



General Assembly

Distr.: Limited
15 June 2005

Original: English

**United Nations Commission
on International Trade Law**
Working Group VI (Security Interests)
Eighth session
Vienna, 5-9 September 2005

Security Interests

Recommendations of the draft legislative guide on secured transactions

Note by the Secretariat

Addendum

Contents

	<i>Recommendations</i>	<i>Page</i>
X. Acquisition financing devices	125-135	2



X. Acquisition financing devices

Purpose

The purpose of the provisions of the law on acquisition financing devices (sales with a retention of title arrangement, purchase-money security devices and financial leases) is to:

- (a) Recognize the importance of acquisition financing as a source of affordable credit, in particular for small- and medium-size businesses; and
- (b) Provide for equal treatment of all providers of acquisition financing, by subjecting them to the rules governing security rights or to [a different but equivalent set of rules] [certain of the rules governing security rights].

Equivalence of acquisition financing devices to security rights

125. The law should treat acquisition rights arising under transactions, such as sales with retention of title arrangements, purchase-money lending arrangements and financial leases, as security rights by including such rights within the definition of “security rights” and, thus, applying the rules governing security rights to these rights directly (“unitary approach”). Alternatively, the law might exclude such rights (or some of them) from the definition of “security rights”, but subject them to [a different but equivalent set of rules] [certain of the rules governing security rights] (“non-unitary approach”). In either case, the recommendations applicable to acquisition security rights should apply, as supplemented by the recommendations applicable to non-acquisition security rights.

Creation of acquisition security rights

126. The law should specify that a security right is created by agreement between the buyer, grantor or financial lessee (hereinafter referred to as “the grantor”) and the seller, secured creditor or financial lessor (hereinafter referred to as “the acquisition financier”) which is in writing and evidences the intent of the grantor to grant a security right or is accompanied by delivery of possession pursuant to the agreement and in accordance with recommendation 9. Writing includes a purchase order, invoice, general terms and conditions and the like. It also includes an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference (see article 6 of the UNCITRAL Model Law on Electronic Commerce).

[Note to the Working Group: Recommendation 126 is based on recommendation 8 (see A/CN.9/WG.VI/WP.21) and is, in essence, consistent with the previous version of this recommendation (see A/CN.9/WG.VI/WP.17/Add.1, Rec. 2). The Working Group may wish to include a note to States that prefer to follow a non-unitary approach that could read along the following lines: “States that prefer to follow a non-unitary approach may wish to maintain the specific terminology (e.g. buyer, seller, financial lessee, financial lessor, etc.).”]

Effectiveness of acquisition security rights against third parties

127. The law should provide that, in order for a non-possessory acquisition security right to be effective against third parties, the acquisition financier has to register a

notice covering its right in the relevant security rights registry. If the acquisition financier registers the notice not later than [specify a short time period, such as 20 or 30 days] from the time of actual delivery of the goods to the grantor, the right should also be effective against third parties whose rights arose between the time the acquisition security right was created and its registration. If the acquisition financier registers the notice after the expiration of that period, the acquisition security right is effective against third parties from the time the notice is registered.

Exceptions to the principle of registration

128. The law should provide that non-possessory acquisition security rights in consumer goods with resale value, such as motor vehicles, trailers, boats and aircraft, are effective against third parties when they are created and need not be registered in the security rights registry.

Priority of acquisition security rights over pre-registered non-acquisition security rights in future goods other than inventory

129. In the case of goods other than inventory, the law should provide that an acquisition security right has priority over a pre-registered security right in the same goods (even if a notice covering that pre-registered security right was registered in the security rights registry before the acquisition security right was registered) if: (i) the acquisition financier retains actual possession of the goods; (ii) notice of the acquisition security right was registered within a period of [the same number of days specified in recommendation 127] from the actual delivery of the goods to the grantor; or (iii) the acquisition security right became effective against third parties under recommendation 128 at the time it was created.

Priority of acquisition security rights over pre-registered non-acquisition security rights in future inventory

130. The law should provide that an acquisition security right has priority over a pre-registered security right in the grantor's inventory (even if that pre-registered right became effective against third parties before the acquisition security right became effective against third parties) if: (i) the acquisition financier retains actual possession of the goods; or (ii) before actual delivery of the inventory to the grantor, the acquisition financier: (a) registers a notice covering its right in the relevant security rights registry; and (b) notifies the holder of the pre-registered security right in writing that the acquisition financier intends to enter into one or more transactions pursuant to which that person will have a higher-ranking acquisition security right with respect to the additional inventory of the grantor described in the notification.

131. The law should provide that notification to holders of pre-registered security rights may cover multiple acquisition transactions between the same parties. However, the notification should be effective only for acquisition security rights created within a period of [specify time, such as five years] after the notification is given.

Cross-collateralization

132. The law should provide that an acquisition security right is subject to the recommendations in this Chapter regarding effectiveness against third parties and priority even if the acquisition financier: (i) also has a security right in the goods securing non-acquisition obligations of the grantor; or (ii) has a security right in other assets of the grantor securing the payment obligation relating to the acquisition security right.

Priority of acquisition security rights in proceeds of inventory

133. The law should provide that the priority, provided under recommendation 130, for an acquisition security right in inventory over a pre-registered security right in the same goods applies to the proceeds of such inventory, provided that the acquisition financier notified pre-registered financiers with a security right in assets of the same kind as the proceeds.

Enforcement

134.

Unitary approach

The law should provide that, in the case of default on the part of the grantor, the acquisition financier is entitled to repossess and dispose of the goods subject to the same rules applicable to security rights generally.

Non-unitary approach

The law should provide that, in the case of default on the part of the buyer, grantor or financial lessee, the seller, purchase-money secured creditor or financial lessor has, to the maximum extent possible, the same rights and remedies as the holder of a security right.

Insolvency

[Note to the Working Group: See recommendations A and B in the recommendations of this Guide on Insolvency:]

Unitary approach

A. The insolvency law should provide that, in the case of the insolvency proceedings of the grantor, the acquisition financier has the rights and duties of a holder of a security right.

Non-unitary approach

B. [The insolvency law should provide that, in the case of insolvency proceedings with respect to a buyer under a title retention arrangement, a grantor or a financial lessee, the seller, purchase-money lender or financial lessor has the rights and duties of a holder of a security right.] [The insolvency law should provide that, in the case of insolvency proceedings with respect to a buyer under a title retention arrangement, a grantor or a financial lessee, the seller or financial lessor has the

rights and duties of a third-party owner of the asset under the UNCITRAL Legislative Guide on Insolvency Law.]

[Note to the Working Group: The two alternatives in recommendation B reflect different approaches that States may take with respect to the extent acquisition financing devices will be treated fully or only to some extent in the same way as purchase-money security rights.]

Conflict of laws

135. The law should provide that the conflict-of-laws recommendation apply to acquisition financing devices with the exception of recommendation 137.
