations, including UNCITRAL, the World Bank Group, the European bank for Reconstruction and Development and the International Chamber of Commerce.

<sup>9</sup> The Secretariat will work with private sector organisations such as Factor Chain International (FCI), World of Open Account (WOA) and the Secured Finance Network in order to allow private sector experts to provide input on the draft instrument and thereby ensure that it meets the needs of industry.

### III. OVERVIEW OF THE DRAFT MODEL LAW

13. This section provides an overview of the draft MLF. The overview is limited to the draft MLF's approach to several major issues. This section does not analyse the entirety of the draft instrument and interested parties are encouraged to consider the instrument itself in preparing their comments.

#### *Relationship with other international instruments*

14. The Model Law on Factoring will be UNIDROIT's second instrument in the field, having also prepared the UNIDROIT Convention on International Factoring in 1988 (Factoring Convention). The Factoring Convention has 9 Contracting States and entered into force in 1995. While many of the core principles of the MLF are consistent with the Factoring Convention, the two instruments serve different purposes. The Factoring Convention applies only to notification factoring arrangements between parties in different countries.<sup>10</sup> Conversely, the draft MLF has been prepared to address both international and domestic factoring arrangements, has a broader scope than the 1988 Convention and relies on a registration system for third-party effectiveness. The MLF also supports modern receivable finance products, such as supply chain financing. Further, as a soft-law instrument, the MLF can be appropriately adapted by implementing States to suit their domestic context, whereas as an international treaty the Factoring Convention provides a set of rules that should be uniformly implemented in Contracting States.

15. The draft MLF has been designed to be largely consistent with the UNCITRAL Model Law on Secured Transactions (2016)<sup>11</sup> and the United Nations Convention on the Assignment of Receivables in International Trade (2001).<sup>12</sup> The Working Group adopted this approach to ensure that the MLF will (i) be consistent with international standards as represented in the UNCITRAL instruments, and (ii) serve as an initial step towards broader secured transactions reform in implementing States.

#### *Structure*

16. The draft MLF consists of 54 Articles and 25 Registry Clauses. The instrument generally follows the structure of the UNCITRAL Model Law on Secured Transactions:

- Chapter I – Scope and general provisions
- Chapter II – Transfers of receivables
- Chapter III – Making a transfer of a receivable effective against third parties
- Chapter IV – The registration system
- Chapter V – Priority of a transfer
- Chapter VI – Rights and Obligations of the Parties
- Chapter VII – Collection and Enforcement
- Chapter VIII – Conflict of Laws
- Chapter IX – Transition
- Annexe A – Registry Provisions

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<sup>10</sup> Article 1(2)(c) of the UNIDROIT Convention on International Factoring (1988) provides that the Convention only applies to factoring contracts pursuant to which notice of the assignment of the receivables is given to debtors. Article 2(1) further provides that the Convention is only applicable where the debtor and transferor are located in different States and either (i) the States in which the debtor, transferor and transferee are Contracting States to the Convention, or (ii) both the sale contract and the factoring contract are governed by the law of a Contracting State.

<sup>11</sup> Available [https://uncitral.un.org/en/texts/securityinterests/modellaw/secured\\_transactions](https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions).

<sup>12</sup> Available <https://uncitral.un.org/en/texts/securityinterests/conventions/receivables>.

17. While the draft MLF generally follows the structure of the UNCITRAL Model Law on Secured Transactions, the draft MLF is significantly shorter. By adopting a limited scope and eliminating rules that are not relevant to factoring, the draft MLF is approximately 65% shorter in terms of word length and contains 25% fewer articles than the UNCITRAL Model Law on Secured Transactions.<sup>13</sup> The draft MLF, however, still provides a complete, self-standing legal regime for factoring transactions.

#### *Scope of the MLF*

18. The draft MLF applies to both outright transfers of receivables and the creation of security rights in receivables (security transfers).<sup>14</sup> The draft MLF applies to both domestic factoring and international factoring and allows for the transfer of both present and future receivables. As such, the scope of the instrument is broader than the traditional notion of factoring reflected in the 1988 UNIDROIT Convention on International Factoring. This expansion was necessary to ensure that the instrument will appropriately apply to the various financing methods that have become common since the UNIDROIT Factoring Convention was adopted.

