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Security Interests

Recommendations of the draft legislative guide on secured transactions

Note by the Secretariat

Addendum

Contents

* This document is submitted three weeks later than the required ten weeks prior to the start of the meeting because of the need to complete consultations and to finalize consequent amendments.

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X. Acquisition financing devices

Definitions (see A/CN.9/WG.VI/WP.22/Add.1, para. 21 (b))

(a) "Security right" means a consensual property right in movable property and fixtures that secures payment or other performance of one or more obligations. [Security rights include acquisition security rights and non-acquisition security rights.]

(b) "Acquisition security right" [in the context of a unitary approach] means a security right in an asset that secures the obligation to pay any unpaid portion of the purchase price of the asset or other obligation incurred to enable the grantor to acquire the asset. Acquisition security rights include those that are denominated as security rights, as well as those that are denominated as retention-of-title sales, hire-and-purchase transactions, financial leases and purchase-money lending transactions). "Grantor" of an acquisition security right includes a buyer, financial lessee or grantor in a purchase-money lending transaction. "Acquisition financier" includes a retention-of-title seller, financial lessor or purchase-money lender.

[*Note to the Working Group: The Working Group may wish to define acquisition financing devices along the following lines: "Acquisition financing devices [in the context of a unitary approach] are arrangements which, whether denominated as security devices or not, enable a person to acquire possession or use of assets subject to an obligation to pay their price to a person who retains a security right in them until the price is paid." This definition could be placed right before the definition of "acquisition security right".*

The Working Group may also wish to consider that additional definitions are necessary for the non-unitary approach along the following lines: (i) "Retention-of-title devices [in the context of a non-unitary approach] are arrangements, which enable a person to acquire possession or use of assets subject to an obligation to pay their price to a person who retains title in them until the price is paid. Retention-of-title devices [in the context of a non-unitary approach] include retention-of-title sales, hire-and-purchase agreements, financial leases and purchase-money lending transactions. and (ii) "Ownership right under a retention-of-title device is ownership in an asset that secures the obligation to pay any unpaid portion of the purchase price of the asset or other obligation incurred to enable the buyer, financial lessee or grantor to acquire the asset.

The Working Group may wish to note that, in the context of a non-unitary approach, in which retention-of-title sellers and financial lessors are treated as owners, purchase-money lenders also need to be treated equally as owners (for this equal-treatment principle, see A/CN.9/574, para. 35.]

Purpose (unitary approach)

The purpose of the provisions of the law on acquisition financing devices is to:

(a) Recognize the importance and facilitate the use 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 applying to them the general regime governing security rights;

(c) Facilitate secured transactions in general by creating transparency with respect to acquisition financing devices.

[*Note to the Working Group: The Working Group may wish to note that subparagraph (c) has been added in the purpose section of this Chapter since the lack of transparency with respect to acquisition financing in those jurisdictions where acquisition financing devices are not subject to a registration requirement is often a serious impediment to non-acquisition inventory and equipment financing (as well as receivables financing in jurisdictions that recognize extended retention-of-title arrangements). Creating transparency would significantly encourage these types of financing.*]

Purpose (non-unitary approach)

The purpose of the provisions of the law on retention-of-title devices is to:

(a) Recognize the importance and facilitate the use of retention-of-title devices as a source of affordable credit, in particular for small- and medium-size businesses; and

(b) Provide for equal treatment of all retention-of-title sellers, financial lessors and purchase-money lenders and apply to retention-of-title devices particular rules so as to produce outcomes that are functionally equivalent to the outcomes produced by a security rights regime [to the extent compatible with the relevant ownership regime];

(c) Facilitate the use of security rights by creating transparency with respect to retention-of-title devices.

[*Note to the Working Group: The Working Group may wish to note that a separate set of recommendations has been prepared for States that may wish to adopt a non-unitary approach with respect to retention-of-title devices. In order to use the relevant terminology and to reflect a slight difference in the issue, where necessary, separate titles have been added to the recommendations of the non-unitary approach. In addition, separate (but the same) numbers have been included to the recommendations of the non-unitary approach not only to facilitate their reading but also their possible later reproduction as a separate, consolidated set of recommendations at the end of the recommendations of the unitary approach.*

