

Implementation of the UN Receivables Convention in the United States

Edwin E. Smith

Bingham McCutchen LLP

Uniform Law Commission

1 March 2010

Implementation Committee

- Multinational
 - U.S. American Law Institute
 - U.S. Uniform Law Commission
 - Canadian Uniform Law Conference
 - Mexican Uniform Law Center
- Process
 - Several meetings; numerous telephone calls
 - Meetings with industry groups

Substantive Interest

- Conflict of laws rule
 - Knowing which law determines priority
- Substantive proceeds rule
- Validation of
 - bulk assignments
 - present assignment of future receivables
- Override of anti-assignment terms
- Rights and obligations of the debtor

Possible Methods of Implementation

- Federal system
- States of the United States do not have treaty making powers

Possible Methods of Implementation

- Self-execution
- Federal implementing legislation
- Implementation through state law
- Some combination
 - Federal implementation in part; state law implementation in part
 - Cf. UN Letter of Credit Convention
 - Reverse pre-emption

Chosen Method

- Self-execution without federal implementing legislation
 - U.S. has signed; need advice and consent from U.S. Senate

Chosen Method

- Reasons for selecting self-execution method of implementation
 - Simplicity
 - Could not rely on state law
 - Conflict of laws rule
 - Overlap of the Convention with UCC Article 9 not exact
 - Convention is broader (e.g., insurance receivables, real estate receivables) than UCC Article 9
 - No uniform state law beyond UCC Article 9

Declarations

- Internal conflict of laws declaration
 - Example: Assignor is a Delaware corporation with its place of business in New York.
 - When the Convention says that the assignor is located in the U.S., the declaration would apply New York conflict of laws rules under UCC Article 9 that point to Delaware law to determine priority

Education

- Confluence with the UCC with certain exceptions
 - Scope
 - Conflict of laws rule
- Official Comment changes to the UCC
- Commentary by Permanent Editorial Board of the UCC
- Other education projects

Status

- Possible treaty package for consideration
 - UN Receivables Convention
 - UN Letter of Credit Convention
 - Hague Convention on Law Applicable to Securities Held with an Intermediary