



< Making it easier to access credit >

## Possible reform of secured transactions regimes based on the UNCITRAL Model Law

Jae Sung LEE

Legal Officer, International Trade Law Division

Office of Legal Affairs, United Nations

E-mail: [jaesung.lee@un.org](mailto:jaesung.lee@un.org)

# Importance of getting credit

**Access to credit is essential for businesses and important for economic growth and sustainable development.**

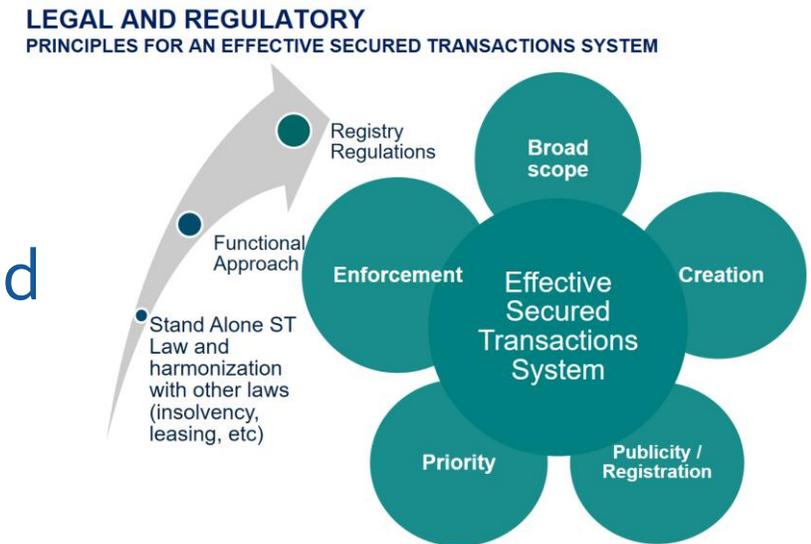
- Then, why is it so difficult for businesses to get credit, particularly for micro, small and medium-sized businesses?
- Lack of collateral which would be accepted by financial institutions (strong preference for immovable property)
- Need for a legal framework to facilitate lending based on **movable asset**

# Key elements of a successful secured transaction legislative reform

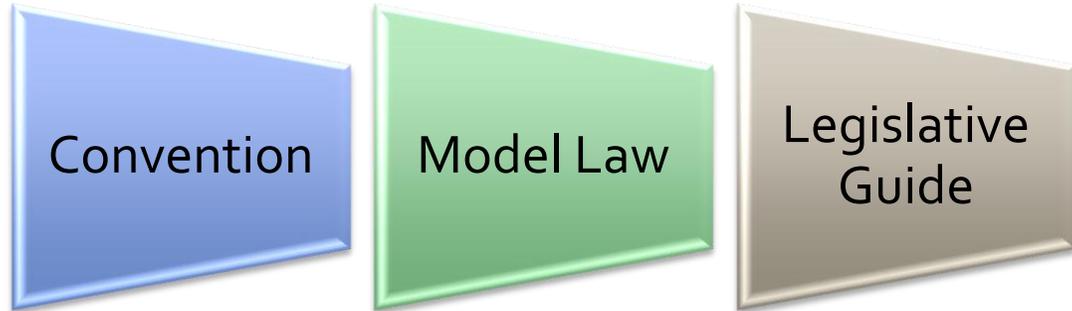
- Comprehensive regime for all types of movable assets
- Certainty and predictability about the transaction, including the rights and obligations of the parties as well as third parties
- Balancing the interests of all parties involved
- Respecting party autonomy

