

UNCITRAL-4TH INTERNATIONAL
COLLOQUIUM ON SECURED
TRANSACTIONS

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The law applicable to proprietary effects of assignments of receivables

NORTH AMERICA

Outline

- Context
- General Rule: law of jurisdiction where debtor located
- Location of Debtor
- Exceptions to general rule

CONTEXT

U.S. and Canada both federal states

- Number and size of federal ‘units’
- Allocation of law-making authority

Legal sources

- Different legal heritage
 - English-speaking Canada looks to England
 - Quebec looks to France
 - U.S. early break from English common law
- Choice of law rules usually not codified

Applicable law

United States

Domestic: Uniform Commercial Code

- Applicable law: §§1-301; 9-301, 9-307
- Law applicable: Article 9
- UCC adopted by all states
- Covers both security and outright assignment

International: Cape Town; [Receivables Convention]

Canada

Domestic: PPSA; Quebec Civil Code

- PPSA: both security and outright assignment
- Quebec: different choice of law rule for outright transfer
 - Civil Code art. 3102 (sale of claim governed by location of claim)

International: Cape Town

General Applicable Law Rule

UNCITRAL Model Law, Arts. 86 & 88

- Art. 86: *** the law applicable to the creation, effectiveness against third parties and priority of a security right in an intangible asset is the law of the State in which the grantor is located.
- Art. 88: The law applicable to issues relating to the enforcement of a security right in: *** (b) An intangible asset is the law applicable to the priority of the security right, ***.

General applicable law rule—U.S.

Uniform Commercial Code § 9-301(1):

- *** while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral. Uniform Commercial Code § 9-301(1):

UCC § 1-301 (party agreement on applicable law enforceable if reasonable relation; if no agreement, UCC applies if appropriate relation)

General applicable law rule—Canada

Alberta PPSA, RSA 2000, c P-7, s 7(2)

- The validity, perfection and effect of perfection or non-perfection of (a) a security interest in (i) an intangible *** must be governed by the law, including the conflict of laws rules, of the jurisdiction where the debtor is located at the time the security interest attaches.

Location of Debtor

UNCITRAL Model Law, Art. 90:

*** the grantor is located:

- (a) In the State in which it has a place of business'
- (b) If the grantor has a place of business in more than one State, in the State in which the central administration of the grantor is exercised, and
- (c) If the grantor does not have a place of business, in the State in which the grantor has his or her habitual residence.

Location of Debtor-U.S.

Uniform Commercial Code § 9-307(b):

- Except as otherwise provided in this section, the following rules determine a debtor's location:
 - (1) An debtor who is an individual is located at the individual's principal residence.
 - (2) A debtor that is an organization and has only one place of business is located at its place of business.
 - (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

UCC §§ 9-307(e), 9-102(a)(71):

- A registered organization that is organized under the law of a State is located in that State.

Location of Debtor—US. (foreign)

UCC § 9-307(c):

- (c) [**Limitation of applicability of subsection (b)**]
Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.
- Comment 3, UCC 9-307 [gloss]

Location of Debtor-U.S. (Former law)

Pre-2001 UCC § 9-103(3)(c)

- (c) If, however, the debtor is located in a jurisdiction which is not part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative in a jurisdiction which is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. ***

Comment 8 to UCC 9-301: “Former Section 9-103(3)(c) *** proved unsatisfactory and was deleted.”

Location of Debtor—Canada

Alberta PPSA, RSA 2000, c P-7, s 7(1)

*** a debtor is deemed to be located

- (a) at the debtor's place of business, if the debtor has a place of business,
- (b) at the debtor's chief executive office, if the debtor has more than one place of business, and
- (c) At the debtor's principal residence, if the debtor has no place of business.

Ontario PPSA, RSO 1990, c P.10, s 7(3) (2016 amendment approximates U.S. law)

Location of Debtor—Canada (foreign)

Alberta PPSA, RSA 2000, c P-7, s 7(4):

If the law governing the perfection of a security interest referred to in [subsection (2)] does not provide for public registration or recording of the security interest or a notice relating to it, *** the security interest is subordinate to (a) an interest in an account payable in the Province *** unless it is perfected under this Act before the interest arises.

Exceptions

UNCITRAL Model Law, Arts. 87, 97-100

Art. 87: receivables relating to immovable property

Art. 97: payment of funds credited to a bank account (see also art. 98)

Art. 99: intellectual property

Art. 100: non-intermediated securities

Exceptions—U.S.

Uniform Commercial Code

- § 9-301(4): As-extracted collateral
- § 9-304: Bank accounts
- § 9-305: Investment property
- § 9-306: Letter-of-credit rights

Exceptions—Canada

Alberta PPSA, RSA 2000 c. P-7, ss. 7 & 7.1

7(6): accounts arising from sale of minerals, location where wellhead or minehead are located

7.1: investment securities