

*United Nations
Convention
on the Assignment
of Receivables in
International Trade*



UNITED NATIONS

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ON THE ASSIGNMENT
OF RECEIVABLES IN
INTERNATIONAL TRADE**



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United Nations Convention on the Assignment of Receivables in International Trade

PREAMBLE

The Contracting States,

Reaffirming their conviction that international trade on the basis of equality and mutual benefit is an important element in the promotion of friendly relations among States,

Considering that problems created by uncertainties as to the content and the choice of legal regime applicable to the assignment of receivables constitute an obstacle to international trade,

Desiring to establish principles and to adopt rules relating to the assignment of receivables that would create certainty and transparency and promote the modernization of the law relating to assignments of receivables, while protecting existing assignment practices and facilitating the development of new practices,

Desiring also to ensure adequate protection of the interests of debtors in assignments of receivables,

Being of the opinion that the adoption of uniform rules governing the assignment of receivables would promote the availability of capital and credit at more affordable rates and thus facilitate the development of international trade,

Have agreed as follows:

CHAPTER I. SCOPE OF APPLICATION

Article 1. Scope of application

1. This Convention applies to:

(a) Assignments of international receivables and to international assignments of receivables as defined in this chapter, if, at the time of conclusion of the contract of assignment, the assignor is located in a Contracting State; and

(b) Subsequent assignments, provided that any prior assignment is governed by this Convention.

2. This Convention applies to subsequent assignments that satisfy the criteria set forth in paragraph 1 (a) of this article, even if it did not apply to any prior assignment of the same receivable.

3. This Convention does not affect the rights and obligations of the debtor unless, at the time of conclusion of the original contract, the debtor is located in a Contracting State or the law governing the original contract is the law of a Contracting State.

4. The provisions of chapter V apply to assignments of international receivables and to international assignments of receivables as defined in this chapter independently of paragraphs 1 to 3 of this article. However, those provisions do not apply if a State makes a declaration under article 39.

5. The provisions of the annex to this Convention apply as provided in article 42.

Article 2. Assignment of receivables

For the purposes of this Convention:

(a) “Assignment” means the transfer by agreement from one person (“assignor”) to another person (“assignee”) of all or part of or an undivided interest in the assignor’s contractual right to payment of a monetary sum (“receivable”) from a third person (“the debtor”). The creation of rights in receivables as security for indebtedness or other obligation is deemed to be a transfer;

(b) In the case of an assignment by the initial or any other assignee (“subsequent assignment”), the person who makes that assignment is the assignor and the person to whom that assignment is made is the assignee.

Article 3. Internationality

A receivable is international if, at the time of conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4. Exclusions and other limitations

1. This Convention does not apply to assignments made:

(a) To an individual for his or her personal, family or household purposes;

(b) As part of the sale or change in the ownership or legal status of the business out of which the assigned receivables arose.

2. This Convention does not apply to assignments of receivables arising under or from:

(a) Transactions on a regulated exchange;

(b) Financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(c) Foreign exchange transactions;

(d) Inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(e) The transfer of security rights in, sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary;

(f) Bank deposits;

(g) A letter of credit or independent guarantee.

3. Nothing in this Convention affects the rights and obligations of any person under the law governing negotiable instruments.

4. Nothing in this Convention affects the rights and obligations of the assignor and the debtor under special laws governing the protection of parties to transactions made for personal, family or household purposes.

5. Nothing in this Convention:

(a) Affects the application of the law of a State in which real property is situated to either:

(i) An interest in that real property to the extent that under that law the assignment of a receivable confers such an interest; or

(ii) The priority of a right in a receivable to the extent that under that law an interest in the real property confers such a right;
or

(b) Makes lawful the acquisition of an interest in real property not permitted under the law of the State in which the real property is situated.

CHAPTER II. GENERAL PROVISIONS

Article 5. Definitions and rules of interpretation

For the purposes of this Convention:

(a) “Original contract” means the contract between the assignor and the debtor from which the assigned receivable arises;

(b) “Existing receivable” means a receivable that arises upon or before conclusion of the contract of assignment and “future receivable” means a receivable that arises after conclusion of the contract of assignment;

(c) “Writing” means any form of information that is accessible so as to be usable for subsequent reference. Where this Convention requires a writing to be signed, that requirement is met if, by generally accepted means or a procedure agreed to by the person whose signature is required, the writing identifies that person and indicates that person’s approval of the information contained in the writing;

(d) “Notification of the assignment” means a communication in writing that reasonably identifies the assigned receivables and the assignee;

(e) “Insolvency administrator” means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or liquidation of the assignor’s assets or affairs;

(f) “Insolvency proceeding” means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the assignor are subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(g) “Priority” means the right of a person in preference to the right of another person and, to the extent relevant for such purpose, includes the determination whether the right is a personal or a property right, whether or not it is a security right for indebtedness or other obligation and whether any requirements necessary to render the right effective against a competing claimant have been satisfied;

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

(i) “Law” means the law in force in a State other than its rules of private international law;

(j) “Proceeds” means whatever is received in respect of an assigned receivable, whether in total or partial payment or other satisfaction of the receivable. The term includes whatever is received in respect of proceeds. The term does not include returned goods;

(k) “Financial contract” means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, equities, bonds, indices or any other financial instrument, any repurchase or securities lending transaction, and any other transaction similar to any transaction referred to above entered into in financial markets and any combination of the transactions mentioned above;

(l) “Netting agreement” means an agreement between two or more parties that provides for one or more of the following:

- (i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise;
- (ii) Upon the insolvency or other default by a party, the termination of all outstanding transactions at their replacement or fair market values, conversion of such sums into a single currency and netting into a single payment by one party to the other; or
- (iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) of this article under two or more netting agreements;

(m) “Competing claimant” means:

- (i) Another assignee of the same receivable from the same assignor, including a person who, by operation of law, claims a right in the assigned receivable as a result of its right in other property of the assignor, even if that receivable is not an international receivable and the assignment to that assignee is not an international assignment;
- (ii) A creditor of the assignor; or
- (iii) The insolvency administrator.

Article 6. Party autonomy

Subject to article 19, the assignor, the assignee and the debtor may derogate from or vary by agreement provisions of this Convention relating to their respective rights and obligations. Such an agreement does not affect the rights of any person who is not a party to the agreement.

Article 7. Principles of interpretation

1. In the interpretation of this Convention, regard is to be had to its object and purpose as set forth in the preamble, to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

2. Questions concerning matters governed by this Convention that are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

CHAPTER III. EFFECTS OF ASSIGNMENT

Article 8. Effectiveness of assignments

1. An assignment is not ineffective as between the assignor and the assignee or as against the debtor or as against a competing claimant, and the right of an assignee may not be denied priority, on the ground that it is an assignment of more than one receivable, future receivables or parts of or undivided interests in receivables, provided that the receivables are described:

(a) Individually as receivables to which the assignment relates; or

(b) In any other manner, provided that they can, at the time of the assignment or, in the case of future receivables, at the time of conclusion of the original contract, be identified as receivables to which the assignment relates.

2. Unless otherwise agreed, an assignment of one or more future receivables is effective without a new act of transfer being required to assign each receivable.

3. Except as provided in paragraph 1 of this article, article 9 and article 10, paragraphs 2 and 3, this Convention does not affect any limitations on assignments arising from law.

Article 9. Contractual limitations on assignments

1. An assignment of a receivable is effective notwithstanding any agreement between the initial or any subsequent assignor and the debtor or any subsequent assignee limiting in any way the assignor's right to assign its receivables.

2. Nothing in this article affects any obligation or liability of the assignor for breach of such an agreement, but the other party to such agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

3. This article applies only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

Article 10. Transfer of security rights

1. A personal or property right securing payment of the assigned receivable is transferred to the assignee without a new act of transfer. If such a right, under the law governing it, is transferable only with a new act of transfer, the assignor is obliged to transfer such right and any proceeds to the assignee.

