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The UN Convention on the Assignment of Receivables – What Is It, and How Will It Change Trade Finance?

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Who Are We?

- ***Global Receivables and Supply Chain Finance Team***
 - Over 50 professionals across our platform focused on receivables and supply chain finance
 - Coverage across our firm including the US, the UK, France, Germany, Hong Kong, Singapore, Brazil and Mexico
 - We are a go-to law firm for a number of the world's leading participants in the supply chain finance and trade receivables finance markets



Welcome To Our Webinar Series!

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 - Tax
 - Customs and Trade
 - Technology Transactions and IP
 - Cash Management
 - Litigation / Enforcement
 - Regulation

Today's Panel:



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Background: Ratification by US happened October 15, 2019

What is UN Convention on the Assignment of Receivables in International Trade?

- A treaty that if adopted by a number of countries will remove substantial legal barriers to cross-border receivables financing and sale transactions:
 - Validates assignment of future receivables and bulk assignments
 - Generally invalidates contractual limitations on the assignment of receivables in line with UCC Section 9-406
 - Enhances certainty as to the effectiveness of a sale/assignment between the assignor and assignee and as against the account debtor
 - Clarifies the law applicable to priority of competing claims in seller bankruptcy
 - Validates assignments (pledges) from a much wider range of assets than under traditional laws
 - Personal property vs fixed property, e.g real estate collateral
 - Certain credit card receipts



Implications for Global Trade:

- At least up until COVID, global merchandise trade was at US \$18-\$20 trillion per year
- Service sector trade representing an additional \$5 trillion in economic activity and value creation
- 80% of cross-border flow of goods and increasingly cross border service sector activity relies on some form of trade financing according to the WTO
- Persistent unmet demand for trade financing of about \$1.5 trillion annually

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Trade activity is financed using a range of techniques including:

- Supply chain finance
 - Global payables finance programs
 - Cross border receivables financings
- Factoring
- Asset based financing
- Trade finance securitizations
- Letters of credit

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Why is the Convention a Game-Changer?

- Brief history of the Convention:
 - It languished for several years until 2019 adoption in the US
 - US Declaration tied to UCC Article 9 (difference between a country Declaration and a Reservation)
- Broad adoption could remove significant barriers to trade growth
 - Convention greatly simplifies the way receivables are transferred
 - Incentivizes FIs and Fintechs to increase cross-border receivables financing activities
- Small and medium size businesses (SMEs) which are critical to supply chains everywhere will have unprecedented access to financing
- Modernizes commercial finance laws in many jurisdictions
- How does the Convention relate to other similar Model Laws and Conventions?



What are the current problems the Convention addresses?

- Onerous and complex local law requirements for receivables financing and sale, e.g.:
 - Notary public or other formal governmental process has to be involved (e.g. Spain)
 - Receivable must be described in granular detail
 - Notice to the account debtor has to be given in a particular way, at a particular time and in a certain language
 - Receivables can't be sold if there is an anti-assignment clause in the sale contract
 - Receivables can't be sold on a batch, future or undivided basis
 - Laws applicable to priority of claims in bankruptcy vague or uncertain; difficult to navigate conflicts of law
- All of these problems make FIs skittish
- SMEs throughout LATAM, CIS (modern finance law largely lacking), the Middle East and Africa don't currently have access this type of financing:
 - Credit in these jurisdictions oftentimes tied up in illiquid assets

The background of the slide features a close-up, slightly blurred image of several Euro banknotes. The notes are in shades of blue, green, and yellow. The faces of the historical figures on the notes are visible, along with some of the intricate patterns and numbers on the paper. A vertical orange bar is positioned on the left side of the slide, partially overlapping the banknotes.

