



The Commercial Finance Association held a special presentation on the United Nations Commission on International Trade Law (UNCITRAL) on March 20 at the United Nations headquarters in New York. The Convention, or model law, under development will cover cross-border assignment of both international and domestic receivables. International receivables are those where the assignor and the assignee are located in different countries. These rules, once revised and implemented, will help increase the flow of trade credit worldwide, enhance overall world trade and enable providers of receivables financing to feel more secure in their ability to finance transactions across borders. Customers will benefit from the ability to obtain needed goods and the availability of financing. Sellers will be able to increase their business volume.

CFA is one of several prestigious nongovernmental organizations participating in the development of the new rules for assignment of receivables. The other organizations include European Banking Federation, the Hague Conference on International Trade Law, European Bank for Reconstruction and Development, Latin American Banking Federation, and The World Bank.

The speakers were Spiros Bazinas, legal officer, UNCITRAL; Richard Kohn, CFA associate general counsel, and partner, Goldberg Kohn Bell Black Rosenbloom & Moritz; and Edwin Smith, partner, Bingham Dana, and U.S. delegate to UNCITRAL.

Mr. Bazinas explained the need for the Convention: “You have an assignment here and now, then you try to enforce it in another country and find that it’s worth nothing. Why? Because it didn’t meet the requirements of that law which was not known to you because the debtor was unknown at that time. It was a future receivable...or you were not sure where an insolvency proceeding would open. In that situation, the administrator would challenge the assignment of the whole pool of the receivables...and in the international scene, that became a fundamental problem. These are the reasons why UNCITRAL decided to deal with the issue.”

Mr. Bazinas added, “We cannot have a copy of our own law in an international text, but we may be able to enhance the certainty, the predictability in the international

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L. to R.: Richard Kohn, Goldberg Kohn Bell Black Rosenbloom & Moritz; Keith Karako, Citibank, N.A.; Harold S. Berman, Department of State; Spiros Bazinas, UNCITRAL; Edwin Smith, Bingham Dana; and Jernej Sekolec, UNCITRAL.

arena. That is as much as we can do, and we'll call that victory and be satisfied with it."

Regarding the importance of the industry as a whole, Mr. Bazinas said, "International trade financing is necessary...providing more financing, more access to financing at a better rate is good for all of us, whether we are assignors, borrowers, assignees or debtors."

The next step, according to Mr. Bazinas, is "adoption by the Commission in June, in Vienna. After that, the Commission will have to consider whether to send it to the General Assembly, where it is likely to be adopted at the end of the year without any further discussion or in a diplomatic conference as early as possible next year. The latter allows states to have another round of discussion."

UNCITRAL delegate Edwin Smith spoke about proceeds: "...we did something in the Convention that we think will be very helpful. That is, we incorporated a substantive proceeds rule with limited application. But the limited application is probably in those instances most familiar to asset-based lenders. That is, if the money gets



Edwin Smith and Spiros Bazinas respond to audience's questions.

paid directly to the lender, the lender has a proprietary interest in that money. If the money gets paid directly to the borrower, and the borrower holds those funds in a segregated account, not commingled with the borrower's other property, the lender has a proprietary right in those funds."

Mr. Smith also spoke about the important role CFA has played in the Convention: "I sort of view CFA as one of the great armies of the world here, because in the very beginning, CFA came in with the artillery and I'll call that Richard Palmieri. And then, as we got along a little farther, they came in with the ground troops, and I'll call that Mike Carsella. But now we're at the point where they had to throw in the reserves to win the battle and I'll call that Richard Kohn. Without all this muscle, all of these shock troops coming in, we certainly would not have gotten to where we did in this Convention."

Richard Kohn spoke about some issues CFA proposed. "With respect to inventory, we focused first of all on what is perhaps the most critical issue in inventory financing, which is the fact that in many countries it's impossible to obtain a security interest in inventory unless you dispossess the borrower of the collateral. That means the lender has to have possession either itself or through an agent. Of course, this makes financing of inventory impossible in those countries, except in those situations where a field warehousing arrangement might work, or where you can put the inventory in a public warehouse. CFA proposed that any model legislation in the area of inventory financing would include the recognition of a nonpossessed security interest in inventory."



Spiros Bazinas

Mr. Kohn also said that CFA focused on the important issue of proceeds. He explained that many U.S. lawyers and lenders are shocked to discover that many countries have a very different concept of proceeds. "You don't automatically get a security interest in the proceeds if you have a security interest in the underlying equipment," he said.

Harold S. Berman, Department of State, Office of Legal Adviser, stressed the importance of industry members pressuring Congress to quickly adopt the Convention. "If the United States drags its feet, other countries will drag their feet," he told the audience. "What is good for commercial finance is generally good for most countries," he said.

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David Morse, partner, Otterbourg, Steindler, Houston & Rosen, PC, said, "There is no doubt that the UNCITRAL Convention on Assignment of Receivables is a positive step in facilitating asset-based financings involving assets in multiple jurisdictions. The provisions of the Convention overriding prohibitions on the assignment of receivables and allowing for 'floating liens' on categories of assets, in particular, will be helpful in addressing such issues in various countries. Diminishing such impediments to asset-based financing will make it easier for asset-based lenders to provide financing based on assets in countries that do not currently recognize such concepts and that ultimately adopt the Convention."

Keith Karako, chairperson of CFA's International Trade Committee and managing director, Citibank N.A.,

said, "UNCITRAL's main benefit to lenders is that it will facilitate financing across borders. Currently, countries all have their own laws governing financing agreements and those laws can differ significantly from one country to the next. These differences complicate the deals and may in fact make asset-based financing either impossible or very difficult. These hurdles currently discourage many lenders from getting involved in international lending. UNCITRAL's goal is to standardize the perfection and security laws among the countries that adopt its proposed Convention of legal standards." ▲



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