2. A right securing payment of the assigned receivable is transferred under paragraph 1 of this article notwithstanding any agreement between the assignor and the debtor or other person granting that right, limiting in any way the assignor's right to assign the receivable or the right securing payment of the assigned receivable.

3. Nothing in this article affects any obligation or liability of the assignor for breach of any agreement under paragraph 2 of this article, but the other party to that agreement may not avoid the original contract or the assignment contract on the sole ground of that breach. A person who is not a party to such an agreement is not liable on the sole ground that it had knowledge of the agreement.

4. Paragraphs 2 and 3 of this article apply only to assignments of receivables:

(a) Arising from an original contract that is a contract for the supply or lease of goods or services other than financial services, a construction contract or a contract for the sale or lease of real property;

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information;

(c) Representing the payment obligation for a credit card transaction; or

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties.

5. The transfer of a possessory property right under paragraph 1 of this article does not affect any obligations of the assignor to the debtor or the person granting the property right with respect to the property transferred existing under the law governing that property right.

6. Paragraph 1 of this article does not affect any requirement under rules of law other than this Convention relating to the form or registration of the transfer of any rights securing payment of the assigned receivable.

CHAPTER IV. RIGHTS, OBLIGATIONS AND DEFENCES

Section I. Assignor and assignee

Article 11. Rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are determined by the terms and conditions set forth in that agreement, including any rules or general conditions referred to therein.

2. The assignor and the assignee are bound by any usage to which they have agreed and, unless otherwise agreed, by any practices they have established between themselves.

3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, implicitly to have made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular type of assignment or to the assignment of the particular category of receivables.

Article 12. Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of conclusion of the contract of assignment that:

- (a) The assignor has the right to assign the receivable;
- (b) The assignor has not previously assigned the receivable to another assignee; and
- (c) The debtor does not and will not have any defences or rights of set-off.

2. Unless otherwise agreed between the assignor and the assignee, the assignor does not represent that the debtor has, or will have, the ability to pay.

Article 13. Right to notify the debtor

1. Unless otherwise agreed between the assignor and the assignee, the assignor or the assignee or both may send the debtor notification of the assignment and a payment instruction, but after notification has been sent only the assignee may send such an instruction.

2. Notification of the assignment or a payment instruction sent in breach of any agreement referred to in paragraph 1 of this article is not ineffective for the purposes of article 17 by reason of such breach. However, nothing in this article affects any obligation or liability of the party in breach of such an agreement for any damages arising as a result of the breach.

Article 14. Right to payment

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent:

(a) If payment in respect of the assigned receivable is made to the assignee, the assignee is entitled to retain the proceeds and goods returned in respect of the assigned receivable;

(b) If payment in respect of the assigned receivable is made to the assignor, the assignee is entitled to payment of the proceeds and also to goods returned to the assignor in respect of the assigned receivable; and

(c) If payment in respect of the assigned receivable is made to another person over whom the assignee has priority, the assignee is entitled to payment of the proceeds and also to goods returned to such person in respect of the assigned receivable.

2. The assignee may not retain more than the value of its right in the receivable.

Section II. Debtor

Article 15. Principle of debtor protection

1. Except as otherwise provided in this Convention, an assignment does not, without the consent of the debtor, affect the rights and obligations of the debtor, including the payment terms contained in the original contract.

2. A payment instruction may change the person, address or account to which the debtor is required to make payment, but may not change:

- (a) The currency of payment specified in the original contract; or
- (b) The State specified in the original contract in which payment is to be made to a State other than that in which the debtor is located.

Article 16. Notification of the debtor

1. Notification of the assignment or a payment instruction is effective when received by the debtor if it is in a language that is reasonably expected to inform the debtor about its contents. It is sufficient if notification of the assignment or a payment instruction is in the language of the original contract.

2. Notification of the assignment or a payment instruction may relate to receivables arising after notification.

3. Notification of a subsequent assignment constitutes notification of all prior assignments.

Article 17. Debtor's discharge by payment

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract.

2. After the debtor receives notification of the assignment, subject to paragraphs 3 to 8 of this article, the debtor is discharged only by paying the assignee or, if otherwise instructed in the notification of the assignment or subsequently by the assignee in a writing received by the debtor, in accordance with such payment instruction.

3. If the debtor receives more than one payment instruction relating to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received from the assignee before payment.

4. If the debtor receives notification of more than one assignment of the same receivable made by the same assignor, the debtor is discharged by paying in accordance with the first notification received.

5. If the debtor receives notification of one or more subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments.

6. If the debtor receives notification of the assignment of a part of or an undivided interest in one or more receivables, the debtor is discharged by paying in accordance with the notification or in accordance with this article as if the debtor had not received the notification. If the debtor pays in accordance with the notification, the debtor is discharged only to the extent of the part or undivided interest paid.

7. If the debtor receives notification of the assignment from the assignee, the debtor is entitled to request the assignee to provide within a reasonable period of time adequate proof that the assignment from the initial assignor to the initial assignee and any intermediate assignment have been made and, unless the assignee does so, the debtor is discharged by paying in accordance with this article as if the notification from the assignee had not been received. Adequate proof of an assignment includes but is not limited to any writing emanating from the assignor and indicating that the assignment has taken place.

8. This article does not affect any other ground on which payment by the debtor to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund discharges the debtor.

Article 18. Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee all defences and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, of which the debtor could avail itself as if the assignment had not been made and such claim were made by the assignor.

2. The debtor may raise against the assignee any other right of set-off, provided that it was available to the debtor at the time notification of the assignment was received by the debtor.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 9 or 10 against the

assignor for breach of an agreement limiting in any way the assignor's right to make the assignment are not available to the debtor against the assignee.

Article 19. Agreement not to raise defences or rights of set-off

1. The debtor may agree with the assignor in a writing signed by the debtor not to raise against the assignee the defences and rights of set-off that it could raise pursuant to article 18. Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not waive defences:

- (a) Arising from fraudulent acts on the part of the assignee; or
- (b) Based on the debtor's incapacity.

3. Such an agreement may be modified only by an agreement in a writing signed by the debtor. The effect of such a modification as against the assignee is determined by article 20, paragraph 2.

Article 20. Modification of the original contract

1. An agreement concluded before notification of the assignment between the assignor and the debtor that affects the assignee's rights is effective as against the assignee, and the assignee acquires corresponding rights.

2. An agreement concluded after notification of the assignment between the assignor and the debtor that affects the assignee's rights is ineffective as against the assignee unless:

- (a) The assignee consents to it; or
- (b) The receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

3. Paragraphs 1 and 2 of this article do not affect any right of the assignor or the assignee arising from breach of an agreement between them.

Article 21. Recovery of payments

Failure of the assignor to perform the original contract does not entitle the debtor to recover from the assignee a sum paid by the debtor to the assignor or the assignee.

Section III. Third parties

Article 22. Law applicable to competing rights

With the exception of matters that are settled elsewhere in this Convention and subject to articles 23 and 24, 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.

Article 23. Public policy and mandatory rules

1. The application of a provision of the law of the State in which the assignor is located may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 22. A State may deposit at any time a declaration identifying any such preferential right.

Article 24. Special rules on proceeds

1. If proceeds are received by the assignee, the assignee is entitled to retain those proceeds to the extent that the assignee's right in the assigned receivable had priority over the right of a competing claimant in the assigned receivable.

2. If proceeds are received by the assignor, the right of the assignee in those proceeds has priority over the right of a competing claimant in those proceeds to the same extent as the assignee's right had priority over the right in the assigned receivable of that claimant if:

(a) The assignor has received the proceeds under instructions from the assignee to hold the proceeds for the benefit of the assignee; and

(b) The proceeds are held by the assignor for the benefit of the assignee separately and are reasonably identifiable from the assets of the assignor, such as in the case of a separate deposit or securities account containing only proceeds consisting of cash or securities.

