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ASSESSING APEC GETTING CREDIT FRAMEWORKS ACCORDING TO INTERNATIONAL BEST PRACTICES: SECURED TRANSACTIONS REPORT AND MATRIX

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SECURED TRANSACTIONS REPORT AND MATRIX

INTRODUCTION

Secured transactions reforms have had a measurable impact on a number of economies that have experienced growth in access to secured credit, particularly for small and medium-sized enterprises (SMEs). A 2013 World Bank study of the economies that completed secured transactions reforms and established modern collateral registries found that in doing so, on average, these economies' access to finance increased by 8 percentage points, the percentage of working capital loans increased by 10%, interest rates were reduced by 3 percentage points and loan maturities extended by six months.¹

The Secured Transactions Report and Matrix will analyze each APEC member economy's "Getting Credit" frameworks governing secured transactions. The analysis will provide an evaluation and other useful information with regards to the degree of alignment of the APEC economies' legal frameworks with the critical features of a modern secured transactions framework based on international best standards as set forth by the just approved UNCITRAL Model Law on Secured Transactions,² the United Nations Convention on the Assignment of Receivables in International

¹ Inessa Love, Sole Martínez Pería and Sandeep Singh, Policy Research Working Papers, World Bank Collateral Registries for Movable Assets: Does Their Introduction Spur Firms' Access to Bank Finance? (June 2013), available at <http://www.ifc.org/wps/wcm/connect/8891c280415edb709ba3bb9e78015671/Collateral%2BRegistries%2Bfor%2BMovable%2BAssets%2B%2BDoes%2BTheir%2BIntroduction%2BSpu%2BFirms%2BAccess%2Bto%2BBank%2BFinance.pdf?MOD=AJPERES> (last accessed July 2016).

² United Nations Commission on International Trade Law, the UNCITRAL Model Law on Secured Transactions, adopted July 1, 2016. Other key international instruments include the United Nations Commission on International Trade Law, UNCITRAL Legislative Guide on Secured Transactions (2010), available at http://www.uncitral.org/pdf/english/texts/security-lg/e/09-82670_Ebook-Guide_09-04-10English.pdf (last accessed July 2016), United Nations Commission on International Trade Law, UNCITRAL Guide on the Implementation of a Security Rights Registry (2014), available at <http://www.uncitral.org/pdf/english/texts/security/Security-Rights-Registry-Guide-e.pdf> (last accessed July 2016) and the World Bank, Secured Transactions Systems and Collateral Registries Toolkit (2010) available at http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/industries/financial+markets/publications/toolkits/secured+transactions+systems+collateral+registries+toolkit (last accessed July 2016). See also United Nations Commission on International Trade Law, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions, available at http://www.uncitral.org/uncitral/en/uncitral_texts/security/2011UNCITRAL_HCCH_Unidroit_texts.html (last accessed July 2016).

Trade,³ and the Organization of American States' Model Inter-American Law of Secured Transactions for the Americas.⁴

The overarching purpose of this Report is to identify areas that can be reformed to improve the business environment in APEC member economies by highlighting legal inefficiencies and suggesting ways for their minimization or complete elimination. The Report does not suggest any concrete legislative drafting that should be incorporated into the member economies' legislation. That step in the reform process should come only once the policy makers have made a firm commitment to modernizing their secured transactions legal frameworks.

The more specific objective of the Report is to highlight the fundamental features of a modern secured transactions system and assess whether the present legal framework of each APEC member economy aligns with these features, and as a result, conclude whether there is a need for partial or comprehensive reform. As such, the Report identifies possible areas for improvement in member economies' secured transactions frameworks and suggest recommendations taking into consideration international best standards. The information provided will facilitate the modernization of secured lending laws in the APEC region, reducing transactional costs and attracting secured finance from foreign sources.

This Report suggests that for an economy to have an effective system in which borrowers may access credit at a reasonable cost, all of the positive features must be operative. While this Matrix and Report presents preliminary findings for each APEC member economy, determining whether all features are operative requires diagnostics or "roadmap" studies of the actual secured transactions practices that is beyond the scope of the present assessment. For instance, one the features measures the effectiveness of enforcement mechanisms. Extra-judicial remedies may be provided for in the legal framework, but their actual application in practice may be thwarted by actions of the debtor who may be able to obtain an order from a court suspending the proceedings indefinitely. Examination of the types of court procedures, defenses, appeals and timelines to implement extra-judicial remedies is beyond the scope of this assessment.

It is also important to note that a legislative package that would allow member economies to reach a takeoff point toward economic growth includes: i) a modern secured transactions system; ii) a simplified procedure for the registration and incorporation of all types and sizes of businesses, including a reliable and reasonably priced book keeping/accounting system that will enable the potential secured creditor to determine its debtor's ability to repay and the source of repayment; iii) efficient rules for the enforcement of commercial obligations; iv) modern bankruptcy (insolvency) laws; v) electronic warehouse receipt laws; and vi) functioning credit bureaus. These measures relate primarily to the area of commercial law but do not purport to cover all potential issues that could affect economic growth, such as taxation and labor rules, among others.

³ The Convention is available at http://www.uncitral.org/uncitral/en/uncitral_texts/security/2001Convention_receivables.html (last accessed July 2016).

⁴ Organization of American States, Model Inter-American Law on Secured Transactions, Department of International Law, available at http://www.oas.org/dil/cidip-vi-securedtransactions_eng.htm (last accessed July 2016).

METHODOLOGY

The collection and analysis of the critical features provided in this Report rely on use of a comparative methodology. As such, this Report profited from the drafting experiences associated with the UNCITRAL Model Law, the UN Receivables Convention, the Organization of American States' Model Inter-American Law of Secured Transactions for the Americas, and other instruments adopted by international organizations.

This Report examines the legal framework of each APEC member economy that was in force at the time the assessments were conducted. Considering that legislation typically governing secured transactions in an economy may not actually be entitled "secured transactions law" or "personal property security interests law," unless the economy has undertaken a reform along the lines of international best standards, this Report examined relevant rules contained in both generally applicable legislation, such as Civil and Commercial Codes, as well as transaction, sector or borrower-specific legislation, such as Bills of Sale, Agricultural Credits and Companies Acts. Decrees and regulations issued pursuant to these laws have also been examined. If the relevant laws were unable to be located on-line, other resources, such as secured transactions experts working in the region for an international organization, such as the World Bank, or in universities in the APEC region, etc. were engaged. Efforts were also made to verify the currency and accuracy of the findings with local lawyers.

It is important to note that at the time the Report was being conducted, certain economies were in the process of reform which have resulted in the formulation of secured transactions bills. However, draft bills were not taken into account for the purpose of this assessment, as their adoption is uncertain and the provisions included therein may change. Similarly, the assessment does not reflect newly enacted laws which have yet to be implemented or take effect, and certain answers in these assessments could change after such implementation.

This Report also profits from the pioneering experience of the United States in Article 9 of the Uniform Commercial Code, the success of which was a result of a proper combination of respect for the rights and duties of regular participants in a secured transaction as well as of the rights and duties of third parties, such as potential secured creditors and purchasers of the debtor's assets. As already apparent in the 1972 formulation of § 9-201: "...Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like..."

Analysis of classic Roman law has shown that by 2nd Century AD, Roman law had already identified some of the key concepts present in current international best standards. Among these were: i) the secured creditor's right to preferential possession of the collateral to be exercised in the event that its debtor defaulted; and ii) the debtor's right to remain in possession of the collateral that secured his loan in order to be able to sell or transform such collateral into assets that could generate proceeds with which to repay the loan.

Yet, a comparative normative analysis, guided by experience with the most successful laws and international model laws and guides to legislative enactment, is an essential first step toward the APEC member economies' enactment of an effective secured transactions law. The drafting of such a law will require empirical/field research of the socio-economic context.

The Report does not adopt a strict approach to assessing all features described in detail in the Matrix and making recommendations thereunder. For instance, with regards to the first feature - **Single Law that Regulates all Security Interests**, an economy scored positively even if a small number of well-defined secured transactions are not covered by a single law. Such exclusions have been made in most economies with modern secured transactions frameworks as well as the international best standards to respect and recognize the existing frameworks and registries for security interests in aircraft objects, ocean-going ships, etc. A similar approach was taken in the assessment and formulation of recommendations under feature 3 - **One Registry for all Security Interests (including electronic capabilities and low fees)**. Under this feature, several economies scored positively even though they operate multiple state or province-based registries. However, the substantive legal framework provides for clear rules as to where to register a notice in order to perfect the security interest against the particular debtor. Accordingly, the approach taken is deeper and more contextual as compared to the World Bank's Doing Business Report.

As expected, the assessment revealed that many APEC economies have enacted multiple laws governing secured transactions which prescribe different requirements. For instance, one law may require the secured creditor to take possession of the collateral while other may allow the debtor to remain in possession. Such economies were scored in feature 4 - **Debtor may Retain Possession or Control of Collateral** based on an underlying consideration that evaluates which of these laws is more likely utilized in practice. The economy's individual assessment (included in Annex A) will highlight this fact and explain why the economy has been scored as such.

The Matrix and the Individual Economy Reports (see Annex A) also, to a limited extent, assess the effectiveness of the existing features in day-to-day practice and take into account the costs associated with the implementation of particular features whenever known. For instance, the legal framework may allow security agreements to provide for the creation of a security interest over assets to be acquired by the debtor in the future or any proceeds of the existing collateral — and this is characterized as a positive feature. However, the legal framework may also require that whenever the debtor acquires a new asset or transforms existing collateral and generates proceeds, he must notify the creditor through a notary or enter into a new agreement or amend the existing security agreement — and this is characterized as a negative feature. If the negatives associated with a feature outweigh the positives, the feature is still considered in need of reform and is reflected as such in the Matrix.

As noted above, the Report does not examine the application of the relevant laws in practice. In the context of these features, the efficiency is measured based on the requirements prescribed by the particular rule which was readily compared against the international best standards. Accordingly, the methodology of the Report is limited to the comparative analysis of the rules.

DESCRIPTION OF MATRIX FEATURES

The Secured Transactions Matrix includes three parts: i) reference to each economy's score under the Strength of Legal Rights Index under the World Bank's Doing Business Getting Credit indicator; ii) indication as to whether the member economy's secured transactions framework is in alignment with international standards or is in need of either a comprehensive or partial reform; and iii) indication as to whether the member economy's legal framework has or does not have each of the eleven features of a modern secured transactions framework.

These features have been designed to align with those included in international best standards, particularly those set forth by the UNCITRAL Model Law, The UN Receivables Convention, and the OAS Model Law. These features are crucial to any successful secured transactions framework.

