

United Nations Convention on the Assignment of Receivables in International Trade, 2001

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Contents

**United Nations Convention on the Assignment of Receivables
in International Trade, 2001**

PREAMBLE	1
CHAPTER I - SCOPE OF APPLICATION	1
Article 1 - Scope of application	1
Article 2 - Assignment of receivables	1
Article 3 - Internationality	2
Article 4 - Exclusions and other limitations	2
CHAPTER II - GENERAL PROVISIONS	2
Article 5 - Definitions and rules of interpretation	2
Article 6 - Party autonomy	4
Article 7 - Principles of interpretation	4
CHAPTER III - EFFECTS OF ASSIGNMENT	4
Article 8 - Effectiveness of assignments	4
Article 9 - Contractual limitations on assignments	4
Article 10 - Transfer of security rights	5
CHAPTER IV - RIGHTS, OBLIGATIONS AND DEFENCES	6
Article 11 - Rights and obligations of the assignor and the assignee	6
Article 12 - Representations of the assignor	6
Article 13 - Right to notify the debtor	6
Article 14 - Right to payment	6
Article 15 - Principle of debtor protection	7
Article 16 - Notification of the debtor	7
Article 17 - Debtor's discharge by payment	7
Article 18 - Defences and rights of set-off of the debtor	8
Article 19 - Agreement not to raise defences or rights of set-off	8

Article 20 - Modification of the original contract	8
Article 21 - Recovery of payments	9
Article 22 - Law applicable to competing rights	9
Article 23 - Public policy and mandatory rules	9
Article 24 - Special rules on proceeds	9
Article 25 - Subordination	10

**CHAPTER V - AUTONOMOUS CONFLICT-OF-LAWS
RULES**

Article 26 - Application of chapter V	10
Article 27 - Form of a contract of assignment	10
Article 28 - Law applicable to the mutual rights and obli- gations of the assignor and the assignee	10
Article 29 - Law applicable to the rights and obligations of the assignee and the debtor	10
Article 30 - Law applicable to priority	10
Article 31 - Mandatory rules	11
Article 32 - Public policy	11

CHAPTER VI - FINAL PROVISIONS

Article 33 - Depositary	11
Article 34 - Signature, ratification, acceptance, approval, accession	11
Article 35 - Application to territorial units	11
Article 36 - Location in a territorial unit	12
Article 37 - Applicable law in territorial units	12
Article 38 - Conflicts with other international agreements	12
Article 39 - Declaration on application of chapter V	12
Article 40 - Limitations relating to Governments and other public entities	12
Article 41 - Other exclusions	13
Article 42 - Application of the annex	13
Article 43 - Effect of declaration	14
Article 44 - Reservations	15

Article 45 - Entry into force	15
Article 46 - Denunciation	15
Article 47 - Revision and amendment	16
ANNEX TO THE CONVENTION	16
SECTION I - PRIORITY RULES BASED ON REGISTRATION	16
Article 1 - Priority among several assignees	16
Article 2 - Priority between the assignee and the insolvency administrator or creditors of the assignor	16
SECTION II - REGISTRATION	16
Article 3 - Establishment of a registration system	16
Article 4 - Registration	16
Article 5 - Registry searches	17
SECTION III - PRIORITY RULES BASED ON THE TIME OF THE CONTRACT OF ASSIGNMENT	17
Article 6 - Priority among several assignees	17
Article 7 - Priority between the assignee and the insolvency administrator or creditors of the assignor	17
Article 8 - Proof of time of contract of assignment	17
SECTION IV - PRIORITY RULES BASED ON THE TIME OF NOTIFICATION OF ASSIGNMENT	17
Article 9 - Priority among several assignees	17
Article 10 - Priority between the assignee and the insolvency administrator or creditors of the assignor	18
<i>[Post Provisions]</i>	18
Metadata	19
SiSU Metadata, document information	19

1 **United Nations Convention on the Assignment of**
2 **Receivables in International Trade, 2001**

3 **PREAMBLE**

4 The Contracting States,

5 Reaffirming their conviction that international trade on the basis of
6 equality and mutual benefit is an important element in the promo-
7 tion of friendly relations among States,

8 Considering that problems created by uncertainties as to the con-
9 tent and the choice of legal regime applicable to the assignment of
10 receivables constitute an obstacle to international trade,

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

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

18 Being of the opinion that the adoption of uniform rules governing the
19 assignment of receivables would promote the availability of capital
20 and credit at more affordable rates and thus facilitate the develop-
21 ment of international trade,

22 Have agreed as follows:

CHAPTER I - SCOPE OF APPLICATION

Article 1 - Scope of application

1. This Convention applies to:

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

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

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

22 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 interna-
tional 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 per-
son ("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.