3. Nothing in paragraph 2 of this article affects the priority of a person having against the proceeds a right of set-off or a right created by agreement and not derived from a right in the receivable.

Article 25. Subordination

An assignee entitled to priority may at any time subordinate its priority unilaterally or by agreement in favour of any existing or future assignees.

CHAPTER V. AUTONOMOUS CONFLICT-OF-LAWS RULES

Article 26. Application of chapter V

The provisions of this chapter apply to matters that are:

- (a) Within the scope of this Convention as provided in article 1, paragraph 4; and
- (b) Otherwise within the scope of this Convention but not settled elsewhere in it.

Article 27. Form of a contract of assignment

1. A contract of assignment concluded between persons who are located in the same State is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of the State in which it is concluded.

2. A contract of assignment concluded between persons who are located in different States is formally valid as between them if it satisfies the requirements of either the law which governs it or the law of one of those States.

Article 28. Law applicable to the mutual rights and obligations of the assignor and the assignee

1. The mutual rights and obligations of the assignor and the assignee arising from their agreement are governed by the law chosen by them.

2. In the absence of a choice of law by the assignor and the assignee, their mutual rights and obligations arising from their agreement are governed by the law of the State with which the contract of assignment is most closely connected.

Article 29. Law applicable to the rights and obligations of the assignee and the debtor

The law governing the original contract determines the effectiveness of contractual limitations on assignment as between the assignee and the debtor, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged.

Article 30. Law applicable to priority

1. 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.

2. The rules of the law of either the forum State or any other State that are mandatory irrespective of the law otherwise applicable may not prevent the application of a provision of the law of the State in which the assignor is located.

3. Notwithstanding paragraph 2 of this article, in an insolvency proceeding commenced in a State other than the State in which the assignor is located, any preferential right that arises, by operation of law, under the law of the forum State and is given priority over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding paragraph 1 of this article.

Article 31. Mandatory rules

1. Nothing in articles 27 to 29 restricts the application of the rules of the law of the forum State in a situation where they are mandatory irrespective of the law otherwise applicable.

2. Nothing in articles 27 to 29 restricts the application of the mandatory rules of the law of another State with which the matters settled in those articles have a close connection if and insofar as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 32. Public policy

With regard to matters settled in this chapter, the application of a provision of the law specified in this chapter may be refused only if the application of that provision is manifestly contrary to the public policy of the forum State.

CHAPTER VI. FINAL PROVISIONS

Article 33. Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 34. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 35. Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may at any time declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
2. Such declarations are to state expressly the territorial units to which this Convention extends.

3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the assignor or the debtor is located in a territorial unit to which this Convention does not extend, this location is considered not to be in a Contracting State.

4. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the law governing the original contract is the law in force in a territorial unit to which this Convention does not extend, the law governing the original contract is considered not to be the law of a Contracting State.

5. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 36. Location in a territorial unit

If a person is located in a State which has two or more territorial units, that person is located in the territorial unit in which it has its place of business. If the assignor or the assignee has a place of business in more than one territorial unit, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one territorial unit, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person. A State with two or more territorial units may specify by declaration at any time other rules for determining the location of a person within that State.

Article 37. Applicable law in territorial units

Any reference in this Convention to the law of a State means, in the case of a State which has two or more territorial units, the law in force in the territorial unit. Such a State may specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State.

Article 38. Conflicts with other international agreements

1. This Convention does not prevail over any international agreement that has already been or may be entered into and that specifically governs a transaction otherwise governed by this Convention.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring (“the Ottawa Convention”). To the extent that this Convention does not apply to the rights and obligations of a debtor, it does not preclude the application of the Ottawa Convention with respect to the rights and obligations of that debtor.

Article 39. Declaration on application of chapter V

A State may declare at any time that it will not be bound by chapter V.

*Article 40. Limitations relating to Governments
and other public entities*

A State may declare at any time that it will not be bound or the extent to which it will not be bound by articles 9 and 10 if the debtor or any person granting a personal or property right securing payment of the assigned receivable is located in that State at the time of conclusion of the original contract and is a Government, central or local, any subdivision thereof, or an entity constituted for a public purpose. If a State has made such a declaration, articles 9 and 10 do not affect the rights and obligations of that debtor or person. A State may list in a declaration the types of entity that are the subject of a declaration.

Article 41. Other exclusions

1. A State may declare at any time that it will not apply this Convention to specific types of assignment or to the assignment of specific categories of receivables clearly described in a declaration.

2. After a declaration under paragraph 1 of this article takes effect:

(a) This Convention does not apply to such types of assignment or to the assignment of such categories of receivables if the assignor is located at the time of conclusion of the contract of assignment in such a State; and

(b) The provisions of this Convention that affect the rights and obligations of the debtor do not apply if, at the time of conclusion of the original contract, the debtor is located in such a State or the law governing the original contract is the law of such a State.

3. This article does not apply to assignments of receivables listed in article 9, paragraph 3.

Article 42. Application of the annex

1. A State may at any time declare that it will be bound by:

(a) The priority rules set forth in section I of the annex and will participate in the international registration system established pursuant to section II of the annex;

(b) The priority rules set forth in section I of the annex and will effectuate such rules by use of a registration system that fulfils the purposes of such rules, in which case, for the purposes of section I of the annex, registration pursuant to such a system has the same effect as registration pursuant to section II of the annex;

(c) The priority rules set forth in section III of the annex;

(d) The priority rules set forth in section IV of the annex; or

(e) The priority rules set forth in articles 7 and 9 of the annex.

2. For the purposes of article 22:

(a) The law of a State that has made a declaration pursuant to paragraph 1 (a) or (b) of this article is the set of rules set forth in section I of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(b) The law of a State that has made a declaration pursuant to paragraph 1 (c) of this article is the set of rules set forth in section III of the annex, as affected by any declaration made pursuant to paragraph 5 of this article;

(c) The law of a State that has made a declaration pursuant to paragraph 1 (d) of this article is the set of rules set forth in section IV of the annex, as affected by any declaration made pursuant to paragraph 5 of this article; and

(d) The law of a State that has made a declaration pursuant to paragraph 1 (e) of this article is the set of rules set forth in articles 7 and 9 of the annex, as affected by any declaration made pursuant to paragraph 5 of this article.

3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which contracts of assignment concluded before the declaration takes effect become subject to those rules within a reasonable time.

4. A State that has not made a declaration pursuant to paragraph 1 of this article may, in accordance with priority rules in force in that State, utilize the registration system established pursuant to section II of the annex.

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that:

(a) It will not apply the priority rules chosen under paragraph 1 of this article to certain types of assignment or to the assignment of certain categories of receivables; or

(b) It will apply those priority rules with modifications specified in that declaration.

6. At the request of Contracting or Signatory States to this Convention comprising not less than one third of the Contracting and Signatory States, the depositary shall convene a conference of the Contracting and Signatory States to designate the supervising authority and the first registrar and to prepare or revise the regulations referred to in section II of the annex.

Article 43. Effect of declaration

1. Declarations made under articles 35, paragraph 1, 36, 37 or 39 to 42 at the time of signature are subject to confirmation upon ratification, acceptance or approval.

2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

4. A State that makes a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

5. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become applicable:

(a) Except as provided in paragraph 5 (b) of this article, that rule is applicable only to assignments for which the contract of assignment is

concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor applies only in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

6. In the case of a declaration under articles 35, paragraph 1, 36, 37 or 39 to 42 that takes effect after the entry into force of this Convention in respect of the State concerned or in the case of a withdrawal of any such declaration, the effect of which in either case is to cause a rule in this Convention, including any annex, to become inapplicable:

(a) Except as provided in paragraph 6 (b) of this article, that rule is inapplicable to assignments for which the contract of assignment is concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a);

(b) A rule that deals with the rights and obligations of the debtor is inapplicable in respect of original contracts concluded on or after the date when the declaration or withdrawal takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

7. If a rule rendered applicable or inapplicable as a result of a declaration or withdrawal referred to in paragraph 5 or 6 of this article is relevant to the determination of priority with respect to a receivable for which the contract of assignment is concluded before such declaration or withdrawal takes effect or with respect to its proceeds, the right of the assignee has priority over the right of a competing claimant to the extent that, under the law that would determine priority before such declaration or withdrawal takes effect, the right of the assignee would have priority.