Strength of Legal Rights Index Score

As noted in the introduction, the Matrix includes reference to each economy's score under the Strength of Legal Rights Index under the World Bank's Doing Business "Getting Credit" indicator, which takes into account only the secured transactions framework.⁵ The World Bank's annual Doing Business Report's "Getting Credit" indicator measures the legal rights of borrowers and lenders but is not completely synonymous with secured transactions. Even though the secured transactions framework is a critical component within this indicator, other components include insolvency regimes. The Getting Credit Strength of Legal Rights index measures the degree to which secured transactions laws protect the rights of borrowers and lenders and thus facilitate lending. The index ranges from 0 to 12, with higher scores indicating that these laws are better designed to expand access to credit.⁶

The features included in this Report against which the APEC member economies' legal frameworks have been examined, to some extent, overlap with the features that determine the member economy's score in the Strength of Legal Rights Index. For instance, feature number one in the Matrix is similar to feature number one in the Index. In contrast, feature number six in the Matrix only partially overlaps with feature number six of the Index. While the former takes into account the level of registration fees, the latter also focuses on whether the registry is geographically unified. Overall, a few of the matrix features fully overlap with the index features, while others only partially overlap and the rest are completely different. Included below is a table of the overlapping and partially overlapping matrix features.

⁵ World Bank Group Doing Business, Getting Credit, Strength of Legal Rights Index table, available at <http://www.doingbusiness.org/data/exploretopics/getting-credit>, (last accessed November 2016).

⁶ For more information on the Strength of Legal Rights Index and Doing Business Getting Credit Methodology see World Bank Group Doing Business, Getting Credit, Strength of Legal Rights Methodology, available at <http://www.doingbusiness.org/methodology/getting-credit>, (last accessed November 2016).

Matrix Features	Corresponding Features in the Strength of Legal Rights Index
1. Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner	1. Does an integrated or unified legal framework for secured transactions that extends to the creation, publicity and enforcement of functional equivalents to security interests in movable assets exist in the economy?
2. Elimination of Secret Liens: Whether "secret liens" have been eliminated through a transparent notice-based system	7. Does a notice-based collateral registry exist in which all functional equivalents can be registered?
3. One Registry for all Security Interests (including electronic capabilities and low fees) Whether the economy has established a single, unitary registry for all security interests, and whether it has electronic capabilities and is characterized by low fees	6. Is a collateral registry in operation for both incorporated and non-incorporated entities, that is unified geographically and by asset type, with an electronic database indexed by debtor's name?
5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement	12. Does the law allow parties to agree on out of court enforcement at the time a security interest is created? Does the law allow the secured creditor to sell the collateral through public auction and private tender, as well as, for the secured creditor to keep the asset in satisfaction of the debt?
7. All or Any of the Debtor's Assets may be Provided as Collateral: Whether all or any of the debtor's assets may be provided as 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?
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future / after-acquired assets and proceeds may be provided as 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?
11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations	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?
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As such, the approach taken for this Report was to conduct an individual analysis on each of the overlapping indicators rather than to rely only on the assessments and conclusions of the World Bank Report. As a result, some answers in the Matrix may deviate from those included in the Index. The Matrix also takes into account reforms completed as of July 2016, while the Index included in the Doing Business 2017 Report considers data as of June 2016.

Level of Reform Needed

The second section of the Matrix indicates the degree in which a member economy's secured transactions framework is in alignment with international standards, and whether the economy is a need of either a comprehensive or partial reform. The factors considered for these designations are described below.

No Reform Needed

Some member economies included in the Report have already implemented modern secured transactions frameworks that are in alignment with international best standards, and therefore do not need reforms. These economies either have perfect, or almost perfect, scores under each of the Matrix features.

Comprehensive Reform Needed

Member economies that have not undertaken reform efforts consistent with the international best standards may need to undertake a comprehensive reform that incorporates all of the features listed below. Successful implementation of these features is also predicated upon the identification of existing practices that hinder credit or that may increase the cost of credit, as well as upon providing adequate solutions for the elimination of such practices. In order to ensure the success of reform efforts, implementation should include training, institutional capacity building, software development and hardware acquisition, best-practice manuals and implementation of international banking and accounting standards.

Partial Reform Needed

For member economies that have embarked on reform efforts consistent with international best standards yet are lacking two or more of the features described below, will need to implement those features as well as engage in training, institutional capacity building, drafting of best-practice manuals and implementation of international banking and accounting standards, where necessary. Successful implementation of these features is also predicated upon the identification of existing practices that hinder access to credit or that may increase the cost of credit, as well as upon providing adequate solutions for the elimination of such practices.

Secured Transactions Matrix Features

1. Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner

Many legal systems still apply multiple laws to regulate security interests, primarily according to the types of borrowers, security devices and/or assets — and this generates uncertainty, inconsistency and unpredictability. Some member economies have also adopted secured transactions laws that expressly exclude certain transactions — for example, financial leases, factoring of accounts or conditional sales — claiming, without a true legal or business basis, that such devices do not involve a security interest but, rather, a retention or transfer of ownership. The multiplicity of laws, each with their own perfection and priority rules, creates the risk of conflicts and increases the monitoring burden of the lender that must modify the credit relationship under certain circumstances (*e.g.*, when an individual borrower incorporates and becomes subject to a different law). It also creates the potential for secret liens discussed below. Furthermore, the multiplicity of laws increases transactional costs forcing lenders to execute more than one security agreement and effectuate multiple registrations in order to comply with the applicable laws.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Some systems permit certain rights in the collateral to remain unregistered and not otherwise subject to any form of public notice, which generates uncertainty and unpredictability because such rights are typically intended to be effective against third parties. The elimination of secret liens was the primary purpose for the adoption of modern secured transactions laws in the United States and Canada in the 1950's. However, in some member economies special interest groups (for example, the leasing industry, factors of accounts receivable and suppliers) have prevented the elimination of secret liens by claiming ownership or fiduciary rights in the collateral.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

There must be a single registry where notices (rather than contracts) of all security interests are registered. Additional registries for rights to specific assets, such as aircraft, or other assets, such as intellectual property rights, may exist and require registration of the respective security interests therein. For purposes of registrations and searches, the registry should be accessible electronically. Exclusive electronic access further enhances the efficiency of the registry and reduces operational costs. Fees should not be based on or progressively increase according to the amount of the transaction, but rather should be low and flat reflecting the automated nature of the processing conducted without any notarization or validation by the registrar.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Some systems enforce limitations on the transferability of receivables which prevent many SMEs, particularly suppliers to large companies, from using them as collateral. Laws should facilitate the utilization of all types of assets as collateral, even at the expense of intruding into the parties' contractual freedom, consistent with international standards as set forth in the UNCITRAL Model Law, the UN Assignment of Receivables Convention and the OAS Model Law. At the same time, the rights of account debtors whose debts have been assigned or encumbered by a security interest should be protected and their duties/obligations remain unaffected.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Upon default, a creditor should be able to take possession of the collateral or collect receivables directly and dispose of it without the need for a lengthy and costly process before a court. Access to out-of-court enforcement mechanisms eliminates the risk of frivolous defenses that may be alleged by debtors in court proceedings. When this takes place, enforcement may take several years to conclude and by that time the collateral, if it still exists, can be valueless. Considering that creditor self-help measures may be subject to court review of their unjust enrichment, abusiveness, or bad faith, it is very important that the universally accepted principle of "*solve et repete*" of documentary sales law (i.e., pay first against the presentation of the documents and claim deficiencies later) be adopted by APEC member economies.

Relevant international standards also stress the importance of the use of alternative dispute resolution mechanisms, including arbitration in the resolution of secured transactions disputes. For example, the newly adopted UNCITRAL Model Law includes a provision (Article 3) stating that "Nothing in this Law affects any agreement to the use of alternate dispute resolution, including arbitration, mediation, conciliation, and online dispute resolution." Similarly the OAS Model Law on Secured Transactions (Article 68) provides that "Any controversy arising out of the interpretation and fulfilment of a security interest may be submitted to arbitration by the parties, acting by mutual agreement and according to the legislation applicable in this State." A number of the top ranked economies in the World Bank Doing Business Report have included a specific provision on arbitration in recognition of the fact that ineffective judicial mechanisms in their economies have a negative impact on the availability and cost of credit. However in APEC, only Peru has an express provision in its law providing for arbitration to solve controversies during the enforcement of a security interest. Member economies may wish to review their laws in this regard.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

In contrast to some legislative frameworks that requires the lender to take possession of the collateral, in a modern secured transactions system the debtor may retain the asset provided as collateral and use it — including to generate income *i.e.* the proceeds from which to repay the loan. This feature measures not only the ability of the debtor to retain possession of some tangible asset, such as machinery, but also the ability to control intangible assets, such as bank accounts.

While most consumer loans (such as those used to purchase a vehicle or household appliances) allow borrowers to take immediate possession, some laws require that the relevant equipment and inventory of a business be temporarily placed in a lender-controlled warehouse or that the relevant accounts receivable be paid directly to the lender, pending repayment of the loan. However, it should be noted that even in some member economies that allow businesses to remain in possession and control of their assets, the relevant arrangements may require that ownership to the collateral be transferred to the lender, without the need to publicize the arrangement by registration. Consequently, if permitted by the law, many security arrangements whereby the debtor is allowed to remain in possession and control of the collateral, are structured as secret liens (see discussion above) and, consequently, are in conflict with a modern secured transactions framework.

7. All or Any of the Debtor's Assets may be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Any asset with value in the marketplace should be capable of being used as collateral — including inventory, equipment, accounts receivable and other “intangibles” such as intellectual property rights. However, many laws may impose the requirement that the debtor create a security interest only in those assets to which he can prove ownership. Furthermore, the law may limit the ability of the debtor to create a security interest in certain types of assets, such as when the only security device recognized by the law is a pledge that requires delivery of collateral to the secured creditor. Finally, laws may also impose limitations on the ability of the secured creditor to encumber the entire business of the debtor under a floating security interest or enterprise mortgage.

8. Crops may be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Systems that allow crops to be used as collateral separate from land enable farmers to have greater access to credit without putting the underlying land at risk. Furthermore, often, the farmer does not own the underlying land which would eliminate the possibility to create a security interest in growing crops. If an interest in crops may arise under both the secured transactions and land laws, it is essential for the legal framework to provide clear priority rules.

9. Future/After-acquired Assets and Proceeds may be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future / after-acquired assets and proceeds may be provided as collateral)

When dealing with inventory, crops and accounts receivable, there is significant turnover of collateral. This feature enables an automatic extension of the security interest to any inventory or crops acquired in the future, as well as to any payments received from the sale or collection *i.e.*, accounts receivable. However, it is the case in many member economies that while the law may provide for an automatic extension of the security interest, it may also require that the debtor engage a notary public (each time that the collateral is sold or transformed) to notify the creditor, or comply with other cumbersome formalities, such as amending the security agreement. Such requirements may significantly increase the cost of inventory and accounts receivable financing. In other economies, the law may recognize automatic extension of the security interest into proceeds but define the concept of proceeds very narrowly thus requiring the creditor to take actions to ensure that its security interest extends to all kinds of proceeds.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Clear priority rules are an essential feature for a modern secured transactions regime. In the absence of such rules, creditors would not be confident in taking security interests because of the uncertainty that their rights to repayment could be preempted by claims that were impossible, or extremely difficult, to discover. Priority rules not only affect competition between secured creditors, but also the rights of buyers and nonconsensual creditors, such as judgment lienholders. Priority rules are also essential to facilitate more complex credit facilities that involve multiple lenders with overlapping security interests. Proper application of the priority rules, to a large extent, depends on the effectiveness of the registry system which can resolve a vast majority of conflicts among competing claimants. Priority rules lack predictability, especially when the legal framework for various secured transactions is not unitary.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Collateral may be described in the security agreement and/or registration forms simply, such as "all debtor's inventory of shoes;" or, when applicable, by using the serial number such as "the debtor's Ford Explorer with VIN 123." The actual description may vary depending on the nature of the transaction and the collateral involved; generic for inventory and specific for a vehicle. It is important for the law to provide for such flexibility in describing the collateral, in both security agreements and registration forms, so as to eliminate the risk that some assets may not be covered by a collateral description and the cost of frequently needing to amend security agreements and registrations. Similarly, it is critical for the system to allow flexible descriptions of obligations that may be secured by the collateral in security agreements. However, descriptions of secured obligations should not be required in registrations.