22

(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;

34

(f) Bank deposits;

35

(g) A letter of credit or independent guarantee.

36

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

37

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.

38

5. Nothing in this Convention:

39

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

40

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

41

(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

42

(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.

43

CHAPTER II - GENERAL PROVISIONS

44

Article 5 - Definitions and rules of interpretation

45

For the purposes of this Convention:

46

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

47

Article 3 - Internationality

23

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.

24

Article 4 - Exclusions and other limitations

25

1. This Convention does not apply to assignments made:

26

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

27

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

28

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

29

(a) Transactions on a regulated exchange;

30

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

31

(c) Foreign exchange transactions;

32

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

33

48 (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;

49 (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;

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

51 (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;

52 (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;

53 (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;

54 (h) A person is located in the State in which it has its place of busi-

ness. 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; 55

(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; 56

(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; 57

(l) "Netting agreement" means an agreement between two or more parties that provides for one or more of the following: 58

(i) The net settlement of payments due in the same currency on the same date whether by novation or otherwise; 59

(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 60

(iii) The set-off of amounts calculated as set forth in subparagraph 61

(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. 89

81 3. This article applies only to assignments of receivables:

82 (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;

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

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

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

86 **Article 10 - Transfer of security rights**

87 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.

88 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: 90

(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; 91

(b) Arising from an original contract for the sale, lease or licence of industrial or other intellectual property or of proprietary information; 92

(c) Representing the payment obligation for a credit card transaction; or 93

(d) Owed to the assignor upon net settlement of payments due pursuant to a netting agreement involving more than two parties. 94

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. 95

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. 96

97 **CHAPTER IV - RIGHTS, OBLIGATIONS AND DEFENCES**

98 **SECTION I - ASSIGNOR AND ASSIGNEE**

99 **Article 11 - Rights and obligations of the assignor and the assignee**

100 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.

101 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.

102 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.

103 **Article 12 - Representations of the assignor**

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

- 105 (a) The assignor has the right to assign the receivable;
- 106 (b) The assignor has not previously assigned the receivable to another assignee; and
- 107 (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. 108

Article 13 - Right to notify the debtor 109

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. 110

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. 111

Article 14 - Right to payment 112

1. As between the assignor and the assignee, unless otherwise agreed and whether or not notification of the assignment has been sent: 113

(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; 114

(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 115

116 (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.

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

118 SECTION II - DEBTOR

119 **Article 15 - Principle of debtor protection**

120 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.

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

122 (a) The currency of payment specified in the original contract; or

123 (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.

124 **Article 16 - Notification of the debtor**

125 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. 127

Article 17 - Debtor's discharge by payment 128

1. Until the debtor receives notification of the assignment, the debtor is entitled to be discharged by paying in accordance with the original contract. 129

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. 130

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. 131

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. 132

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. 133

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 134

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.

135 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.

136 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.

137 **Article 18 - Defences and rights of set-off of the debtor**

138 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.

139 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.

140 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

141

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.

142

2. The debtor may not waive defences:

143

(a) Arising from fraudulent acts on the part of the assignee; or

144

(b) Based on the debtor's incapacity.

145

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.

146

Article 20 - Modification of the original contract

147

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.

148

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:

149

(a) The assignee consents to it; or

151 (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.

152 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.

153 **Article 21 - Recovery of payments**

154 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.

155 SECTION III - THIRD PARTIES

156 **Article 22 - Law applicable to competing rights**

157 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.

158 **Article 23 - Public policy and mandatory rules**

159 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.

160 2. The rules of the law of either the forum State or any other State

150 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.

162 **Article 24 - Special rules on proceeds**

163 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.