What are the Convention's Objectives:

- Preamble: “to promote the availability of capital and credit at more affordable rates” and “create certainty, transparency and modernization” relating to assignments of receivables
- Uniform rules reduce transactions costs and legal risk
- Facilitate cross border financings that are more economically and geographically diverse
- Supports wider range of “moveable assets” as sources of assignment or collateral



Key Features:

- Scope
 - Convention only applies if assignor and assignee are located in different countries or the assignor or the account debtor on the receivable are located in different countries
- Assignments can be in bulk; future receivables can be assigned; general descriptions of receivables ok
- Convention generally invalidates contractual restrictions in the underlying sale contract
- Either or both of the assignor and assignee can send the account debtor notice of assignment or a payment instruction
 - After the account debtor receives notification, its debt is discharged only by paying the assignee
 - Most effective with low-cost fast electronic “notice filing”
- Priority of an assignee’s interest in a receivable as against competing claimants is determined by the law of the jurisdiction where the assignor is located

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Treaty Enforcement

- What happens if a country violates the Convention?
 - Credit spigot gets turned off by international credit community
 - First responder to non-compliance is the international credit community and not the courts
 - Sends strong signal: once spigot shut off, it doesn't open easily



Forward View; Next Steps:

- US second country after Liberia to ratify
- Must be ratified by 5 countries before it enters into full force and effect
 - Countries have flexibility to enact Declarations
- Various industry groups – ICC/USCIB, BAFT, SF Net, US Chamber of Commerce, and the Kozolchyk National Law Center (NatLaw) – advocated for ratification
 - Positioned as a technical, apolitical solution to a very specific finance problem and transparency

A background image showing several Euro banknotes, including a 100 Euro note and a 50 Euro note, with a blue and yellow vertical bar on the left side.

Forward View; Next Steps (continued):

- UNCITRAL continues to promote the adoption of the Convention in coordination with the World Bank and other interested stakeholders:
 - Countries who have already participated in secured transactions reform
 - Group of 73 countries who ratified the Cape Town Convention on International Interests in Mobile Equipment aircraft protocol
- Challenges/impediments to adoption
 - Government ministries may not be receptive to benefits
 - Some countries already undergoing a more comprehensive reform of their secured transaction laws

The background of the slide features a close-up, slightly blurred image of several US dollar bills. The focus is on the portrait of George Washington on the one-dollar bill, with other bills partially visible behind it. The colors are muted, with a blue and green tint. A vertical orange bar is on the left side of the slide.

Best Way Forward:

- Continue to position as a technical, apolitical solution
- Supportive messaging from U.S. State Department, U.S. Commerce Department, and other U.S. agencies, Export-Import Bank of the United States, corporates, chambers of commerce, other influential stakeholders to complement UNCITRAL efforts and efforts of other international bodies that are or may become involved
- Other actions by the above parties including developing contacts and active support where appropriate in other countries
- Support of Canadian resources
- Prior similar efforts like Cape Town Convention
 - Convention on Assignment of Receivables Entirely Consistent with Cape Town Convention



CONCLUSION

- Summary – Wrap Up
- Ways you can help raise awareness?

For more information on the Convention, please find a copy of the Mayer Brown Legal Update dated May 21, 2020 titled “*The UN Convention on the Assignment of Receivables in International Trade*” and co-authored by Rebecca Fruchtman and Alexander Malaket at <https://www.mayerbrown.com/en/perspectives-events/publications/2020/05/the-un-convention-on-the-assignment-of-receivables-in-international-trade>

Questions?



Presenter Bios



Rebecca O. Fruchtman | Counsel, Mayer Brown | rfruchtman@mayerbrown.com

Rebecca Fruchtman is counsel in Mayer Brown's Chicago office and a member of the Banking & Finance practice. Her practice focuses on the global trade finance space, including supply chain finance, open account, letters of credit, structured letters of credit and risk distributed trade transactions, and on asset-based financing transactions—both domestic and cross-border. Previously Ms. Fruchtman served as general counsel to Bank of America's Business Capital asset based lending line of business (US Central Region) and as counsel to the Bank's Global Transaction Services Global Trade and Supply Chain line of business.