APEC MEMBER ECONOMY SECURED TRANSACTIONS MATRIX

Member Economy \ Feature	Score in World Bank Doing Business - Getting Credit, Strength of Legal Rights Index (Out of 12)	Comprehensive Reform needed	Partial Reform needed	1. Single Law that Regulates all Security Interests	2. Elimination of Secret Liens	3. One Registry for all Security Interests (including electronic capabilities and low fees)	4. Effective and Efficient Transfer of Interests in Receivables	5. Out of Court Enforcement	6. Debtor may Retain Possession or Control of Collateral	7. All or Any of the Debtor's Assets may be Provided as Collateral	8. Crops and Livestock may be Provided as Collateral Independently from Land	9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	10. Predictable Priority Rules	11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations
Australia	11	No Reform Needed		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Brunei Darussalam	5			No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
Canada	9	No Reform Needed		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Chile	4			No	No	No	No	No	Yes	Yes	Yes	No	No	No
People's Republic of China	4			No	No	No	No	No	Yes	Yes	Yes	Yes	No	No
Hong Kong, China	8			No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	No
Indonesia	6			No	No	No	No	Yes	Yes	Yes	No	No	No	Yes

Matrix Legend - Yes: Member Economy has Feature; No: Member Economy does not have Feature

Feature	Member Economy	Score in World Bank Doing Business - Getting Credit, Strength of Legal Rights Index (Out of 12)	Comprehensive Reform needed	Partial Reform needed	1. Single Law that Regulates all Security Interests	2. Elimination of Secret Liens	3. One Registry for all Security Interests (including electronic capabilities and low fees)	4. Effective and Efficient Transfer of Interests in Receivables	5. Out of Court Enforcement	6. Debtor may Retain Possession or Control of Collateral	7. All or Any of the Debtor's Assets may be Provided as Collateral	8. Crops and Livestock may be Provided as Collateral Independently from Land	9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	10. Predictable Priority Rules	11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations
	Japan	4			No	No	No	No	Yes	Yes	No	Yes	Yes	No	No
	Republic of Korea	5			No	No	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes
	Malaysia	7			No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
	Mexico	10			No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	New Zealand	12	No Reform Needed		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Papua New Guinea	9	No Reform Needed		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Peru	8			Yes	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes
	The Philippines	3			No	No	No	No	No	Yes	No	Yes	No	No	No

Matrix Legend - Yes: Member Economy has Feature; No: Member Economy does not have Feature

Feature	Member Economy	Score in World Bank Doing Business - Getting Credit, Strength of Legal Rights Index (Out of 12)	Comprehensive Reform needed	Partial Reform needed	1. Single Law that Regulates all Security Interests	2. Elimination of Secret Liens	3. One Registry for all Security Interests (including electronic capabilities and low fees)	4. Effective and Efficient Transfer of Interests in Receivables	5. Out of Court Enforcement	6. Debtor may Retain Possession or Control of Collateral	7. All or Any of the Debtor's Assets may be Provided as Collateral	8. Crops and Livestock may be Provided as Collateral Independently from Land	9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	10. Predictable Priority Rules	11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations
	Russia	6			No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
	Singapore	8			No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Chinese Taipei	4			No	No	No	No	Yes	Yes	No	No	No	No	Yes
	Thailand	3			No	No	No	No	No	Yes	Yes	Yes	No	No	No
	The United States	11	No Reform Needed		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Viet Nam	7			No	Yes	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes

CONCLUSIONS AND RECOMMENDATIONS

As illustrated in the Matrix, the APEC member economies are in varying degrees of alignment with international best standards depending on the features measured. In general, a significant majority of APEC economies allow lenders to take security interests in crops and livestock independently of any rights to the underlying immovable property. Similarly, most of member economies allow lenders to take security interests in any or all assets of the borrower. In contrast, many member economies are not in alignment with international best standards with respect of the first two features – the adoption of a single law and the elimination of secret liens.

For some of the indicators, the economies have fared relatively well. All of the economies scored a “Yes” on the indicator which measures the ability of the debtor to remain in possession or control of the collateral. However, the ability to retain possession or control over the collateral, assessed on its own, does not indicate that the framework is credit-friendly. Assessed within the context of the other features, the framework may not provide effective and inexpensive methods to execute non-possessory security interests if the registration process is complicated and costly. As a result, the debtor may remain in possession of the collateral but only at the cost of bearing the registration fees.

Some indicators clearly divided the economies into two groups reflecting the reformed frameworks, on the one hand, and the reliance on the traditional (outdated) concepts, on the other. This was particularly the case for the feature that measured whether receivables may be transferred efficiently despite a provision in the underlying agreement prohibiting or restricting a transfer as well as the feature measuring the predictability of priority rules.

For some of the indicators, further diagnostic measuring their practical utilization and efficiency would be required. For instance, a majority of the economies scored a “Yes” on the out of court enforcement indicator. This indicator measures primarily the availability of extra-judicial enforcement mechanisms, including alternative dispute resolution mechanisms as provided in substantive laws. However, their practical application could not be measured and assessed. As a result, while the legal framework may allow creditors to proceed extra-judicially, it may happen that in practice such remedies are inefficient because the debtor has the ability to easily petition the court to stay the proceedings.

Generally, the APEC member economies have not scored well on the first three indicators that examine whether the economy has a single law and a single registry that covers all security interests and their functional equivalents. A “No” score on the first three indicators is a sign that the frameworks have not been based on the functional approach to secured transactions enshrined in international best standards. It is these three indicators that the reforms should primarily focus on. Once these building blocks are accepted, the other aspects measured in the indicators would fall in place as well. For instance, if the economy has a comprehensive single secured transactions law it will inevitably also have predictable priority rules.

Based on the analysis that led to the formulation of the relevant recommendations, the APEC member economies may be divided into three groups: i) those whose legal frameworks correspond to the international best standards; ii) those whose legal frameworks require a partial reform to bring some of the features up to the international best standards; and iii) those whose legal frameworks require a comprehensive reform.

With respect to the second group of member economies, the degree of the partial reform may vary from relatively minor to more significant because the latest reforms have been

implemented with some gaps. The urgency for a reform, particularly within the last group of member economies, may also depend on the level of development of the particular economy. While in certain economies stakeholders may not feel that a reform of this kind is urgent because the credit needs of their SMEs are relatively well addressed, that would not be the case in other economies.

The economies listed in the first group could serve as mentors for the other economies in terms of properly implementing all (or almost all) of the Matrix features, since their laws are consistent with international standards as set forth in the UNCITRAL Model Law, the Assignment of Receivables Convention and the OAS Model Law. Yet, the design and implementation of reforms should also take into account each economy's credit practices and markets, the legal origins of their respective legal frameworks, and other local conditions. The framework for secured transaction reform based upon international standards in the UNCITRAL Model law, the Assignment of Receivables Convention and the OAS Model Law should serve as models in terms of the fundamental principles on which their secured transactions laws and registries are built. But drafting and implementation of the actual laws may differ depending upon the needs of each economy and its stage of economic development.

There is also opportunity among economies that share common legal traditions to learn from one another. For example, APEC member economies may learn from Mexico's experience on how to establish a modern electronic registry and minimize the notarial fees associated with the execution of security agreements and registrations. Additionally, a number of economies have already completed reforms that have not been satisfactory and are already re-engaged in curing the mistakes, which could also provide valuable guidance to the other APEC member economies.

Regional cooperation would be further enhanced with the ratification of the United Nations Convention on the Assignment of Receivables in International Trade which provides modern, predictable and uniform choice of law and substantive rules on selling or using receivables as collateral in cross-border transactions. International best standards such as those reflected in the UNCITRAL and OAS Model laws are based on the Convention's fundamental principles so its ratification would be complementary to modernization of the legal framework governing domestic transactions. The ratification would further strengthen commercial ties among the APEC members and significantly reduce impediments for exporters and importers to obtain low-cost credit, particularly SMEs.

ANNEX A

ASSESSING APEC GETTING CREDIT FRAMEWORKS ACCORDING TO INTERNATIONAL BEST PRACTICES: SECURED TRANSACTIONS INDIVIDUAL MEMBER ECONOMY REPORTS

AUSTRALIA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	Yes
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	Yes
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	11
Level of Reform Needed	No Reform Needed

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

Yes. The Personal Property Securities Act (PPSA), enacted in 2009, comprehensively covers all security interests in personal property. The PPSA became operational on January 30, 2012 and is based on a similar statute adopted in Saskatchewan. Section 12 of the PPSA sets out the "in substance security interest" test under which it is stated that formal considerations and classifications (e.g., fixed or floating charge) no longer play any role. Accordingly, fixed and floating charges, hire-purchase transactions, financial leases, retentions of title, consignments, trust receipts, and flawed asset arrangements are treated as security interests. Furthermore, under Section 12(2)(j), sales of accounts and chattel paper, true consignments and long-term operating leases are also deemed to be security interests.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Security interests in personal property as well as a number of instruments deemed security interests are subject to registration in a single notice-based PPSA Registry that operates on the federal level.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. The PPSA has established a single, electronic, notice-based registry that charges flat fees depending on the duration of the registration. Fees are: i) AUS\$6.80 for a filing with a duration of up to seven years, ii) AUS\$34 for a filing with a duration for up to 25 years, and AUS\$119 for a filing with an unlimited duration. A document may be attached to a filing for an additional fee of AUS\$3.40. The fee for a search is AUS\$3.40, whether the search is performed according to the debtor identifier or the serial number of the collateral.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Yes. Under Section 81 of the PPSA, any restriction on the transfer of an account is binding only on the transferor (i.e., the debtor) but is unenforceable against third parties. This Section reverses the traditional common law rule that upheld the validity of anti-assignment clauses.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Chapter 4 of the PPSA governs remedies for secured transactions and allows the parties to generally contract out these remedies. Accordingly, the parties may utilize any remedies they have agreed on as long as the secured creditor proceeds in a commercially reasonable manner. The remedies included in Chapter 4 do not apply to: outright transfers of accounts and chattel paper, commercial consignments and personal property security (PPS) leases that do not secure an obligation. As such, in these cases the parties' rights are governed by the common law. Certain provisions also do not apply to collateral held as consumer goods and the enforcement of security interests in this type of collateral is subject to Part 5 of the National Credit Code. Chapter 4 does not apply when a receiver or receiver and manager have been appointed to take control of the collateral. The powers of receivers and receivers and managers are regulated by Section 420 of the Corporations Act.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The debtor may remain in possession of tangible collateral subject to a security interest that may be perfected by filing and retaining control of the intangible assets. A security interest in bank accounts, called authorized deposit-taking institution (ADI) accounts under the PPSA, may be perfected by control when the secured creditor is an

