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Comparison and analysis of major features of international instruments relating to secured transactions

Note by the Secretariat

Pursuant to a decision by the Commission,¹ the secretariats of the International Institute for the Unification of Private Law (Unidroit) and the United Nations Commission on International Trade Law (UNCITRAL) and the Permanent Bureau of The Hague Conference on Private International Law prepared the paper annexed to this note. The purpose of this paper is to explain the inter-relationship among the security interests texts prepared by the three organizations and thus to assist States in understanding how these texts fit together and may be all adopted by States to establish a comprehensive and consistent regime on security interests in movable assets. It is envisaged that this paper be issued as a publication by the three organizations in order to assist States considering these security interests texts for adoption. The Commission may wish to consider and approve this paper and its publication.

¹ See Annex II, Preface.



Annex I

List of instruments prepared by The Hague Conference on Private International Law (the Hague Conference), the International Institute for the Unification of Private Law (Unidroit) and the United Nations Commission on International Trade Law (UNCITRAL) on security interests in movable assets

Unidroit Convention on International Factoring (Ottawa, 1988)

Unidroit Convention on International Financial Leasing (Ottawa, 1988)

United Nations Convention on the Assignment of Receivables in International Trade (New York, 2001) — prepared by UNCITRAL

UNCITRAL Legislative Guide on Secured Transactions (2007) and Supplement on Security Rights in Intellectual Property (2010)

Unidroit Model Law on Leasing (2008)

Convention on International Interests in Mobile Equipment (Cape Town, 2001) — prepared by Unidroit

Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Cape Town, 2001) — prepared by Unidroit

Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (Luxembourg, 2007) — prepared by Unidroit

Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (The Hague, 2006) — prepared by the Hague Conference

Unidroit Convention on Substantive Rules for Intermediated Securities (Geneva, 2009)

Convention on the Law Applicable to Trusts and on Their Recognition (The Hague, 1985) — prepared by the Hague Conference

Annex II

Preface

At its forty-first session in 2008, the Commission noted that coordination meetings had taken place in September 2007 in Rome and in May 2008 in New York among the secretariats of the International Institute for the Unification of Private Law (“Unidroit”) and the United Nations Commission on International Trade Law (“UNCITRAL”) and the Permanent Bureau of The Hague Conference on Private International Law (the “Hague Conference”). It also noted that the main topic discussed at those meetings was the interrelationship among the texts on security interests prepared by the Hague Conference, Unidroit and UNCITRAL respectively, and ways in which States could adopt those texts to establish a modern comprehensive and consistent legislative regime on secured transactions.

In addition, the Commission noted that it was recognized that policymakers in States might have difficulty determining how the various instruments adopted by the three organizations in the field of security interests fit together, which ones would best serve the policy goals of the State and whether implementing one instrument would preclude the implementation of another.

Moreover, the Commission noted that the three organizations were, therefore, preparing a paper aimed at assisting policymakers by summarizing the scope and application of those instruments, showing how they worked together and providing a comparative understanding of the coverage and basic themes of each instrument. At that session, strong support was expressed in the Commission for those efforts. It was also suggested that the paper could be published as one of the future instalments of the ongoing survey of the work of international organizations related to the harmonization of international trade law.²

At its forty-second session in 2009, the Commission recalled the mandate it had given to the Secretariat for the publication of a text discussing the interrelationship of various texts on security interests prepared by the Commission, Unidroit and the Hague Conference.³

At its forty-third session in 2010, the Commission encouraged the Secretariat to explore ways of collaborating further with other organizations, such as the Permanent Bureau of the Hague Conference and the Secretariat of Unidroit, to jointly promote related texts.⁴ In view of the above, the three organizations, with the assistance of experts,⁵ cooperated in preparing this text. A draft of this text was discussed at a coordination meeting which was held on 4 May 2011. [...]

At its forty-fourth session in 2011, the Commission [...]

² *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17 (A/63/17)*, para. 384.

³ *Ibid. Sixty-fourth Session, Supplement No. 17 (A/64/17)*, para. 321.

⁴ *Ibid. Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 287.

⁵ Neil Cohen (Professor, Brooklyn Law School, New York) and Steven Weise (Partner, Proskauer Rose LLP, Los Angeles, California).

Introduction

1. The Hague Conference on Private International Law (“the Hague Conference”), the International Institute for the Unification of Private Law (“Unidroit”), and the United Nations Commission on International Trade Law (“UNCITRAL”) regularly coordinate their activities in order to: (a) assure the integration of the substantive terms of the instruments that they sponsor; and (b) avoid overlap and inconsistency. This coordination results in the promulgation of instruments that complement each other and, thus, can be considered and implemented by States either as part of a comprehensive systemic reform or separately.

2. Many instruments promulgated by the three organizations concern or directly affect transactions creating rights in movable assets (whether tangible or intangible) to secure obligations and similar financing transactions such as the sale of receivables. Notwithstanding the coordination by the three organizations, policymakers and legislators who have not actively participated in the preparation of the instruments may have some difficulty in determining: (a) how the various instruments concerning secured transactions and similar financing transactions fit together; (b) which instruments would serve the policy goals of the State; (c) whether implementing (or declining to implement) one instrument precludes implementing another instrument; and (d) whether the instruments need be implemented in a particular order.

3. Thus, to assist such policymakers and legislators, the three organizations have prepared this paper in order to: (a) summarize the scope and application of these instruments; (b) show how the instruments work together; and (c) provide a comparative understanding of the coverage and basic themes of each instrument. This paper is not intended to be a comprehensive review of each of the instruments.

4. This paper has three parts, successively providing more detail about each of the relevant instruments:

Part I: This part is quite general. It includes a chart that generally summarizes the purpose of each instrument, explains how each instrument fits in with the other instruments in connection with secured transactions and similar transactions, and discusses the benefits of adoption of the package of instruments.