The Working Group may wish to note that the words "to the extent compatible with the relevant ownership regime" have been added to align the purpose section with one of the alternatives on the enforcement of acquisition security rights in the case of insolvency, which is the treatment of acquisition financiers as owners (see recommendation 135 (non-unitary approach)). The equivalent of this recommendation has been added also with respect to enforcement of an acquisition security right outside an insolvency proceeding (see recommendation 134 (non-unitary approach)). Under this alternative of the non-unitary approach, the treatment of the enforcement of acquisition security rights in and outside insolvency proceedings would not be equivalent to the treatment of security rights but would rather conform to the treatment of enforcement of ownership rights (for a discussion of the differences, see A/CN.9/WG.VI/WP.17, paras. 39-42; see also Note under

recommendation 134 below). The commentary will discuss the consequences of such an approach (e.g. lack of uniformity, potential impact on the availability of credit) to assist States in making a choice.]

Equivalence of acquisition security rights to security rights (unitary approach)

125. The law should treat all acquisition security rights as security rights (see definition of "security right" and "acquisition security right") and, thus, the recommendations in this Guide governing security rights generally, as supplemented by the specific recommendations in this Chapter, should apply equally to acquisition security rights ("unitary approach").

[*Note to the Working Group: The Working Group may wish to have additional text as follows: "In this case, the characterization of an acquisition security right as a security right, with the result that the acquisition secured creditor is the secured creditor and the grantor is the owner of the encumbered assets, applies only to the secured financing aspect of the transaction. While the acquisition security right secures the grantor's obligation to pay the balance of the purchase price, the underlying transaction is still a sale or a financial lease. Therefore, the law of sales or leases continues to apply to other aspects of the transaction (such as warranties of title and quality, right to re-sell or sub-lease, taxation, insurance and accounting)." The commentary will explain that, if, for example, a secured creditor under an acquisition financing device sold equipment to a buyer which was defective, the buyer would be able to rely on the terms of the contract including other relevant law to pursue such remedies as may be available to a buyer by that other law, such as rejection of the goods and repudiation of the contract by the buyer.*]

Equivalence of ownership rights under retention-of-title devices to security rights (non-unitary approach)

125. If the law excludes ownership rights under retention of title devices from the definition of "security rights", the law should provide that purchase-money lenders have the same status that is inherent in a retention-of-title transaction by a transfer of ownership either from the seller or from the buyer. The law should also provide that the recommendations applicable to security rights, as supplemented by the specific recommendations applicable to ownership rights under retention-of-title devices in this chapter, apply to all retention-of-title devices in a manner that preserves the functional equivalence of rights under retention-of-title devices to security rights [to the extent compatible with the relevant ownership regime].

[*Note to the Working Group: The Working Group may wish to note that, in order to implement the Working Group's decision to treat all providers of acquisition financing equally (see A/CN.9/574, para. 35), under the non-unitary approach, language has been added to recommendation 125 (non-unitary approach) to ensure that purchase-money lenders are treated as owners. The commentary will explain the words "to the extent compatible with the relevant ownership regime" and their consequences with respect to the enforcement of an ownership right under a retention-of-title device in and outside insolvency (see recommendations 134 and 135 (non-unitary approach below).*]

Creation of acquisition security rights (unitary approach)

126. The law should provide that an acquisition security right is created [in the same way as a security right under recommendations 8 to 12] [by agreement between the grantor and the secured creditor which need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses].

[*Note to the Working Group: The Working Group may wish to note that recommendation 126 (unitary approach) includes the same alternatives as recommendation 126 (non-unitary approach), so as to implement the equivalence principle. However, if the Working Group decides to retain the creation requirements applicable under recommendations 8 to 12, recommendation 126 may not be necessary.*]

Creation of ownership rights under retention-of-title devices (non-unitary approach)

126. The law should provide that an ownership right under a retention-of-title device is created [in the same way as a security right under recommendations 8 to 12] [by an agreement between the buyer, financial lessee or grantor and the seller, financial lessor or purchase-money lender which need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses].

[*Note to the Working Group: The Working Group may wish to note that, in order to ensure that all issues addressed by recommendations 8 to 12 are covered, recommendation 126 (non-unitary approach) refers to creation, although no new ownership right is created by a retention-of-title device. The Working Group may wish to consider alternative wording or an explanation for the commentary.*

As requested by the Working Group, recommendation 126 (non-unitary approach) provides for two alternatives, one based on article 11 of the United Nations Sales Convention ("CISG") and another based on the form requirements foreseen in recommendations 8 to12 of the draft Guide.

