

## PLACE TO FILE FOR FOREIGN (NON-U.S.) DEBTORS MAY NOT BE WASHINGTON, D.C. UNDER ARTICLE 9

Based on our interactions with clients, there seems to be some confusion regarding the proper place to file a UCC under Article 9 when the debtor is a foreign (non-U.S.) entity. Many seem to think the place to file in this situation would always be Washington, D.C. A careful reading of 9-307 will reveal that this is not always the case.

9-307(b) states the general rules for the debtor's location and basically says that if the debtor is an individual, the location under Article 9 would be the individual's principal residence address. If the debtor is an organization, the location would be where their chief executive office is located. [NOTE: The term "organization" in this section refers to UNREGISTERED organizations. As most people know, 9-307(e) clearly indicates that if the debtor is a REGISTERED organization, the place to file would be in the formation state]

Per the 9-102(a) definition of "registered organization", a **foreign (non-U.S.) entity is NOT a registered organization** and would thus be subject to the general rules of 9-307(b) described above.

9-307(c) states a limitation to the general rules of 9-307(b). The limitation is that if the location described in 9-307(b) is not a jurisdiction that has an Article 9-type filing/notice system, then the debtor's location would be Washington, DC.

**EXAMPLE # 1:** *The debtor is a corporation that was formed in France and their chief executive offices are in New York. Per 9-307(b), the place to file would be NEW YORK and NOT Washington, DC. (NOTE: As a precaution, some would file in DC IN ADDITION to filing in New York and we think this is a good idea since a searcher may not know where the chief executive offices are located and may search only DC. But if the filing was ONLY made in DC, we believe it would not be sufficient to perfect under 9-307(b)'s rule for filing where the chief executive office is located)*

**EXAMPLE # 2:** *The debtor is a corporation that was formed in France and their chief executive offices are in France. Assuming France does not have a UCC-type filing/notice system, the place to file under Article 9 would be Washington, DC.*

**EXAMPLE # 3:** *Debtor is a Canadian corporation with chief executive offices in Toronto (ONTARIO) Canada and assets in New York and California. Following the general rule of 9-307(b), the place to file under Article 9 would be Canada since that is where the chief executive offices are located AND Ontario, Canada DOES operate under a UCC-type filing/notice system. Again, many would ALSO file in DC and we think that is a good idea. In addition, because Canada's Personal Property Security Act is more like our "old" (pre-2001) Article 9 regarding the place to file being where the collateral is located, it may be advisable to ALSO file in NY and CA to address "choice of law" issues.*

So... **the bottom line is that you can NOT always assume that the place to file under Article 9 for a foreign (non-U.S.) entity debtor is Washington, DC.** You must first determine where the chief executive office is located and whether that location has a UCC-type filing/notice system. As mentioned above, **you may always want to file in DC anyway, but don't assume that is the ONLY place you should file.**

As always, we do our best to provide you with accurate information you need to do your job, but we remind you that this information is not to be taken as legal advice. We urge you to check with your in-house or outside counsel on all issues that can affect the perfection or priority of your UCC filings.

April 2015

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