Part II: This part consists of two charts that graphically present a comparison of major features of these international instruments in connection with secured transactions and similar transactions. The first chart sets out in brief form the coverage (scope) of each instrument, indicating not only the basic scope of each instrument, but also areas in which the scope of one instrument overlaps, abuts, or interconnects with that of another. In this way, the reader can determine how the various instruments relate to each other in terms of coverage. The second chart sets out in brief form important substantive themes of each instrument, as they relate to secured transactions. Each chart contains references to the more detailed textual summaries in Part III for further description of the matters noted briefly in the chart. By consulting this chart, the reader can determine similarities and differences among various instruments.

Part III: This part provides a more detailed textual summary of each instrument in connection with secured transactions and similar transactions for the benefit of a policymaker that has the responsibility for considering the substantive provisions of the instruments and how they might fit into the legal system and economy of the State. The format of the summaries parallels the organization of the charts. As noted above, the charts contain references to portions of the summaries that discuss the matters noted briefly in the charts.

5. As any summary of technical and complex instruments must necessarily exclude some details, reference to the full, original text of the instruments is recommended. Those texts may be found on the websites of the three organizations, as follows: (a) the Hague Conference (www.hcch.net); (b) Unidroit (www.unidroit.org); and (c) UNCITRAL (www.uncitral.org).

I. General Summary

| Instrument | Summary of Purposes |
|--|--|
| <i>Unidroit Convention on International Factoring</i> | <ul style="list-style-type: none"> • To adopt uniform rules providing a legal framework that will facilitate international factoring • To maintain a fair balance of interests between the different parties involved in factoring transactions |
| <i>Unidroit Convention on International Financial Leasing</i> | <ul style="list-style-type: none"> • To provide a legal framework for cross-border leasing transactions • To establish rules that maintain a fair balance between lessor, lessee and third-party supplier, while removing certain legal impediments |
| <i>United Nations Convention on the Assignment of Receivables in International Trade</i> | <ul style="list-style-type: none"> • To establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency • To promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices • To ensure adequate protection of the interests of debtors in assignments of receivables • To promote the availability of capital and credit at more affordable rates • Cumulatively, to facilitate the development of international trade |
| <i>UNCITRAL Legislative Guide on Secured Transactions and Supplement on Security Rights in Intellectual Property</i> | <ul style="list-style-type: none"> • To provide a broad policy framework for an effective and efficient secured transactions law • To establish a single comprehensive regime for secured transactions |
| <i>Unidroit Model Law on Leasing</i> | <ul style="list-style-type: none"> • To develop a legal framework that will foster the swift growth of a nascent equipment leasing industry • To harmonize legal regulations of equipment leasing on a global basis in order to facilitate trade in capital goods |

| Instrument | Summary of Purposes |
|---|---|
| <i>Convention on International Interests in Mobile Equipment</i> | <ul style="list-style-type: none"> • To facilitate the financing of the acquisition and use of mobile equipment of high value or particular economic value • To ensure that interests in such equipment are recognized and protected universally • To reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions • To create an international registration system for the protection of the rights of the parties to such asset-based financings of mobile equipment and leases of mobile equipment |
| <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i> | <ul style="list-style-type: none"> • To implement the Convention on International Interests in Mobile Equipment regarding aircraft equipment • To adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment |
| <i>Protocol to the Convention On International Interests In Mobile Equipment on Matters Specific to Railway Rolling Stock</i> | <ul style="list-style-type: none"> • To implement the Convention on International Interests in Mobile Equipment regarding railroad rolling stock • To adapt the Convention to meet the particular requirements of railway rolling stock financing |
| <i>Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary</i> | <ul style="list-style-type: none"> • To provide legal certainty and predictability as to the law applicable to securities that are now commonly held through clearing and settlement systems or other intermediaries • To reduce legal risk, systemic risk, and associated costs in relation to cross-border transactions involving securities held with an intermediary so as to facilitate the international flow of capital and access to capital markets • To establish common provisions on the law applicable to securities held with an intermediary beneficial to States at all levels of economic development |
| <i>Unidroit Convention on Substantive Rules for Intermediated Securities</i> | <ul style="list-style-type: none"> • To establish principles and to adopt rules relating to rights in connection with intermediated securities • To bring certainty and reduce risk associated with holding intermediated securities |
| <i>Convention on the Law Applicable to Trusts and on Their Recognition</i> | <ul style="list-style-type: none"> • To establish common provisions on the law applicable to trusts • To provide for recognition of trusts established under applicable law |

II. Summary charts

A. Scope rules

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|--|--|--|--|---|--|---|
| <i>Unidroit Convention on International Factoring</i> | <ul style="list-style-type: none"> • Receivables arising from sale of goods | <ul style="list-style-type: none"> • Factoring contracts (assignment of receivables arising from sale of goods) | <ul style="list-style-type: none"> • Yes | <ul style="list-style-type: none"> • Parties may agree | <ul style="list-style-type: none"> • See United Nations Convention on Assignment of Receivables in International Trade and UNCITRAL Legislative Guide on Secured Transactions | <ul style="list-style-type: none"> • None |
| <i>Unidroit Convention on International Financial Leasing</i> | <ul style="list-style-type: none"> • Financial leasing transactions | <ul style="list-style-type: none"> • Equipment financing transactions involving supply agreement between lessor and third-party supplier | <ul style="list-style-type: none"> • Yes | <ul style="list-style-type: none"> • Parties may agree | <ul style="list-style-type: none"> • Convention on International Interests in Mobile Equipment • Unidroit Model Law on Leasing | <ul style="list-style-type: none"> • None |
| <i>United Nations Convention on the Assignment of Receivables in International Trade</i> | <ul style="list-style-type: none"> • Receivables | <ul style="list-style-type: none"> • Assignment of receivables (including both the sale of a receivable and the creation of a security right in a receivable) | <ul style="list-style-type: none"> • International assignment or assignment of international receivables only | <ul style="list-style-type: none"> • Assignments to an individual for personal, family or household purposes • Transactions on a regulated exchange | <ul style="list-style-type: none"> • Unidroit Convention on International Factoring • UNCITRAL Legislative Guide on Secured Transactions | <ul style="list-style-type: none"> • Other international agreements that may specifically govern a transaction • Unidroit Convention on International Factoring |