With regard to recommendation 126 (non-unitary approach), the Working Group may wish to consider additional wording along the following lines: "The law should also provide that a buyer, financial lessee or grantor under a retention-of-title device has the power to grant security rights in the goods sold or leased notwithstanding the seller's, lessor's or purchase-money lender's ownership rights."]

Effectiveness of acquisition financing rights against third parties (unitary approach)

127. Except as otherwise provided in recommendation 128, the law should provide that a non-possessory acquisition security right becomes effective against third parties by registration of a notice of the right in the general security rights registry in the same manner as provided in the recommendations in chapter V with respect to security rights in the same kind of encumbered assets. If the notice is registered not later than [specify a short time period, such as 20 or 30 days] from the time of delivery of the goods to the grantor, the right is effective against third parties whose

rights arose between the time the acquisition security right was created and its registration, as well as against third parties whose rights were registered subsequently. If the notice is registered after the expiration of that period, the acquisition security right is effective against third parties from the time the notice is registered.

[*Note to the Working Group: The Working Group may wish to note that the references to "actual" possession and "actual" delivery in recommendations 127, 129 and 130 have been deleted on the assumption that "possession" and "delivery" will be explained in the terminology section as referring to "actual" possession and "actual" delivery.*]

Effectiveness of ownership rights under retention-of-title devices against third parties (non-unitary approach)

127. Except as otherwise provided in recommendation 128, the law should provide that an ownership right under a retention-of-title device becomes effective against third parties by registration of a notice of the right in the general security rights registry in the same manner as provided in the recommendations in chapter V with respect to security rights in the same kind of encumbered assets. If the notice is registered not later than [specify a short time period, such as 20 or 30 days] from the time of delivery of the goods to the buyer, financial lessee or grantor, the right is effective against third parties whose rights arose between the time the retention-of-title device was concluded and its registration, as well as against third parties whose rights were registered subsequently. If the notice is registered after the expiration of that period, the ownership right under the retention-of-title device is effective against third parties from the time the notice is registered.

[*Note to the Working Group: The Working Group may wish to consider adding to recommendation 127 (non-unitary approach) language along the following lines: "In the case of a retention-of-title device, effectiveness against third parties and priority over competing claimants means that the ownership right of the retention-of-title seller, financial lessor or purchase-money lender to the goods may be asserted against third parties, including competing claimants, claiming through the buyer, lessee or grantor."*]

Exceptions to the requirement of registration (unitary approach)

128. The law should provide that an acquisition security right in consumer goods becomes effective against third parties upon its creation. This recommendation does not affect rights made effective against third parties by delivery of possession of the encumbered assets to the secured creditor under recommendations 38 to 40 or by registration in a specialised title registry or notation on a title certificate under recommendation 40 bis.

Exceptions to the requirement of registration (non-unitary approach)

128. The law should provide that an ownership right under a retention-of-title device relating to consumer goods becomes effective against third parties upon its creation. This recommendation does not affect rights made effective against third parties by delivery of possession of the encumbered assets to the secured creditor

under recommendations 38 to 40 or by registration in a specialised title registry or notation on a title certificate under recommendation 40 bis.

[*Note to the Working Group: The Working Group may wish to consider whether all security rights in consumer goods (perhaps, with the exception of security rights in consumer goods that are to become fixtures in immovables) should be exempted from the requirement of registration (see A/CN.9/WG.VI/WP.24/Add.3, recommendation 35 bis (h))*.]

Priority of acquisition security rights in goods other than inventory or consumer goods over earlier registered non-acquisition security rights in the same goods (unitary approach)

129. In the case of goods other than inventory or consumer goods, the law should provide that an acquisition security right has priority over a non-acquisition security right in the same goods (even if a notice of that security right was registered in the general security rights registry before registration of a notice of the acquisition security right), if: (i) the acquisition financier retains possession of the goods; or (ii) notice of the acquisition security right was registered within a period of [the same number of days specified in recommendation 127] from the delivery of the goods to the grantor.

