

Professional Perspective

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Uniform Commercial Code Amendments (2022): Revisions to Article 9

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Introduction

In 2022, the American Law Institute and the Uniform Law Commission approved the [Uniform Commercial Code Amendments \(2022\)](#) that propose changes to the Uniform Commercial Code (UCC) to address transactions in digital assets and other emerging technologies.

While the main focus of the 2022 Amendments is the introduction of a new Article 12 to govern the transfer of property rights in digital assets (“controllable electronic records”), there are, in addition, significant changes to other articles of the UCC, including Article 9. These changes can be described as modifications that conform Article 9 to the new Article 12 and other modifications to Article 9, including modifications related to chattel paper, money, and deposit accounts.

Modifications to Article 9 Required to Integrate With Article 12

As mentioned above, Article 12 governs the transfer of property rights in a newly defined property type, a controllable electronic record (CER) See U.C.C. § 12-102(1). CER is intended to cover broad types of intangible digital assets—the only limiting factor is that records evidencing CER can be subjected to control in accordance with Article 9.

In addition, Article 12 governs the transfer of property rights in two other types of related property: controllable accounts and controllable payment intangibles. These two new collateral types are defined in the 2022 Amendments to Article 9 as an account or a payment intangible, respectively, that is evidenced by a CER. See U.C.C. § 9-102(2), (61).

Consistent with the current treatment of chattel paper, instruments, investment property and negotiable instruments, the 2022 Amendments modify Section 9-314 to provide that a secured party can perfect a security interest in a controllable account or a controllable payment intangible by filing or by control. Control of a controllable account or controllable payment intangible is achieved by obtaining control of the CER that evidences the controllable account or controllable payment intangible.

To establish control of a CER under Section 12-105, the following conditions must be met:

- The electronic record must have some value or benefit—for example, a virtual currency’s “value” or an underlying right of payment tethered to a digital asset—and the controlling person must have the right to enjoy “substantially all the benefit”.
- The controlling person must have the exclusive power to prevent others from enjoying any rights or benefits of the electronic record.
- The controlling person must have the exclusive power to transfer control of the electronic record.
- The electronic record must contain some marking or other identification that a controlling person can use to readily identify themselves as having the powers listed in the three points above.

See U.C.C. § 12-105(a).

Additionally, a security interest perfected by control in a controllable account or controllable payment intangible has priority over a security interest perfected by filing. Finally, modifications to Section 9-331 make it clear that the take-free rules and protected purchaser rights in respect of a controllable account or controllable payment intangible are respected under Article 9. See U.C.C. § 9-331.

With respect to choice of law rules governing perfection of a controllable account or controllable payment intangible, the law of the CER's jurisdiction under Section 12-107 governs if perfecting by control, and the law of the jurisdiction in which a debtor is located governs if perfecting by filing. See U.C.C. §§ 9-306B, 12-107.

Chattel Paper Related Modifications to Article 9

The 2022 Amendments amend the Article 9 definition of chattel paper to make it clear that it is the underlying right of payment of a monetary obligation that is chattel paper and not record or records that evidence that right. There was no intended change to the defined term based on the original definitional intent, as the right to payment itself provides the relevant collateral value. See U.C.C. § 9-102(11).

The next set of changes reverses modifications that were introduced in the 1998 Revisions to the UCC. The 1998 Revisions modified Article 9 to split the term chattel paper into “electronic chattel paper” –chattel paper stored in an electronic medium–and “tangible chattel paper”–chattel paper consisting of tangible writings. In time, however, the authors of the 2022 Amendments note that the market began to see practical problems arising due to this bifurcation.

Among other issues, uncertainty arose from the practice of converting tangible chattel paper to electronic chattel paper and vice versa. The 2022 Amendments remove the distinction between electronic chattel paper and tangible chattel paper, again focusing solely on the right to payment, and result in a single term for chattel paper. In addition, the modified Article 9 provides for a single rule for perfecting a security interest by means other than filing, whether by taking possession of all authoritative tangible copies, if any, or by obtaining control of all electronic authoritative copies, if any. See U.C.C. § 9-101 Cmt. 4(b).

As noted in Official Comments to the 2022 Amendments, the secured party does not need prove that no other tangible or electronic authoritative copies exist to make a prima facie case. See U.C.C. § 7-106 Cmt. 7. Section 9-105, which relates to control of electronic authoritative copies of records evidencing chattel paper, was revised in light of the introduction of Article 12. While Sections 9-105(a) and 9-105(b), which relate to the general rule and the “safe-harbor” rule if there is only a single authoritative copy, remain largely unchanged, a new clause (c) is added to provide a “safe harbor” rule when there are one or more authoritative copies.

