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MEMORANDUM

**WHERE TO FILE FINANCING STATEMENTS
UNDER REVISED ARTICLE 9¹**

Basic Rule: With few exceptions, in order to perfect a security interest by filing, a financing statement must be filed in the jurisdiction where the debtor² is “located”.³

First Question: Does the transaction involve **collateral** that is subject to one of the **exceptions** to the Basic Rule?

The **exceptions** (and proper jurisdiction for filing with respect to such collateral) are:

Type of Collateral	Where to File	Code Section
Goods ⁴ subject to a fixture filing ⁵	Jurisdiction where the goods are located	Rev. § 9-301(3)(A)
Goods consisting of timber to be cut ⁶ , as extracted collateral ⁷ and farm products ⁸ to agricultural perfect consignment liens ⁹	Jurisdiction where the goods, collateral or merchant are located	Rev. §§ 9-301(B), 9-301(4) and 9-302, respectively

¹ This checklist is intended to be used as a guide in determining where to file a financing statement to perfect a security interest. Filing a financing statement may not be an effective or appropriate means of perfecting a security interest. A security interest in a deposit account as original collateral, for example, can be perfected only by control. Rev. §§ 9-312(b)(1), 9-314 & 9-104. Even where a security interest may be perfected by filing, the security interest so perfected may nevertheless be junior as to a security interest in the same collateral perfected by another method. For example, while a security interest in an instrument may be perfected by filing a financing statement, a purchaser of the same instrument will have priority if the purchaser takes possession of the instrument, and has satisfied the other requirements of Rev. § 9-330(d).

² Rev. § 9-102(a)(28) defines a debtor as “(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor; (B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or (C) a consignee.” *See also* § 9-102(a)(59) (defining obligor) Rev. § 9-102 cmt. 2.a (distinguishing debtor and obligor).

³ As discussed below, the debtor’s “location” will be determined for most purposes related to the filing of a financing statement by Rev. §§ 9-301 (choice of law governing perfection and priority of security interests) & 9-307 (location of debtor).

⁴ “Goods” are “all things that are movable when a security interest attaches” and includes fixtures. Rev. § 9-102(a)(44).

⁵ “Fixtures” are “goods that have become so related to particular real property that an interest in them arises under real property law.” Rev. § 9-102(a)(41). *See also* Rev. § 9-102(a)(40) (defining fixture filing).

⁶ *See* Rev. § 9-301 cmt. 5.c (discussing choice-of-law rules applicable to timber to be cut, as distinct from timber that has been cut).

⁷ Rev. § 9-301(B).

⁸ Rev. § 9-301(4).

⁹ Rev. 9-302 and cmt. 2.

Second question: Where is the debtor "located" for purposes of the Basic Rule? The debtor's location depends upon the debtor's category for purposes of Rev. § 9-307.

The possible categories (and related "locations") are:

Type of Debtor	"Location of the Debtor"	Code Section
Individual (which will include a sole proprietorship ¹⁰) whose principal residence is in the United States, ¹¹ whether assets are business or personal assets	Jurisdiction of the individual's principal residence ¹²	Rev. § 9-307(b)(1)
Individual whose principal residence is not in the United States, whether the assets are business or personal assets	<ul style="list-style-type: none"> • If the debtor's principal residence is located in a jurisdiction whose law affords public notice of security interests,¹³ the law of the jurisdiction of the individual's principal residence will govern (and the secured party must comply with "perfection" requirements in that jurisdiction rather than file a financing statement under the UCC)¹⁴ • If the foregoing is not applicable, the District of Columbia 	Rev. § 9-307(b)(1) & (c)
"Registered organization" ¹⁵ organized under the law of a single state ¹⁶	The registered organization's state of organization	Rev. § 9-307(e)

¹⁰ A sole proprietorship is not within the definition of "organization" because it is not a "legal or commercial entity." UCC § 1-201(28).