[*Note to the Working Group: The Working Group may wish to note that the commentary will explain that a common situation in which this priority conflict arises is where a pre-existing secured creditor has a security right in all of the grantor's existing and future-acquired goods.*]

Priority of ownership rights under retention-of-title devices in goods other than inventory or consumer goods over earlier registered security rights in the same goods (non-unitary approach)

129. In the case of goods other than inventory or consumer goods, the law should provide that an ownership right under a retention-of-title device has priority over a security right in the same goods (even if a notice of that security right was registered in the general security rights registry before registration of a notice of the ownership right under the retention-of-title device), if: (i) the seller, financial lessor or purchase-money lender retains possession of the goods; [*Note to the Working Group: The Working Group may wish to consider whether (i) could apply to a retention-of-title device in view of the fact that normally possession of the goods is delivered to the buyer, financial lessee or grantor.*] (ii) notice of the ownership right under the retention-of-title device was registered within a period of [the same number of days specified in recommendation 127] from the delivery of the goods to the buyer, financial lessee or grantor.

[*Note to the Working Group: The Working Group may wish to note that the commentary will explain the impact of recommendations 129 and 130 in non-unitary systems along the lines described in A/CN.9/588, para. 60.*]

Priority of acquisition security rights in inventory over earlier registered non-acquisition security rights in inventory of the same kind (unitary approach)

130. The law should provide that an acquisition security right in inventory of the grantor has priority over a non-acquisition security right in the grantor's inventory of the same kind (even if that security right became effective against third parties before the acquisition security right became effective against third parties), if: (i) the acquisition financier retains possession of the goods; or (ii) before delivery of the inventory to the grantor: (a) a notice of the acquisition security right is registered in the general security rights registry; and (b) the holder of the earlier-registered security right is notified in writing that the acquisition financier intends to enter into one or more transactions pursuant to which that person will have an acquisition security right with respect to the additional inventory of the grantor described in the notification sufficiently to inform the holder of an earlier-registered security right of the kind of the inventory being financed.

Priority of ownership rights under retention-of-title devices in inventory over earlier registered security rights in inventory of the same kind (non-unitary approach)

130. The law should provide that an ownership right under a retention-of-title device in inventory has priority over a security right in inventory of the same kind (even if that right became effective against third parties before the ownership right under the retention-of-title device became effective against third parties), if: (i) the seller, the financial lessor or the purchase-money lender retains possession of the goods; [*Note to the Working Group: The Working Group may wish to consider whether (i) would apply to a retention-of-title transaction or financial lease in view of the fact that normally possession of the goods is delivered to the buyer, financial lessee or grantor.*] or (ii) before delivery of the inventory to the buyer, financial lessee or grantor: (a) a notice of the ownership right under the retention-of-title device is registered in the general security rights registry; and (b) the holder of an earlier registered security right is notified in writing that the seller, financial lessor or purchase-money lender intends to enter into one or more transactions pursuant to which that person will retain title in the inventory with respect to the additional inventory described in the notification sufficiently to inform the holder of an earlier-registered security right of the kind of the inventory being financed.

[Priority of acquisition security rights over the rights of unsecured creditors in encumbered assets (unitary approach)

130 bis. The law should provide that, notwithstanding recommendation 62, an acquisition security right that is made effective against third parties within the grace period provided in recommendation 127 has priority over the rights of an unsecured creditor that has, under law other than this law, obtained a judgement against a grantor after the creation of the acquisition security right and taken the steps necessary to acquire rights in encumbered assets of the grantor by reason of the judgement.

Priority of ownership rights under retention-of-title devices rights over the rights of unsecured creditors in the relevant assets (non-unitary approach)

130 bis. The law should provide that, notwithstanding recommendation 62, an ownership right under a retention-of-title device that is made effective against third parties within the grace period provided in recommendation 127 has priority over the rights of an unsecured creditor that has, under law other than this law, obtained a judgement against a buyer, financial lessee or grantor after the creation of the ownership rights under the retention-of-title device and taken the steps necessary to acquire rights in the relevant assets of the buyer, financial lessee or grantor by reason of the judgement.

[*Note to the Working Group: The Working Group may wish to consider that an acquisition security right that became effective against third parties during the relevant grace period should not lose to the rights of a judgement creditor described in this recommendation, whose interest in the encumbered asset arose after the creation of the acquisition security right but before it became effective against third parties. If this were not the case, utilizing the grace period would be too risky for acquisition financiers. The Working Group may wish to consider this recommendation together with recommendation 62 (see A/CN.9/WG.VI./WP.24/Add.4).*]

Priority of acquisition security rights in fixtures in immovables over earlier registered security rights in the immovables (unitary approach)

130 ter. The law should provide that an acquisition security right in goods that are to become fixtures in immovables, with respect to which a notice has been registered in the immovables registry within […] days after the goods become fixtures, has priority over an existing mortgage in the related immovables (other than a mortgage securing loans financing the construction of an immovable).