Article 44. Reservations

No reservations are permitted except those expressly authorized in this Convention.

Article 45. Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession with the depositary.

2. For each State that becomes a Contracting State to this Convention after the date of deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to assignments if the contract of assignment is concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (*a*), provided that the provisions of this Convention that deal with the rights and obligations of the debtor apply only to assignments of receivables arising from original contracts concluded on or after the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when this Convention enters into force in respect of the Contracting State referred to in article 1, paragraph 1 (*a*), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority in the absence of this Convention, the right of the assignee would have priority.

Article 46. Denunciation

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

3. This Convention remains applicable to assignments if the contract of assignment is concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (*a*), provided that the provisions of this Convention that deal with the rights and obligations of the debtor remain applicable only to assignments of receivables arising from original contracts concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 3.

4. If a receivable is assigned pursuant to a contract of assignment concluded before the date when the denunciation takes effect in respect of the Contracting State referred to in article 1, paragraph 1 (a), the right of the assignee has priority over the right of a competing claimant with respect to the receivable to the extent that, under the law that would determine priority under this Convention, the right of the assignee would have priority.

Article 47. Revision and amendment

1. At the request of not less than one third of the Contracting States to this Convention, the depositary shall convene a conference of the Contracting States to revise or amend it.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

ANNEX TO THE CONVENTION

Section I. Priority rules based on registration

Article 1. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Section II. Registration

Article 3. Establishment of a registration system

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4. Registration

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.

2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.

3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.

4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.

5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.

6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective.

Article 5. Registry searches

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.

2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

Section III. Priority rules based on the time of the contract of assignment

Article 6. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusion of the respective contracts of assignment.

Article 7. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8. Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

Section IV. Priority rules based on the time of notification of assignment

Article 9. Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

DONE at New York, this 12th day of December two thousand one, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

Explanatory note by the UNCITRAL secretariat on the United Nations Convention on the Assignment of Receivables in International Trade*

I. Introduction

1. The United Nations Convention on the Assignment of Receivables in International Trade was adopted and opened for signature by the General Assembly by its resolution 56/81 of 12 December 2001.¹ The Convention was prepared by the United Nations Commission on International Trade Law.²

*The present explanatory note has been prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for information purposes. It is not an official commentary on the Convention.

¹At its twenty-sixth to twenty-eighth sessions (1993-1995), the Commission considered three reports of the Secretary-General, namely, A/CN.9/378/Add.3 (*UNCITRAL Yearbook, Volume XXIV: 1993* (United Nations publication, Sales No. E.94.V.16)), A/CN.9/397 (*UNCITRAL Yearbook, Volume XXV: 1994* (United Nations publication, Sales No. E.95.V.20)) and A/CN.9/412 (*UNCITRAL Yearbook, Volume XXVI: 1995* (United Nations publication, Sales No. E.96.V.8)). The deliberations of the Commission on those reports are reflected in its reports on its twenty-sixth to twenty-eighth sessions (*Official Records of the General Assembly, Forty-eighth Session, Supplement No. 17* (A/48/17), paras. 297-301 (*UNCITRAL Yearbook, Volume XXIV: 1993*) (op. cit.); *ibid.*, *Forty-ninth Session, Supplement No. 17* (A/49/17), paras. 208-214 (*UNCITRAL Yearbook, Volume XXV: 1994*) (op. cit.) and *ibid.*, *Fiftieth Session, Supplement No. 17* (A/50/17), paras. 374-381 (*UNCITRAL Yearbook, Volume XXVI: 1995*) (op. cit.)). At its twenty-eighth session (1995), the Commission decided to entrust the Working Group on International Contract Practices with the task of preparing a uniform law on assignment in receivables financing. The draft convention was prepared by the Working Group at its twenty-fourth to thirty-first sessions (one more session of another Working Group, which was renamed for that session, its twenty-third session, was also held). For the reports of those sessions, see documents A/CN.9/420 (*UNCITRAL Yearbook, Volume XXVII: 1996* (United Nations publication, Sales No. E.89.V.7)), A/CN.9/432 and A/CN.9/434 (*UNCITRAL Yearbook, Volume XXVIII: 1997* (United Nations publication, Sales No. E.99.V.6)), A/CN.9/445 and A/CN.9/447 (*UNCITRAL Yearbook, Volume: XXIX: 1998* (United Nations publication, Sales No. E.99.V.12)), A/CN.9/455 and A/CN.9/456 (*UNCITRAL Yearbook, Volume XXX: 1999* (United Nations publication, Sales No. E.00.V.9)), A/CN.9/466 (*UNCITRAL Yearbook, Volume XXXI: 2000* (United Nations publication, Sales No. E.02.V.3)) and A/CN.9/486 (*UNCITRAL Yearbook, Volume XXXII: 2001* (United Nations publication, Sales No. E.04.V.4)). For the papers prepared by the Secretariat and considered by the Working Group at those sessions, see A/CN.9/WG.II/WP.87 and A/CN.9/WG.II/WP.89 (*UNCITRAL Yearbook, Volume XXVIII: 1997*) (op. cit.), A/CN.9/WG.II/WP.93 and A/CN.9/WG.II/WP.96 (*UNCITRAL Yearbook, Volume XXIX: 1998*), A/CN.9/WG.II/WP.98 and A/CN.9/WG.II/WP.102 (*UNCITRAL Yearbook, Volume XXX: 1999*) (op. cit.) and A/CN.9/WG.II/WP.104 (*UNCITRAL Yearbook, Volume XXXI: 2000*) (op. cit.)).

²For information on UNCITRAL and its work, see the web site of the Commission (www.uncitral.org). The deliberations of UNCITRAL on the draft convention are reflected in the reports on the work of its thirty-third (2000) and thirty-fourth (2001) sessions (*Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 17* (A/55/17), paras. 12-192 (*UNCITRAL Yearbook, Volume XXXI A: 2000*) (op. cit.), and *Official Records of the General Assembly, Fifty-sixth Session,*

2. The main objective of the Convention is to promote the availability of capital and credit at more affordable rates across national borders, thus facilitating the cross-border movement of goods and services. The Convention achieves this objective by reducing legal uncertainty with respect to a number of issues arising in the context of important receivables financing transactions, including asset-based lending, factoring, invoice discounting, forfaiting and securitization, as well as transactions in which no financing is provided.

3. The Convention establishes principles and adopts rules relating to the assignment of receivables. In particular, it removes statutory prohibitions to the assignment of future receivables and of receivables that are not specifically identified (bulk assignments). It also removes contractual limitations to the assignment of trade receivables, agreed between the parties to the contract from which the assigned receivables arise, and clarifies the effect of an assignment on rights securing payment of the assigned receivables. In addition, the Convention recognizes party autonomy and provides a set of non-mandatory rules applicable in the absence of an agreement between the parties to the assignment. Moreover, it addresses legal barriers to the collection of receivables from foreign debtors by providing a uniform set of rules on debtor-related issues, such as notification of the debtor, discharge of the debtor by payment and defences and rights of set-off of the debtor.

