

P.R.I.M.E. Finance De-escalating Cross-Border Legal Tensions: The Role of Global Standards and P.R.I.M.E. Finance Experts UNCITRAL secured finance standards



P.R.I.M.E. FINANCE
Panel of Recognized International Market Experts in Finance



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1. U.N. Receivables Convention: key provisions

- Articles 1-4: scope
 - All assignments of contractual receivables
 - Int'l assignments and assignments of int'l receivables
 - ABL, factoring, forfaiting, securitization, project finance covered
 - Receivables from financial contracts, bank deposits and letters of credit excluded
- Article 8: Removes statutory prohibitions to the assignment of future receivables and bulk assignments
- Article 9: Removes contractual limitations to the assignment of receivables
- Articles 15-21: Remove legal barriers to the collection of receivables from foreign debtors
- Articles 22-25 (and 30): Remove legal uncertainty with respect to the law applicable to the proprietary effects of assignments



2. U.N. Receivables Convention: applicable law provisions

- Article 28: Mutual rights and obligations of the assignor and the assignee: the law chosen by the parties
- Article 29: Relationship between the assignee and the debtor: the law governing the original contract
- Article 30: Third-party (proprietary) effects of assignments: the law of the assignor's location
 - Location: place of business, principal place of business (place of central administration), habitual residence



3. U.N. Receivables Convention: latest developments

- On January 2, 2019 the US Senate consents to ratification by the US
- On March 12, 2018 EU Commission proposed Regulation on the law applicable to the third-party effects of assignments of claim
 - General rule: the law of the country where the assignor has its habitual residence at the material time.
 - Receivables from bank deposits and financial instruments: the law of the assigned receivable
 - Receivables in securitization: the law chosen by the assignor and the assignee
 - Conflicts between the general rule and the rule on securitization: the law applicable to the assignment first made effective against third parties



4. UNCITRAL Model Law on Secured Transactions: salient features (1)

- General: unitary and functional approach
- Comprehensive scope
 - All types of movable asset (mainly except receivables from intermediated securities and financial contracts)
 - All types obligation, debtor and creditor
- Creation (attachment): written agreement (unless possession is given to the secured creditor)
- Third-party effectiveness (perfection): mainly notice registration, but also possession and control
- Priority: comprehensive set of priority rules
- Enforcement: judicial and extra-judicial (with debtor and competing creditor protection)



5. UNCITRAL Model Law on Secured Transactions: salient features (2)

- Model Registry regulations: all registry-related issues covered
- Conflict-of-laws chapter: general and asset specific rules
 - Security interests in non-intermediated equity securities: the law under which the issuer is constituted
 - Security interests in non-intermediated debt securities: the law governing the securities
- Comprehensive transition rules
- Insolvency: UNCITRAL Secured Transactions and Insolvency Legislative Guides



6. P.R.I.M.E. Finance: facilitating greater awareness and reliance on these instruments (1)

- Disputes arising from secured finance agreements are generally applicable
- The main issue is third-party rights at the stage of enforcement of the arbitral award
- The UNCITRAL Model Law addresses these rights by way of generally acceptable rules
 - At the stage of out-of-court repossession, the enforcing secured creditor must notify persons in possession of the asset
 - At the stage of out-of-court disposition, the enforcing secured creditor must notify all creditors of record
 - Higher ranking secured creditor may take over enforcement
 - Higher ranking secured creditor must be paid first



P.R.I.M.E. Finance: facilitating greater awareness and reliance on these instruments (2)

- In the case of arbitration, the rules of the Model Law are applicable as the rules chosen by the parties (whether they are enacted by a State or not)
- They may also apply as the rules applicable by way of the conflict-of-laws rules which the arbitral tribunal considers appropriate