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|--|---|---|--|---|--|---|
| <i>UNCITRAL Legislative Guide on Secured Transactions and Supplement on Security Rights in Intellectual Property</i> | <ul style="list-style-type: none"> All types of movable asset (tangible or intangible) | <ul style="list-style-type: none"> Property right in a movable asset to secure payment or performance of an obligation Sales of receivables | <ul style="list-style-type: none"> No | <ul style="list-style-type: none"> Financial contracts Inter-bank payment systems Securities Negotiable instruments Mobile equipment covered by Unidroit Convention on International Interests in Mobile Equipment Intellectual property in so far as covered by law relating to intellectual property Securities Payment rights arising under or from financial contracts governed by netting agreements | <ul style="list-style-type: none"> Unidroit Convention on International Interests in Mobile Equipment Various intellectual property treaties and conventions | <ul style="list-style-type: none"> Mobile equipment international agreements Intellectual property law, including international agreements insofar as inconsistent with the Legislative Guide Supplement refers to specific international instruments on intellectual property |

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|--|---|---|--|---|---|--|
| <i>Unidroit Model Law on Leasing</i> | <ul style="list-style-type: none"> Assets used in the craft, trade or business of the lessee | <ul style="list-style-type: none"> Transaction involving right to possession and use of an asset for a specific term in return for rentals | <ul style="list-style-type: none"> No | <ul style="list-style-type: none"> Lease that functions as a security right Large aircraft equipment, unless parties agree to be subject to law and foreign exchange transactions | <ul style="list-style-type: none"> Convention on International Interests in Mobile Equipment and Aircraft Protocol | <ul style="list-style-type: none"> Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment |
| <i>Convention on International Interests in Mobile Equipment</i> | <ul style="list-style-type: none"> Airframes, aircraft engines, and helicopters Railway rolling stock Space assets | <ul style="list-style-type: none"> Security agreement Lease | <ul style="list-style-type: none"> No, but State may declare that certain aspects are inapplicable to “internal transactions” | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> United Nations Convention on the Assignment of Receivables in International Trade Unidroit Convention on International Financial Leasing |
| <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i> | <ul style="list-style-type: none"> Airframes Aircraft engines Helicopters | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment Sales | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> Convention on the International Recognition of Rights in Aircraft [Article XXIII] Convention for the Unification of Certain Rules Relating to the Precautionary |

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|---|--|--|--|---|--|---|
| <i>Protocol to the Convention on International Interests In Mobile Equipment on Matters Specific to Railway Rolling Stock</i> | <ul style="list-style-type: none"> Railway rolling stock | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> None | <p>Attachment of Aircraft [Article XXIV]</p> <ul style="list-style-type: none"> Unidroit Convention on International Financial Leasing [Article XXV] Unidroit Convention on International Financial Leasing [Article XIX] |
| <i>Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary</i> | <ul style="list-style-type: none"> Securities held with an intermediary | <ul style="list-style-type: none"> Law applicable to crediting a security to a securities account Law applicable to disposition of securities credited to a securities account Law applicable to perfection of a disposition of securities held | <ul style="list-style-type: none"> Yes | <ul style="list-style-type: none"> Purely contractual or otherwise purely personal rights Rights and obligations of an issuer of securities | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> None |

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|--|--|---|--|---|---|--|
| | | with an intermediary | | | | |
| | | <ul style="list-style-type: none"> • Law applicable to priority of interests in securities held with an intermediary | | | | |
| <i>Unidroit Convention on Substantive Rules for Intermediated Securities</i> | <ul style="list-style-type: none"> • Intermediated securities | <ul style="list-style-type: none"> • Acquisition and disposition of intermediated securities • Rights of account holders arising out of credit of securities to a securities account • Integrity of the intermediated security system • Use of intermediated securities as collateral | <ul style="list-style-type: none"> • No | <ul style="list-style-type: none"> • State may declare that Convention shall apply only to certain intermediaries • Does not apply to functions of creation, recording, or reconciliation vis-à-vis issuer by transfer agent and the like • Does not affect any right of the account holder against the issuer of the securities | <ul style="list-style-type: none"> • Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary | <ul style="list-style-type: none"> • None |

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|--|--|--|--|---|--|--|
| <i>Convention on the Law Applicable to Trusts and on Their Recognition</i> | <ul style="list-style-type: none"> All assets, movable or immovable, that are placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose | <ul style="list-style-type: none"> Law applicable to the trust Recognition of trust created under applicable law | <ul style="list-style-type: none"> No | <ul style="list-style-type: none"> Applies only to trusts created voluntarily and evidenced in writing Does not apply to validity of wills or other acts by virtue of which assets are transferred to trustee | <ul style="list-style-type: none"> United Nations Convention on the Assignment of Receivables in International Trade (if assets of trust are receivables and trust is used to secure an obligation, the United Nations Convention on Assignment of Receivables in International Trade defers pursuant to Article 38 (1)) UNCITRAL Legislative Guide on Secured Transactions (if trust is used to secure an obligation), in which case the law of the enacting State resolves conflict between domestic legislation and Convention Convention on the Law Applicable to | <ul style="list-style-type: none"> None |

| Instrument | Assets covered | Transactions or issues covered | International transactions only? | Principal exclusions and limitations | Possible overlap with other international instruments | References to other international instruments |
|------------|----------------|--------------------------------|----------------------------------|--------------------------------------|---|---|
| | | | | | Certain Rights in Respect of Securities Held with an Intermediary (if assets of trust are securities and trust is used to secure an obligation), in which case general methods for resolving conflicts between conventions are applicable | |