4. Most importantly, the Convention removes the existing uncertainty with respect to the law applicable to conflicts as to who is entitled to receive payment as between an assignee and a competing claimant, such as another assignee, creditors of the assignor or the administrator in the insolvency of the assignor. This is achieved by subjecting priority conflicts to a single law, one that is easy to determine and is most likely to be the place in which the main insolvency proceeding with respect to the assignor will be opened (i.e. the place of the assignor's place of business and, in the case of places of business in more than one State, the law of the State in which the assignor has its central administration). The Convention also addresses the non-recognition of rights in proceeds in many countries by providing a uniform limited priority rule with respect to proceeds, which aims to facilitate practices, such as securitization and undisclosed invoice discounting. In addition, it provides guidance to States wishing to modernize their substantive law priority rules by providing model substantive law priority rules.

Supplement No. 17 and corrigendum (A/56/17 and Corr.3), paras. 13-200 (UNCITRAL Yearbook, Volume XXXII: 2001) (op. cit.). Annex I of the report of UNCITRAL on the work of its thirty-third session (A/56/17 and Corr.3) contains the draft convention as submitted by the Commission to the General Assembly. At its thirty-third and thirty-fourth sessions, the Commission had before it versions of an analytical commentary on the draft convention, prepared by the Secretariat (A/CN.9/470 (UNCITRAL Yearbook, Volume XXXI: 2000) (op. cit.) and A/CN.9/489 and Add.1 (UNCITRAL Yearbook, Volume XXXII: 2001) (op. cit.)).

5. Furthermore, the Convention enhances uniformity of the law applicable to assignment by including a set of conflict-of-laws rules. These rules are designed to fill gaps left in the Convention on issues governed but not explicitly settled in it. They may apply if the State in which a dispute arises has adopted the Convention.

6. A summary of the main features and provisions of the Convention is given below.

II. Scope of application

A. Assignment/assignor-assignee-debtor/receivable

7. “Assignment” is defined in the Convention as a transfer of property in receivables by agreement (art. 2). The definition covers both the creation of security rights in receivables and the transfer of full property in receivables, whether or not for security purposes. The Convention, however, does not specify what constitutes either an outright or a security transfer, leaving this issue to law applicable outside the Convention. An “assignment” may be a contractual subrogation or a pledge-type transaction. On the other hand, it may not be a transfer by operation of law (e.g. statutory subrogation) or other non-contractual assignment.

8. The “assignor” is the creditor in the original contract giving rise to the assigned receivable. The assignor is either a borrower (or a third party) assigning receivables as security or a seller of receivables. The “assignee” is the new creditor, a lender or a buyer of receivables. The “debtor” is the obligor in the contract from which the assigned receivables arise (“original contract”).

9. The Convention defines a “receivable” as a “contractual right to payment of a monetary sum”. The definition includes parts of and undivided interests in receivables. Receivables from any type of contract are included. While the exact meaning of the term “contractual right” is left to national law, claims from contracts for the supply of goods, construction and services are clearly covered, whether the contracts are commercial or consumer contracts. Also included are loan receivables, intellectual property licence royalties, toll road receipts and monetary damage claims for breach of contract, as well as interest and non-monetary claims convertible to money. The term does not include a right to payment arising other than by contract, such as a tort claim or a tax refund claim.

B. Practices covered

10. In view of the broad definition of the terms “assignment” and “receivable”, the Convention applies to a wide array of transactions. In particular, it covers the assignment of trade receivables (arising from the supply of goods, construction or services between businesses), loan receivables (arising from the extension of credit), consumer receivables (arising from consumer transactions) and sovereign receivables (arising from transactions with a governmental authority or a public entity). As a result, asset-based financing (e.g. revolving credit facilities and purchase-money financing) is covered. Factoring and forfaiting are also covered in all their variants (e.g. invoice discounting, maturity factoring and international factoring). The Convention also covers financing techniques, such as securitization of contractual receivables, as well as project financing on the basis of the future income flow of a project.

C. Exclusions and other limitations

11. The scope of assignments covered is restricted by way of outright or limited exclusions of some types of receivable or assignment. The Convention excludes some assignments because no market exists for them (art. 4, para. 1). For example, assignments to a consumer are excluded; however, assignments of consumer receivables are covered. The Convention also excludes the assignment of those types of receivable which are already sufficiently regulated, or for which some of the provisions of the Convention may not be suitable, such as assignments of receivables arising from securities (whether directly or indirectly held), letters of credit, independent guarantees, bank deposits, derivative and foreign exchange transactions, payment systems and so forth (art. 4, para. 2).

12. Beyond the outright exclusion of certain types of assignment or receivable, the Convention provides two further types of limitation. One type is the “hold harmless” clause, which applies to assignments of receivables in the form of negotiable instruments, consumer receivables and real estate receivables (art. 4, paras. 3-5). The Convention applies to the assignment of such receivables. However, it does not change the legal position of certain parties to such assignments. For example, the priority of a holder in due course under the law governing negotiable instruments is preserved.

13. The Convention places another type of limitation upon the scope of the provision granting effectiveness to assignments notwithstanding anti-assignment and similar clauses (arts. 9 and 10). Articles 9 and 10 apply only to trade receivables, broadly defined to include receivables from the supply

or lease of goods or the provision of services other than financial services (arts. 9, para. 3, and 10, para. 4). They do not apply to assignments of other receivables, such as loan or insurance receivables. The result of this limitation to the scope of articles 9 and 10 is that the effectiveness of an anti-assignment clause in an assignment outside the scope of articles 9 and 10 is subject to law outside the Convention (which, under article 29, is the law governing the original contract).

D. Definition of “internationality”

14. As it focuses on international trade, the Convention applies in principle only to assignments of international receivables and to international assignments of receivables (art. 3). An assignment is international if the assignor and the assignee are located in different States. A receivable is international if the assignor and the debtor are located in different States. The international character of an assignment or a receivable is determined by the location of the assignor and the assignee, or the debtor, at the time of the conclusion of the assignment contract (a subsequent change does not affect the application of the Convention).

15. The Convention generally does not apply to domestic assignments of domestic receivables. Two exceptions exist, however. The first relates to subsequent assignments where, for example, A assigns to B, B to C, and so on. In order to ensure consistent results, the Convention applies to such subsequent assignments irrespective of whether the subsequent assignments are international or relate to international receivables, provided that any prior assignment in the chain of subsequent assignments is governed by the Convention (art. 1, para. 1 (b)). The second exception speaks to conflicts of priority between a domestic and a foreign assignee of domestic receivables (i.e. assignee A in country X and assignee B in country Y; the receivables are owed by a debtor in country Y). To ensure certainty as to the priority rights of assignees, the Convention covers the priority conflict between assignee A and assignee B even though the assignment to B is a domestic assignment of domestic receivables (arts. 5 (m) and 22).

E. Connecting factors for the application of the Convention

16. With the exception of the debtor-related provisions (e.g. arts. 15-21), the Convention applies to international assignments and to assignments of international receivables if the assignor is located in a State that is a party to the Convention (art. 1, para. 1 (a)). The Convention may apply to subsequent assignments that may be wholly domestic even if the assignor is not

located in a contracting State as long as a prior assignment is governed by the Convention (art. 1, para. 1 (b)).

17. For the debtor-related provisions to apply, the debtor too should be located in a State party to the Convention or the law governing the assigned receivables should be the law of a State party to the Convention (art. 1, para. 3). This approach protects the debtor from being subject to a text of which it could not be aware. It does not, however, exclude the application of the Convention's rules that have no effect on the debtor, such as the rules dealing with the relationship between the assignor and the assignee or those dealing with priority among competing claimants. Accordingly, even if the debtor-related provisions do not apply to a particular assignment, the balance of the Convention may still apply to the relationship between the assignor and the assignee or the assignee and a competing claimant.

18. The autonomous conflict-of-laws rules of the Convention may apply even if the assignor or the assignee is not located in a contracting State as long as a dispute is brought before a court in a contracting State (art. 1, para. 4).

