

## Security Interest in Movables and Conflict-of-laws Rules (summary)

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There have been three significant changes with respect to security interest in movables in recent years. First, a borderless economy has increased the volume of the security interest in the goods which can move from one jurisdiction to another. Second, financial institutions have become active in using bulk assets as security for Asset Based Lending (ABL), lending to corporations with assets used in the conduct of their business, such as inventory and account receivables. Finally, Japan has amended and renamed the Special Rules to the Civil Code Concerning the Perfection of the Transfer of Movables and Assignment of Receivables (PTMAR) in 2005, and introduced a system for filing which can perfect the transfer by way of security in movables.

Article 13 of the *Act on the General Rules of Application of Laws* (The Applicable Laws Act) provides that rights in rem to movables, immovables, and any other rights requiring filing, shall be governed by the law of the place where the property is situated (*lex rei sitae*). Therefore, security interests in movables are governed by the law of the place where the movable is situated.

In the light of the changes above, the *lex rei sitae* rule may cause a number of problems. If property is situated in more than one jurisdiction, parties may be burdened to refer to the law of every jurisdiction in which each property is located, and to satisfy third party effectiveness requirements separately for each property. Second, because property can move from one jurisdiction to another, it often becomes impractical to investigate the law of the location of each property. Furthermore, it is likely that, under the applicable foreign law, the courts will not recognize the third party effectiveness granted by the filing under the PTMAR.

Under the Uniform Commercial Code (the UCC), however, the perfection of non-possessory security interests is governed by the law of the debtor's location. This debtor-location rule has the advantage of subjecting the security interests to a solo regime instead of having the situs of each movable determined separately. Furthermore, the debtor who is a business entity such as a corporation

may move less frequently than the movable, making the advantage of the debtor-location rule all the more clear.

On the other hand, the debtor-location rule is not without its problems. This is why the rule was not adopted by the United Nations Commission on International Trade Law (UNCITRAL) in its Legislative Guide on Secured Transactions. However, as seen in the UCC, these problems can be dealt with by limiting the scope of the rule to the perfection of non-possessory security interests.

In this article it is proposed that in Japan if the application of the debtor-location rule to the perfection of non-possessory security interests is accepted as the exception to Article 13 of the Applicable Laws Act (*lex rei sitae*), then issues concerning both the *lex rei sitae* and the debtor-location rule may be resolved.