Perceived risk of creditors ▼

Availability of credit at a more affordable rate and  
for longer periods ▲



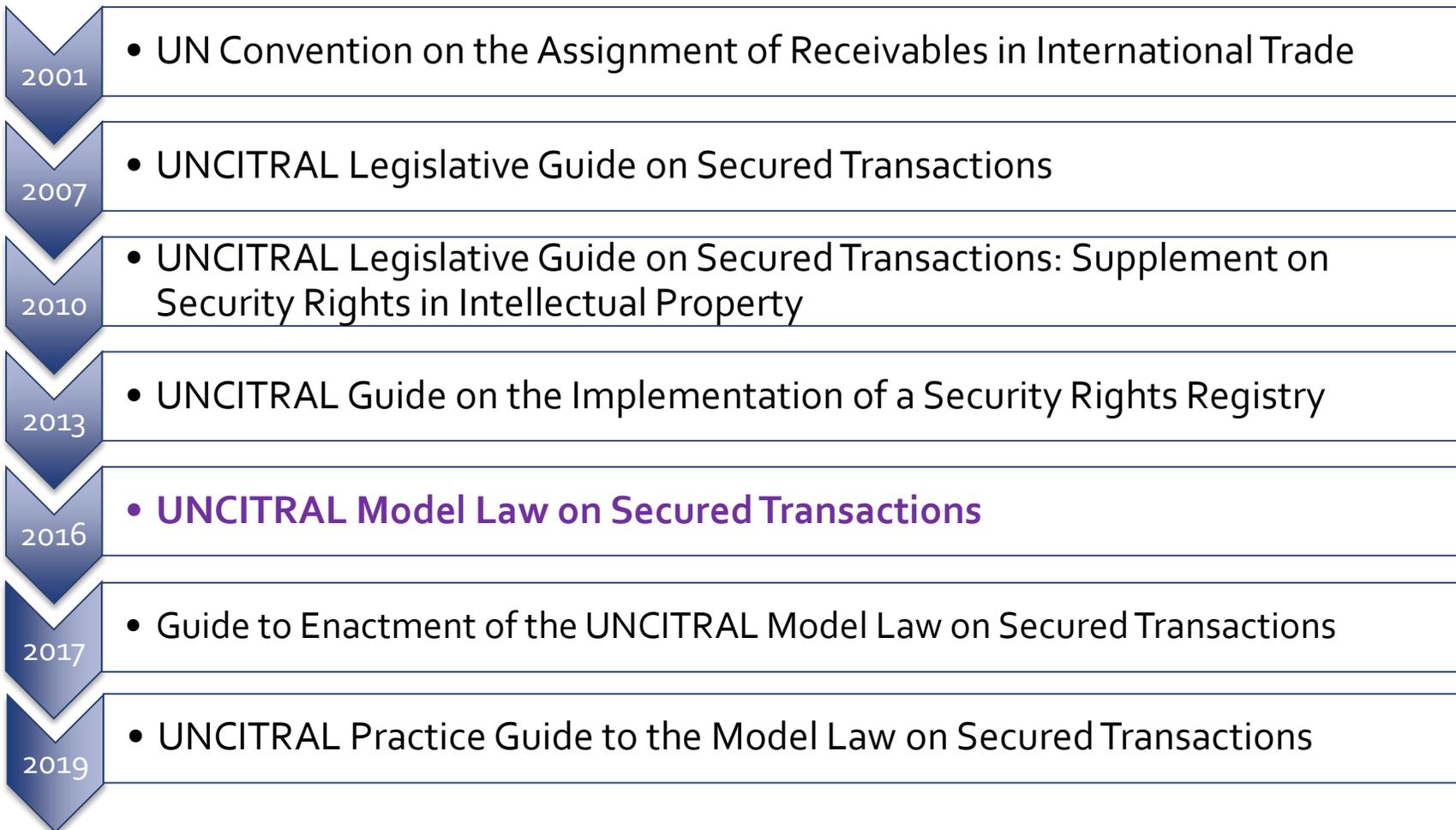
# UNCITRAL texts and its six Working Groups



- Negotiated with universal participation reflecting balance of national, regional, economic, legal and other interests
- Drafted with a view to ensuring compatibility with the various legal traditions