F. Definition of "location"

19. The meaning of the term "location" has an impact on the application of the Convention (i.e. on the international character of an assignment or a receivable and on the territorial scope of the Convention). It also has an impact on the law governing priority (art. 22). The Convention defines "location" by reference to the place of business of a person, or the person's habitual residence, if there is no place of business. Departing from the traditional "location rule", referring in the case of multiple places of business to the place with the closest relationship to the relevant transaction, the Convention provides that, when an assignor or an assignee has places of business in more than one State, reference shall be made to the place of central administration (in other terms, the principal place of business or the main centre of interests). The reason for this approach is to provide certainty with respect to the application of the Convention as well as to the law governing priority. In contrast, when a debtor has places of business in more than one State, reference is to be made to the place most closely connected to the original contract. This different approach was taken with regard to the location of the debtor so as to ensure that the debtor is not surprised by the application of legal rules to which the original contract between the debtor and the assignor has no apparent relationship.

20. In the case of transactions made through branch offices, the central administration location rule will result in the application of the Convention

rather than the law of the State in which the relevant branch is located, if the assignor has its central administration in a State party to the Convention. In addition, a transaction may become international and fall under the Convention if the assignee has its central administration in a State other than the State in which the assignor is located, even though the assignee acted through a branch located in the same State as the assignor. Moreover, the central administration location rule will result in the application of the law of the assignor's central administration (rather than the place with the closest relationship to the assignment) to priority disputes. Certainty in the application of the Convention and in the determination of the law governing priority justify such a result. This rule will not affect a financing institution as a debtor of the original receivable because, in such a case, the close connection test determines the institution's location.

III. General provisions

A. Definitions and rules of interpretation

21. Important terms such as “future receivable”, “writing”, “notification”, “location”, “priority”, “competing claimant” and “financial contract” are defined in article 5.

B. Party autonomy

22. The Convention recognizes the right of the assignor, the assignee and the debtor to derogate from or vary by agreement provisions of the Convention (art. 6). There are two limitations: firstly, such an agreement cannot affect the rights of third parties; and, secondly, the debtor may not waive certain defences (art. 19, para. 2).

C. Interpretation

23. The Convention contains a general rule that its interpretation should be with a view to its object and purpose as set forth in the preamble, its international character and the need to promote uniformity in its application and the observance of good faith in international trade. Gaps left with respect to matters covered but not expressly settled in the Convention are to be filled in accordance with its general principles and, in the absence of a relevant principle, in accordance with the law applicable by virtue of the rules of private international law, including those of the Convention if they are applicable (art. 7).

IV. Effects of assignment

A. Formal and material validity

24. Owing to the lack of consensus in the Commission, the Convention does not contain a uniform substantive law rule as to the formal validity of the assignment. However, it does contain conflict-of-laws rules. The form of an assignment as a condition of priority is referred to the law of the assignor's location (arts. 5 (g) and 22). Moreover, a conflict-of-laws rule for formal validity of the contract of assignment as between the parties thereto is contained in the autonomous conflict-of-laws rules of the Convention (art. 27).

25. An assignment made by agreement between the assignor and the assignee is effective if it is otherwise effective as a matter of contract (arts. 2 and 11). No notification is required for the assignment to be effective (art. 14, para. 1). The Convention focuses on statutory and contractual limitations, as well as on the impact of assignment on security and other supporting rights. Other issues related to material validity or effectiveness are addressed in the context of the relationship in which they may arise (assignor-assignee or debtor-assignee or assignee-third party).

B. Statutory limitations

26. In order to facilitate receivables financing, the Convention sets aside statutory and other legal limitations with respect to the assignability of certain types of receivable (e.g. future receivables) or the effectiveness of certain types of assignment (e.g. bulk assignments) that are typical in receivables financing transactions. It is sufficient if receivables are identifiable as receivables to which the assignment relates at the time of assignment or, in the case of future receivables, at the time of conclusion of the original contract. One act is sufficient to assign several receivables, including future receivables (art. 8). Apart from the statutory limitations mentioned, other statutory limitations, such as those relating to personal or sovereign receivables, are not affected by the Convention.

C. Contractual limitations

27. The Convention validates an assignment of trade receivables (broadly defined in art. 9, para. 3) made in violation of an anti-assignment clause

without eliminating the liability that the assignor may have for breach of contract under law applicable outside the Convention and without extending that liability to the assignee (art. 9, para. 1). However, if such liability exists, the Convention narrows its scope by providing that mere knowledge of the anti-assignment agreement, on the part of the assignee that is not a party to the agreement, does not constitute sufficient ground for liability of the assignee for the breach of the agreement. In addition, the Convention protects the assignee further by ensuring that the violation of an anti-assignment clause by the assignor is not in itself sufficient ground for the avoidance of the original contract by the debtor (art. 9, para. 2). Furthermore, the Convention does not allow a claim for breach of an anti-assignment clause to be made by the debtor against the assignee by way of set-off so as to defeat the assignee's demand for payment (art. 18, para. 3).

28. With respect to consumers, the approach of the Convention is based on the assumption that this provision does not affect them, since anti-assignment clauses are very rare in consumer contracts. In any case, if there is a conflict between the Convention and applicable consumer-protection law, consumer-protection law will prevail (art. 4, para. 4). With respect to the assignment of sovereign receivables, States may enter a reservation with regard to article 9 (art. 40). This exception is intended to protect a limited number of States that do not have a policy of protecting themselves by statute, but instead rely on contractual limitations.

D. Transfer of rights securing payment of the assigned receivables

29. An accessory right, whether personal or property, securing payment of the assigned receivable is transferred with the receivable without a new act of transfer. The assignor is obliged to transfer to the assignee an independent security or other supporting right (art. 10, para. 1). With respect to contractual limitations on assignment, such rights are treated in the same way as a receivable (art. 10, paras. 2 and 3). This provision likewise applies to "trade receivables" defined broadly (art. 10, para. 4) and does not affect any obligations of the assignor towards the debtor under the law governing the security or other supporting right (art. 10, para. 5). Similarly, this provision does not affect any form or registration requirement necessary for the transfer of the security right (art. 10, para. 6).

V. Rights, obligations and defences

A. Assignor and assignee

1. Party autonomy and rules of practice

30. The Convention recognizes the right of the assignor and the assignee to structure their contract in any way they wish to meet their particular needs, as long as they do not affect the rights of third parties (arts. 6 and 11). The Convention also gives legislative strength to trade usages agreed upon by the assignor and the assignee and trade practices established between such parties. Moreover, the Convention includes certain non-mandatory rules that are applicable to the relationship between the assignor and the assignee. Those rules are meant to provide a list of issues to be addressed in the contract and, at the same time, to fill gaps left in the contract with respect to matters, such as representations of the assignor, notification and payment instructions, as well as rights in proceeds. They are suppletive rules only. The parties may always agree to modify the rules as they operate between them.

2. Representations

31. With respect to representations, the Convention follows generally accepted principles and attempts to establish a balance between fairness and practicality (art. 12). For example, unless otherwise agreed, the risk of hidden defences on the part of the debtor is placed on the assignor. The Convention follows this approach, in view of the fact that the assignor is the contractual partner of the debtor and thus is in a better position to know whether there will be problems with the contract's performance that may give the debtor rights of defence.

3. Notification and payment instructions

32. Unless otherwise agreed, the assignor, the assignee or both may send the debtor a notification and a payment instruction. The assignee is given an independent right to notify the debtor and request payment. This independent right is essential where the assignee's relationship with the assignor becomes problematic and the assignor is unlikely to cooperate with the assignee in notifying the debtor. After notification, only the assignee may request payment (art. 13). Notification of the debtor in violation of an agreement between the assignor and the assignee would still permit the debtor to obtain a discharge if it pays in accordance with such a notification, but the claim for breach of contract between the assignor and the assignee is preserved.

