The UNIDROIT Best Practices for Effective Enforcement and the enforcement of security rights

8th Conference on International Coordination of Secured Transactions Law Reform

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International Institute for the Unification of Private Law

Institut International pour l'Unification du Droit Privé

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PROPOSAL

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- World Bank Group (WP 2000-2022)

WORKING GROUP

- Chair: *Ms. Kathryn Sabo* - UNIDROIT Governing Council member (Canada); *members*: Civil Law and Common Law jurisdictions, developed and developing economies across Europe, Asia, North and South America; *institutional observers*: International organisations: UNCITRAL, HCCH, WBG, EBRD, UIHJ, ELI, national courts and other specialised organisations; ad hoc special reporters.
- Consultations with practitioners: facilitated by the EBRD, in the form of questionnaires.
- Working Group met for eleven sessions and through intense intersessional meetings (including Drafting Committee meetings).
- Entire draft approved in principle in May 2025 by Governing Council when authorising public consultation.

CONSULTATIONS ON FINAL DRAFT

- Pre-consultation phase with institutional observers
- Public consultation phase (July-September 2025)

EXPECTED APPROVAL: end of 2025/beginning of 2026

WHY BEST PRACTICES?

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- Need for flexibility because legal systems differ widely
- Need for flexibility because enforcement law is influenced not only by the broader legal context and interconnection with other areas of the law, but also by the specific social and economic realities in each jurisdiction
- Recommendations primarily addressed at national legislators and policy-makers; benchmark for decision-makers
- Need to strike a balance between sufficiently technical guidance (needed for procedural issues) and flexibility
- Not all best practices ("recommendations") are strictly legal (descriptive language; practical advice...)

BPEE – STRUCTURE

THREE PARTS:

- **Part I: Enforcement by way of authority**
  - “Default” enforcement procedure through public authorities
  - General principles of party disposition, cooperation, proportionality, protection of fundamental rights (including the overarching creditor’s right to enforcement)
  - Structured part which follows the life-cycle of the enforcement, including general recommendations on organisation
  - Inclusion of impact of technology (e.g., digital registers, online auctions, automated enforcement…)
- **Part II: Enforcement of security rights**
  - Focusing on extra-judicial enforcement
  - Enforcement over movables based on existing international instruments, with additional recommendations
  - Enforcement over immovables
- **Part III: Enforcement against digital assets**
  - Why a separate part?
  - Scope determined by the UNIDROIT DAPL Principles (but see Rec 37 in Part I)

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BPEE – PART II – STRUCTURE

- **Chapter I**. General principles
- **Chapter II**. Secured creditor’s right to obtain possession of tangible movables after default
- **Chapter III**. Secured creditor’s right to realise on encumbered assets consisting of movables after default
- **Chapter IV**. Enforcement of security rights over rights to receive payment and credit instruments (including issues of automation)
- **Chapter V**. Expeditious relief to support extrajudicial enforcement
- **Chapter VI**. Variation of the rules governing the enforcement of security rights
- **Chapter VII**. Enforcement of security rights in immovables

BPEE – PART II – Coordination and added value

- **STARTING POINT**: Existing international instruments approved at a multilateral level, including those developed by UNIDROIT itself and UNCITRAL, considered as a point of necessary reference for enforcement of security rights on movables
- **VALUE ADDED:**
  - Integration of guidance provided by UNCITRAL and UNIDROIT instruments (*e.g., coverage of enforcement on intermediated securities*)
  - Different manner of presentation: BP addressed both to States that have enacted substantive secured transactions law in line with international recommendations, but also to other States which may consider reforming enforcement practices
  - Comments and illustrations specifically focusing on enforcement issues

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BPEE – PART II – Coordination and added value

- **VALUE ADDED:**
  - Impact of technology on enforcement of security rights (e.g., automation, online auctions)
  - Innovative, more detailed guidance implementing general standards for enforcement contained in existing instruments (*e.g., expeditious relief for extra-judicial enforcement*)
  - Innovative guidance regarding enforcement of security rights on immovables [WB Principle A 7]:
    - Best practices guided by the more consolidated international standards for enforcement of security rights over movables
    - Extrajudicial enforcement
    - Limited protection for "vulnerable" debtors and right of redemption

BPEE – PART III – Enforcement on Digital Assets

- Digital assets should be susceptible to enforcement
  - Subcategory of digital assets as electronic records is capable of being subject to control (UNIDROIT DAPL Principles)
  - Application to other digital values? (Rec 37)
- Application of existing enforcement procedures and measures, with necessary adaptations
  - Emphasis on debtor’s and third party’s (custodian) cooperation
  - Enforcement measures applicable to the debtor personally?
  - Combined use of enforcement measures / receivership
  - Challenges for enforcement organs in relation to enforcement on digital assets

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Thank you!

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