Priority of ownership rights under retention-of-title devices with respect to fixtures in immovables over earlier registered security rights in the immovables (non-unitary approach)

130 ter. The law should provide that an ownership right under a retention-of-title device in goods that are to become fixtures in immovables, with respect to which a notice has been registered in the immovables registry within […] days after the goods become fixtures, has priority over an existing mortgage in the related immovables (other than a mortgage securing loans financing the construction of an immovable).]

[*Note to the Working Group: The Working Group may wish to note that the super-priority introduced by this recommendation would probably not prejudice the rights of holder of an existing mortgage on the related immovables because presumably the mortgagee under such a mortgage did not, at the time the mortgage was created, rely upon the subsequently acquired goods becoming fixtures. The super-priority created by this rule should not operate to grant priority over construction lenders, who are presumed to rely upon all goods that become fixtures in immovables during the course of construction.*]

One or more acquisition financing transactions (unitary approach)

131. The law should provide that a single notification to holders of earlier-registered non-acquisition security rights may cover encumbered assets acquired through one or more acquisition financing transactions between the same parties (without those transactions having to be identified in the notification). However, the notification should be effective only for acquisition security rights in encumbered assets delivered within a period of [specify time, such as five years] after the notification is given.

One or more retention-of-title devices (non-unitary approach)

131. The law should provide that a single notification to holders of earlier-registered security rights may cover assets acquired through one or more retention-of-title devices between the same parties (without those devices having to be identified in the notification). However, the notification should be effective only for ownership rights in assets delivered within a period of [specify time, such as five years] after the notification is given.

Priority of acquisition security rights in proceeds of goods other than inventory or consumer goods (unitary approach)

132. The law should provide that the priority, provided under recommendation 129 (unitary approach), for an acquisition security right in goods other than inventory or consumer goods over an earlier registered non-acquisition security right in the same goods extends to the proceeds of such goods.

Priority of ownership rights under retention-of-title devices in proceeds of goods other than inventory or consumer goods (non-unitary approach)

132. The law should provide that the priority, provided under recommendation 129 (non-unitary approach), for an ownership right under a retention-of-title device in goods other than inventory extends to the proceeds of such goods.

Priority of acquisition security rights in proceeds of inventory (unitary approach)

133. The law should provide that the priority, provided under recommendation 130 (unitary approach), for an acquisition security right in inventory over an earlier-registered non-acquisition security right inventory of the same kind extends to the proceeds of such inventory [other than receivables], provided that the acquisition financier notified earlier registered financiers with a security right in inventory of the same kind as the proceeds before delivery of the inventory to the grantor or, at the latest, at the time the proceeds arose.

[*Note to the Working Group: The Working Group may wish to note that, although it approved the extension of the super-priority of recommendation 130 to all proceeds, it may wish to give further consideration to whether the super-priority should be extended to proceeds consisting of receivables. The extension of the super-priority to receivables would significantly discourage receivables financing. In most instances, there may be no practical way for a receivables financier to determine which of the grantor's receivables would be subject to the acquisition financier's paramount security right. Also, in situations where a single receivable covers both goods subject to an acquisition financing device and goods that are not*

subject to an acquisition financing device, there may be no practical way for the receivables financier to allocate proceeds of the receivable to the acquisition financier. The result might be that the receivables financier may simply stop financing when it receives the notice contemplated by this recommendation. That possibility will either discourage receivables financing or, if the receivable financier agrees to continue financing only if there are no inventory acquisition financing devices, it will discourage acquisition financing. Neither possibility is consistent with the objectives of the Guide. A better solution would be for the priority of the inventory financier not to extend to proceeds consisting of receivables so that the receivables financier is encouraged to provide credit against the receivables and the proceeds of that credit may be used by the grantor to pay the inventory financier. The Working Group may wish to note that, in most jurisdictions that recognize retention-of-title arrangements, the property right of the retention-of-title seller in the inventory sold does not extend to receivables arising from the sale of that inventory.]