19. While the MLF covers a broader range of transactions than the UNIDROIT Factoring Convention, the Working Group has ensured that the draft MLF has a clear and limited scope. The draft MLF applies only to receivables (i) arising from contracts for the supply or lease of goods and services, (ii) arising from contracts for the licence or assignment of intellectual property and (iii) representing the payment obligation for a credit card transaction.<sup>15</sup> By adopting a clear and limited scope, the draft MLF does not apply to receivables arising from contracts for the sale or lease of immovable property or receivables arising from various financial transactions, such as financial contracts governed by netting agreements, receivables arising from foreign exchange transactions, and receivables arising from inter-bank payment systems. The draft MLF does not apply to negotiable instruments or bank accounts (except to the extent they are proceeds of a receivable).<sup>16</sup>

20. The MLF does not cover any regulatory issues, such as the licensing of financial institutions to undertake factoring activities. However, such issues will be addressed in the Guide to Enactment.

#### *Treatment of data*

21. It is intended for the MLF to also apply to receivables arising from contractual rights to payment for a sum of money relating to data. 'Data receivables' are a category of receivables that are separate and distinct from receivables arising from the assignment or licence of intellectual property. However, it has not yet been decided how 'data receivables' should be dealt with in the MLF. The Working Group will give further consideration to this matter at its sixth session in November 2022.

#### *Formal requirements for a transfer*

22. The draft MLF requires very few formal requirements for the transfer of a receivable by an agreement. For a transfer agreement to be effective, it must (i) be in writing and signed by the transferor, (ii) identify the transferor and the transferee, and (iii) describe the receivable in a manner than reasonably allows its identification.<sup>17</sup>

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<sup>13</sup> The draft MLF contains 79 Articles (including the 25 Registry Clauses) and approximately 9000 words, whereas the UNCITRAL Model Law on Secured Transactions contains 107 Articles and approximately 25 500 words.

<sup>14</sup> Article 2(1)(h) and (i).

<sup>15</sup> Article 2(1)(f).

<sup>16</sup> Article 1(4).

<sup>17</sup> Article 5.

### *Anti-assignment clauses*

23. The draft MLF provides for a complete override of anti-assignment clauses.<sup>18</sup> Unlike the UNCITRAL Model Law on Secured Transactions and the Receivables Convention, the draft MLF does not preserve the right of a debtor to claim damages from the transferor for breach of contract in relation to an anti-assignment clause. The anti-assignment clause override is limited to transactions within the scope of the MLF and also applies to any restriction on transfers of supporting rights, such as guarantees.

### *Registration and priority*

24. The draft MLF provides for a transferor-based registry for the registration of notices of transfers (including security transfers). Once a notice is registered, a transfer of a receivable is effective against third parties and priority between competing transfers is determined by order of registration.<sup>19</sup> The priority of a transfer is not affected by any knowledge that the transferee may have of another transfer.<sup>20</sup>

25. The rules related to registrations and searches of the registry are set out in Annexe A, rather than directly in Chapter IV. This approach streamlines the text of the instrument, while still ensuring that implementing States will have the model rules required to establish a functional registry. In some States, a registry might have already been established under that State's secured transactions law. In those cases, the MLF does not contemplate the establishment of a separate registry for factoring transactions.

### *Proceeds*

26. The draft MLF provides that the right of a transferee of a receivable extends to its identifiable proceeds.<sup>21</sup> 'Proceeds' are defined as money, negotiable instruments or the rights to funds credited to a bank account that are received in respect of a receivable, including proceeds of proceeds.<sup>22</sup> Third party effectiveness of a transfer and a transferee's priority as established by registration also extend to proceeds.<sup>23</sup>

### *Rights and obligations of the parties*

27. Chapter VI of the draft MLF provides a set of rules regarding the rights and obligations of the transferor and transferee (Section 1) and the rights and obligations of the debtor (Section 2). To provide sufficient protection for debtors, Article 25 provides that a transfer does not affect the rights and obligations of the debtor, including payment terms, and cannot change the currency of the payment specified in the contract giving rights to the receivable or the State in which the payment is to be made.