authorized deposit-taking institution. The PPSA does not require that the debtor's access to the funds held in an ADI account be disabled.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. The PPSA does not impose any limitation on the debtor's ability to encumber all of its personal property. Section 23 sets forth a number of exclusions from its scope, including i) the transfer of an interest under an insurance policy or contract of annuity except for the transfer of a right to an insurance pay-out for loss of or damage to collateral, ii) water rights, which include the right to control, use or gain access to water, iii) some licenses governed by the Offshore Minerals Act of 1994, etc., and iv) fixtures.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The PPSA definition of goods also includes crops and livestock to make it clear that crops are classified as personal property in which a security interest may be created and perfected under the PPSA. Section 31 prescribes a specific proceeds rule in relation to crops and livestock, providing that identifiable harvested produce of crops and products of livestock constitute proceeds. Under Section 84 A, a security interest may attach to crops while they are growing and a security interest may attach to the products of livestock before they become proceeds (e.g., sheep's wool before it is shorn). Sections 85 and 86 set forth special 'production money' super-priority rules for security interests in crops and livestock. Under Section 123, the power of seizure includes the right to enter the land to repossess the livestock. Sections 138 B and C provide for specific rules governing the seizure and disposal of crops and livestock.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest is created upon execution of a written security agreement pursuant to Section 20, as long as the collateral description is sufficient (e.g., a description by type would be sufficient). Under Section 18, the security agreement may provide for security interests in after-acquired property that will attach automatically when the debtor acquires sufficient rights in the collateral. However, Section 44 of the National Credit Code prohibits 'blanket' (all assets) security interests in consumer transactions. Under Section 45, security interests continue in proceeds and under Section 32, a security interest automatically extends to proceeds, which is enforceable whether or not the security agreement includes a description of the proceeds.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Yes. Parts 2.5 and 2.6 of Chapter 2 provide comprehensive rules governing priority conflicts between i) secured creditors and ii) between secured creditors and other types of claimants in the collateral such as buyers of inventory and purchasers of negotiable instruments.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Under Section 18, a security agreement may provide for security interests in after-acquired property and for future advances. Under Section 20, the security agreement may describe the collateral 'super-generically' such as 'all of the debtor's present and after-acquired property.' For the 'consumer property' and 'commercial property' descriptions, a more particular additional description of the collateral is needed, such as by reference to item or class. In a financing statement, the collateral may be described as 'all present and after-acquired property,' but for 'serial-numbered property' further identification by a serial number must or may be inserted, depending on the type of serial-numbered property. In the actual filing system, the secured creditor must select a collateral class from the drop-down menu. As a result of a design defect, the secured creditor must register multiple financing statements if its collateral belongs to more than one class (e.g., commercial property, motor vehicle and commercial property, other goods).

BRUNEI DARUSSALAM

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	5
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Brunei Darussalam does not have unitary legislation that comprehensively and singularly governs the taking of security interests. Multiple laws regulate secured transactions, ranging from the English common law on pledges, liens, and doctrines of equity, to the provisions of the Companies Act of 1984 (as amended), Bills of Sale Act of 1984, Hire-Purchase Order of 2006, and Islamic (finance) law. On March 1, 2016, Brunei Darussalam adopted the Secured Transactions Order which, as of July 2016, has not yet taken effect and is pending the

establishment of the Collateral Registry. The Order provides for a modern secured transactions framework, the implementation of which will eliminate the need for a comprehensive reform as indicated in the Matrix.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Brunei Darussalam does not have a transparent notice-based system for the registration of security interests. Although Section 5 of the Bill of Sales Act does require the registration of documents evidencing security interests in secured transactions, the Act is not in popular use. Furthermore, it provides for a document-registration rather than notice-filing system. Section 80 of the Companies Act merely requires the registration of all charge instruments created by a company over its property or undertaking and Section 83(3) of the Companies Act mandates that the registry be open for inspection by any person. There is also a requirement that companies maintain and display, at their registered office, a copy of every instrument evidencing a charge. Under the Hire Purchase Order of 2006, registration of hire purchase agreements is not required.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Brunei Darussalam does not have a singular, all-encompassing, registry for the registration of all security interests; separate registries have been established under the Bills of Sale and Companies Acts and a number of security interests are effective without registration.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Receivables transactions in Brunei Darussalam are regulated by agreement between the parties. Accordingly, in the absence of any statutory provisions that would override contractual arrangement, an anti-assignment clause would be enforced as against the assignee.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. The parties may agree on the use of several out of court enforcement mechanisms, such as the appointment of a receiver, repossession, or appropriation of the collateral. Extra-judicial repossession is available under Section 15 of the Hire Purchase Order. Section 9 of the Bills of Sale Act permits the grantee (secured creditor) to sell or seize possession only if the grantor (debtor) consents. It would seem that such consent can be evidenced by a clause, in the party’s agreement, permitting out-of-court enforcement. Similarly, the Companies Act empowers creditors to appoint a receiver so long as the underlying agreement with the company debtor provides for such a power.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. Where a charge is the form of the secured transaction, the debtor may retain control or possession of the collateral. Similarly, under the Bills of Sale and Hire-Purchase Acts, individual debtors may take possession of the collateral. The common law recognizes constructive possession, where title documents are delivered to the secured creditor, while the debtor retains control.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. The debtor may encumber all or a substantial part of its assets under a floating charge created pursuant to the Companies Act. Islamic law may also forbid the use of certain items as collateral.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. By virtue of the Bills of Sale Act 1984, "personal chattel" is defined as including growing crops, provided the crops are charged separately from any instrument charging the land on which they grow. Livestock may also be used as collateral. The Companies Act does not impose any limitations on the ability to create a security interest over crops and livestock independently from land.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest will extend to after-acquired property if the collateral description is sufficient. Similarly, a charge created under the Companies Act will continue to the proceeds of the original collateral. The Stamp Duty Act requires the payment of stamp duties on instruments evidencing secured obligations prior to the execution of such instruments.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The absence of a single unitary law regulating security interests and the presence of multiple laws touching on secured transactions prevent the clear identification of priority rules among competing interests. Regardless, it is worth noting that Section 11 of the Bills of Sale Act provides that priority shall be in the order of the date of registration. The Companies Act also makes provisions for priority rules with regard to charges on a company's assets, but this is limited to insolvency situations.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The law allows for general and simple descriptions of collateral and secured debts or obligations in both security agreements and registrations. The parties may describe the collateral to refer to all assets or to certain types of assets. The agreement may also describe the secured obligations to extend to future debts that may thereafter be undertaken by the debtor, under the same agreement, and secured by the same collateral.

CANADA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	Yes
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	Yes
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	9
Level of Reform Needed	No Reform Needed

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

Yes. Each of the common law Canadian Provinces have adopted their own Personal Property Security Acts (PPSA) that govern security interests in personal property and fixtures in a comprehensive fashion and that are based on the Uniform Commercial Code (UCC) Article 9 (Secured Transactions) adopted in all states in the United States. There are some variations among the PPSAs of the provinces (e.g., in terms of their application to deemed security interests, registration of notices of judgment liens, etc.) and as such, the degree of uniformity

amongst them is not as high as that of the United States under UCC Article 9. In Quebec, the Civil Code regulates secured transactions in both personal and real property. The Federal Bank Act also covers a specific security device that may be taken in addition to the PPSA security interest thus creating potential conflicts. The Law Commission of Canada has recommended repeal of the Bank Act.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Security interests in personal property and those that are deemed security interests, such as long-term operating leases as well as a significant majority of non-consensual liens including judgment liens, must be properly publicized through filing in the relevant PPSA registry office. All Canadian registries are notice-based.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. Given the absence of a federal secured transactions law, every province and territory has its own PPSA registry system. However, the conflict of law provisions included in the provincial and territorial statutes clearly determine which registry is applicable to submit a notice in to perfect the relevant security interest. Canada is a pioneer in the implementation of electronic registration functions and all PPSA registry offices allow registrations and searches to be conducted electronically. The PPSA registries also cover registrations of security interests in vehicles, which may be indexed according to serial numbers. Registration fees are flat and low in cost. For instance, Nova Scotia charges a CA\$26.50 registration fee for a financing statement with duration of up to 25 years. For a financing statement without expiration, the fee is CA\$623.00. A search of the registry is subject to a CA\$8.75 fee.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Yes. With the exception of Ontario, all PPSAs in Canada allow for the creation or transfer of an interest in a receivable notwithstanding the presence of a non-assignment clause. In Ontario, the common law rules under which an assignment may be made governs but the account debtor remains entitled to assert the clause as a defense to payment. In effect, the assignee acquires rights in the receivable that are effective against third parties but may enforce these rights as against the account debtor only through the assignor.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Part 5 of the PPSAs provides for a set of remedies available to secured creditors upon default of their debtors. For the most part, the rules governing remedies are comprehensive and mandatory. Other Parts of the PPSAs include additional enforcement rules applicable to specific types of collateral, including accessions, crops and fixtures. Secured creditors may resort to a number of extra-judicial remedies including repossession of the collateral,

collection of accounts, disposal of the collateral or appropriation of the collateral to the satisfaction of the secured obligation. Consumer protection and other special statutes, such as the Federal Farm Debt Mediation Act may affect the enforcement of secured creditors' rights. These and similar Acts, such as the Saskatchewan Farm Security Act may require secured creditors to temporarily suspend enforcement and attempt to mediate the dispute.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The debtor may remain in possession of tangible collateral subject to a security interest that may be perfected by filing and may retain control of intangible assets, such as deposit accounts, that it may utilize in the ordinary course of its business.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. The debtor may create a security interest in any or all of its assets as long as they constitute property under the general law. A number of PPSAs explicitly provide that licenses, such as milk and tobacco production quotas are property. Certain assets may not be encumbered by a security interest, such as claims owed by the government and retirement savings plans.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Crops and the unborn young of animals are expressly included within the definition of goods. With the exception of Ontario and Yukon, all PPSAs have included provisions on the priority and enforcement of security interests in crops. The priority rules for crops against competing interests that arise under land law substantially follow the priority rules for fixtures. Accordingly, a creditor may take a security interest in crops, independently of the land, and gain priority over a mortgagee if it has registered a notice in the relevant land registry. Crops that have been severed are treated as personal property to which an interest of the mortgagee does not attach. Except Ontario and Yukon, all PPSAs provide for a special type of purchase money security interest that enables the debtor to acquire food, drugs and hormones.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security agreement may provide for a security interest in after-acquired property that will attach automatically when the debtor acquires sufficient rights to such property. The PPSAs include some limitations on the extension of a security interest to after-acquired property that is consumer goods. Under the PPSAs, the security interest automatically extends to proceeds, whether or not the security agreement includes a description of proceeds, as long as they are identifiable or traceable. For certain types of proceeds, the registration must be amended to add these specific types of proceeds.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Yes. All PPSAs provide a comprehensive set of rules that govern various conflicts including i) between two secured creditors, ii) between a secured creditor and a buyer/transferee/purchaser of the collateral, and iii) between a secured creditor and a judgment lien holder, statutory right holder or a holder of the commercial lien. A priority conflict between a PPSA secured creditor and the holder of the Bank Act security will be governed by the Bank Act under which a prior PPSA security interest, even though unperfected, has priority over a later-in-time Bank Act security.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The PPSAs prescribes the same description standard for collateral applicable to both security agreements and financing statements. While the Ontario and Yukon PPSAs require that the collateral must be described sufficiently to enable it to be identified, the other PPSAs authorize various types of descriptions, including by item or kind, all-assets and all-assets with some exceptions. Certain types of assets, known as serial-numbered goods, such as motor vehicles, may or must be described by a serial number in the financing statement according to which searches may be conducted. The security agreement may also contain an "all obligations" clause, known as the dragnet clause, which provides that all present and future obligations are secured by the collateral. The parties may also include a statement as to the maximum amount to be secured.