B. Rules other than scope

| Instrument | PIL rules | Key functional definitions | Effectiveness between parties | Effectiveness against third parties | Priority |
|--|--|---|---|---|--|
| <i>Unidroit Convention on International Factoring</i> | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> “Factoring Contract” is contract where supplier assigns receivables arising from sale of goods | <ul style="list-style-type: none"> No form required May assign in bulk Future receivables Override anti-assignment term | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> None |
| <i>Unidroit Convention on International Financial Leasing</i> | <ul style="list-style-type: none"> None | <ul style="list-style-type: none"> Financial leasing transaction defined to mean a transaction where the lessor, on specifications of the lessee, enters a supply agreement with a third party. | <ul style="list-style-type: none"> No form required Lessee may assign rights under the agreement with consent of lessor | <ul style="list-style-type: none"> None, although some rights of third-party supplier are implicitly recognized | <ul style="list-style-type: none"> None |
| <i>United Nations Convention on the Assignment of Receivables in International Trade</i> | <ul style="list-style-type: none"> Priority (including effectiveness against third parties) governed by law of the State where the assignor is located Assignor is located where its central administration is exercised | <ul style="list-style-type: none"> “Assignment” is the transfer by agreement Includes an outright transfer and a transfer as security for an indebtedness or other obligation “Receivable” is a contractual right to payment of a monetary sum | <ul style="list-style-type: none"> May assign future receivables May assign in bulk | <ul style="list-style-type: none"> Third-party effectiveness based on other law extends to proceeds Otherwise, only PIL rules | <ul style="list-style-type: none"> Priority based on other law extends to proceeds Otherwise, only PIL rules |

| Instrument | PIL rules | Key functional definitions | Effectiveness between parties | Effectiveness against third parties | Priority |
|--|---|--|--|--|---|
| <i>UNCITRAL Legislative Guide on Secured Transactions and Supplement on Security Rights in Intellectual Property</i> | <ul style="list-style-type: none"> • Location of tangible asset • Location of grantor for intangible property (except for bank accounts, letters of credit and intellectual property, see below) • For intellectual property, generally law of the State in which the intellectual property protected, with certain exceptions | <ul style="list-style-type: none"> • “Security right” is a property right in a movable asset, however the property right is denominated, that secures performance of an obligation • “Security right” also applies to sales of receivables | <ul style="list-style-type: none"> • Agreement required | <ul style="list-style-type: none"> • Generally registration of notice required • Exceptions for possession by secured creditor, control of certain encumbered assets | <ul style="list-style-type: none"> • Generally first to register or otherwise become effective against third parties • Registration in specialized registry has higher priority than registration in general registry • Right in certain assets made effective against third parties by possession or “control” has higher priority than other security rights in same asset • “Super-priority” for acquisition security rights |
| <i>Unidroit Model Law on Leasing</i> | <ul style="list-style-type: none"> • No PIL rules as such, but the Model Law has scope rules determining which cross-border transactions a State’s enactment may govern | <ul style="list-style-type: none"> • “Lease” is a transaction in which one person provides another with the right to possess and use an asset for a specific term in return for rentals • “Financial lease” is a lease with specified characteristics, including | <ul style="list-style-type: none"> • No specific requirements stated, but definition of “lease” implicitly requires agreement of exchange (“Lease” is defined as a “transaction in which one person | <ul style="list-style-type: none"> • Not applicable | <ul style="list-style-type: none"> • Rights of creditors of lessor or lessee generally subject to lease |

| Instrument | PIL rules | Key functional definitions | Effectiveness between parties | Effectiveness against third parties | Priority |
|--|--|---|--|--|--|
| | <ul style="list-style-type: none"> A State's law may apply if leased asset is in the State, centre of main interests of the lessee is in the State, or leasing agreement provides that the law of the State applies | <p>that the lessee specifies the asset and selects the supplier</p> | <p>provides another person with the right to possess and use an asset for a specific term in exchange for rentals.”)</p> | | |
| <i>Convention on International Interests in Mobile Equipment</i> | <ul style="list-style-type: none"> PIL rules of forum State | <ul style="list-style-type: none"> “Security interest” is an interest to secure the performance of an obligation Conditional sale | <ul style="list-style-type: none"> Agreement | <ul style="list-style-type: none"> Registration of interest in international registry | <ul style="list-style-type: none"> Generally registration defeats all subsequent interests First interest registered has priority over a later-registered interest Registered interest has priority over an unregistered interest Buyer acquires interest subject to registered interest |

| Instrument | PIL rules | Key functional definitions | Effectiveness between parties | Effectiveness against third parties | Priority |
|---|--|--|---|--|--|
| <i>Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment</i> | <ul style="list-style-type: none"> Optional rules [Article VIII] | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment | <ul style="list-style-type: none"> International registry | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment |
| <i>Protocol to the Convention on International Interests In Mobile Equipment on Matters Specific to Railway Rolling Stock</i> | <ul style="list-style-type: none"> Parties may agree on the law that will govern their contractual rights and obligations, if Contracting State has made a declaration under Article XXVII [Article VI] | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment Additional provisions for identification of railway rolling stock [Article XIV] | <ul style="list-style-type: none"> International registry [Chapter III] | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment |
| <i>Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary</i> | <ul style="list-style-type: none"> Law expressly agreed in the account agreement, provided the intermediary has a qualifying office in the State whose law has been chosen Other PIL rules apply if account agreement does not expressly specify the law of a State in which | <ul style="list-style-type: none"> “Intermediary” means a person that, in the course of a business or other regular activity, maintains securities accounts for others or both for others and its own account and is acting in that capacity “Relevant intermediary” means the intermediary that maintains the securities account for the account holder | <ul style="list-style-type: none"> PIL only | <ul style="list-style-type: none"> PIL only | <ul style="list-style-type: none"> PIL only |

| Instrument | PIL rules | Key functional definitions | Effectiveness between parties | Effectiveness against third parties | Priority |
|--|--|---|--|--|--|
| | the intermediary has a qualifying office | | | | |
| <i>Unidroit Convention on Substantive Rules for Intermediated Securities</i> | • None | <ul style="list-style-type: none"> • “Interests” in securities • “Control agreement” • “Designating entry” | <ul style="list-style-type: none"> • Account holder must enter into an agreement with person holding security interest • There is a security agreement in favor of the holder of the security interest | <ul style="list-style-type: none"> • State may declare that one of the steps specified for effectiveness between the parties also is sufficient to render the security interest effective against third parties | <ul style="list-style-type: none"> • Security interests made effective against third parties as indicated under the Convention have priority over security interests made effective by other means under other law • Interests that become effective against third parties using a method under Article 12 rank based on occurrence of certain events • Interests granted by intermediary has priority over rights of account holders in certain circumstances • Additional detailed rules |

