

**SUMMARY OF
INTERNATIONAL INSTRUMENTS RELATING TO
SECURED TRANSACTIONS**

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Several international organizations - The Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT), and the United Nations Commission on International Trade Law (UNCITRAL) - have been active in preparing instruments that can affect secured transactions and similar financing transactions. Some of these instruments are conventions that have gone into effect with the United States as a "contracting state." Others are conventions not yet in effect because the required number of ratifications has not been achieved. Still others are model laws or "legislative guides" that may influence the development of the law, particularly outside the United States. When these instruments have the force of law, they should be considered by persons engaging in transactions that may be governed by them. Even when they do not currently have the force of law, attorneys should be aware of these instruments, as they may presage legal developments in accordance with the rules recommended in them. This article summarizes the scope, application, and status of the instruments.

General

- *UNIDROIT: Convention on International Factoring*: This Convention addresses the relationship among factor, supplier, and debtor resulting from assignment of receivables arising from sale of goods. Seven countries are parties to this Convention. The United States has signed the Convention but has not ratified it.¹
- *United Nations Convention on the Assignment of Receivables in International Trade*: Provides rules (some substantive, others conflict of laws) governing assignments of receivables (not limited to receivables arising from the sale of goods) in international trade, whether outright or for security. This Convention is not yet in effect. The United States has signed this Convention but has not ratified it.

¹ See <http://www.unidroit.org/english/implement/i-88-f.pdf>.

- *UNCITRAL: Legislative Guide on Secured Transactions*: Comprehensive law governing creation, third-party effectiveness, priority, and enforcement of security rights in movables and outright transfers of receivables. The UN General Assembly has approved this Guide.

Mobile Equipment

- *UNIDROIT: Convention on International Interests in Mobile Equipment (Cape Town)*: Addresses creation, effectiveness against third parties, priority, and enforcement of rights created by security interest, conditional sale, or lease of mobile equipment that is the subject of a protocol. This Convention has been joined by 31 states, including the United States.
- *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment*: Protocol to Cape Town Convention for airframes, aircraft engines, and helicopters. This Protocol has been joined by 28 states, including the United States.²
- *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (Luxembourg Protocol)*: Protocol to Cape Town Convention for rolling stock. This Protocol is not yet in force.

Leasing

- *UNIDROIT: Model Law on Commercial Leasing*: This model law provides substantive rules governing both financial and non-financial leases of property (including assets that become fixtures) used in trade or business, including plant, capital goods, equipment, future assets, specially manufactured assets and living and unborn animals. This was approved by the UNIDROIT Governing Council in Fall 2008.

Securities

- *Hague: Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary*: Determines applicable law governing rights resulting from credit of securities to a securities account and disposition of securities held with an intermediary, as

² China joined on February 3, 2009.

well as issues of perfection, priority, and realization. This Convention is not yet in effect.

- *UNIDROIT: Convention on Substantive Rules Regarding Intermediated Securities*: This Convention provides substantive rules concerning the rights resulting from the credit of securities to a securities account as well as rules for security interests therein; it also addresses priority of interests, and protection from adverse claims for good-faith purchasers. This project is continuing.

Private International Law

- *Hague: Feasibility Study on the Choice of Law in International Contracts*: Study for possible international instrument addressing choice-of-law issues, including party autonomy and its limits and determination of applicable law in the absence of choice by the parties. This project is continuing.