CHILE

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	No
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	4
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Chilean Law No. 20190 of 2007 dictates the rules for non-possessory pledges and created the Registry of Non-possessory Pledges ("Non-Possessory Pledge Law"). However, there are other forms of pledges and security interests that are not governed by this law, for instance possessory pledges, movable pledges in favor of a bank, irregular pledges, stock exchange pledges, security over credit instruments, floating pledges and financial leasing and factoring. These other forms are governed by different laws including the Civil and

Commercial Codes, the Law of the Pledge in Favor of Banks, and the Agricultural Pledge Agreement Law, among others.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Non-possessory pledges are the only form of security interest in movable property that is registered in the registry. For example, a non-possessory pledge of a receivable would be required to be registered in the registry in order to perfect the security interest. But, the sale or factoring of a receivable is outside the scope of the law and is perfected by simply holding the invoice.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. The registry established pursuant to the Non-Possessory Pledge Law was created exclusively for the registration of non-possessory pledges. This registry is not designed as a notice-based system because a copy of the actual security agreement and secured obligation agreement must be attached to the registration. Moreover, the information that must be registered according to the Registry Regulations goes beyond the best international standards. For example, if the asset is a motor vehicle or trailer, the notice of pledge must indicate the plate numbers and an additional application must be filed in the corresponding vehicle or trailer registry. Security interests in vehicles must also be registered with the vehicles or trailers registries and require paying additional fees. Under Law No. 4097 of the Agricultural Pledge Agreement, the agricultural pledge must be registered within the special registries for agricultural pledges, which are part of the real estate registry offices. The registry for non-possessory pledges is nationwide and accessible physically and electronically. The fees for registrations are higher than the fees charged for these types of registries in other Latin American economies: for an initial registration and cancellation the fee is 30,490 Chilean Peso (\$46 USD) and there is a fee of 7,500 Chilean Pesos (\$12 USD) for subsequent amendments. Searching the registry is considerably cheaper: the Chilean Registry can issue certificates of registration for 3,000 Chilean Pesos (\$4.60 USD), and certificates of the registered pledge agreements for 3,750 Chilean Pesos (\$6 USD).

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Article 1902 of the Civil Code provides that the assignment of receivables is not effective without notification to and consent of the account debtor.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

No. The Non-Possessory Pledge Law establishes rules for the judicial enforcement procedure of non-possessory pledge rights but does not provide for the possibility of out-of-court enforcement mechanisms. Other laws governing security interests also only allow for special

shorter judicial mechanisms and not out-of-court enforcement. For instance, the factoring law provides that upon receiving judicial notification, the debtor may oppose the action in court; this proceeding is substantiated in the form of an incidental (shorter) procedure as specified in Article 5(d).

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The Non-Possessory Pledge Law specifically regulates non-possessory pledges. There are also other security devices that allow the debtor to remain in possession of the encumbered asset (e.g. movable pledge in favor of a bank).

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. In principle, the Non-Possessory Pledge Law provides that all types of assets, whether tangible and intangible, present or future, may be encumbered as collateral. The Non-Possessory Pledge Law excludes aircrafts and ships from its application as security interests in such devices are governed by their corresponding laws.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Under Law No. 4097 of the Agricultural Pledge Agreement, crops, livestock, and other movable property used in the agricultural sector may be encumbered independently from land.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. Although the Non-Possessory Pledge Law provides for security interests in after-acquired assets, the agricultural pledge that exists under Law No. 4097 does not allow for a pledge in future assets. In addition, the Non-Possessory Pledge Law imposes several formalities for the creation of security interests, including the execution of agreements and their registration by the notaries public. Additionally, if a security interests is created in categories of assets, the agreement must indicate the exact value of the assets or their particularities so they can be specifically identified.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. In general, under the Non-Possessory Pledge Law, registration grants priority and effectiveness against third parties and the time of registration is based upon the time the Chilean registry receives the application form. The Non-Possessory Pledge Law provides that the secured creditors will have priority according to the Civil Code and it includes rules that cover buyers and buyers in the ordinary course of business. The Civil Code establishes the priority rules that govern various types of conflicts among secured creditors, non-consensual

creditors and holders of statutory liens. However, the multiplicity of security devices available under the Chilean legal framework undermines predictability, including the priority status of security rights, particularly as against claims based on retentions of title and assignments of receivables.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. Even though the Non-Possessory Pledge Law provides for the creation of non-possessory pledges over categories of assets such as inventory, raw material and machinery, it states that in case of categories of assets, the agreement must indicate the exact value of the assets or their particularities for their specific identification. Furthermore, according to the Regulations to the registry of non-possessory pledges the assets must be specifically identified and the description of assets must include specific information. For instance, for animals, the registration must indicate their species, breed, birth marks, and any other imprinted marks perforated or somehow placed on them; also, the parties, according to their perception, can choose to describe the condition of the animal.

PEOPLE'S REPUBLIC OF CHINA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	No
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	4
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Various secured transactions, such as pledges, assignments and retentions of title, are governed by the Contract Law and Property Law. The Property Law governs pledges, chattel mortgages and liens and the Contract Law governs assignments.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Conditional sales are not subject to registration in China. Other ownership-based security devices, such as financial leases and pledges covering accounts receivable, are subject to registration in the collateral registry of the People's Bank of China (PBOC). Furthermore, the chattel mortgages registries (i.e. local offices of the Administration for Industry and Commerce) in which equipment, raw materials, semi-finished or finished products are registered are not notice-based since registration of the actual mortgage agreement is required.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Under Chinese Law, a lender must navigate through a registration system comprised of more than a dozen individual registries differentiated by the types of movable assets and the status of the debtor. As a result, multiple registrations are required when more than one type of asset is involved. For instance, in addition to the PBOC's collateral registry, a number of specialized registries apply to security devices over specific types of assets, such as the Agricultural Management Bureau for farm tractors and the Bureau of Forestry for standing timber. Furthermore, if the collateral is both existing and future equipment, raw materials, semi-finished or finished products, the registry will be the local Administration for Industry and Commerce. It should be noted that the PBOC's collateral registry (covering pledges over receivables and financial leases) does have electronic capabilities.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. The Chinese law enforces both legal and contractual restrictions on the assignment of receivables. Article 209 of the Property Law provides that only the restrictions on transferability set forth in laws and administrative regulations are effective and nullify the creation of a security interest. Under Article 228, the pledgee may not transfer the pledged receivables without the pledgor's consent. Article 79 of the Contract Law also prohibits assignments of rights without the consent of the party to the original contract.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

No. Chinese courts play a major role in the enforcement of security interests. In the event of a default by the debtor, the secured party must seek a judgment and an execution order from the court in order to take possession of the collateral. The seizure and sale of the collateral must also be done by court officials.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The Property Law recognizes the chattel mortgage as a non-possessory security interest. According to Article 180 of the Property Law, the following personal property can be subject to a mortgage: production equipment, raw materials, works in process, finished goods and other property not prohibited from being mortgaged by law or administrative regulations.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. According to Articles 180 and 223 of the Property Law, only specific categories of property may be subject to a chattel mortgage or pledge, though the categories are fairly broad and include manufacturing facilities, raw materials, receivables, contract rights, intellectual property rights, semi-manufactured goods and products of an individual industrial or commercial household or agricultural production operator.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The laws do not appear to impose any restrictions on the creation of security interests in crops and livestock such as the proof of ownership to the land on which the crops and livestock are located.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. The chattel mortgage must be in writing and the agreement must specify, inter alia, the type and amount of the underlying secured obligation, the mortgage term, and particulars of the mortgaged property. Article 174 of the Property Law expressly extends the reach of the security interest to any proceeds including insurance claims payable as a result of loss or damage to the collateral. Furthermore, Article 181 of the Property Law allows the use of future/after-acquired property as collateral to the extent agreed to by the parties in a written agreement. It should be noted that future or after-acquired property must be described in detail since the description in the agreement must include the changing nature or condition of the collateral and its specific identification. These description requirements can be used to challenge the effective creation of the "chattel mortgage."

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The Property Law provides for clear and predictable priority rules among competing security interests. Priority among two competing mortgagees, for instance, will depend on the time of registration of the chattel mortgage agreement in the local office of the Administration for Industry and Commerce. Furthermore, the Property Law also provides for clear rules regarding the priority of liens. However, the multiplicity of security devices available under the Chinese legal framework undermines the predictability, including the

priority status of security rights, particularly as against claims based on retentions of title and assignments of receivables.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. The chattel mortgage agreement, which is the instrument filed at the local office of the Administration for Industry and Commerce, must include an exact description of the mortgaged property containing the name, quantity, quality, condition, location and owner of the property. Also, when it comes to chattel mortgages covering existing and future production equipment, raw materials, works in process, and finished goods, the agreement must explicitly address the changing nature or conditions of the collateral while at the same time preserve specific identification of the collateral.

