



**Asia-Pacific
Economic Cooperation**

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Session 3

Legal Infrastructure for Promoting SME Finance

Submitted by: APEC FMP



JAPAN 2010

**Seminar on Getting Credit for Small and
Medium Enterprises
Sendai, Japan
21 September 2010**




Asia-Pacific
Economic Cooperation

FINANCE AND ECONOMIC WORKING GROUP

Third Meeting 2010
25 August 2010
The Intercontinental Hotel Bangkok
Bangkok, Thailand

Legal Infrastructure for Promoting SME Finance



Overview

- ABAC has recognized important role played by clear and predictable legal infrastructure for secured lending in facilitating finance for commercial activities, particularly SME's.
 - See, e.g., 2009 ABAC Report to Economic Leaders, Sec R.2(c)
- Research and discussion in 2010, including at ABAC I (Melbourne), ABAC II (Taipei) and at the SELI Dialogue at SOM I (Hiroshima) have identified several gaps that could be effectively addressed by an APEC initiative involving capacity building and harmonization efforts.
- Specifically, promoting best practice sharing around rules and standards for secured lending would promote innovative financial products, enhance overall liquidity for the SME sector, and advance the goal of financial sector inclusion (i.e. "inclusive growth") and sustainable growth.
- Increasing level of interest by member economies in addressing these gaps. On agenda at Ease of Doing Business Seminar at SOM III in Sendai.
- **FEWG endorsement sought to launch SME Financing Initiative, covering these proposals, and include call for support in 2010 Report to Leaders.**



Summary of Issues Identified as Hurdles for Secured Lending Legal Infrastructure

- Absence of Exclusive Security Interest Registry
 - “Hidden Lien” Problem
- Voidable Conversion/Preference
- Unclear Perfection Rules or Lack of Coverage for Certain Types of Collateral
 - Movables
 - Receivables
 - Goodwill
- Absence of Blocked Account Security Precedence
- Untested Debtor-in-Possession (“DIP”) Process
- Treatment of Floating Charges
- Lack of Broad Licensing Authority for Commercial Lending



Proposal for APEC SME Financing Initiative

- Survey of Global Best Practices on Secured Lending Regimes and Link to Financing Availability
- Develop Model Elements for “APEC Code” of Security Interest Creation, Perfection and Enforcement
 - Clear Perfection Rules
 - Broad Coverage of Collateral Types
 - Exclusivity (Eliminate “Hidden Liens”)
- Model Treatment of Floating Charges/AR Financing
- Public/Private Dialogue to Validate Improvements
- APEC “Checklist” for Statutory/Regulatory Implementation
- Promote Broad Licensing Authority for Commercial Finance
 - NBFC Charters, etc.



APEC SME Financing Initiative Next Steps

- Secure Technical Support, Partnership from Organizations for SME Financing Initiative:
 - Asian Development Bank Institute
 - Asian-Pacific Finance Development Center
 - Others
- Develop Detailed list of 2011 Action Steps, including Support Needed from SME, Finance and Foreign Ministerial Meetings, and from US 2011 APEC Hosts
- Identify Other Key Stakeholders in Member Economies for Inclusion in Dialogue
 - e.g. Justice Ministries



Appendix

*Excerpt from
2009 ABAC Report to Economic Leaders*



● ABAC 2009 Report to Economic Leaders

■ (R) Strengthening and Deepening the Region's Capital Markets

· 2. Improving Regulatory Frameworks

- (c) Building Financial System Infrastructure to Facilitate SME Finance

The development of financial system infrastructure as well as appropriate supporting regulatory and legal frameworks, will be vital to facilitating the financing of enterprises, particularly SMEs, and eventually to restoring confidence and growth. Key areas that should be given attention are promoting commercial lending through an enhanced secured lending framework; promoting improved risk management through modernized credit information; and improving the regulatory process, transparency and predictability of the judicial system.

Secured lending requires legal and judicial infrastructure to ensure predictability. Asset-based lending and secured financing remain in many cases at less than their full potential to provide needed corporate liquidity, particularly for SMEs.

Recommendation

Undertake initiatives to promote a more predictable legal architecture for secured lending, including an exclusively available system for registering and perfecting security interests in both movables and receivables as collateral, efficient judicial procedures for enforcement of security interests, and clear regulations around asset-based lending requirements to further enable both lenders and borrowers to assess risk and enhance sound credit and lending activities.