28. Notifications and payment instructions must be provided to the debtor in writing.<sup>24</sup> Where a debtor receives a notification of a transfer, the debtor is discharged by paying the transferee or as

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<sup>18</sup> Article 8.

<sup>19</sup> Article 9 and Article 13.

<sup>20</sup> Article 20.

<sup>21</sup> Article 6.

<sup>22</sup> Article 2(1)(e).

<sup>23</sup> Articles 10 and 14.

<sup>24</sup> Article 26(1).

otherwise instructed in the notification, subject to any payment instruction subsequently received by the debtor from the transferee.<sup>25</sup>

#### *Funds credited to a bank account*

29. As noted above, the draft MLF does not treat rights to payment of funds credited to a bank account as receivables, but it does cover them as proceeds of a receivable. As such, the draft MLF does allow a transferee to establish priority over funds credited to a bank account that are proceeds of a receivable by registering a notice in relation to the receivable itself.

30. As the draft MLF does not consider the right to payment of funds credited to a bank account as receivables themselves, the instrument does not contain an article that corresponds to Article 47 of the UNCITRAL Model Law on Secured Transactions. Article 47 provides several rules regarding the perfection and priority of security interests in rights to payment of funds credited to a bank account, including security rights made effective against third parties by the conclusion of a control agreement. While these provisions are appropriate for a general secured transactions law, the Working Group decided that by treating the right to payment of funds credited to a bank account as proceeds, a transferee's interest in those funds would be sufficiently protected under the MLF.

#### *Conflict of laws and transition*

31. Chapters VIII and IX of the draft MLF respectively provide conflict of law and transition rules. Enacting States are able to determine the length of time that prior transfers under the applicable law remain effective against third parties once the new law has entered into force.<sup>26</sup>

#### *Further information*

32. Detailed analysis on the draft MLF is available in the Issues Paper from the MLF Working Group's fifth session ([Study LVIII A – W.G.5 – Doc. 2](#)).<sup>27</sup> Further information about the MLF project and all documents from the Working Group meetings are available on the UNIDROIT website at <https://www.unidroit.org/work-in-progress/factoring-model-law>.

33. Questions about the Model Law on Factoring project, the consultation process or the draft instrument itself can be directed to [MLFconsultation@unidroit.org](mailto:MLFconsultation@unidroit.org).

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<sup>25</sup> Article 27(2).

<sup>26</sup> Article 52(1).

<sup>27</sup> While the Issues Paper provides useful additional analysis, it should be noted that the document was prepared in relation to a previous iteration of the draft MLF and as such some sections might now be outdated.

**ANNEXE A****DRAFT MODEL LAW ON FACTORING**

1. This Annexe contains the draft Model Law on Factoring (MLF), based on the decisions made by the MLF Working Group's 5<sup>th</sup> session (16-18 May 2022).

2. The draft MLF consists of 54 Articles and 25 Registry Clauses:

Chapter I – Scope and general provisions

Chapter II – Transfers of receivables

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

Chapter IV – The registration system

Chapter V – Priority of a Transfer

Chapter VI – Rights and Obligations of the Parties

Chapter VII – Collection and Enforcement

Chapter VIII – Conflict of Laws

Chapter IX – Transition

Annexe A – Registry Provisions

## **DRAFT MODEL LAW ON FACTORING**

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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.

##### **Article 2 – Definitions**

1. For the purposes of this Law:
  - (a) “Debtor” means a person who owes payment of a receivable.
  - (b) “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.
  - (c) “Competing claimant” means a person with rights in a receivable that may be in competition with the rights of a transferee of the receivable.
  - (d) “Future receivable” means a receivable that arises after the time a transfer agreement is entered into, whether or not the contract giving rise to the receivable has been entered into at that time.
  - (e) “Proceeds” of a receivable means any:
    - (i) money;
    - (ii) negotiable instrument; or
    - (iii) right 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.
  - (f) “Receivable” means a contractual right to payment of a sum of money arising from:
    - (i) the supply or lease of goods or services;

- (ii) the assignment or licence of intellectual property; or
- (iii) the payment obligation for a credit card transaction.

