

ASSOCIATION OF COMMERCIAL FINANCE ATTORNEYS
AMERICAN COLLEGE OF COMMERCIAL FINANCE LAWYERS

September 2007

THE UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN
INTERNATIONAL TRADE

THE UNCITRAL LEGISLATIVE GUIDE ON SECURED TRANSACTIONS

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As global commerce expands and national economies become more interdependent, numerous initiatives have emerged to reduce legal barriers to international trade and provide greater legal certainty for international transactions. A number of these initiatives have been undertaken by the United Nations Commission on International Trade Law (UNCITRAL), the International Institute for the Unification of Private Law (UNIDROIT), and the Hague Conference on Private International Law (the “Hague Conference”).

The work of these three organizations in the fields of commercial and insolvency law, considered together, have been described as the promulgation of an “international uniform commercial code”.¹ This description is apt given that the initiatives have covered the areas of sales of goods,² leases of goods,³ negotiable instruments,⁴ funds transfers,⁵ standby letters of credit and independent guaranties,⁶ investment securities,⁷ secured transactions⁸ and insolvency⁹.

¹ Amelia H. Boss, “The Future of the Uniform Commercial Code in an Increasingly International World,” 68 Ohio State Law Journal 349 (2007).

² United Nations Convention on Contracts for the International Sale of Goods (1980), available at www.uncitral.org.

³ UNIDROIT Convention on International Financial Leasing (1988), available at www.unidroit.com. UNIDROIT is also developing a model law of leasing.

⁴ United Nations Convention on International Bills of Exchange and International Promissory Notes (1988), available at www.unictral.org.

⁵ UNCITRAL Model Law on International Credit Transfers (1992), available at www.unictral.org.

⁶ United Nations Convention on Independent Guaranties and Stand-by Letters of Credit (1995), available at www.unictral.org.

⁷ Hague Convention on the Law Applicable to Certain Rights in respect of Securities Held with an Intermediary (2006), available at http://www.hcch.net/index_en.php?act=home.splash. UNIDROIT is also currently developing a convention on intermediated securities, available at www.unidroit.org.

⁸ UNIDROIT Convention on International Factoring (1988), available at www.unidroit.org; the United Nations Convention on the Assignment of Receivables in International Trade (2001), available at www.unictral.org, the Convention on International Interests in Mobile Equipment (2001), together with its Protocol on Matters Specific to Aircraft Equipment (2001) and Protocol on Matters specific to Railway Rolling Stock (2007), available

Through its participation in UNCITRAL, UNIDROIT, and the Hague Conference, the United States has been very active in shaping these initiatives, which all reflect the strong influence of the Uniform Commercial Code and other U.S. laws. The initiatives take various forms: some are international conventions, while others are model laws or legislative guides. Although the United States has thus far adopted only a small number of the products of the three organizations in the commercial and insolvency law areas,¹⁰ the United States is poised to consider ratification of one significant commercial convention - the United Nations Convention on the Assignment of Receivables in International Trade (the "Receivables Convention") - and has left a large footprint on the proposed UNCITRAL Legislative Guide on Secured Transactions (the "Guide").

The attached materials focus on the Receivables Convention and the Guide. The Receivables Convention addresses various issues relating to the assignment (whether as security or by sale) of certain contractual rights to payment, if either the assignment or the receivable is "international." The Guide is being developed to assist countries, especially emerging market countries, in enacting a modern secured transactions law. The attached materials consist of (1) a summary of the Receivables Convention, (2) a copy of the Receivables Convention, (3) a draft of declarations and understandings that the United States might consider in ratifying the Receivables Convention,¹¹ and (4) the current draft of the recommendations to be made in the Guide.¹²

The authors were able to attend the recent June meeting of the UNCITRAL Commission, which focused primarily on finalizing the Guide, with funding provided by the Association of Commercial Finance Attorneys and the American College of Commercial Finance Lawyers, for which the authors are grateful. It is hoped that a resumed Commission meeting, scheduled for December 2007, will result in final approval of the Guide.

at www.unidroit.org, and the draft UNCITRAL Legislative Guide on Secured Transactions (projected to be completed in 2007), available at www.uncitral.org.

⁹ UNCITRAL Model Law on Cross-Border Insolvency (1997) and the UNCITRAL Legislative Guide on Insolvency Law (2004), available at www.uncitral.org. UNCITRAL is also developing materials on insolvency of company groups and post-commencement financing.

¹⁰ The United States has adopted the United Nations Convention on Contracts for the International Sale of Goods, the Convention on International Interests in Mobile Equipment, together with its Protocol on Matters Specific to Aircraft Equipment, and, as Chapter 15 of the Bankruptcy Code, the UNCITRAL Model Law on Cross-Border Insolvency.

¹¹ The proposed declarations and understandings were developed by representatives of the American Law Institute and the National Conference of Commissioners on Uniform State Laws as part of a joint project with the Uniform Law Conference of Canada and the Mexican Uniform Law Center to harmonize the law of North America on the assignment of receivables.

¹² The attached draft of the recommendations is a tentative, unofficial draft for the sole purpose of discussion at the Secured Transactions Guide "experts group" meeting held in Vienna, Austria, from September 5 to 9, 2007. The official draft of the recommendations will be issued before the December 2007 Commission meeting and will be made available at www.uncitral.org.