¹¹ See Rev. § 9-307 cmt. 3. A jurisdiction that has not enacted Revised Article 9 or an earlier version of Article 9 should be treated as not being in the United States for purposes of applying the rules in this portion of the checklist.

¹² See Rev. § 9-307 cmt. 2 (noting that "principal residence" is not defined).

¹³ The law of a jurisdiction affords public notice of a security interest if it generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral (*i.e.*, being "perfected"). See Rev. § 9-307(c) & cmt. 3.

¹⁴ See Rev. § 9-307 cmt. 3 (regarding choice of law as to non-U.S. debtors).

¹⁵ A "registered organization" is defined in Rev. § 9-102(a)(70) as "an organization organized solely under the laws of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized." Rev. § 9-102 cmt. 11 explains that corporations, limited liability companies, and limited partnerships generally are registered organizations, and that general partnerships generally are not registered organizations. For any other type of domestic organization, it will be necessary to check the laws of the applicable state or of the United States to determine whether the entity is a registered organization within the meaning of the definition. An organization organized under the laws of a non-U.S. jurisdiction will not be a registered organization, but ordinarily will be considered an "organization" under the UCC. See UCC § 1-201(28).

¹⁶ "State" is defined in Rev. § 9-102(a)(76) as "a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States."

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Type of Debtor	“Location of the Debtor”	Code Section
"Registered organization" organized under the law of the United States	1. In the state that the law of the United States designates, if the law designates a state of location 2. In the state that the registered organization designates, if the law of the United States authorizes the registered organization to designate its state of location 3. In the District of Columbia, if neither paragraph (1) nor (2) applies	Rev. § 9-307(f)
Organization ¹⁷ (other than a registered organization organized under the law of a State or of the United States)	Unless covered by any of the specialized rules below: <ul style="list-style-type: none">• If the debtor has only one place of business,¹⁸ the jurisdiction of its place of business• If the debtor has more than one place of business, the jurisdiction of its chief executive office¹⁹	Rev. § 9-307(b)(2) & (3)
Organization (other than a registered organization organized under the law of a state or the United States) whose sole place of business or chief executive office is not in the United States	<ul style="list-style-type: none">• If the debtor's place of business or chief executive office, as applicable, is located in a jurisdiction whose law affords public notice of security interests²⁰, the law of the jurisdiction of the organization's sole place of business or chief executive office, as applicable, will govern (and the secured party must comply with "perfection" requirements in that jurisdiction rather than filing a financing statement under the UCC)²¹• If the foregoing is not applicable, the District of Columbia	Rev. § 9-307(b)(2), (b)(3), & (c)

¹⁷ "Organization" is defined in UCC § 1-201(28) to include "a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity" and "person" is defined in UCC § 1-201(30) to include "an individual or an organization." *See also* UCC § 1-102(5) (rules of construction regarding number and gender).

¹⁸ "Place of business" is defined in Rev. § 9-307(a) as "a place where a debtor conducts its affairs" for purposes of Rev. § 9-307. *See also* Rev. § 9-307 cmt. 2 (discussing "place of business").

¹⁹ Revised Article 9 does not define "chief executive office;" Rev. § 9-307 cmt. 2 explains that chief executive office means "the place from which the debtor manages the main part of its business operations or other affairs."

²⁰ *See* note 13, *supra*.

²¹ *See* note 14, *supra*.

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Type of Debtor	“Location of the Debtor”	Code Section
A branch or agency in the United States of a bank that is not organized under the law of the United States or a state	<ul style="list-style-type: none"> • In the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state • If not all branches and agencies of the bank are licensed in only one state: <ol style="list-style-type: none"> 1. In the state that the law of the United States designates, if such law designates a state of location 2. In the state that the branch or agency designates, if the law of the United States authorizes the branch or agency to designate its state of location 3. In the District of Columbia, if neither paragraph (1) nor (2) applies 	Rev. § 9-307(f) & (i)
Foreign air carrier under the Federal Aviation Act of 1958, as amended ²²	The jurisdiction of the designated office of the agent upon which service of process may be made on behalf of the carrier ²³	Rev. § 9-307(j)
United States	In the District of Columbia	Rev. § 9-307(h)

²² 49 U.S.C. §§ 40101, *et. seq.* (1994).