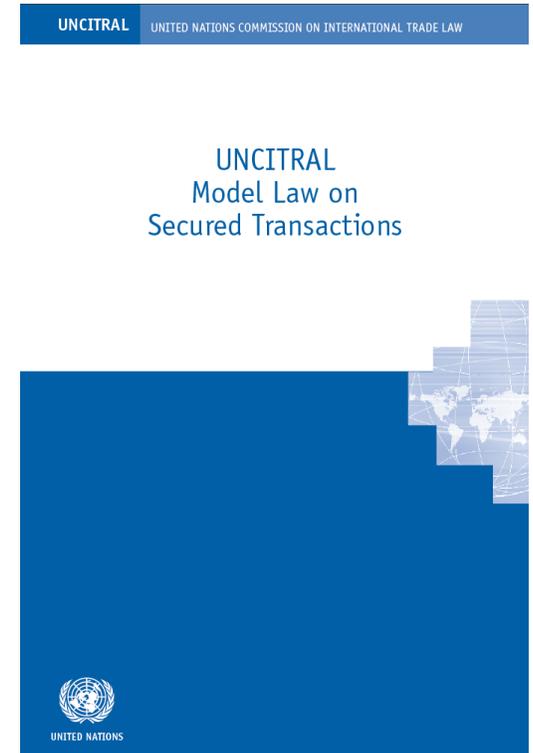
# Creating a favorable environment for access to credit



*[Explanatory text]*  
UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions (2011)

# UNCITRAL Model Law on Secured Transactions

- A simple, concise text based on the Receivables Convention, Legislative Guide, Registry Guide and the IP Supplement
- Comprehensive and functional approach to address multiplicity of regimes which have created gaps and inconsistencies
- 140 articles including 33 registry-related provisions
- Guide to Enactment finalized in 2017 and the Practice Guide in 2019



# The Model Law Approach

- ✓ Movable assets as collateral (non-possessory security rights)
- ✓ Functional approach (regardless of the form)

## Article 1. Scope of application

1. This Law applies to security rights in **movable assets**.
2. ... , this Law applies to **outright transfers of receivables by agreement**.

## Article 2. Definitions and rules of interpretation

(kk) “Security right” means a property right in a movable asset that is created by an agreement to secure payment or other performance of an obligation, **regardless of** whether the parties have denominated it as a security right, and **regardless of** the type of asset, the status of the grantor or secured creditor, or the nature of the secured obligation;

# The Model Law Approach

- ✓ Security right in a single category of movable assets, in all assets of the grantor, in future assets

## Article 6. Creation of a security right

1. A security right is created **by a security agreement**, provided that the grantor has rights in the asset to be encumbered or the power to encumber it.
2. A security agreement may provide for the creation of a security right **in a future asset**, but the security right in that asset is created only when the grantor acquires rights in it or the power to encumber it.

## Article 9. Description of encumbered assets ...

1. ... described ... **in a manner that reasonably allows their identification**.
2. A description ... that indicates that the encumbered assets consist of **all the grantor's movable assets**, or of all the grantor's movable assets **within a generic category**, satisfies the standard in paragraph 1.

# The Model Law Approach

- ✓ Distinction between creation and third-party effectiveness
- ✓ Advance registration possible

## Article 18. Primary methods for achieving third-party effectiveness

A security right in an encumbered asset is effective against third parties if **a notice ... is registered in the Registry.**

## Article 28. Establishment of the Registry

- Central point for publicizing all security rights in movable assets
- Electronic and public
- **Notice-based** (vs. document-based)
- **Grantor-based indexing** (vs. asset-based)

# The Model Law Approach

- ✓ Resolution of priority conflict among competing claimants: **clear and predictable** priority rules

## Chapter V. Priority of a security right

Article 29. **Competing security rights** created by the same grantor

Article 34. Security rights competing with **rights of buyers** or other transferees, lessees or licensees of an encumbered asset

Article 35. Impact of the grantor's **insolvency** ...

Article 36. Security rights competing with **preferential claims**

Article 37. Security rights competing with rights of **judgment creditors**

Article 38. **Acquisition security rights** ...

# The Model Law Approach

- ✓ Flexibility including out-of-court enforcement

## Article 72. Post-default rights

1. After default, the grantor and the secured creditor are **entitled to exercise**:
  - (a) Any right under the provisions of this chapter; and
  - (b) Any other right provided in the security agreement or any other law, except to the extent it is inconsistent with the provisions of this Law.