New clause (c) follows Section 12-105 for control of CER. According to clause (c), control over chattel paper is established if the system:

- Enables the purchaser to readily identify each electronic copy as either authoritative or non-authoritative.
- Enables the purchaser to readily identify itself.
- Gives the purchaser the exclusive power to prevent others from adding or changing an identified assignee of an authoritative electronic copy and to transfer control of an authoritative electronic copy.

See U.C.C. § 9-105(c).

Note that references to a “secured party” in Section 9-105 have been changed to refer to a “purchaser”. Additionally, exclusivity is not voided even if the power is shared with another person or certain system terms or protocols are programed to cause a change, such as a transfer or loss of control. See U.C.C. § 9-105.

Other revisions to Article 9 address uncertainties with respect to chattel paper in bundled transactions in which monetary obligations exist not only in connection with a lease of goods—say, lease of office equipment—but also with respect to other property and services relating to the leased goods—say, bundled maintenance services. Given that the value of the bundled services can out-weigh the value of the rights to the leased goods, there was a question in the market as to whether these type of transactions created chattel paper. In order to remove this ambiguity, the revisions to Article 9 make it clear that only those transactions whose predominant purpose is to give the lessee the right to possession and use of the goods give rise to chattel paper. See U.C.C. § 9-102 Cmt. 5(b).

Finally, revisions to Article 9 provide a new choice-of-law rule for perfection and priority of security interests in chattel paper perfected by possession or control. Section 9-306A sets forth the rule that perfection and priority are to be governed by the law of the “chattel paper’s jurisdiction,” which means, for chattel paper evidenced only by authoritative tangible copies, the law of the physical location of the authoritative tangible copies, and for chattel paper evidenced by a combination of authoritative electronic copies and authoritative tangible copies, the following decisional waterfall:

- The law of the jurisdiction expressly provided for as the chattel paper’s jurisdiction in such authoritative electronic copy—but only if records in respect of such authoritative electronic copy are readily available for review.
- If the foregoing does not apply, the law of the jurisdiction expressly provided for as the chattel paper’s jurisdiction in the rules of the system in which such authoritative electronic copy is recorded—but only if such rules are readily available for review.
- If any of the foregoing does not apply, the law of the jurisdiction expressly provided for, in such authoritative electronic copy, as governing the chattel paper—but only if records in respect of such authoritative electronic copy are readily available for review.
- If any of the foregoing does not apply, the law of the jurisdiction expressly provided for, in the rules of the system in which such authoritative electronic copy is recorded, as governing the chattel paper or such system—but only if such rules are readily available for review.
- If any of the foregoing does not apply, the law of the jurisdiction in which the debtor is located

See U.C.C. § 9-306A(b).

Money Related Modifications to Article 9

The 2022 Amendments revise the definition of “money” as defined in Article 1 to exclude medium of exchange that privately existed and operated as a medium of exchange before it was authorized or adopted by a government. See U.C.C. § 1-201(b)(24). This was to remove mediums of exchange like Bitcoin—which was famously adopted as legal tender by El Salvador and the Central African Republic.

Further, revisions to Article 9 narrows the definition of money as set forth in Article 1 to exclude deposit accounts and certain money in electronic form. Even though not explicitly stated, previous versions of the UCC understood money to include only tangible mediums, such as coins and bills. Given the explicit possibility of intangible money, Article 9’s definition of money was revised to exclude mediums of exchange that would not work within the paradigms of possession or control as such concepts are defined in Article 9. See U.C.C. § 1-201 Cmt. 24.

Deposit accounts were removed from Article 9’s definition of money because the authors of the 2022 Amendments foresaw the possibility of deposit accounts being adopted as a medium of exchange. Money in electronic form that can be subjected to control under Section 9-105A—which is a new section in Article 9—is not excluded from Article 9’s narrower definition of “money”. The requirements for obtaining control of electronic money under Section 9-105A parallels those for obtaining control of a CER under Article 12. See U.C.C. § 9-105A(a).

Deposit Account Related Modifications to Article 9

In addition, the above-described changes affecting the definition of money, Article 9 provisions relating to control of deposit accounts (Section 9-104) were revised to add a provision for a secured party to obtain control of a deposit account by virtue of the acknowledgment by another person in control of the deposit account. This is a similar concept that is in Section 8-106(d)(3), which relates to control of security entitlements.

Section 8-106(d)(3) itself along with corresponding provisions in other Articles (electronic document of title (Section 7-106(g)), electronic copy of a record evidencing chattel paper (Section 9-105(g)) and electronic money (Section 9-105A(e)) were modified to conform to Section 12-105(e), which relates to control of controllable electronic records by virtue of the acknowledgment by another person. See U.C.C. § 12-105(e).