| Instrument | PIL rules | Key functional definitions | Effectiveness between parties | Effectiveness against third parties | Priority |
|--|---|--|--|--|--|
| <i>Convention on the Law Applicable to Trusts and on Their Recognition</i> | <ul style="list-style-type: none"> Trust is governed by the law chosen by the settlor Choice not effective if law chosen does not provide for trusts If no effective choice by settlor, trust is governed by the law with which it is most closely connected | <ul style="list-style-type: none"> “Trust” means the legal relationships created when assets are placed under control of a trustee for the benefit of a beneficiary or a specified purpose. This can include circumstances in which assets are placed under control of a trustee for purposes of securing an obligation | <ul style="list-style-type: none"> PIL only | <ul style="list-style-type: none"> PIL only | <ul style="list-style-type: none"> PIL only |

III. Detailed charts

Unidroit Convention on International Factoring

| Topic | Provisions of Instrument |
|--|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Receivables arising from sale of goods [Article 1.1 and 2.1] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Factoring contracts [Article 2.1] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • Yes. Supplier and debtor on underlying sales contract must be located in different states [Article 2.1] |
| <i>Principal Exclusions and Limitations</i> | <ul style="list-style-type: none"> • Parties to factoring contract may exclude application [Article 3.1(a)] • Parties to contract of sales of goods as to receivables arising from that contract, if notice given to factor [Article 3.1(b)] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • See United Nations Convention on Assignment of Receivables in International Trade which, by its terms, prevails over this Convention [Article 38.2] |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • None |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • “Factoring Contract” is contract where supplier assigns receivables arising from the sale of goods [Article 1.2] |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • No particular form required • May assign receivables in bulk [Article 5(a)] • May assign future receivables [Article 5(b)] • May assign receivables even if subject to anti-assignment term [Article 6.1] |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • None |
| <i>Priority</i> | <ul style="list-style-type: none"> • None |

Unidroit Convention on International Financial Leasing

| Topic | Provisions of Instrument |
|--|---|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Rights arising under financial leases |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Financial Leasing transactions [Article 1 and Article 2] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • Yes. Lessor and lessee must have their places of business in different States. [Article 3.1] |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • Application may be excluded if parties to both the leasing agreement and the supply agreement so agree [Article 5.2] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • Convention does not prevail over other treaties [Article 17] |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • None |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • Financial leasing transaction characteristics [Article 1] |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • No form required • Lessee may assign rights under the agreement with consent of lessor [Art. 14.2] |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • None, although some rights of third-party supplier are implicitly recognized (e.g. supplier's consent is required for the application of the Convention to be excluded) |
| <i>Priority</i> | <ul style="list-style-type: none"> • None |

United Nations Convention on the Assignment of Receivables in International Trade

| Topic | Provisions of Instrument |
|---|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Receivables [Article 2(a)] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Assignment of receivable [Article 2(a)] • Assignment of receivable as security [Article 2(a)] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • International assignments or assignments of international receivables only [Article 1(a)] |

| Topic | Provisions of Instrument |
|--|---|
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • Assignments to an individual for personal, family or household purpose [Article 4.1(a)] • Transactions on a regulated exchange [Article 4.2(a)] • Financial contracts governed by netting agreements, except for receivable owed on termination [Article 4.2(b)] • Inter-bank payment systems [Article 4.2(d)] • Securities [Article 4.2(e)] • Financial assets held with an intermediary [Article 4.2(e)] • Does not affect rights and obligations of a person under law governing negotiable instruments [Article 4.3] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • See Unidroit Convention on International Factoring; United Nations Convention on the Assignment of Receivables by its terms prevails over Unidroit Convention on International Factoring |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • Unidroit Convention on International Factoring [Article 38(2)] • In general, other international agreements that specifically govern a transaction otherwise within the scope of the Convention [Article 38(1)] |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • Law of the State where the assignor is located governs priority (including third-party effectiveness) of the right of an assignee of an assigned receivable over the right of a competing claimant [Article 22] • A person is located in the State in which it has its place of business [Article 5(h)] • If a person has places of business in more than one State, it is located at the place where the central administration of the person is exercised [Article 5(h)] • If a person has no place of business, the person is located at the place where it has its habitual residence [Article 5(h)] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • “Assignment” is the transfer by agreement from one person to another person of an interest in a receivable • “Assignment” includes an outright transfer and a transfer as security for an indebtedness or other obligation • “Receivable” is a contractual right to payment of a monetary sum • “Priority” includes not only rank order, but also whether any requirements necessary to render the right effective against a competing claimant have been satisfied |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • May assign all or part of a receivable [Article 8.1] • May assign future receivables [Article 8.1] • May assign receivables individually or in bulk assignment [Article 8.1] • No specific requirement as to form or method of assignment |

| Topic | Provisions of Instrument |
|--|--|
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • Substantive rule for proceeds (Article 24) • No substantive rule for other situations; effect of PIL rule is to apply law of the State in which the assignor is located [Article 22] • Optional Annex with substantive rules |
| <i>Priority</i> | <ul style="list-style-type: none"> • Substantive rule for proceeds (article 24) • No substantive rule for other situations; effect of PIL rule is to apply law of the State in which the assignor is located [Article 22] • Optional Annex with substantive rules |

