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| <p style="text-align: center;">UNCITRAL - Third International Colloquium on Secured Transactions Presentation by Steve Weise</p> |
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CONTRACTUAL GUIDE TO SECURED TRANSACTIONS

1. Introduction

1.1 *Subject*

1.2 *Panelists*

1.3 *What is a “contractual guide”*

(a) Difference between a Legislative Guide and a Contractual Guide

1.4 *Relationship with contract law and law of obligations generally*

(a) Legislative guide does not replace all of contract law and the law of obligations

1.5 *Party autonomy under the Guide (Recommendation 10)*

(a) Agreement of the parties determines many rights and obligations (Recommendation 110)

(b) Certain mandatory rules (Recommendation 111)

(1) Obligations of good faith and commercial reasonableness cannot be waived (Recommendation 132)

(c) Certain non-mandatory rules (Recommendation 112)

(d) Variations permitted after default (Recommendation 133-134)

(e) Generally cannot affect the rights of a third party (Recommendation 135)

2. Overview of contractual guide

2.1 *Desirability of having a contractual guide*

2.2 *Need for a contractual guide*

2.3 *Feasibility*

(a) Can “one size fit all” for a contractual guide?

(b) Can a contractual guide assist for both civil and common law legal systems?

2.4 *Novel provisions in the Guide that would benefit from more guidance*

2.5 *Examples:*

(a) Name of grantor

(b) Descriptions of encumbered assets

2.6 *Consider scope of Guide*

(a) Make provision for kinds of encumbered assets not subject to the scope of the *Guide* (Recommendation 4)

2.7 *Consider possible effect of consumer law of applicable jurisdiction*

2.8 *Key issues and model clauses*

2.9 *Consider effect of putting a label on the transaction to disguise the application of the secured transactions law (Recommendation 8)*

3. Preparation of a contractual guide

3.1 *What kinds of provisions does the Guide contemplate that a security agreement will or may address?*

3.2 *Form of contract*

(a) Need for a writing (Recommendation 15)

3.3 *Meaning of the agreement – usage and practices (Recommendation 110)*

3.4 *Reflect intent to create a security right (Recommendation 14(a))*

3.5 *Identify grantor (Recommendation 14(b))*

(a) Type of entity

(b) Jurisdiction of formation

(c) Jurisdiction of location of grantor

3.6 *Identify secured creditor*

3.7 *Describe the secured debt or obligation (Recommendation 14(c))*

(a) State maximum amount (Recommendation 14(e))

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- (b) Secure future loans and advances?
- 3.8 *Describe encumbered assets (Recommendation 14(d))*
 - (a) By category or type?
 - (b) How much specificity?
 - (c) Location of the encumbered assets?
 - (d) Applies to future assets?
 - (1) Require new act of transfer for future assets? (Recommendation 23(b))
 - (e) Limit scope of “proceeds”? (Recommendation 19)
- 3.9 *Agreements of grantor to protect effectiveness*
 - (a) Restrictions on transfer of encumbered assets (Recommendation 81)
 - (b) Restrictions on creating other security rights in the encumbered assets
 - (c) Restrictions on grantor changing its name
 - (d) Restrictions on amalgamations with others
- 3.10 *Representations about the grantor and the encumbered assets*
 - (a) Ownership of the encumbered assets
 - (b) Title to the encumbered assets
 - (1) Does grantor promise that it has right to assign receivables? (Recommendation 114(a))
 - (2) Does grantor promise that debtor on the receivable will pay? (Recommendation 114(b))
- 3.11 *Provide for actions and grantor’s cooperation to make the security right effective against third parties*
 - (a) Registration in general security rights registry
 - (b) Registration in specialized registries
 - (c) Other methods to make the security right effective against third parties
 - (d) Consider need for subordination agreement (Recommendation 94)
- 3.12 *Provide for right of secured creditor to protect value of encumbered assets (Intellectual Property Supplement to Guide)*
- 3.13 *Default and enforcement issues*
 - (a) Definition of “default”
 - (b) Preservation of encumbered assets
 - (c) Provide who will pay expenses of transaction (Recommendation 113)
 - (d) Agreements concerning collection of receivables
 - (1) Notification of the debtor on a receivable (Recommendation 115)
 - (2) Right to collection of receivable (Recommendation 116)
 - (e) Grantor’s consent to extra-judicial possession following default (Recommendation 147)
- 3.14 *Notices (Recommendations 149-151)*
 - (a) To whom do notices go and at what address
- 3.15 *Choice of law (Recommendation 216)*
 - (a) May designate law applicable to rights of grantor and secured creditor as between each other
- 3.16 *Electronic contracting (Recommendations 11-12)*
- 3.17 *Best practices*
 - (a) Simplicity
 - (b) Level of detail