## Article 73. Methods of exercising post-default rights

1. The secured creditor may exercise its post-default rights by application to [a court or other authority to be specified by the enacting State] **or without such an application.**

# The Model Law Approach

## Chapter VII. Enforcement of a security right

Article 76. Right of a higher-ranking secured creditor to take over enforcement

Article 77. Right of the secured creditor **to obtain possession** of an encumbered asset

Article 78. Right of the secured creditor **to dispose** of an encumbered asset

Article 79. **Distribution of proceeds**

Article 80. Right to **propose acquisition**

Article 82. **Collection of payment** (regarding receivables)

# UNCITRAL Practice Guide to the MLST (2019)

- Provides practical guidance to parties involved in secured transactions and those whose rights might be affected
- Explains key features of the MLST and illustrates types of transactions possible under the MLST
- Provides step-by-step explanations on how to engage in the most common and commercially important secured transactions
- Includes a chapter primarily for regulated financial institutions and prudential regulatory authorities on the need for coordination between secured transactions law and prudential regulation

---

# PRESS RELEASES

---

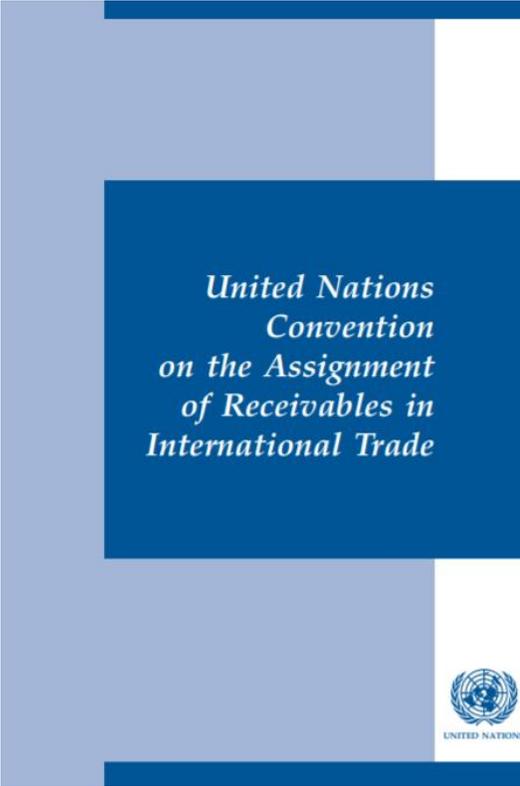
For information only - not an official document

UNIS/L/286  
24 October 2019

## The United States of America ratifies the United Nations Convention on the Assignment of Receivables in International Trade

VIENNA, 24 October (UN Information Service) - The United States of America becomes the second State Party to the United Nations Convention on the Assignment of Receivables in International Trade. The instrument of ratification was deposited at UN Headquarters in New York on 15 October 2019. The Convention will enter into force on the first day of the month following the expiration of six months after the deposit of the fifth instrument of ratification, acceptance, approval or accession.

The Convention, adopted by the General Assembly in 2001, establishes principles and rules relating to the use of receivables (rights to payment of money) in the cross-border context for financing purposes. By providing certainty to such transactions and protecting the interest of all parties involved, the Convention aims to promote the availability of capital and credit on the basis of receivables at more affordable rates, which would be particularly helpful for small and medium-sized enterprises. Entry into force of the Convention would facilitate the development



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



Reference: C.N.567.2019.TREATIES-X.17 (Depositary Notification)

UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES  
IN INTERNATIONAL TRADE

NEW YORK, 12 DECEMBER 2001

UNITED STATES OF AMERICA: RATIFICATION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 15 October 2019, with:

Understandings and Declarations (Original: English)

# United Nations Convention on the Assignment of Receivables in International Trade (2001)

- Establishes rules relating to the use of receivables (rights to payment of money) in the cross-border context for financing purposes, which have been embodied in the Model Law
- Covers both international assignments of receivables and assignments of international receivables
- Aims to promote the availability of capital and credit on the basis of receivables at more affordable rates
- Entry into force would facilitate the development of trade finance as well as international trade

For more information on the work of  
UNCITRAL, please visit our web site

<https://uncitral.un.org>

E-mail: [jaesung.lee@un.org](mailto:jaesung.lee@un.org)

