Getting Credit Under the Personal Property Secured Transactions Act

Submitted by: Chinese Taipei
Getting Credit under the Personal Property Secured Transactions Act

Financial Supervisory Commission
Director General of Banking Bureau
Hsien-Nung Kuei

October 6 2010

Outline

- The strength of legal rights index
- Financial depth
- Regulatory regime governing security interests
- Personal Property Secured Transactions Act in a nutshell
  - Background
  - Framework
  - Content
- Conclusion
Getting Credit

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Index ranges</th>
<th>Chinese Taipei</th>
<th>East Asia &amp; Pacific Average</th>
<th>OECD Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Rights Index</td>
<td>10</td>
<td>4</td>
<td>5.7</td>
<td>6.8</td>
</tr>
<tr>
<td>Credit Information Index</td>
<td>6</td>
<td>5</td>
<td>1.9</td>
<td>4.9</td>
</tr>
<tr>
<td>Private Registry Coverage</td>
<td>100%</td>
<td>63.2%</td>
<td>14.4%</td>
<td>59.6%</td>
</tr>
</tbody>
</table>


Strength of legal rights index

<table>
<thead>
<tr>
<th>Legal Rights Index</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Any business may use movable assets as collateral while keeping possession of the assets, and any financial institution may accept such assets as collateral</td>
<td>1</td>
</tr>
<tr>
<td>2. The law allows a business to grant a non-possessory security right in a single category of revolving movable assets (such as accounts receivable or inventory), without requiring a specific description of the secured assets</td>
<td>0</td>
</tr>
<tr>
<td>3. The law allows a business to grant a non-possessory security right in substantially all of its assets, without requiring a specific description of the secured assets</td>
<td>0</td>
</tr>
<tr>
<td>4. A security right may extend to future or after-acquired assets and may extend automatically to the products, proceeds or replacements of the original assets</td>
<td>0</td>
</tr>
</tbody>
</table>
Strength of legal rights index

5. General description of debts and obligations is permitted in collateral agreements and in registration documents, so that all types of obligations and debts can be secured by stating a maximum rather than a specific amount between the parties  
   1

6. A collateral registry is in operation that is unified geographically and by asset type and that is indexed by the name of the grantor of a security right  
   0

7. Secured creditors are paid first (for example, before general tax claims and employee claims) when a debtor defaults outside an insolvency procedure  
   1

8. Secured creditors are paid first (for example, before general tax claims and employee claims) when a business is liquidated  
   1

9. Secured creditors are not subject to an automatic stay or moratorium on enforcement procedures when a debtor enters a court supervised reorganization procedure  
   0

10. The law allows parties to agree in a collateral agreement that the lender may enforce its security right out of court  
    0

---

Financial Depth

- Bank Loans to GDP in our jurisdiction is around 1.4, higher than those in Japan, Korea and Singapore.
- The banking sector depth correlates with the private sector’s reliance on banking credits or invest.

![Loan To GDP Ratio](chart)

- SG - Singapore
- JP - Japan
- KR - Korea
- TW - Taiwan

---

3 of 12
# Regulatory regime governing security interests

<table>
<thead>
<tr>
<th>Type</th>
<th>Legal ground</th>
<th>Debtor possession</th>
<th>Creditor right</th>
<th>Out of court enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>pledge of personal property/right</td>
<td>Civil Code</td>
<td>X</td>
<td>Alien over personal property/right in possession</td>
<td>V (Foreclosure by agreement)</td>
</tr>
<tr>
<td>Mortgage over Immovable</td>
<td>Civil Code</td>
<td>V</td>
<td>A security interest in real property</td>
<td>V (Foreclosure by agreement)</td>
</tr>
<tr>
<td>Chattel Mortgage</td>
<td>The Act</td>
<td>V</td>
<td>Alien over personal property</td>
<td>V (Creditor’s self-help repossession and sale)</td>
</tr>
<tr>
<td>conditional sales</td>
<td>The Act</td>
<td>V</td>
<td>Ownership by fiduciary transfer of title</td>
<td>V (Creditor’s self-help repossession and sale)</td>
</tr>
<tr>
<td>trust possession</td>
<td>The Act</td>
<td>V</td>
<td>Ownership by fiduciary transfer of title</td>
<td>V (Creditor’s self-help repossession and sale)</td>
</tr>
</tbody>
</table>

## Background of the Act

- A pioneer of secured transactions laws in Asia (proclaimed by the Asia Development Bank)
- Introduction of non-possessory security interest in movable property into the civil law system
- 3 Overarching principles
- 3 alternatives of getting credit
The Framework of the Act

Personal Property Secured Transaction

- Satisfaction of financing needs
- Maximization of economic effects of personal property
- Protection of transaction security

- General Principles
- Chattel Mortgage
- Conditional Sale
- Trust Possession
- Supplementary Provisions

5 Chapters with 39 Articles

Collateral

- Machines, equipments, tools, materials, semi-finished products, products, cars, agricultural, forestry, fishery, and husbandry products, livestock, power-driven ship of under 20 gross tonnage or a non-power-driven ship of under 50 gross tonnage (§4)
APEC Seminar on the First Steps of Successful Reform in Doing Business

Financial Supervisory Commission

Security rights shall be extended to contributed, joined, and mixed goods

The Act § 4-1
Contribute (Civil Code § 814) Join (Civil Code § 812) Mix (Civil Code § 813)

How to get credit over personal property

Trust Possession
Dealer
sell cars to pay back $$$$$ $\rightarrow$ A bank
Conditional Sale
Consumer
A bank
Chattel Mortgage

Personal Property Secured Transactions Act
**Registration Antagonism**

- The creditor of security interests in personal property may register his or her right in the collateral to assert his or her right against a bona fide third party (§5, Paragraph 1)

- A way to perfect security interests
APEC Seminar on the First Steps of Successful Reform in Doing Business

Financial Supervisory Commission

Registry

- Appointed by the cabinet. (§6)
- By asset type and location
  - e.g.: Registry of Vehicles
  - The Municipal Government and Directorate General of Highways, Ministry of Transportation and Communication
- Public notice

Public Notice

[Image of a screen capture showing a public notice]

Personal Property Secured Transactions Act
Enforcement Procedures
Repossession, Sale and Auction

- by court – the Compulsory Execution Act
- out of court – the Act

Statistics of Personal Property Secured Transactions (Ministry of Transportation and Communication)

The amount of transactions and cases of vehicles for personal property secured transaction from 2004 to 2008

Data Resource: Directorate General of Highways, Ministry of Transportation and Communication

Personal Property Secured Transactions Act
Statistics of Personal Property Secured Transactions
Chinese Taipei
(excluding Kaohsiung City and Taipei City)

Data Resource: Central Region Office, Ministry of Economic Affairs

---

Statistics of Personal Property Secured Transactions
(Kaohsiung City)

Data Resource: Department of Economic Development, Kaohsiung City Government
Statistics of Personal Property Secured Transactions (Taipei City)

Data Resource: Department of Economic Development, Taipei City Government

Maximization of economic effects of personal property

Protection of transaction security

An effective and efficient secured transaction system

Satisfaction of financing needs

Personal Property Secured Transactions Act
Thank You