²³ *See* Rev. § 9-307 cmt. 7 (indicating that this provision is superceded by the Convention on the International Recognition of Rights in Aircraft (Geneva Convention) to the extent the Convention is applicable).

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Type of Debtor	"Location of the Debtor"	Code Section
Unusual Situations	<p>A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by Rev. § 9-307(b) & (c) (i.e., the general rules on location of debtor)</p> <p>A registered organization continues to be located in the jurisdiction specified by Rev. § 9-307(e) or (f) notwithstanding (1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization, or (2) the dissolution, winding up, or cancellation of the existence of the registered organization²⁴</p>	Rev. § 9-307(d) & (g)

CAVEAT: A NON-U.S. FORUM MAY NOT BE BOUND BY THE REVISED ARTICLE 9 CHOICE OF LAW REQUIREMENTS OUTLINED ABOVE. ALTHOUGH THE REVISED ARTICLE 9 CHOICE OF LAW PROVISIONS MAY RESULT IN THE CHOICE OF THE LAW OF A STATE IN THE UNITED STATES TO GOVERN THE ISSUE OF HOW TO PERFECT A SECURITY INTEREST, INCLUDING PLACE OF FILING, A NON-U.S. FORUM MAY REACH A DIFFERENT CONCLUSION AND NOT RECOGNIZE AS EFFECTIVE PERFECTION UNDER THE UCC OR OTHER LAW OF A STATE OR THE UNITED STATES.²⁵ IN ADDITION, A TRANSACTION OR DEBTOR MAY NOT HAVE SUFFICIENT CONTACTS WITH ANY STATE OR THE UNITED STATES TO MAKE THE APPLICATION OF REVISED ARTICLE 9 APPROPRIATE.²⁶ THEREFORE, IN A TRANSACTION WITH CONTACTS TO A NON-U.S. JURISDICTION (E.G., A DEBTOR OR PROPERTY LOCATED OUTSIDE THE UNITED STATES) THE REQUIREMENTS (INCLUDING CHOICE OF LAW PROVISIONS) OF THE LAW OF THE OTHER JURISDICTION SHOULD ALSO BE REVIEWED.

²⁴ See Rev. § 9-307 and accompanying cmt. 4 (events affecting status of registered organization, "such as dissolution," do not affect its location for purposes of Rev. § 9-307(e)).

²⁵ See Rev. §§ 9-307 cmt. 3 & 9-109 cmt. 9 (including Example 4).

²⁶ See Rev. §§ 9-307 cmt. 3 & 9-109 cmt. 4 (including Example 4).

Third question: In what office in the applicable state should the financing statement be filed?

General Rule: File in the central office designated for that state (Rev. § 9-501(a)(2)).

Exceptions:

- File in the office designated for the filing or recording of a record of a mortgage²⁷ on the related real property if:
 - the collateral is as-extracted collateral or timber to be cut (Rev. § 9-501(a)(1)(A))²⁸
 - the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures (Rev. § 9-501 (a)(1)(B))²⁹
- If the debtor is a transmitting utility,³⁰ file in the office specified by that state for filings with respect to this type of debtor (including for collateral that is fixtures) (Rev. § 9-501(b))³¹

²⁷ Rev. § 9-102(a)(55) (defining “mortgage”).

²⁸ Rev. § 9-501 cmt. 3.

²⁹ Rev. § 9-501 cmt. 4. The central office is the appropriate place for filing if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing. Rev. § 9-501 (a)(2).

³⁰ Rev. §9-102(a)(80) (defining “transmitting utility”).

³¹ Rev. § 9-501 cmt. 5.