P.R.I.M.E. Finance De-escalating Cross-Border Legal Tensions: The Role of Global Standards and P.R.I.M.E. Finance Experts

UNCITRAL secured finance standards

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1. U.N. Receivables Convention: key provisions

- Articles 1-4: scope
  - All assignments of contractual receivables
  - Int’l assignments and assignments of int’l receivables
  - ABL, factoring, forfaiting, securitization, project finance covered
  - Receivables from financial contracts, bank deposits and letters of credit excluded

- Article 8: Removes statutory prohibitions to the assignment of future receivables and bulk assignments

- Article 9: Removes contractual limitations to the assignment of receivables

- Articles 15-21: Remove legal barriers to the collection of receivables from foreign debtors

- Articles 22-25 (and 30): Remove legal uncertainty with respect to the law applicable to the proprietary effects of assignments
2. U.N. Receivables Convention: applicable law provisions

• Article 28: Mutual rights and obligations of the assignor and the assignee: the law chosen by the parties

• Article 29: Relationship between the assignee and the debtor: the law governing the original contract

• Article 30: Third-party (proprietary) effects of assignments: the law of the assignor’s location
  – Location: place of business, principal place of business (place of central administration), habitual residence

- On January 2, 2019 the US Senate consents to ratification by the US
- On March 12, 2018 EU Commission proposed Regulation on the law applicable to the third-party effects of assignments of claim
  - General rule: the law of the country where the assignor has its habitual residence at the material time.
  - Receivables from bank deposits and financial instruments: the law of the assigned receivable
  - Receivables in securitization: the law chosen by the assignor and the assignee
  - Conflicts between the general rule and the rule on securitization: the law applicable to the assignment first made effective against third parties
4. UNCITRAL Model Law on Secured Transactions: salient features (1)

- **General**: unitary and functional approach
- **Comprehensive scope**
  - All types of movable asset (mainly except receivables from intermediated securities and financial contracts)
  - All types obligation, debtor and creditor
- **Creation (attachment):** written agreement (unless possession is given to the secured creditor)
- **Third-party effectiveness (perfection):** mainly notice registration, but also possession and control
- **Priority:** comprehensive set of priority rules
- **Enforcement:** judicial and extra-judicial (with debtor and competing creditor protection)
5. UNCITRAL Model Law on Secured Transactions: salient features (2)

- Model Registry regulations: all registry-related issues covered
- Conflict-of-laws chapter: general and asset specific rules
  - Security interests in non-intermediated equity securities: the law under which the issuer is constituted
  - Security interests in non-intermediated debt securities: the law governing the securities
- Comprehensive transition rules
- Insolvency: UNCITRAL Secured Transactions and Insolvency Legislative Guides
6. P.R.I.M.E. Finance: facilitating greater awareness and reliance on these instruments (1)

- Disputes arising from secured finance agreements are generally applicable.
- The main issue is third-party rights at the stage of enforcement of the arbitral award.
- The UNCITRAL Model Law addresses these rights by way of generally acceptable rules:
  - At the stage of out-of-court repossession, the enforcing secured creditor must notify persons in possession of the asset.
  - At the stage of out-of-court disposition, the enforcing secured creditor must notify all creditors of record:
    - Higher ranking secured creditor may take over enforcement.
    - Higher ranking secured creditor must be paid first.
P.R.I.M.E. Finance: facilitating greater awareness and reliance on these instruments (2)

- In the case of arbitration, the rules of the Model Law are applicable as the rules chosen by the parties (whether they are enacted by a State or not)

- They may also apply as the rules applicable by way of the conflict-of-laws rules which the arbitral tribunal considers appropriate