33. Payment instructions do not fall within the definition of notification of the assignment (art. 5 (d)). This means that a notification need not provide a change in payment instructions to the debtor, but may be given mainly to freeze the debtor's defences and rights of set-off (art. 18, para. 2).

4. Rights in proceeds

34. The Convention introduces a contractual right to proceeds of receivables and proceeds of proceeds ("whatever is received in respect of an assigned receivable", art. 5 (j)). As between the assignor and the assignee, the assignee may claim proceeds if payment is made to the assignee, to the assignor or to another person over whom the assignee has priority (art. 14). Whether the assignee may retain or claim a proprietary right in such proceeds is generally an issue left to law applicable outside the Convention. However, if the proceeds are themselves receivables, this issue is left to the law of the assignor's location (arts. 5 (j) and 22). In addition, in certain circumstances, the Convention's limited substantive proceeds rule may apply (art. 24).

B. Debtor

1. Debtor protection

35. An assignment does not affect the debtor's legal position without the debtor's consent, unless a provision of the Convention clearly states otherwise. Furthermore, the assignment cannot change the currency or the State in which payment is to be made without the debtor's consent (arts. 6 and 15).

36. Beyond generally codifying the principle of debtor protection, the Convention contains a number of specific expressions of this principle. These provisions deal with the debtor's discharge by payment, defences, rights of set-off, waivers of such defences or rights of set-off, modification of the original contract and recovery of payments by the debtor.

2. Debtor's discharge by payment

37. The debtor may be discharged by paying in accordance with the original contract, unless the debtor receives notification of the assignment. After receiving such notification, the debtor is discharged by paying in accordance with the written payment instructions and, in the absence of such instructions, by paying the assignee (art. 17, paras. 1 and 2). The notification of the

assignment thereby determines the method by which the debtor shall be discharged. The notification must be written in a language that is reasonably expected to be understood by the debtor and must reasonably identify the assigned receivables and the assignee (art. 16).

38. Whether the debtor knew or ought to have known of a previous assignment of which it did not receive a notification is irrelevant. The Convention adopts this approach so as to ensure an acceptable level of certainty as to debtor discharge, which is an important element in pricing a transaction by the assignee. This approach encourages neither bad faith nor fraud. It is always difficult to prove what the debtor knew or ought to have known and, in any case, the Convention does not override national law provisions on fraud.

39. The Convention also provides a series of rules concerning multiple notifications or payment instructions. When the debtor receives several payment instructions that relate to a single assignment of the same receivable by the same assignor, the debtor is discharged by paying in accordance with the last payment instruction received (art. 17, para. 3). Where several notifications relate to more than one assignment of the same receivables by the same assignor, the debtor is discharged by paying in accordance with the first notification received (art. 17, para. 4). In the case of several notifications relating to subsequent assignments, the debtor is discharged by paying in accordance with the notification of the last of such subsequent assignments (art. 17, para. 5).

40. When the debtor receives several notifications relating to parts of, or undivided interests in, one or more receivables, it has a choice. The debtor may obtain a discharge by paying either in accordance with the notifications received or in accordance with the Convention as if no notification had been received (art. 17, para. 6). By giving the debtor, in effect, the right to determine whether or not the notification of a partial assignment is effective with respect to debtor discharge, the Convention avoids overburdening the debtor with the obligation of dividing its payment. This approach does not invalidate partial assignments. Rather, it merely suggests that assignors or assignees need to structure payments taking into account that the debtors need not agree to partial payments (e.g. according to the provisions of art. 24, para. 2). The assignor and the assignee may also divide payments with the debtor's consent obtained at the time of the conclusion of the original contract or the assignment or at a subsequent point of time.

41. One of the key debtor-protection provisions allows the debtor to request adequate proof of the assignment when the assignee gives notification without the cooperation or apparent authorization of the assignor (art. 17,

para. 7). This right is intended to safeguard the debtor from the risk of having to pay an unknown third party. “Adequate proof” includes any writing with the assignor’s signature indicating that the assignment occurred, such as the assignment contract or an authorization for the assignee to notify. If the assignee does not provide such proof within a reasonable period of time, the debtor may obtain a discharge by paying the assignor.

42. The Convention does not affect any rights the debtor may have under law outside the Convention to discharge its obligation by payment to the person entitled to payment, to a competent judicial or other authority, or to a public deposit fund (art. 17, para. 8). For example, if the debtor is discharged under law outside the Convention by complying with a notification that does not meet the Convention’s requirements, the Convention recognizes this result. Similarly, payment to a public deposit fund under law outside the Convention is recognized in the Convention as a valid discharge where payment to such a fund is recognized under law outside the Convention.

3. Debtor defences and rights of set-off

43. With respect to the debtor’s defences and rights of set-off, the Convention codifies generally accepted rules. The debtor may raise against the assignee any defences or rights of set-off that the debtor could have raised in a claim against the assignor. Rights of set-off arising from the original contract or a related transaction may be raised against the assignee even if they become available to the debtor after notification (art. 18, para. 1). However, rights of set-off that do not arise from the original contract or a related transaction, and become available to the debtor after notification, may not be raised against the assignee (art. 18, para. 2). The Convention leaves the meaning of “become available” (i.e. whether the right has to be quantified, has matured or has become payable) to be determined by the applicable law outside the Convention (for rights of set-off arising from the original contract, that law is, under article 29, the law governing the original contract).

4. Waiver of defences

44. The debtor may waive its defences and rights of set-off by agreement with the assignor. To warn the debtor of the important consequences of the waiver, the Convention requires a writing signed by the debtor for a waiver or its modification (art. 19, para. 1). In order to protect the debtor from undue pressure by the assignor, the Convention also prohibits waiver of defences or rights of set-off arising from fraudulent acts of the assignee or based on the debtor’s incapacity (art. 19, para. 2).

5. *Modification of the original contract*

45. Often, the original contract needs to be modified to meet the changing needs of the parties. The agreement itself determines the *inter partes* effects of such modifications. The Convention addresses the third-party effects, such as whether the debtor can pay to the assignee the receivable as modified to be discharged, and whether the assignee can claim payment of the receivable as modified. The basic rule provides that, up until notification of the debtor, any contract modification is effective as against the assignee and the assignee acquires the receivable as modified (art. 20, para. 1). After notification, without the assignee's consent, such a modification is ineffective as against the assignee of a receivable earned by performance but is effective against the assignee of an unearned receivable if the modification was provided for in the original contract or a reasonable assignee would have consented to the modification (art. 20, para. 2). The Convention does not affect any liability of the assignor towards the assignee under applicable law for breach of an agreement not to modify the original contract (art. 20, para. 3).

6. *Recovery of payments by the debtor*

46. The debtor may recover only from the assignor payments made to the assignor or the assignee (art. 21). This, in effect, means that the debtor bears the risk of insolvency of its contractual partner, which would be the case even in the absence of an assignment.

C. *Third parties*

1. *Law applicable to priority in receivables*

47. One of the most important parts of the Convention deals with the impact of assignment on third parties, such as competing assignees, other creditors of the assignor and the administrator in the insolvency of the assignor. This issue is addressed in the Convention as an issue of priority among competing claimants, that is, of who is entitled to receive payment or other performance first. As the assignor's assets may not be sufficient to satisfy all creditors, this issue is of considerable importance.

48. As there was no consensus in the Commission on a substantive law priority rule, the Convention addresses this issue through conflict-of-laws rules (arts. 22-24). The value of these rules lies in the fact that, deviating from traditional approaches, they centralize all priority conflicts to the law of the assignor's location. Because "location" means the place of central

administration, if the assignor has a place of business in more than one State, the Convention thereby refers priority conflicts to the law of a single, and easily determinable, jurisdiction. In addition, the main insolvency proceeding with regard to the assignor will most often be opened in this jurisdiction, a result that makes conflicts between secured transactions and insolvency laws easier to address.