HONG KONG, CHINA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	8
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Hong Kong law differentiates between security interests created by individuals and those created by companies and different laws apply to each of these types. Generally speaking, security interests created by individuals are governed by the Bills of Sale Ordinance and security interests created by incorporated entities are governed by the Companies Ordinance. In addition to the different treatment of debtors based on their individual or company status, Hong Kong legislation and case law also differentiate between legal and

equitable charges and legal and equitable mortgages, both of which can be created over personal property.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Registration of retention of title clauses is not compulsory in Hong Kong. Similarly, the effectiveness of an assignment of receivables against a third party does not depend on any registration based on Chapter 23, Section 9 of Law Amendment and Reform Consolidation Ordinance. As stated in Chapter 23, an assignment of receivables must meet three requirements in order to be effective: i) assignment must be absolute; ii) assignment must be in writing under the hand of the assignor; and iii) notice of it must be given to the debtor of the receivable.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No⁷. Registration with the Companies Registry—where security interests granted by local and foreign legal entities must be registered—applies only to incorporated debtors. Furthermore, the Companies Registry has electronic capabilities and allows filings to be submitted either in paper form or electronically and the cost of filing a statement of particulars is 340 Hong Kong Dollars (USD\$45). On the other hand, security interests created by individuals must be registered with the Registrar of the High Court which currently does not have electronic capabilities but the Judiciary is in the process of enhancing the application of IT technology in support of its operation. Parties registering interests in the Companies Registry will need to deliver to the Registrar the particulars of the charge (statement of particulars) and the instrument by which the charge is created or evidenced (certified true copy of the underlying charging document). This document-registration system is inconsistent with modern notice-filing systems.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Receivables cannot be transferred effectively when there is a valid and enforceable non-assignment clause in the contract that gives rise to the receivable.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes, out of court enforcement is available. Proprietary remedies of a legal mortgagee, an equitable mortgagee, a chargee and a pledgee include the following: i) taking possession when creditor does previously not have possession; ii) the appointment of a receiver; iii)

⁷ However, in practice almost all registration is done at one registry (the Companies Registry) given the rare occurrence of registration of charges created by individuals in Hong Kong, China. The number of registrations by individuals comprises less than 0.5% of the number of registrations by incorporated debtors at the Companies Registry.

foreclosure, and iv) sale. With regards to tangible property, the nature of the security device and the agreement, if any, determine whether the creditor has the right to take possession. The creditor of a bill of sale (security interest granted by a non-corporate debtor) has to comply with the strict conditions of §14 of the Bill of Sale Ordinance before it can exercise the power of seizure and sale of goods. These requirements include that the debtor has defaulted on the loan or has been adjudicated as bankrupt.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes, non-possessory security interests are recognized for both incorporated and individual debtors. A charge and mortgage over personal property may be created by incorporated entities and a bill of sale by individuals.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. A floating charge may be created over a class of assets, present and future.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes, under the Bills of Sale Ordinance, personal chattels include goods, furniture, and other articles capable of delivery, and, when separately assigned or charged, fixtures and growing crops. Section 2 of the Bills of Sale Ordinance does not specify what the situation is with regards to livestock but, unlike crops, livestock is not physically associated with land as a result of which it also should be classified as a chattel. It should also be noted that under the Sale of Goods Ordinance (§26), the term "goods" includes industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. This description has been used to assist in the interpretation of the Companies Ordinance.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes, only equitable security interests (e.g. floating charges and equitable mortgages) can include after-acquired assets. With the exception of security interests covering land which require a deed, security interests over movable property are created by contract. The creation of security interests in Hong Kong, China is mainly governed by common law, equity and legislation.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No⁸. Subject to certain specific registration rules and the rules on protection of bona fide purchasers set out below, the priority between competing security interests of the same kind over the same asset is determined by its date of creation and the first in-time prevails. However, one can question whether this priority rule is predictable because it does not rely on a transparent and public source, such as the registry, but rather the date of execution of a private contract that creates the charge. A bona fide purchaser without knowledge may take free of the charge. Similarly, the priority of interests in receivables relies on a relatively non-transparent notification of the account debtor, as compared to registration. The following rules apply to specific types of security interest, which are created on the same date: i) a legal chargee/mortgagee ranks above an equitable chargee/mortgagee; ii) priority between competing floating charges is determined by the date of "crystallization", which typically occurs on default of the secured debtor when the charge becomes fixed with respect to specific collateral; iii) priority between competing security interests over receivables is determined by the order in which written notice is given to the debtor. The above mentioned principles are subject to an overriding rule that a bona fide purchaser, including a subsequent chargee/mortgagee, only loses priority if it has notice of the prior encumbrance. Again, the element of knowledge of a competing interest is different from other priority regimes which rely on objective criteria such as the date of registration.

Therefore, a prior equitable charge or mortgage will only rank above a subsequent legal charge or mortgage if the subsequent chargee or mortgagee has notice of the prior security interest. It is particularly important to register a registrable charge (not all charges are subject to registration) to prevent a subsequent creditor from taking a higher ranking security interest without notice. The priority rule is also subject to any other specific registration requirements. These include items such as: a) the registration requirement of security interests over real estate within the Land Registry; b) the registration requirement of security interests over certain intellectual property within the Patents, Designs and Trade Marks Registries; and c) the registration requirement of ship mortgages with the Hong Kong Shipping Registry.

The order of payment in a liquidation of a company is generally the following: (i) expenses of the enforcement, including the liquidator's remuneration; (ii) preferential debts as defined by Section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance; (iii) any preferential charge on distrained goods; (iv) the company's general creditors; and (v) shareholders. The order of priority of the costs in a winding-up is set out in rule 179 of the Companies (Winding-Up) Rules (Cap. 32H).

⁸ The registration system provides for transparency by requiring that the underlying charge instrument be filed at a public registry, such that the date of creation of a charge is available for public inspection at the registry, providing a predictable basis for priority rules.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No⁹. Only general/simple description of collateral and secured debts or obligations are required to be provided in the “Statement of Particulars of Charge”, a form specified by Companies Registry under the law governing security interests created by incorporated debtors (Companies Ordinance). However, under the law governing security interests created by unincorporated debtors (under the Bills of Sale Ordinance), every bill of sale must include as an annex a schedule containing an inventory of the personal property covered by the bill of sale. Such property must be “specifically described” in the mentioned schedule.

⁹ General/simple description applies in relation to registration with the Companies Registry, which comprise almost all the registration in Hong Kong, China. The number of registrations by unincorporated debtors comprises less than 0.5% of the number of registrations by incorporated debtors at the Companies Registry.

INDONESIA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	No
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	6
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The current Indonesian legal framework for secured transactions is regulated primarily by the Civil Code and the Fiduciary Security Act (Law No. 42 of 1999). Both of these laws effectively vest ownership rights to the collateral in the creditor, whether in a fiduciary capacity (e.g., under a "fiduciary security") or as an absolute owner (e.g., for retentions of title under sale agreements). Furthermore, the Limited Liability Company Act (Law No. 1 of 1995) governs secured transactions in which the stock issued by a company is used as collateral.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. For instance, there is no registration requirement for the assignments of rights, retentions of title, financial leases and similar devices under which the creditor purports to retain or acquire title to the collateral. The requirement of Article 3(1) of the Government Regulation Concerning the Procedure for the Registration of Fiducia Securities and Fees to Draw-Up the Deed of Fiducia Securities, Number 86 of 2000, for the Registry Official to examine the completeness of the requirements of the fiduciary securities registration application is inconsistent with the nature of notice-filing systems. Section 13(1) of the Fiduciary Security Act and Article 3 of the Regulation Concerning Procedures for Electronic Fiducia Security Registration, Number 10 of 2013, prescribes the items of information that an application for registration must include. This information goes beyond that prescribed by best international standards in a number of aspects, including the security value and value of the object.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. The perfection requirements have not been coordinated and many security devices are not subject to registration. For instance, Article 1153 of the Civil Code conditions the establishment of the pledge right on the notification of the person who owes the debt or performance of some obligation. Indonesia has already taken some steps towards instituting registration as the primary form of perfecting security interests by enacting the Regulation of the Minister of Finance of the Republic of Indonesia concerning Registration of Fiduciary Securities for Financing Companies Providing Consumer Financing For Motor Vehicles Secured By Fiducia Security Number 130/PMK.010/2012 that, by virtue of Article 1(1). This regulation mandates all financing companies to register their fiduciary securities in consumer vehicles. The Regulation Concerning the Application of the Electronic Fiducia Security Registration, Number 9 of 2013, in Article 3, provides that electronic registrations may only be conducted from one of the fiduciary security registry offices. This indicates that the registry is not entirely available to the public at large. Currently, registrations of fiduciary securities in Indonesia are subject to a fee schedule that increases with the value of the security taken by the secured creditor.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Under the Civil Code, a receivable may not be transferred without the consent of the account debtor.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Indonesian legal framework provides for expedited judicial as well as extra-judicial remedies. Pursuant to Section 15(2) of the Fiduciary Security Act, the registration certificate

issued by the Registry has force of execution equal in value to a court order, entitling the beneficiary to engage police assistance in enforcing their rights. Section 29 of the Fiduciary Security Act already recognizes various forms of extra-judicial enforcement, including a private sale of the collateral. However, under Article 6 of the Regulation of the Chief of the National Police Force of the Republic of Indonesia Concerning the Execution of Fiducia Security, Number 8 of 2011, only registered fiduciary securities may be enforced.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. Both a pledge under the Civil Code and fiduciary security under the Fiducia Security Act are non-possessory security devices. Section 1(2) of the latter specifically provides that the fiduciary grantor may remain in control of the collateral.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. In principle, any assets can be used as collateral under the Fiduciary Security Act, including real property that is not governed by some other law and subject to registration thereunder. Article 4 of the Regulation of the Chief of the National Police Force of the Republic of Indonesia Concerning the Execution of Fiducia Security, Number 8 of 2011, confirms this broad scope of the Indonesian main secured transactions legislation. Section 3 of the Fiducia Security Act expressly excludes from its scope mortgages over ships and aircrafts.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. Field crops which have their roots attached to the soil fall under the definition of immovable property in Article 506 of the Civil Code. Under Article 502, anything produced by cattle or bred by livestock is considered a natural product of the asset that may be subject to a security interest.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. While the law facilitates the taking of after-acquired property and proceeds as collateral, security devices available under the Indonesian law are subject to formalities that increase the cost of their creation. For instance, Section 5(1) of the Fiduciary Security Act and Article 1(5) of the Regulation of the Chief of the National Police Force of the Republic of Indonesia Concerning the Execution of Fiducia Security, Number 8 of 2011 define deed of fiduciary security as the deed drawn up by a notary. Furthermore, Section 5(2) of the Fiduciary Security Act clearly states that notarization of a deed shall be subject to a fee. According to Section 9(1) of the Fiduciary Security Act, a fiduciary security may be taken over one or more units of the property, including that to be acquired in the future and Section 10 extends the fiduciary security to any proceeds.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The Fiducia Security Act provides for a priority scheme that is based on the time of registration as well as rules protecting third parties, such as buyers of the collateral under Section 22. Furthermore, Section 27(3) of the Fiduciary Security Act clearly stipulates that liquidation or bankruptcy of the debtor shall not affect the priority of the fiduciary security. But, notably, Section 3 of the Fiduciary Security Act excludes from its scope liens which create some ambiguity with respect to the priority of fiduciary securities as against these kinds of liens. However, the multiplicity of security devices available under the Indonesian legal framework undermines the predictability, including the priority status, of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Section 6 of the Fiducia Security Act provides that the deed of fiduciary security must provide a description of the collateral. However, the Act does not provide what standards would satisfy the description requirements which are included in the 'Official Elucidation on the Act.' According to the Elucidation relating to Section 6, description of the collateral may simply consist of identification of the object, but in the case of inventory, further description by type, brand and quality is required. Article 1159 of the Civil Code provides: *In the event that a second debt arises between the same debtor and the same creditor, following the pledge, and collectible prior to the payment, or on the date of the payment of the first debt, the creditor shall not be obliged to dispose of the property pledged, prior to full settlement of both debts, even though no stipulations have been made to secure the pledge for payment of the second debt.* Similarly, Section 7 of the Fiduciary Security Act allows the fiduciary security to extend to a future debt up to a certain amount without the requirement to specifically identify those debts in a security agreement.