UNCITRAL Legislative Guide on Secured Transactions and Supplement on Security Rights in Intellectual Property

| Topic | Provisions of Instrument |
|--|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • All types of movable assets, tangible and intangible [Recommendation 2] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Property right in a movable asset created by agreement to secure payment or performance of an obligation [Recommendation 2] • Sales of receivables without re-characterization [Recommendation 3] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • No |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • Mobile equipment in so far as covered by national law or international agreement to which State is a party [Recommendation 4(a)] and matters covered in the Legislative Guide are addressed in that law or agreement • Intellectual property in so far as the provisions of the Legislative Guide are inconsistent with national law to international agreement to which State is a party relating to intellectual property [Recommendation 4(b)] • Securities [Recommendation 4(c)] • Payment rights arising under or from financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions [Recommendation 4(d)] • Payment rights arising under or from foreign exchange transactions [Recommendation 4(e)] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • Mobile equipment • Intellectual property |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • Deferral to mobile equipment international agreements [Recommendation 4(a)] • Deferral to other international intellectual property agreements in so far as inconsistent with Legislative Guide [Recommendation 4(b)] |

| Topic | Provisions of Instrument |
|--|--|
| <i>PIL rules</i> | <ul style="list-style-type: none"> • Location of tangible asset [Recommendation 200] • Location of grantor for intangible asset (except for intellectual property, see below) [Recommendation 205] • For intellectual property, generally law of the State in which the intellectual property is protected, with certain exceptions |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • “Security right” is a property right in a movable asset that is created by agreement and secures payment or other performance of an obligation, regardless of whether the parties have denominated it as a security right • “Security right” also includes rights of an outright assignee of a receivable • “Retention-of-title right” means a seller’s right in a tangible asset pursuant to an arrangement by which ownership of the asset is not transferred until the unpaid portion of the purchase price is paid • “Financial lease right” means a lessor’s right in tangible asset (other than a negotiable instrument or negotiable document) that is the object of a lease agreement under which, at the end of the lease: (a) the lessee automatically becomes the owner of the asset that is the object of the lease; (b) the lessee acquire ownership of the asset by paying no more than a nominal price; or (c) the asset has no more than residual value |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • Agreement required [Recommendation 13] • Unless oral agreement is accompanied by possession of encumbered asset by secured creditor, agreement must be concluded or evidenced in writing and indicate, by itself or in conjunction with a course of conduct by the parties, the grantor’s intent to create a security right [Recommendation 15] • Otherwise, no specific requirement as to form • Agreement may create security right in multiple assets or future assets [Recommendation 23] |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • Generally registration required (including for retention-of-title right and for financial lease right in States choosing “non-unitary” approach) [Recommendation 32] • Exceptions for possession by secured creditor, control of certain encumbered assets [Recommendations 34(a)] |
| <i>Priority</i> | <ul style="list-style-type: none"> • Generally first to register or otherwise become effective against third parties [Recommendation 73(a)] • Registration in specialized registry has higher priority than registration in general registry [Recommendation 74] • Right in certain assets made effective against third parties by “control” has higher priority than other security rights in same asset [Recommendations 103 and 107] • Higher priority for acquisition security rights, if certain notices are given and procedures are followed, than for other security rights in the same asset [Recommendation 180] |

Unidroit Model Law on Leasing

| Topic | Provisions of Instrument |
|--|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Property used in the trade or business of the lessee [Article 2] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Transaction in which a person grants a right to possession and use of an asset for a specific term in return for rentals [Article 2] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • No [Article 1] |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • Leasing agreement that creates a security right or an acquisition financing right [Article 3.1] • Subject to real property laws [Article 3.2] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • No PIL rules as such, but the Model Law has rules determining which cross-border transactions a State's enactment may govern. A State's law may apply if leased asset is in the State, centre of main interests of the lessee is in the State, or leasing agreement provides that the law of the State applies |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • "Lease" is transaction in which a person grants a right to possession and use of an asset for a specific term in return for rentals • "Financial lease" is a lease where the lessee picks the asset and the supplier |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • No specific requirements stated other than existence of a transaction in which one person provides another person with the right to possess and use an asset for a specific term in exchange for rentals |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • Not applicable |
| <i>Priority</i> | <ul style="list-style-type: none"> • Creditor of the lessee takes subject to the rights and remedies of the parties to the lease and cannot impair any interest arising under the lease • Creditor of the lessor takes subject to the rights and remedies of the parties to the lease |

Convention on International Interests in Mobile Equipment

| Topic | Provisions of Instrument |
|--|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • The following categories of objects, when a Protocol has been adopted [Article 2] <ul style="list-style-type: none"> ○ Airframes, aircraft engines, and helicopters ○ Railway rolling stock ○ Space assets |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Rights created by a security agreement [Article 2.2(a)] • Rights created by a conditional sale [Article 2.2(b)], or • Rights created by a lease [Article 2.2(c)] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • No, but State may declare that certain aspects are inapplicable to “internal transactions.” [Article 50] |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • None |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • Prevails over the United Nations Convention on Assignment of Receivables in International Trade to the extent of any inconsistency [Article 45 bis] • Relationship with the Unidroit Convention on International Financial Leasing left to protocols |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • United Nations Convention on Assignment of Receivables in International Trade • Unidroit Convention on International Financial Leasing |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • Points to PIL rules of Forum State [Article 5] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • Agreement for the sale of an object on terms that ownership does not pass until fulfilment of a condition [Article 1(II)] • Agreement that grants an interest to secure the performance of an obligation [Article 1(ii)] |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • Agreement that satisfies the following provisions [Article 7] <ul style="list-style-type: none"> ○ Writing ○ Relates to object which the obligor has the power to dispose ○ Enables the object to be identified ○ Enables the secured obligation to be determined |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • Registration of interest in international registry [Article 29] |

| Topic | Provisions of Instrument |
|-----------------|---|
| <i>Priority</i> | <ul style="list-style-type: none"> • Generally registration defeats all subsequent interests, as described below [Article 29] <ul style="list-style-type: none"> ○ First interest registered has priority over a later-registered interest ○ Registered interest has priority over an unregistered interest ○ Buyer acquires interest subject to registered interest ○ Buyer acquires interest free of unregistered interest ○ In all cases knowledge of existing unregistered interest does not affect priority |