Priority of ownership rights under retention-of-title devices in proceeds of inventory (non-unitary approach)

133. The law should provide that the priority, provided under recommendation 130 (non-unitary approach), for an ownership right under a retention-of-title device in inventory over an earlier-registered security right in inventory of the same kind extends to the proceeds of such inventory [other than receivables], provided that the retention-of-title seller, financial lessor or purchase-money lender notified earlier-registered financiers with a security right in inventory of the same kind as the proceeds before actual delivery of the inventory to the buyer, financial lessee or grantor, or, at the latest, at the time the proceeds arose.

Enforcement (unitary approach)

134. The law should provide that the recommendations in chapter VIII apply to the enforcement of acquisition security rights.

Enforcement (non-unitary approach)

134. [The law should provide that, in the case of default, a retention-of-title device should be enforced in such a manner that: (i) the same principles and objectives as those governing enforcement of security rights generally are complied with; and (ii) the same results are obtained.]

[*Note to the Working Group: The Working Group at its eighth session recommended formulation of the non-unitary approach along the lines set out above.*]

[The law should provide that the recommendations in chapter VIII apply to the enforcement of ownership rights under retention-of-title devices to the extent compatible with the regime applicable to the enforcement of ownership rights.]

[*Note to the Working Group: The Working Group may wish to note that the last words of the second alternative under a non-unitary would conform the non-unitary approach to the existing law in each State on the enforcement of ownership rights rather than to the enforcement recommendations of the Guide. For example, in some jurisdictions this would mean that, upon default, a seller that retained title and*

obtained possession of the assets would be permitted to retain, rather than dispose of, the assets and would not have to account to the buyer for any surplus of the value of those assets over the unpaid portion of the purchase price and would not have a claim against the buyer with respect to the unpaid portion of the purchase price (for a discussion of the differences, see A/CN.9/WG.VI/WP.17, paras. 39-42; see also the second alternative of the non-unitary approach recommendation on the enforcement of ownership rights under retention-of-title devices in insolvency proceedings below).

In an effort to achieve the appropriate balance between certainty and uniformity on the one hand, and flexibility on the other hand, the Working Group may wish to consider including in recommendation 134 (non-unitary approach) two alternatives, along the lines of the alternatives in recommendation 135 (non-unitary approach). One alternative could be formulated along the lines of recommendation 134 (unitary approach) and the other alternative could be formulated along the lines of the second alternative of recommendation 134 (non-unitary approach). As a result, in the context of a non-unitary approach, States could choose between a recommendation that would conform the non-unitary approach to the enforcement recommendations of the Guide and a recommendation that would conform the non-unitary approach to the existing law in the enacting State on the enforcement of ownership rights. The commentary could discuss these alternatives to assist States in making a decision.

The Working Group may also wish to consider additional text along the following lines: "In the case of an ownership right under a retention-of-title device, if notice of the right was required to be registered in the security rights registry, but was not registered, or was registered only after the expiration of the time specified in recommendation 127, the retention-of-title seller, financial lessor or purchase-money lender is entitled to repossess the goods only if they are still in the possession of the buyer, financial lessee or grantor and takes the goods back subject to any security rights granted by the buyer, financial lessee or grantor. However, in the case of a late registration, if the notice was registered before the sale of the goods by the original buyer, financial lessee or grantor, the seller, financial lessor or purchase-money lender may repossess the goods in the possession of the subsequent buyer, other than [a buyer of inventory in the ordinary course of business of the seller, and any other person whose rights to the inventory derive from that buyer (even if such buyer or other person has knowledge of the existence of the security right)] [a good faith buyer]".]

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, financial lessee or grantor under a retention-of-title device , the seller, financial lessor or purchase-money lender 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, financial lessee or grantor under a retention-of-title device, the seller, financial lessor or purchase-money lender has the rights and duties of a third-party owner of the asset under the UNCITRAL Legislative Guide on Insolvency Law.]]

Conflict of laws (unitary approach)

135. The law should provide that the conflict-of-laws recommendations in chapter XI apply to acquisition security rights.

Conflict of laws (non-unitary approach)

135. The law should provide that the conflict-of-laws recommendations in chapter XI apply to retention-of-title devices.

[*Note to the Working Group: The Working Group may wish to refer in this recommendation to the definition of grantor for retention of title devices included in this chapter, i.e. "Grantor" in the context of an acquisition financing device includes a buyer, financial lessee or grantor in a purchase-money lending transaction. "Acquisition financier" includes a retention-of-title seller, financial lessor or purchase-money lender.*]