49. In order to cover all possible priority conflicts, the term “competing claimant” is defined so as to include other assignees, even if both the assignment and the receivable are domestic and thus otherwise outside the Convention’s scope, other creditors of the assignor, including creditors with rights in other property extended by law to the assigned receivable, such as creditors with a proprietary right in the receivable created by court decision or a retention of title in goods extended by law to the receivables from the sale of the goods, and the administrator in the insolvency of the assignor (art. 5 (*m*)). The definition of the term “priority” covers not only the preference in payment or other satisfaction but also related matters, such as the determination of whether that right is a personal or a property right, whether or not it is a security right and whether any required steps to render the right effective against a competing claimant have been satisfied (art. 5 (*g*)). Priority does not generally cover the effectiveness of an assignment as between the assignor and the assignee or the debtor (arts. 5 (*g*), 8 and 22, “with the exception of matters that are settled elsewhere in this Convention”).

2. *Mandatory law and public policy exceptions*

50. A mandatory law priority rule of the forum State may result in setting aside the applicable priority rule of the assignor’s law if the latter’s application is “manifestly contrary to the public policy of the forum State” (art. 23, para. 1). Mandatory law rules of the forum State or another State may not prevent in and of themselves the application of a priority provision of the assignor’s law (art. 23, para. 2). However, in the case of insolvency proceedings in a State other than the State of the assignor’s location, the forum State may apply its own mandatory priority rule giving priority to certain types of preferential creditor, such as tax or wage claimants (art. 23, para. 3). Moreover, the Convention is not intended to interfere with substantive and procedural insolvency rules of the forum State that do not affect priority as such (e.g. avoidance actions, stays on collection of receivables assigned and the like).

3. *Law applicable to priority in proceeds*

51. The Convention does not contain a general rule on the law applicable to priority in proceeds. The reason lies in the differences between legal

systems with respect to the nature and the treatment of rights in proceeds. However, the Convention contains two limited proceeds rules. Under the first one, if the assignee has priority over other claimants with respect to receivables and proceeds are paid directly to the assignee, the assignee may retain the proceeds (art. 24, para. 1). The second rule is intended to facilitate practices such as securitization and undisclosed invoice discounting. In such practices, payments are channelled to a special account held by the assignor, separately from its other assets, on behalf of the assignee. The Convention provides that, if the assignee has priority over other claimants with respect to the receivables and the proceeds are kept by the assignor on behalf of the assignee and are reasonably identifiable from the other assets of the assignor, the assignee has the same priority with respect to proceeds (art. 24, para. 2). The Convention does not address, however, a priority conflict between an assignee claiming an interest in proceeds held in a deposit or securities account and the depositary bank or the securities broker or other intermediary with a security or set-off right in the account (art. 24, para. 3).

4. *Substantive law priority rules*

52. In order to obtain the benefit of the Convention's priority rules, parties have the opportunity to structure their transactions in a way that refers priority questions to the appropriate law (e.g. by creating special entities in appropriate locations). The question remains as to what should happen if this is impossible, or is only possible at a considerable cost, and the applicable law has insufficient priority rules. In order to address this question, the Convention offers model substantive priority provisions (annex). States have a choice between three substantive priority systems if they wish to change their existing rules. One is based on filing of a notice about the assignment, another is based on notification of the debtor and the third is based on the time of assignment. States that wish to adjust their legislation may, by declaration, select one of these priority regimes, or simply enact new priority rules or revise their existing priority rule by way of domestic legislation. The assumption is that, in an environment of free competition between legal regimes, the regime with the most economic benefits will prevail.

5. *Subordination agreements*

53. Parties involved in a priority conflict may negotiate and relinquish priority in favour of a subordinate claimant where commercial considerations so warrant. In order to afford maximum flexibility and to reflect prevailing business practices, the Convention makes it clear that a valid subordination

need not take the form of a direct subordination agreement between the assignee with priority and the beneficiary of the subordination agreement (art. 25). It can also be effected unilaterally, for instance, by means of an undertaking of the first ranking assignee to the assignor, empowering the assignor to make a second assignment ranking first in priority.

VI. Autonomous conflict-of-laws rules

A. Scope and purpose

54. The Convention contains a set of conflict-of-laws rules that may apply independently of any territorial link with a State party to the Convention. In cases where the assignor, or the debtor, is located in a State party to the Convention, or the law governing the original contract is the law of a State party to the Convention, the independent conflict-of-laws rules may apply to fill gaps in the Convention, unless an answer may be derived from the principles underlying the Convention. If the assignor, or the debtor, is not located in a State party to the Convention, or the law governing the receivable is not the law of a State party, the independent conflict-of-laws rules may apply to transactions to which the other provisions of the Convention would not apply (art. 26). Such transactions need to be international, as defined in the Convention, and should not be excluded from the scope of the Convention.

55. The autonomous conflict-of-laws rules of the Convention in chapter V are subject to a reservation. States that enter a reservation with respect to chapter V are not bound by it (art. 39). Such a reservation was allowed to ensure that States that wished to adopt the Convention would not be prevented from doing so merely because the autonomous conflict-of-laws rules were inconsistent with their own conflict-of-laws rules.

B. Law applicable to the form of the contract of assignment

56. In the case of a contract of assignment concluded between persons located in the same State, formal validity of the contract of assignment is subject to the law of the State, which governs the contract, or of the State in which the contract is concluded. When a contract of assignment is concluded between persons located in different States, it is valid if it satisfies the formal requirements of either the law that governs the contract or the law of one of those States (art. 27).

***C. Law applicable to the mutual rights and obligations
of the assignor and the assignee***

57. The mutual rights and obligations of the assignor and the assignee are subject to the law of their choice. The parties' freedom of choice is subject to the public policy of the forum and the mandatory rules of the forum or a closely connected third country. In the absence of a choice by the parties, the law of the State with which the contract of assignment is most closely connected governs. The "close connection" test was adopted in this case despite the uncertainty it might cause as it is unlikely to have much impact in view of the fact that in the vast majority of cases parties choose the applicable law (art. 28).

***D. Law applicable to the rights and obligations
of the assignee and the debtor***

58. The relationship between the assignee and the debtor, the conditions under which the assignment can be invoked as against the debtor and contractual limitations on assignment are subject to the law governing the original contract. The fact that most of these issues are covered by the substantive law rules of the Convention limits the impact of this provision. However, certain issues were deliberately not covered in the substantive law rules of the Convention, such as the question as to when a right of set-off is available to the debtor under article 18. Article 29 governs that particular issue, at least with respect to transaction set-off (i.e. set-off arising from the original contract or another contract that was part of the same transaction). Another question falling within the scope of article 29 is the effect of anti-assignment clauses on assignments of receivables to which article 9 or 10 does not apply either because they relate to assignments of non-trade receivables or because the debtor is not located in a State party to the Convention. Statutory limitations, however, are not covered by article 29. While some statutory limitations aim to protect the debtor, many are intended to protect the assignor. In the absence of a way to draw a clear distinction between the various types of statutory limitation, it would be inappropriate to subject them to the law governing the original contract. In any case, with a few exceptions, the Convention does not affect statutory limitations.

E. Law applicable to priority

59. The Convention refers issues of priority to the law of the assignor's location. The value of this rule is that it may apply to transactions to which

article 22, which it repeats, does not apply because of the absence of a territorial connection between an assignment and a State party to the Convention.

VII. Final provisions

60. The Convention will enter into force upon ratification by five States (art. 45). States may exclude further practices by declaration, but may not exclude practices relating to “trade receivables” broadly defined in articles 9, paragraph 3, and 10, paragraph 4 (art. 41). The Convention will not apply to such practices if the assignor is located in a State that has made such a declaration. The Convention prevails over the Unidroit Convention on International Factoring (the Ottawa Convention). However, this does not affect the application of the Ottawa Convention to the rights and obligations of a debtor if the Convention does not apply to that debtor (art. 38).

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