*Protocol to the Convention on International Interests in Mobile Equipment on
Matters Specific to Aircraft Equipment*

| Topic | Provisions of Instrument |
|--|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Aircraft objects, as specified below [Article II] • Airframes • Aircraft engines • Helicopters |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • As provided in the Convention on International Interests in Mobile Equipment |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • As provided in the Convention on International Interests in Mobile Equipment |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • None |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • Prevails over the Convention on the International Recognition of Rights in Aircraft, the Convention for the Unification of Certain Rules in Aircraft, and the Unidroit Convention on International Financial Leasing as they relate to aircraft objects |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • Convention on the International Recognition of Rights in Aircraft [Article XXIII] • Convention for the Unification of Certain Rules relating to the Precautionary Attachment of Aircraft [Article XXIV] • Unidroit Convention on International Financial Leasing [Article XXV] |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • Optional rules [Article VIII] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • As provided in the Convention on International Interests in Mobile Equipment |

| Topic | Provisions of Instrument |
|--|---|
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> Registration in international registry [Chapter III] Description of aircraft object must include manufacturer's serial number [Article VI] |
| <i>Priority</i> | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment |

Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock

| Topic | Provisions of Instrument |
|--|--|
| <i>Assets covered</i> | <ul style="list-style-type: none"> Railway rolling stock [Article II.1] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment Sales (partial) [Article III] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> None |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> To the extent of any inconsistency, the Protocol prevails over the Unidroit Convention on International Financial Leasing and the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of Modification of 3 June 1999 |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> Unidroit Convention on International Financial Leasing [Article XIX] Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of Modification of 3 June 1999 [Article XX] |
| <i>PIL rules</i> | <ul style="list-style-type: none"> Parties may agree on the law that will govern their contractual rights and obligations, if Contracting State has made a declaration under Article XXVII [Article VI] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> As provided in the Convention on International Interests in Mobile Equipment Additional provisions for identification of railway rolling stock [Article XIV] |

| Topic | Provisions of Instrument |
|--|--|
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • International registry [Chapter III] |
| <i>Priority</i> | <ul style="list-style-type: none"> • As provided in the Convention on International Interests in Mobile Equipment |

Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary

| Topic | Provisions of Instrument |
|--|---|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Securities held with an intermediary [Article 2] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Legal effects of crediting a security to a securities account (applicable law) [Article 2(1)] • Legal effects of disposition of securities credited to a securities account (applicable law) [Article 2(1)] • Requirements for perfection of a disposition of securities held with an intermediary (applicable law) [Article 2(1)] • Priority of interests in securities held with an intermediary (applicable law) [Article 2(1)] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • Yes. Convention applies in all cases involving a choice between the laws of different States [Article 3] |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • Rights and duties arising from the credit of securities to a securities account to the extent that such rights or duties are purely contractual or otherwise purely personal [Article 2(3)(a)] • Contractual or other personal rights and duties of parties to a disposition of securities held with an intermediary [Article 2(3)(b)] • Rights and duties of an issuer of securities or of an issuer's registrar or transfer agent [Article 2(3)(c)] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • None |

| Topic | Provisions of Instrument |
|--|---|
| <i>PIL rules</i> | <ul style="list-style-type: none"> • Law expressly agreed in the account agreement with the securities intermediary, provided the intermediary has a qualifying office in the State whose law has been chosen [Article 4(1)] • If above rule is inapplicable, law of the place of the office that a written account agreement expressly and unambiguously identifies as the office through which the relevant intermediary entered into the account agreement [Article 5(1)] • If above rules are inapplicable, law of the place of incorporation or organization of the relevant intermediary [Article 5(2)] • If above rules are inapplicable, law of the principal place of business of the relevant intermediary [Article 5(3)] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • “intermediary” means a person that in the course of a business or other regular activity maintains securities accounts for others or both for others and for its own account and is acting in that capacity [Article 1(1)(c)] • “relevant intermediary” means the intermediary that maintains the securities account for the account holder [Article 1(1)(g)] |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • PIL only |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • PIL only |
| <i>Priority</i> | <ul style="list-style-type: none"> • PIL only |

Unidroit Convention on Substantive Rules Regarding Intermediated Securities

| Topic | Provisions of Instrument |
|---|---|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • Intermediated securities [Article 1] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Rights of the account holder [Chapter II] • Transfer of intermediated securities [Chapter III] • Integrity of the intermediated holding system [Chapter IV] • Special provisions for collateral transactions [Chapter V] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • No |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • None |

| Topic | Provisions of Instrument |
|--|--|
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • None. Convention, which provides substantive rules, is applicable when: (a) choice-of-law rules of forum state designate the law of a Contracting State [Article 2(a)]; or (b) circumstances do not involve choice of any other law and the forum State is a Contracting State [Article 2(b)] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • “Intermediated securities” are securities credited to a securities account • Refers to “rights or interests” in securities, but does not define them • “Control agreement” is an agreement in relation to intermediated securities between an account holder, the relevant intermediary and another person, which includes either or both of the following provisions: (a) that the relevant intermediary is not permitted to comply with any instructions given by the account holder in relation to the intermediated securities to which the agreement relates without the consent of that other person; (b) that the relevant intermediary is obliged to comply with any instructions given by that other person in relation to the intermediated securities to which the agreement relates in such circumstances and as to such matters as may be provided by the agreement, without any further consent of the account holder; [Article 1(k)] • “Designating entry” is an entry in a securities account made in favour of a person (including the relevant intermediary) other than the account holder in relation to intermediated securities, which, under the account agreement, a control agreement, the uniform rules of a securities settlement system or the non-Convention law, has either or both of the following effects: (a) that the relevant intermediary is not permitted to comply with any instructions given by the account holder in relation to the intermediated securities as to which the entry is made without the consent of that person; (b) that the relevant intermediary is obliged to comply with any instructions given by that person in relation to the intermediated securities as to which the entry is made in such circumstances and as to such matters as may be provided by the account agreement, a control agreement or the uniform rules of a securities settlement system, without any further consent of the account holder; [Article 1(l)] • “Security collateral agreement” is an agreement between a collateral provider and a collateral taker providing (in whatever terms) for the grant of an interest other than full ownership in intermediated securities for the purpose of securing the performance of relevant obligations.” [Article 31.3(b)] • “Title transfer collateral agreement” is an agreement, including an agreement providing for the sale and repurchase of securities, between a collateral provider and a collateral taker providing (in whatever terms) for |