A receivable does not cease to be a receivable as defined by this section if it is consolidated or refinanced by the parties to it.

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

(h) "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.

- (i) "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.

(j) "Transfer agreement" means an agreement providing for the transfer of a receivable that meets the requirements in Article 5(1).

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

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

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

### **Article 3 – Party autonomy**

1. With the exception of Articles [4, 5, 36(3), 37(1) and 38-54], 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.

## CHAPTER II

### EFFECTIVENESS OF TRANSFERS OF RECEIVABLES BETWEEN THE PARTIES

#### Article 5 – Requirements for the transfer of a receivable

1. An agreement is only effective as a transfer agreement if it:
  - a. is evidenced by a writing that is signed by the transferor;
  - b. identifies the transferor and the transferee; and
  - c. describes the receivable in a manner that reasonably allows its identification. A description of receivables in a transfer agreement will be 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.
3. 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.
4. 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 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.

#### 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:

- (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 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 19 – Future advances and future receivables**

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, whether the receivable 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**

**SECTION I. TRANSFEROR AND TRANSFEREE**

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

**Article 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**

1. As between the transferor and the transferee, whether or not notification of a transfer has been sent:
  - (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. Notification of a transfer constitutes notification of all previous transfers.

### **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, 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, the debtor is discharged by paying in accordance with the notification of that transfer or, in the case of a series of such transfers, 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 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 a 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 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 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 transferee arising from breach of an agreement 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. 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 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 [25-31].

#### **B. SECURITY TRANSFERS**

##### **Article 33 – Collection of payment under a security transfer**

1. After default, the transferee under a security transfer is entitled to collect the receivable at any time after payment becomes due.
2. The transferee may exercise the right to collect under paragraph 1 before default if the transferor consents.
3. The transferor exercising the right to collect under paragraph 1 or 2 is also entitled to enforce any personal or property right that secures or supports payment of the receivable.

##### **Article 34 – 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.
3. 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.
4. The transferee must give notice of its intention 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.
5. 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.
6. The notice must be in a language that is reasonably expected to inform the recipient about its content.
7. It is sufficient if the notice to the transferor is in the language of the transfer agreement.
8. The notice need not be given if the receivable is of a kind sold on a recognised market.

**Article 35 – 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 33 or 34:
- (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 2(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**

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 – Transfers of receivables relating to 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 of proceeds is the law applicable to the effectiveness as between the transferor and the transferee of the transfer of the receivable from which the proceeds arose.
  
2. The law applicable to the third-party effectiveness and priority of a transfer of proceeds is the law applicable to the third-party effectiveness and priority of a transfer of a receivable.

### **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. 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 – 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 49 – General applicability of this Law**

1. For the purposes of this chapter:
  - (2) “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
  - (2) “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 50 – 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 51 – 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 52 – 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 53 – 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 54 – 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 of the registration of a notice or a search request**

1. The Registry must not permit the registration of:
  - (a) A notice if no information is entered in one of the mandatory designated fields; 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 or other identifier of that person as it appears in [the relevant official document to be specified by the enacting State; if the enacting State specifies more than one document, it must designate the order in which each document should be used to determine that person’s name or other identifier].
2. [The enacting State should specify which components of the transferor’s name or other identifier determined in accordance with paragraph 1 must be entered in an initial or amendment notice].
3. [The enacting State should specify the manner in which the name or other identifier is determined if the name or other identifier is legally changed after the issuance of the relevant document referred to in paragraph 1.]
4. Where the person to be identified in an initial or amendment notice as the transferor is a legal person, the transferor’s identifier is the name or other identifier of that person as it appears in or is determined by [the relevant document, law or decree to be specified by the enacting State].

### **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 must designate the order in which each document should be used to determine that person’s name or other identifier].
2. Where the person to be identified in an initial or amendment notice as the transferee is a legal person, the transferee’s identifier is the name or other identifier of that person as it appears in or is determined by [the relevant document, law or decree to be specified by the enacting State].

### **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 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 transfer 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.