JAPAN

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	No
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	4
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The basic security interests, consisting of mortgage, pledge, right of retention, and lien are stipulated under the Civil Code. However some important security interests are left out of statutory law. The most noted is the security by way of assignment called the *joto-tanpo* which originates from court precedents. *Joto-tanpo* is a transfer of ownership in property as security with an obligation to retransfer those rights to the security provider on satisfaction of the principal obligation. There is no legislation on the creation and effect of a *joto-tanpo*,

but special law on the registration of a *joto-tanpo* for perfection against third parties exists and is included in the Act on Special Provisions of the Civil Code regarding Perfection on Transfer of Movables and Claims (“Act on Special Provisions”). Another important security interest admitted by court precedent and absent from statutory law is the retention of title. In addition to these interests, various other special laws exist including the Corporate Security Act (*kigyō-tanpo hō*), which enables the entire undertaking of a corporation to be used as collateral for bondholders; the law on mortgages for aircrafts; the law on mortgages for construction machines; and the law on mortgages for factory.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. For instance, for a *joto-tanpo* that covers movable property, constructive transfer of ownership with retention of possession constitutes an effective method of perfection without any form of registration. For the assignment of receivables, the Civil Code only requires notice by an officially certified date to the account debtor. Although the Act on Special Provisions provides for an alternative method of perfection of interests in movable property as well as for assignment of receivables, the registration is only an alternative way to the method provided in the Civil Code and is only possible when the assignor is a corporation (juridical person). Furthermore, there is no registration requirement for leases and retention of title clauses since the Act on Special Provisions does not apply to these security devices.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. The Nakano Ward of Tokyo Legal Affairs Bureau Office is the exclusive registry for interests in receivables and other movable property. However, the registry is only an alternative means of perfecting a security interest in the property and is limited to debtors that are corporations (juridical persons). It has electronic capabilities, but only filing and application for certificate of registrations forms are available online. The registration fee is 7500 Yen. The registration fee for *joto-tanpo* security interests known is 2% of the fixed asset valuation amount while for mortgages and pledges it is 0.4% of the secured loan amount.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. While receivables can be pledged or assigned in Japan, if the account debtor has restricted the rights of the debtor to pledge or assign the receivable, any pledge or assignment is considered invalid. There are two exceptions to this rule: i) if the pledgee/assignee is unaware of the prohibition agreement without gross negligence, the pledge/assignment shall be valid; and (ii) the pledge/assignment will become valid retroactively from the time of the pledge/assignment (to the extent not harmful to a third party) if the obligor of the target receivable consents to the pledge/assignment, even if there has been a prohibition agreement.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. The enforcement of security interests governed by the Civil Code is regulated under the Civil Enforcement Act and is completed by an auction of the collateral. For *joto-tanpo*, only out of court enforcement is possible. There are two types of enforcement mechanisms for *joto-tanpo*: i) the secured creditor may accept the collateral in satisfaction of the secured obligation, or ii) there may be a sale of the collateral.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The *joto-tanpo*, security by way of assignment, can be used as security over movable property whereby the transferor/debtor retains physical possession and the use of the movable property but does so as an agent of the secured creditor (transferee). Secured creditors often seek to notify third parties of the security interest created by attaching a label on the movable property. Alternatively, a registration system established pursuant to the Act on Special Provisions may be utilized to perfect the security right over the movable however this registry is applicable only when the transferee is a corporation. It should be noted that upon registration, the possession of the movable property is deemed transferred in accordance with the Japanese Civil Code.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

No. Japanese Law does not recognize equitable floating charges as a form of security although, in limited instances, the Corporate Security Act (*kigyo-tanpo hou*) enables the entire undertaking of a corporation to be used as collateral to secure the issuance of bonds. Furthermore, unless the identity and location where the collateral is located is indicated in the registration, future/after-acquired movable property cannot be used as collateral.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Crops and livestock may be used as collateral under *joto-tanpo*. *Joto-tanpo* can encumber crops or livestock only when such assets are identified by such criteria as place, kind and amount. There is also a special law, the Act on Credit for Agricultural Movable Property (*Nougyo-dousan-shinyou-hou*) that enables the mortgage to cover certain livestock with each animal needing to be identified individually but this law is rarely used.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. *Joto-tanpo*, the security by way of assignment for movables, is created and granted by a contract (which is not necessarily in writing). The parties can (although they are not required to) prepare a granting document in the form of a notary deed for enforcement purposes because a notary deed is one type of proof of obligation (*saimumeigi*). Future/after-

acquired assets may also be subject to a security interest. If the debtor disposes of the collateral, the security interest will extend to the proceeds through the legal concept of subrogation.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. Generally, the order of priority among competing claims over the same collateral is determined by the order of perfection. Collateral subject to security interests is not included in the estate for bankruptcy or civil rehabilitation purposes so secured creditors can establish their security interests against the bankruptcy trustee or insolvent debtor and enforce them outside the bankruptcy or rehabilitation process in preference to the rights of unsecured creditors. However, the multiplicity of security devices available under the Japanese legal framework and the fact that they have been recognized as such only by the force of a judicial precedent undermines the predictability, including the priority status of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. For mortgages and pledges under the Civil Code, specific identification of the collateral is necessary. However, for a bulk assignment of receivables, the Supreme Court has upheld more flexible descriptions, including the cause and time of accrual of the claims, their amounts, and the period in which the claims arises. Nonetheless, this flexibility does not equal the general requirements of modern secured transactions laws.

Under the Act on Special Provisions, the registration of security interests that cover movable property must identify the collateral by choosing one of the two following methods: i) identification by mentioning the kind of asset (such as "MRI machine") and its serial number or equivalent, or ii) identification by kind and the place (the exact address) of where these assets are situated. For the registration of security interests that cover assignments, the description must refer to the kind of claim (such as rent), the cause (the contract that gives rise to the claim) and the period in which the claim arises. It is unnecessary to name the account debtor or to specify the total amount of claim for future claims.

REPUBLIC OF KOREA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	Yes
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	No
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	5
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Secured transactions in Korea are governed at least by two laws: the Civil Act and the Act Concerning Security over Movable Property and Receivables. The Civil Act governs possessory pledges of tangibles and non-possessory pledges but only for intangibles. The Act also regulates outright transfers of receivables. On the other hand, the Act Concerning Security over Movable Property and Receivables governs non-possessory security rights covering tangible movable property and receivables (other than outright transfers). It should

be noted that the Act Concerning Security over Movable Property and Receivables does not apply to construction machinery; non-possessory security interest covering these assets are explicitly governed by the Act on Mortgage on Automobiles and Other Specific Movables. Finally, other security interests covering some equipment of a company are governed by the Factory and Mining Foundations Mortgages Act.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. The Supreme Court of Korea (*Supreme Court Decision of 7 September 1999, Docket Number 99 Daka 30534*) has categorized retention of title arrangements as conditional sales instead of security interests which means that these arrangements are not subject to the general rules on security rights, such as creation, publicity, and priority. It should be noted that retention of title arrangements can be registered under the Act Concerning Security over Movable Property and Receivables if the parties so decide but their registration is not compulsory. The same applies to financial leases—registration is merely optional. Finally, the Registry established under the Act Concerning Security over Movable Property and Receivables is not a notice-based system since applicants must submit the security agreement. However, it should be noted that the security agreement is not actually registered or searchable in the registry and is only reviewed by the registrar for verification of the information entered in the registration application.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Mortgages over construction machinery and automobiles must be perfected by registration in the relevant real estate registry—the same way traditional real estate mortgages are perfected. On the other hand, security rights covering movable assets and receivables created pursuant to the Act Concerning Security over Movable Property and Receivables must be perfected by registration in a secured transactions registry regulated and administered by the Supreme Court (Articles 39 and 40 of the Act Concerning Security over Movable Property and Receivables). The registry has electronic capabilities (Article 42(2)). There was no information available online on registration fees.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Yes. According to Article 499(2) of the Civil Act, a receivable (or claim) can be assigned even if there is an anti-assignment clause in the underlying contract to the extent that the assignee does not have knowledge of such restriction. Although a non-assignment clause may be overridden, knowledge of the assignee is an important factor in determining the effect of the override. This factor introduces a level of uncertainty that is inconsistent with the UNCITRAL Model Law and the United Nations Convention on the Assignment of Receivables in International Trade.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. A secured creditor is not required by law to enforce its security interest in any particular manner and may elect from remedies specified in the security agreement. For instance, according to Article 31 of the Act Concerning Security over Movable Property and Receivables, “[a] secured creditor and a person who has created a security interest may agree on a procedure for enforcement different from that prescribed by this Act, provided that an agreement that the secured creditor may dispose of collateral or acquire collateral in direct satisfaction of his/her claim without giving notice...or without giving another notice before the lapse of one month after such notice is given shall not be effective.”

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. A security right over movable property under the Act Concerning Security over Movable Property and Receivables is created and granted by an agreement and delivery of the collateral to the creditor under this security device is not required. The same is true for mortgages.

7. All or Any of the Debtor’s Assets may be provided as Collateral: Whether all or any of the debtor’s assets may be provided as collateral

Yes. According to Article 3 of the Act Concerning Security over Movable Property and Receivables, “if two or more movable assets (including movable assets expected to be acquired in the future) are provided as security, but it is possible to specify the types, places for storage, and quantity of the assets or identify the assets in any similar manner, such assets may be utilized as collateral for a security interest.” Also, a “factory mortgage”—governed by Factory and Mining Foundations Mortgages Act—is a variant of the mortgage that is heavily favored by creditors in Korea who seek to establish a blanket security interest in a factory’s underlying land, building, fixtures, equipment, and other facilities in the factory.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. Crops cannot be provided as collateral independently from land. According to Article 99 of the Civil Act, “[l]and things firmly affixed thereto shall be immovable [property].” Furthermore, according to Article 358 of the Civil Act, a mortgage shall extend to all things which are attached to the immovable including its accessories.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. According to Article 3 of the Act Concerning Security over Movable Property and Receivables all types of movable property, including movable assets expected to be acquired in the future, may be provided as collateral as long as the movable assets can be identified by their kind, location, quantum, or other similar methods. Future receivables can be

provided as collateral as long as they are identified by their kind, cause of right, and accrual date or other similar methods. Furthermore, under the Act Concerning Security over Movable Property and Receivables a security interest may extend to a monetary payment or any replacing goods that a grantor receives, as a result of sale, lease, or other disposition of the encumbered asset, or for loss of or damage to the encumbered asset.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. Priorities among the registered security rights are generally determined based on the chronological order of registration of the security rights—the first party to register its security rights will have priority over the other parties with competing security rights. However, the multiplicity of security devices available under the Korean legal framework undermines the predictability, including the priority status of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The security agreement must reasonably describe the secured obligation and the assets to be encumbered. However, as mentioned above, a security interest in a pool of movable assets (including future movable assets) can only be created if the assets can be identified by their kind, location, and quantity or other similar methods.