164 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:

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

166 (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.

167 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.

168 **Article 25 - Subordination**

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

170 **CHAPTER V - AUTONOMOUS CONFLICT-OF-LAWS RULES**

171 **Article 26 - Application of chapter V**

172 The provisions of this chapter apply to matters that are:

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

175 **Article 27 - Form of a contract of assignment**

176 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.

177 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 178

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

180 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 181

182 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 183

184 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.

185 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.

186 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.

187 **Article 31 - Mandatory rules**

188 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.

189 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.

190 **Article 32 - Public policy**

191 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.

192 **CHAPTER VI - FINAL PROVISIONS**

193 **Article 33 - Depositary**

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

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

196 1. This Convention is open for signature by all States at the Headquarters of the United Nations in New York until 31 December 2003.

197 2. This Convention is subject to ratification, acceptance or approval by the signatory States.

198 3. This Convention is open to accession by all States that are not signatory States as from the date it is open for signature.

199 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

201 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.

202 2. Such declarations are to state expressly the territorial units to which this Convention extends.

203 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.

204 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.

205 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.

206 **Article 36 - Location in a territorial unit**

207 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.

208 **Article 37 - Applicable law in territorial units**

209 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

210

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.

211

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.

212

Article 39 - Declaration on application of chapter V

213

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

214

Article 40 - Limitations relating to Governments and other public entities

215

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.

216

217 **Article 41 - Other exclusions**

218 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.

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

220 (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

221 (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.

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

223 **Article 42 - Application of the annex**

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

225 (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;

226 (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;

227 (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 228

(e) The priority rules set forth in articles 7 and 9 of the annex. 229

2. For the purposes of article 22: 230

(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; 231

(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; 232

(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 233

(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. 234

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. 235

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. 236

5. At the time a State makes a declaration pursuant to paragraph 1 of this article or thereafter, it may declare that: 237

(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

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

240 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.

241 **Article 43 - Effect of declaration**

242 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.

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

244 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.

245 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.

238 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.

249 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.

252 7. If a rule rendered applicable or inapplicable as a result of a dec-

laration 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.

253 **Article 44 - Reservations**

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

255 **Article 45 - Entry into force**

256 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.

257 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.

258 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

259 (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. 260

Article 46 - Denunciation 261

1. A Contracting State may denounce this Convention at any time by written notification addressed to the depositary. 262

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. 263

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. 264

4. If a receivable is assigned pursuant to a contract of assignment 265

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.

266 **Article 47 - Revision and amendment**

267 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.

268 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.

269 **ANNEX TO THE CONVENTION**

270 **SECTION I - PRIORITY RULES BASED ON REGISTRATION**

271 **Article 1 - Priority among several assignees**

272 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

273

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.

274

SECTION II - REGISTRATION

275

Article 3 - Establishment of a registration system

276

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.

277

Article 4 - Registration

278

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.

279

280 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.

281 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.

282 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.

283 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.

284 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.

285 **Article 5 - Registry searches**

286 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.

287 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 as-

signor, 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.

298 **Article 10 - Priority between the assignee and the insolvency administrator or creditors of the assignor**

299 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.

[Post Provisions]

300 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.

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

Metadata

SiSU Metadata, document information

Document Manifest @:

http://www.jus.uio.no/lm/un.assignment.of.receivables.in.international.trade.convention.2001/sisu_manifest.html

Title: United Nations Convention on the Assignment of Receivables in International Trade, 2001

Creator: United Nations (UN)

Rights: Copyright (C) 2001 United Nations (UN)

Subject: assignment receivables

Publisher: SiSU <http://www.jus.uio.no/sisu> (this copy)

Date: 2001

Topics Registered: United Nations:assignment:receivables:convention;assignment:-receivables:convention

Version Information

Sourcefile: un.assignment.of.receivables.in.international.trade.convention.-2001.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(un.assignment.of.receivables.in.international.trade.-convention.2001.sst)=bbb921322b29ccec55ab45d3fa7ede8f100d68438712db43-c0993b3fbc434d01

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23-a8499e68de066eec8ea9b8e9

Generated

Document (dal) last generated: Tue Sep 21 17:43:41 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]