

Annex I

Draft Convention on 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 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 the 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 the 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 and 2 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 the conclusion of the original contract, the assignor and the debtor are located in different States. An assignment is international if, at the time of the conclusion of the contract of assignment, the assignor and the assignee are located in different States.

Article 4. Exclusions

1. This Convention does not apply to assignments:
 - (a) Made to an individual for his or her personal, family or household purposes;
 - (b) Made by the delivery of a negotiable instrument, with an endorsement, if necessary;
 - (c) Made as part of the sale, or change in the ownership or the 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) Bank deposits;
 - (d) Inter-bank payment systems, inter-bank payment agreements or investment securities settlement systems;
 - (e) A letter of credit or independent guarantee;
 - (f) The sale, loan or holding of, or agreement to repurchase, investment securities.
3. This Convention does not:
 - (a) Affect whether a property right in real estate confers a right in a receivable related to that real estate or determine the priority of such a right in the receivable with respect to the competing right of an assignee of the receivable;
 - (b) Make lawful the acquisition of property rights in real estate not permitted under the law of the State where the real estate is located.
- [4. This Convention does not apply to assignments listed in a declaration made under article 41 by the State in which the assignor is located, or with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, by the State in which the debtor is located or the State whose law is the law governing the original contract.]

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 the conclusion of the contract of assignment; "future receivable" means a receivable that arises after the 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 party in preference to another party;
- (h) A person is located in the State in which it has its place of business. If the assignor or the assignee has places 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 places 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 which 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; and
 - (iii) The set-off of amounts calculated as set forth in subparagraph (l) (ii) 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 21, 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. Form of assignment

An assignment is valid as to form if it meets the form requirements, if any form requirements exist, of either the law of the State in which the assignor is located or any other law applicable by virtue of the rules of private international law.

Article 9. Effectiveness of assignments, bulk assignments, assignments of future receivables and partial assignments

1. An assignment of one or more existing or future receivables, and parts of, or undivided interests in, receivables is effective as between the assignor and the assignee, as well as against the debtor, whether 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 the 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, articles 11 and 12, paragraphs 2 and 3, this Convention does not affect any limitations on assignment arising from law.
4. An assignment of a receivable is not ineffective against, and the right of an assignee may not be denied priority with respect to the right of, a competing claimant, solely because law other than this Convention does not generally recognize an assignment described in paragraph 1 of this article.

Article 10. Time of assignment

Without prejudice to the right of a competing claimant, an existing receivable is transferred, and a future receivable is deemed to be transferred, at the time of the conclusion of the contract of assignment, unless the assignor and the assignee have specified a later time.

Article 11. 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 under an original contract for the supply or lease of [goods], construction or services other than financial services, or for the sale or lease of real estate;
 - (b) Arising under an original contract for the sale, lease or licence of industrial or other intellectual property or other 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 12. 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 an agreement between the assignor and the debtor or other person granting the 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 an 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 for the supply or lease of [goods], construction or services other than financial services, or for the sale or lease of real estate;
- (b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or other 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 13. Rights and obligations of the assignor and the assignee

1. The rights and obligations of the assignor and the assignee as between them 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 that they have established between themselves.
3. In an international assignment, the assignor and the assignee are considered, unless otherwise agreed, to have implicitly made applicable to the assignment a usage that in international trade is widely known to, and regularly observed by, parties to the particular practice.

Article 14. Representations of the assignor

1. Unless otherwise agreed between the assignor and the assignee, the assignor represents at the time of the 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 financial ability to pay.

Article 15. 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 payment instructions, but after notification is sent only the assignee may send a payment instruction.

2. Notification of the assignment or payment instructions sent in breach of any agreement referred to in paragraph 1 of this article are not ineffective for the purposes of article 19 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 16. 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 is also entitled 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 17. 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:

- (a) Change the currency of payment specified in the original contract; or
- (b) Change 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 18. 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. A 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 19. 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 assignments 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 20. Defences and rights of set-off of the debtor

1. In a claim by the assignee against the debtor for payment of the assigned receivables, 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 if 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.

3. Notwithstanding paragraphs 1 and 2 of this article, defences and rights of set-off that the debtor may raise pursuant to article 11 against the assignor for breach of agreements limiting in any way the assignor's right to assign its receivables are not available to the debtor against the assignee.

Article 21. Agreement not to raise defences or rights of set-off

1. Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, 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 20.

Such an agreement precludes the debtor from raising against the assignee those defences and rights of set-off.

2. The debtor may not exclude:
 - (a) Defences arising from fraudulent acts on the part of the assignee; or
 - (b) Defences 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 22, paragraph 2.

Article 22. 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. After notification of the assignment, an agreement 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 for breach of an agreement between them.

Article 23. Recovery of payments

Without prejudice to the law governing the protection of the debtor in transactions made for personal, family or household purposes in the State in which the debtor is located, 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
OTHER PARTIES

Article 24. Law applicable to competing rights

1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:

- (a) With respect to the right of a competing claimant, the law of the State in which the assignor is located governs:
 - (i) The characteristics and priority of the right of an assignee in the assigned receivable; and
 - (ii) The characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention[;
- (b) With respect to the right of a competing claimant, the characteristics and priority of the right of the assignee in proceeds described below are governed by:
 - (i) In the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of the State in which such money or instruments are located;
 - (ii) In the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;
 - (iii) In the case of bank deposits, the law of the State in which the bank is located[; and
 - (iv) In the case of receivables whose assignment is governed by this Convention, the law of the State in which the assignor is located].
- (c) The existence and characteristics of the right of a competing claimant in proceeds described in paragraph 1 (b) of this article are governed by the law indicated in that paragraph].

