Negotiable Documents under UNCITRAL Instruments

Paper Based and Electronic
List of Relevant Instruments

- UNCITRAL Model Law on Secured Transactions
- Draft UNCITRAL Model Law on ETRs
- The Rotterdam Rules
- UNCITRAL Model Law on Electronic Commerce
Negotiable Document

- Includes bills of lading and warehouse receipts (see the term in LG on Secured Transactions)
UNCITRAL ML on Secured Transactions

UNCITRAL MLST applies to “most” movable assets

Specific Rules for Paper Negotiable Documents

General Rules to Non-negotiable Documents

General Rules to Electronic (non) Negotiable Documents
Special Rules

- Article 16 – creation

- Article 26 – third-party effectiveness
  - Registration
  - Possession
  - Temporary

- Article 49 – priority

- Article 70 – rights against the issuer

- Articles 85, 96 and 98 conflicts rules
 Depends on Other Law

• Is warehouse receipt a negotiable document or a non-negotiable document of title?

• Priority of a transferee under Article 49(3)

“In most States, the law governing negotiable documents is well developed and contains clear rules...”

(Legislative Guide at 270)
Electronic WRs

• See footnote 25 in the Legislative Guide:

    *The Guide contemplates that an enacting State that wishes to address this matter could do so...*

• Need for special third-party effectiveness and priority rules
Draft Model Laws on ETRs

- ETRs exclude certain assets such as securities
- Technology neutral, including distributed ledger (blockchain)
- **ML may not be used to create ETRs that do not have paper equivalents**
ETRs and Security Rights

- Model Law does not contain provisions on the use of ETRs as collateral

- “Control” to transfer rights in ETR (Article 10)

- Control is not defined – equivalent to possession

- Article 16 on endorsement of ETRs
Rotterdam Rules

• Electronic transport records

• Control and transfer of rights
Model Law on E-Commerce

• Part II (Chapter 1) Carriage of Goods

• Covers negotiable and non-negotiable transport documents (electronic)
Application of UNCITRAL Instruments

- Coverage of warehouse receipts is not comprehensive

- Treatment of security rights in non-negotiable WRs and EWRs through general rules only

- Dependence on local law of negotiable documents
THANK YOU!

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