UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN INTERNATIONAL TRADE

Implementation in Canada

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Canada is a federal state and implementation of a private law international convention requires legislation at the federal level for matters falling under the jurisdiction of the Parliament of Canada and at the provincial levels for matters falling under the legislative authority of the provinces. As most of the matters dealt with in the Convention are within provincial jurisdiction, provincial implementing legislation is required.

The "federal clauses"[2] in the Convention permit Canada to ratify the Convention before implementing legislation is enacted in all provinces, that is, by declaring that the Convention will apply only in that province that have adopted implementing legislation. Subsequent declarations may then extend the application of the Convention in the other provinces when they enact their legislation.

The Uniform Law Conference of Canada has recommended the implementation of the Convention by the Canadian provinces. No such provincial legislation has been tabled so far but it is likely that ratification of the Convention by the United States would be an incentive to do so: in the Canadian context, a significant part of the receivables or assignments falling within the scope of the Convention involve U.S. parties. Therefore, ratification by the United States would result in a greater need for harmonization between Canada and the United States of legal rules applicable to international assignments or international receivables.

That being said, from a broad perspective, the laws currently in effect in the various Canadian provinces recognize the basic concepts and rules of the Convention.

For instance, at the substantive level, Canadian law is already in line with the Convention rule that recognizes the validity of an assignment of multiple and future receivables, even if these

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[2] Articles 35, 36 and 37.

receivables are not identified in the assignment[3]; it is possible in each Canadian province for a business enterprise to assign to its bank all of its present and future receivables, without any further description.

The Convention does not provide for substantive priority rules and rather addresses priority issues through a conflict-of-laws rule. Article 22 states that the law of the State in which the assignor is located governs the priority of the right of an assignee in the assigned receivable over the right of a competing claimant. If an assignor is located in State X, the law of State X will govern the priority of the assignee against competing claimants such as another assignee or an insolvency administrator of the assignor[4]. The location of the assignor is its place of business where its "central administration" is exercised; an assignor who has no place of business is located at its habitual residence.

The laws of all Canadian province contain an equivalent conflict-of-laws rule except that in the province of Quebec the equivalent rule applies only to assignments by way of security; moreover, under the Quebec rule, the location of the assignor is the place of its legal domicile, which may not necessarily coincide with the place where senior management decisions are taken; the legal domicile of a corporation is its statutory head office, and it might happen that the statutory head office be located in a State other than the State of the location of the real head office.

The Convention applies to both an outright assignment (i.e. an absolute transfer of ownership such as a sale) and an assignment made by the assignor to secure an obligation to the assignee[5]. Consistency with the Convention has therefore dictated the adoption in the Uncitral Legislative Guide on Security Rights of rules similar to those of the Convention where the assets subject to a security right are receivables. The conflict-of-laws rules of the Guide for the priority of a security right in receivables is thus the same as under the Convention.

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[3] Article 2.

[4] The term "competing claimants" is defined in Article 5.

[5] Article 2.