Secured Transactions Reform in Asia Pacific Economies: Progress and Challenges

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Secured Transactions Reform in Asia Pacific Economies: Progress and Challenges

Elaine MacEachern, Global Product Specialist for Secured Transactions & Collateral Registries
East Asia Pacific
IFC Advisory Services, World Bank Group

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• What has been the Progress?
• What Further Reforms are Required?
**What has been the Progress?**

**Secured Transactions System**

Legal and institutional framework to facilitate the use of movable property as collateral for both business and consumer credit

- Bank Accounts
- Accounts Receivable
- Inventory and Raw Goods
- Intellectual Property Rights
- Industrial and Agricultural Equipment
- Durable Consumer Goods
- Agricultural Products (crops, livestock, fish)
- Vehicles

**What has been the Progress?**

- In the past few years, some good progress made in secured transactions reforms (STR) in APEC economies ... but more needs to be done:
  - Major reforms completed in some member economies (e.g., Australia, Vietnam, China, Mexico)—among others, creating a consolidated electronic registry has been a major focus
  - The volume of movables financing is increasing; and innovations are emerging progressively
  - Support services (e.g., CMCs, platforms) are being developed
  - However, some economies clearly lag behind
  - Even in the reformed developing economies, greater efforts are required to develop a movables lending industry
  - Investments (and know-how) in movables financing are needed by the developing economies
What has been the Progress?
One Way to Understand a Secured Transactions System: The Eight Indicators of Doing Business Report

1. Can any business use movable assets as collateral while keeping possession of the assets; and any financial institution accept such assets as collateral?
2. Does the law allow businesses to grant a non possessory security right in a single category of movable assets, without requiring a specific description of collateral?
3. Does the law allow businesses to grant a non possessory security right in substantially all of its assets, without requiring a specific description of collateral?
4. May a security right extend to future or after-acquired assets, and may it extend automatically to the products, proceeds or replacements of the original assets?

What has been the Progress?
One Way to Understand a Secured Transactions System: The Eight Indicators of Doing Business Report

5. Is a general description of debts and obligations permitted in collateral agreements; can all types of debts and obligations be secured between parties; and can the collateral agreement include a maximum amount for which the assets are encumbered?
6. Is a collateral registry in operation, that is unified geographically and by asset type, with an electronic database indexed by debtor’s names?
7. Are secured creditors paid first (i.e. before general tax claims and employee claims) when a debtor defaults outside an insolvency procedure?
8. Does the law allow parties to agree in a collateral agreement that the lender may enforce its security right out of court, at the time a security interest is created?
What has been the Progress?
Eight Dimensions of Secured Transactions Systems in APEC

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Source: Doing Business Database, World Bank/IFC.

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What has been the Progress?
Strength of Legal Rights for Lenders and Borrowers

Note: 10 indicators measuring the strength of collateral (8) and insolvency (2) laws. Higher scores indicate a better system to facilitate access to credit. The graph shows the number of economies with each score on the strength of legal rights from 185 economies.
Source: Doing Business 2013: Economy Profile, World Bank/IFC.

What Further Reforms are Required?
Internationally Accepted Standards

- UNCITRAL Registry Guide and Legislative Guide on Secured Transactions
- World Bank Principles on Insolvency and Creditors Rights
- IFC Guide on Secured Transactions and Collateral Registries
- OAS Model Law
What Further Reforms are Required?
Building Blocks of a Good Secured Transactions System

- Need greater understanding of the importance and benefits of STR and movables financing, particularly among government officials, regulators and lenders
- In the STR lagging economies (e.g., Indonesia, Philippines, Thailand), need to build up a strong commitment for reform
- In the reforming economies (e.g., Vietnam, China), still need to fill in the gaps (e.g., stronger enforcement of security interests)
- In all developing member economies, need greater efforts to develop a diversified range of movables lending practice, particularly with a view to serve the priority segments (e.g., agri, SMEs)
What Further Reforms are Required?  
Main Recommendations

- In all developing member economies, need to further develop support services (e.g., warehousing infrastructure, CMCs, credit enhancers, e-platforms)
- To promote knowledge and experience exchanges on STR and movables financing among economies
- To encourage cross-border investments in movables financing industry

What Further Reforms are Required?  
A Few Practical Experience

- One size does not fit all: certain principles are key, but flexibility and adaptability are also important
- The overall goal of reform is to have an impact: more access to credit, financial inclusion, economic growth, more investment, etc.
- A reform will only have economic impact if three elements are present:
  - Modern legal and regulatory framework
  - Functioning registry. Modern technology is a must but not always possible.
  - Interest/willingness of banks and other lenders to use the system and to lend based on movable assets
- Training and Awareness is Key
Thank You!