| Topic | Provisions of Instrument |
|--|--|
| <i>Effectiveness between parties</i> | <p data-bbox="576 293 1362 383">the transfer of full ownership of intermediated securities by the collateral provider to the collateral taker for the purpose of securing or otherwise covering the performance of relevant obligations.” [Article 31.3(c)]</p> <ul data-bbox="539 416 1386 685" style="list-style-type: none"> • Account holder must enter into an agreement with person holding security interest and at least one of the following applies [Article 12.1(a)] • Intermediary is holder of the security interest [Article 12.3(a)] • Intermediary makes a designating entry in its records that has the effect of giving only the holder of the security interest the right to give effective instructions to the intermediary [Article 12.3(b)] • There is a control agreement in favour of the holder of the security interest [Article 12.3(c)] |
| <i>Effectiveness against third parties</i> | <ul data-bbox="539 712 1386 801" style="list-style-type: none"> • State may declare that one of the steps specified for effectiveness between the parties also is sufficient to render the security interest effective against third parties [Article 12.5(a)] |
| <i>Priority</i> | <ul data-bbox="539 824 1386 1234" style="list-style-type: none"> • Security interests made effective against third parties as indicated under the Convention have priority over security interests made effective by other means under other law [Article 19.2] • For security interests made effective against third parties under the Convention, order of becoming effective determines priority, subject to following rule [Article 19.3] • For a security interest made effective against third parties where the intermediary is the holder of the security interest, and makes a designating entry or enters into a control agreement with the consequence that an interest of another person becomes effective against third parties, the interest of that other person has priority over the interest of the intermediary unless that other person and the intermediary expressly agree otherwise [Article 19.4] |
| <i>Other</i> | <ul data-bbox="539 1261 1386 1538" style="list-style-type: none"> • An intermediary must, for each description of securities, hold or have available securities and intermediated securities of an aggregate number or amount equal to the aggregate number or amount of securities of that description credited to securities accounts that it maintains for its account holders other than itself [Article 24.1(a)] • Securities held by an intermediary to comply with this obligation shall not form part of the property of the intermediary available for distribution among or realisation for the benefit of creditors of the intermediary [article 25.1 and 2] |

Convention on the Law Applicable to Trusts and on their Recognition

| Topic | Provisions of Instrument |
|--|---|
| <i>Assets covered</i> | <ul style="list-style-type: none"> • All assets, movable or immovable, that are placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose [Article 2] |
| <i>Transactions or issues covered</i> | <ul style="list-style-type: none"> • Generally, the law applicable to validity of a trust, its construction, its effects, and administration of the trust [Article 8] • Law applicable to appointment, removal, etc. of trustees [Article 8 (a)] • Law applicable to rights and duties of trustees and extent to which duties are delegable [Article 8(b)-(c)] • Law applicable to power of trustee to acquire, dispose of, or grant security in assets, and to administer assets [Article 8(d)] • Law applicable to investment powers of trustee [Article 8(e)] • Law applicable to restrictions on duration of trust and upon power to accumulate income [Article 8(f)] • Law applicable to relationship between trustee and beneficiary [Article 8(g)] • Law applicable to variation or termination of trust [Article 8(h)] • Law applicable to distribution of trust assets [Article 8(i)] • Law applicable to duty of trustees to account for their administration [Article 8(j)] |
| <i>International transactions only?</i> | <ul style="list-style-type: none"> • No |
| <i>Principal exclusions and limitations</i> | <ul style="list-style-type: none"> • Applies only to trusts created voluntarily and in writing [Article 3] • Does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee [Article 4] |
| <i>Possible overlap with other international instruments</i> | <ul style="list-style-type: none"> • Trusts are often used as security devices, either as a matter of custom or convenience or when other security devices are unavailable as a matter of domestic law. By assuring that a trust for purpose of security is recognized as such in non-trust jurisdictions, there is possible overlap with other instruments that govern security devices regardless of their form, such as the United Nations Convention on the Assignment of Receivables in International Trade, the UNCITRAL Legislative Guide on Secured Transactions, and the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary. In the case of overlap with the United Nations Convention, the latter will defer pursuant to Article 38(1) of that Convention. In the case of overlap with the UNCITRAL Legislative Guide on Secured Transactions, the enacting State will resolve any conflict between domestic legislation and Convention. In the case of overlap with the Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, general methods for resolving conflicts between conventions are applicable. |

| Topic | Provisions of Instrument |
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| <i>References to other international instruments</i> | <ul style="list-style-type: none"> • None |
| <i>PIL rules</i> | <ul style="list-style-type: none"> • Trust is governed by the law chosen by the settlor [Article 6] • Settlor's choice not effective if the law chosen by the settlor does not provide for trusts or for the category of trust involved [Article 6] • If settlor does not make an effective choice of applicable law, a trust is governed by the law with which it is most closely connected [Article 7] |
| <i>Key functional definitions</i> | <ul style="list-style-type: none"> • "Trust" means the legal relationships created when assets are placed under control of a trustee for the benefit of a beneficiary or a specified purpose [Article 2] |
| <i>Effectiveness between parties</i> | <ul style="list-style-type: none"> • Determined by applicable law • However, Convention does not prevent application of provisions of law designated by the conflicts laws of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating to, inter alia, security interests in property [Article 15] |
| <i>Effectiveness against third parties</i> | <ul style="list-style-type: none"> • Determined by applicable law • However, Convention does not prevent application of provisions of law designated by the conflicts laws of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating to, inter alia, security interests in property [Article 15] |
| <i>Priority</i> | <ul style="list-style-type: none"> • Determined by applicable law • However, Convention does not prevent application of provisions of law designated by the conflicts laws of the forum, in so far as those provisions cannot be derogated from by voluntary act, relating to, inter alia, security interests in property [Article 15] |
| <i>Other</i> | <ul style="list-style-type: none"> • A trust created in accordance with the applicable law shall be recognized as a trust. [Article 11] This assures that a trust, including a trust created for security purposes, is recognized as such in non-trust jurisdictions. • Specifies the minimum effects of a trust. [Article 11] |