Alex Dell | Partner, Mayer Brown | adell@mayerbrown.com

Alex Dell is head of the Banking & Finance group of the London office, as well as co-chair of the firm's asset based lending (ABL) practice. He is focused on multi-jurisdictional receivables financing programs and ABL transactions. Alex advises on a range of true sale issues as well as borrowing base techniques, both from a lender and borrower perspective. He also has an in-depth knowledge of off balance sheet considerations, payables finance, fintech platforms, bill discounting and floorplanning. Alex represents banks, credit funds, sponsors and corporates including some of the world's largest financial institutions and companies. He is widely-recognized as a leading ABL and receivables financing lawyer in the UK. Prior to joining Mayer Brown in 2015, Alex led the Structured Trade & Receivables Finance team with another leading international law firm.

Presenter Bios



Hal Burman | Legal Counsel, Grey Zone Functions | halburman@aol.com

Hal Burman, recently retired from the Office of Legal Adviser, Department of State, Washington, DC, focuses on cross-border commercial and financial transactions and the interaction of different legal systems, as well as treaties and the means for their enforcement. He served as Head of US Delegation in negotiations at Uncitral, Unidroit, the Hague Conference on and the Organization of American States on the Uncitral Assignment of Receivables Convention and its parallel at Unidroit, the Cape Town Convention on asset-based finance, as well as the OAS InterAmerican Model Law on secured finance. Other commercial law negotiations included the Uncitral Model Law on international Credit Transfers and Model Law on Cross-Border Insolvency proceedings, the latter then being enacted in the U.S. as Chapter 15 of the US Bankruptcy Code. Prior to the above, he dealt with cross-border contract and other commercial law matters in a variety of countries.



Jae Sung Lee | Legal Officer, UNCITRAL | jaesung.lee@un.org

Jae Sung Lee is a legal officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for the United Nations Commission on International Trade Law (UNCITRAL). He currently functions as the Secretary of the Working Group on Dispute Settlement (II) focusing on expedited arbitration and further services the Working Group on Investor-State Dispute Settlement Reform (III). Previously, he has functioned as the Secretary of the Working Groups on Secured Transactions (VI) preparing the Practice Guide to the Model Law on Secured Transactions and on Electronic Commerce (IV) preparing the Model Law on Electronic Transferable Records. Before joining the United Nations in 2007, Jae Sung served in the Korean Ministry of Foreign Affairs.

Presenter Bios



Robert Trojan | Senior Advisor, NatLaw | btrojan@natlaw.com

Mr. Trojan is an international expert on disruptive tech and lending, thought leader and speaker. He is Founder of Token Insights & Financial Services Insights, his advisory firm that specialize in global strategy, FinTech, RegTech, and regulatory/ legislative affairs, including blockchain, AI and data privacy/security. He is also a Senior Advisor for the National Law Center and Mentor with several FinTech accelerators. Previously, Mr. Trojan was the CEO of the Commercial Finance Association (CFA), the global trade organization representing the asset-based lending, supply chain finance, trade finance, and factoring business.

Mr. Trojan also serves as official Observer on various UN Working Groups (UNCITRAL, UNIDROIT), was appointed to advise the US Secretary of Commerce on its Trade Finance Advisory Council, and engages regularly with the international community including the World Bank, among others.



Appendix – webinar schedule

- 22 July: 10 Most Common Insolvency Questions in Receivables and Payables Finance – A Focus on US
- 29 July: 10 Most Common Insolvency Questions in Receivables and Payables Finance – A Focus on Asia and Europe
- August 12: Capital Markets/Alternative Investors; Investing in the Trade Receivable Asset Class
- August 19: 5 Most Common Questions About Financing Receivables and Payables Through a Platform
- September 2: 5 Most Common Questions About Financing Foreign Receivables; Issues Beyond Simple Perfection, Priority and Enforcement
- September 16: Supply Chain Finance Using Drafts and Bills of Exchange
- October 21: Working Together for Mutual Benefit: Non-Recourse Receivables Purchase and Trade Receivables Securitization
- November 4: The UN Convention on the Assignment of Receivables – What Is It, and How Will It Change Trade Finance?
- November 11: Credit Insurance – How Does It Actually Work in Supply Chain Finance?

Recordings of previous programs can be found here: [Global Receivables & Supply Chain Finance Webinar Series](#)

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