2. For the purposes of this article and article 31, the characteristics of a right are:

- (a) Whether it is a personal or property right; and
- (b) Whether or not it is security for indebtedness or other obligation.

Article 25. Public policy and preferential rights

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

2. 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 status over the rights of an assignee in insolvency proceedings under the law of that State may be given priority notwithstanding article 24. A State may deposit at any time a declaration identifying any such preferential right.

Article 26. Special proceeds rules

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 those claimants 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 account containing only cash receipts from receivables assigned to the assignee.

Article 27. 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 28. 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 29. 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 30. 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 any question whether the debtor's obligations have been discharged.

Article 31. Law applicable to competing rights of other parties

1. With the exception of matters that are settled elsewhere in this Convention and subject to articles 25 and 26:
 - (a) With respect to the right of a competing claimant, the law of the State in which the assignor is located governs:
 - (i) The characteristics and priority of the right of an assignee in the assigned receivable; and
 - (ii) The characteristics and priority of the right of the assignee in proceeds that are receivables whose assignment is governed by this Convention[;

- (b) With respect to the right of a competing claimant, the characteristics and priority of the right of the assignee in proceeds described below are governed by:
- (i) In the case of money or negotiable instruments not held in a bank account or through a securities intermediary, the law of the State in which such money or instruments are located;
 - (ii) In the case of investment securities held through a securities intermediary, the law of the State in which the securities intermediary is located;
 - (iii) In the case of bank deposits, the law of the State in which the bank is located[; and
 - (iv) In the case of receivables whose assignment is governed by this Convention, the law of the State in which the assignor is located].
- (c) The existence and characteristics of the right of a competing claimant in proceeds described in paragraph 1 (b) of this article are governed by the law indicated in that paragraph].

2. 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 status 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 32. Mandatory rules

1. Nothing in articles 29 and 30 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 29 and 30 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 in so far as, under the law of that other State, those rules must be applied irrespective of the law otherwise applicable.

Article 33. 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 by a court

or other competent authority only if that provision is manifestly contrary to the public policy of the forum State.

Chapter VI. FINAL PROVISIONS

Article 34. Depositary

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

Article 35. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until
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 36. 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 a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

[Article 37. Applicable law in territorial units

If a State has two or more territorial units whose law may govern a matter referred to in chapters IV and V of this Convention, a reference in

those chapters to the law of a State in which a person or property is located means the law applicable in the territorial unit in which the person or property is located, including rules that render applicable the law of another territorial unit of that State. Such a State may specify by declaration at any time how it will implement this article.]

Article 38. Conflicts with other international agreements

1. This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this Convention, provided that the assignor is located at the time of the conclusion of the contract of assignment in a State party to such agreement or, with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, at the time of the conclusion of the original contract, the debtor is located in a State party to such agreement or the law governing the original contract is the law of a State party to such agreement.

2. Notwithstanding paragraph 1 of this article, this Convention prevails over the Unidroit Convention on International Factoring (“the Ottawa Convention”). If, at the time of the conclusion of the original contract, the debtor is located in a State party to the Ottawa Convention or the law governing the original contract is the law of a State party to the Ottawa Convention and that State is not a party to this Convention, nothing in this Convention precludes the application of the Ottawa Convention with respect to the rights and obligations of the 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 11 and 12 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 the 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 11 and 12 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 types of assignment or to the assignment of categories of receivables listed in a declaration. In such a case, 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 the conclusion of the contract of assignment in such a State or, with respect to the provisions of this Convention that deal with the rights and obligations of the debtor, at the time of the 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.

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 the 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 the conclusion of the original contract, the debtor is located in such a State or the law governing the receivable is the law of such a State.]

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 8 of the annex.

2. For the purposes of article 24:
 - (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;
 - (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;
 - (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; 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 8 of the annex.
3. A State that has made a declaration pursuant to paragraph 1 of this article may establish rules pursuant to which assignments made 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 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.

Article 43. Effect of declaration

1. Declarations made under articles 36, paragraph 1, and 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 36, paragraph 1, 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 36, paragraph 1, 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 36, paragraph 1, or 38 to 41 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 and its proceeds 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 and its proceeds 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 for revising or amending 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 Draft 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 and its proceeds 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 the 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 and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds 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 the insolvency proceeding, attachment, judicial act or similar act of a competent authority.

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 and its proceeds is determined by the order of the conclusion of the contract 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 and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds 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 the insolvency proceeding, attachment, judicial act or similar act of a competent authority.

SECTION IV
PRIORITY RULES BASED ON THE TIME OF
NOTIFICATION OF ASSIGNMENT

Article 8. 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 and its proceeds is determined by the order in which notification of the assignment is effected.

Article 9. Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable and its proceeds has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable or its proceeds 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 effected before the commencement of the insolvency proceeding, attachment, judicial act or similar act of a competent authority.

Annex II

Renumbering of articles of the draft convention

Current article number ¹	Former article number ²
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	New
29	28
30	29
31	30
32	31
33	32
34	33

1. Annex to the present document.
 2. Draft articles 1 through 17 are taken from A/55/17, Annex I. Draft article 18 to 44 of the draft convention and 1 to 7 of the annex are taken from A/CN.9/466, Annex I

35	34
36	35
37	New
38	36
39	37
40	38
41	39
42	40
43	41
44	42
45	43
46	44
47	New

Annex to the draft convention

1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	New
9	New

* * *