MALAYSIA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	7
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The Malaysian Companies Act of 1965 regulates security interests granted by incorporated debtors. On the other hand, the Bills of Sale Act regulates security interests covering personal property granted by individuals. Also, hire/purchase agreements, under which the hirer may retain ownership, are regulated by the Hire-Purchase Act of 1967.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. For instance, there is no registration requirement for hire/purchase agreements in Malaysia as evident in the Hire-Purchase Act of 1967 (as of 1 March 2013). It should be noted that the registration of the assignment and charge over receivables is required under the Companies Act.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. There are at least two registries for charges created by companies that are incorporated under two different laws (Malaysian Companies Act of 1965 and the Labuan Companies Act of 1990) which have no electronic capabilities. The fee for registering a charge created under the Malaysian Companies Act of 1965 is the equivalent of US\$70. Also, charges created by individuals under the Bills of Sale Act must be registered at another registry administered by the Malaysian High Court.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Under the Malaysian Civil Law Act of 1956, only the outright transfer of a receivable is valid. An assignment of a debt or legal choice of action must be by way of an “absolute assignment” in writing under hand of the assignor and express notice in writing must be given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or choice of action. When there is a provision in the underlying contract prohibiting assignment, the assignment of rights under that contract is invalid.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Lenders can enforce security interests covering personal property extra-judicially. For instance, vehicles acquired under a hire-purchase agreement can be repossessed extra-judicially. With regards to bank accounts, lenders are able to exercise their right contained in the memorandum of deposit coupled with a letter of set-off. When it comes to equipment and inventory, a receiver and manager may be appointed to manage or dispose of such assets under the Companies Act.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. Malaysian law recognizes floating charges which operate as non-possessory security interests. A floating charge is one which is created by a company over all of its assets that may be dealt with and disposed of in the ordinary course of business. When a floating charge crystallizes into a fixed charge, the chargor then can no longer deal in those assets

but could still remain in possession. The usual events that trigger crystallization are events such as default in payment of principal or interest, breach of covenant, appointment of receiver and the winding up of the company. In addition, under the Hire-Purchase Act, individuals are able to take possession of vehicles subject to the rights of lenders. Finally, the Bills of Sale Act also recognizes non-possessory security interests.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. A floating charge can be created over all movable assets of a company, including future and fluctuating assets under the Companies Act. The Bills of Sale Act, on the other hand, only allows for the creation of security interests over goods and other articles "capable of complete transfer by delivery" (i.e. not after-acquired property).

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The Bills of Sale Act defines the term "personal chattels" as "*...goods, furniture and other articles capable of complete transfer by delivery, and trade machinery as hereinafter defined, and, when separately assigned or charged, fixtures and growing crops.*" In addition, the Sale of Goods Act defines the term "goods" as "*...growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.*" Crops and livestock may also be subject to a charge under the Companies Act.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest (floating charge) can be granted over future assets that are not yet owned. However, agreements by which charges and bills of sale by way of security are created are subject to stamp duties under the Stamp Act 1949, First Schedule. In addition, proceeds can be subject to a security interest.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The Companies Act includes clear and predictable priority rules among competing security interests and other claims. These rules establish a priority system for non-consensual security interests such as taxes, wages and workers' compensations and consensual security interests such as floating charges pursuant to the traditional version of the English system of priorities. However, the multiplicity of security devices available under the Malaysian legal framework undermines the predictability, including the priority status of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Under the Companies Act, a short description of the property covered by a security interest must be inserted in the statement of particulars that must be filed with the Registrar. There are no specific requirements on the description of secured obligations.

MEXICO

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	10
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The Mexican legal framework for secured transactions is governed by the Commercial Code and the General Law for Credit Instruments and Transactions ("General Credit Law"). The General Credit Law provides for several devices for which movable property can be used as collateral including pledges, special pledges used in specific sectors, financial leasing, factoring, trusts, etc. The Commercial Code establishes general rules for registration and the enforcement of security interests. These federal laws did not include any transitional rules, as

a result of which, the security devices perfected prior to the launch of the registry of security interests remain governed by the previously existing framework.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Pursuant to the Commercial Code, any interest in movable property (including retention of title, special privileges, statutory liens, assignment of receivables, etc.), is subject to registration for publicity and priority purposes, except for security interests in property that is subject to registration in special registries (e.g. aircrafts). In these cases, the Commercial Codes establishes that the special registries and the registry of security interests in movable property shall be interconnected. The registration of security interests functions as a notice-based system.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. The Mexican registry of security interests is established by the Commercial Code as a national, centralized and electronic system accessible to the public online. Registrations are done by creditors using their digital signature and searches are available to the public in general. Both registrations and searches are free of charge.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Article 2030 of the Civil Code provides that the consent of the account debtor is required if the transfer is prohibited by the terms of an agreement between the account debtor and the secured debtor (assignor). The General Credit Law provides that all types of receivables can be transferred to a factoring company, and like the Civil Code, Article 419 of the General Credit Law requires the account debtor’s consent when the transfer to a factoring company is prohibited by an agreement it entered into with the secured debtor.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Article 1414 of the Commercial Code provides for extra judicial enforcement, as long as the parties have agreed to such enforcement. However if the debtor opposes surrender of the collateral or otherwise satisfies the secured obligation, or if the parties do not agree on the third party appointed for the determination of the collateral value, the extra judicial proceedings shall be terminated and the enforcement must be completed in court. The Commercial Code regulates the judicial procedure for the enforcement of security interests.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The General Credit Law provides for several non-possessory security mechanisms, including non-possessory pledges, loans for the agricultural sector secured by the movable property in a farm in which the farmer remains in possession, guarantee trusts, factoring, and financial leasing.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Under the General Credit Law, a debtor may provide any and all of their assets as collateral.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The General Credit Law provides for two security devices designed especially for the acquisition of raw material, supplies, machinery, equipment, livestock, etc. and for agricultural production where the supplements and products, including crops and livestock, are collateral independently from the land. In addition, crops and livestock can also serve as collateral under other security interest mechanisms (e.g. a general non-possessory pledge).

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. Under the General Credit Law, after-acquired property may be encumbered by a security interest. Unless the parties agree otherwise, the law provides that a security interest is automatically extended to proceeds and assets resulting from transformation processes of the collateral. However, if parties have a non-possessory pledge agreement or guarantee trust that exceeds 250,000 Mexican index units (UDIS) (approx. USD \$75,500), they must ratify their signatures before a notary public adding to the total transaction costs.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Yes. The priority system provided by the Commercial Code and the General Credit Law provides comprehensive rules of priority for various competing claimants. The priority system is based on the time of registration; for example, a security interest in fixtures has priority over a mortgage if it is registered before attachment of the asset to the immovable. The law protects buyers in the ordinary course of business. Article 367 provides that labor claims have preference over security interests.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The collateral may be identified individually, generically or by group of assets (General Credit Law, Art. 354). With regards to purchase money security interests, the description must be sufficient to differentiate the asset(s) encumbered by the purchase money security interests from those previously encumbered and covered by a different security interest.

NEW ZEALAND

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	Yes
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	12
Level of Reform Needed	No Reform Needed

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

Yes. The Personal Property Securities Act (PPSA), enacted in 1999, comprehensively covers all security interests in personal property. The PPSA is based on the Canadian PPSAs and thus follows the functional and unitary model. Aside from traditional security interests, it also applies to long-term operating leases and other deemed security interests listed in Section 17(1).

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Security interests in personal property as well as a number of deemed security interests are subject to registration in a single notice-based PPSA Registry.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. The PPSA has established a single, electronic and notice-based registry that charges a flat fee of NZ\$20 for filing and NZ\$3 per search.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. The PPSA does not include a specific provision that would render “anti-assignment” clauses ineffective. Under Section 102, the assignee takes subject to the terms of the contract between the assignor and the account debtor. There is also some uncertainty as to the relationship of the PPSA priority rules for security interests in accounts receivable and Sections 48-53 of the 2007 Property Law Act that governs the assignment of book debts.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Part 9 of the PPSA governs the enforcement of security interests. Under Section 107, the parties may contract out of the stated list of Sections and resort to contractual remedies. Part 9 provides for a number of extra-judicial remedies, including the right to repossess the collateral, the right to collect an account, and the right to retain collateral in satisfaction of the secured obligation. For security interests in consumer goods, the PPSA yields to the Credit Repossession Act of 1997.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The debtor may remain in possession of tangible collateral subject to a security interest that may be perfected by filing and retain control of intangible assets.

7. All or Any of the Debtor’s Assets may be provided as Collateral: Whether all or any of the debtor’s assets may be provided as collateral

Yes. The PPSA does not impose any limitation on the debtor’s ability to encumber all of its personal property. Section 23 sets forth a number of exclusions from its scope, including an assignment of a claim for wages and a transfer of an interest under a policy of insurance or a contract of annuity. The Wages Protection Act of 1983 governs wages in general but does not provide a rule addressing a security assignment of wage claims.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The PPSA definition of goods also includes crops to make it clear that crops are classified as personal property in which a security interest may be created and perfected under the PPSA. Goods also include livestock and the unborn young of animals. However, under Section 100, a security interest in crops may not prejudice the rights of a lessor or mortgagee of land on which the crops are growing if those rights existed at the time the security interest in the crops was created.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest is created upon execution of a written security agreement, as long as the collateral description is sufficient (e.g., a description by type would be sufficient). Under Section 42, the security agreement may provide for security interests in after-acquired property that will attach without any specific appropriation of the debtor. Section 45 specifies that the security interest continues in proceeds and Sections 46 and 47 govern the automatic and temporary continuation of the security interest in proceeds.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Yes. Part 7 includes priority rules for conflicts between secured creditors and Part 8 deals with priority of liens and other interests in the collateral.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Section 36 of the PPSA sets out the requirements for description in the security agreement and Part 10 of the PPSA governs registration including the sufficiency of the collateral description in a financing statement. Under Section 36(1)(b)(ii), the collateral may be described in a security agreement by "*a statement that a security interest is taken in all of the debtor's present and after-acquired property.*" Section 142 of the PPSA defers to the regulations for further guidance on the sufficiency of collateral descriptions in financing statements. Under the regulations, the collateral may be described by a type (e.g., all accounts) or as "all present and after-acquired property." There are no specific requirements on the description of secured obligations in security agreements.

PAPUA NEW GUINEA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	Yes
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	Yes
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	9
Level of Reform Needed	No Reform Needed

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

Yes. The Personal Property Securities Act (PPSA) was passed by the parliament in December 2011. It was designed to replace existing registers for company charges, chattel mortgages, hire purchase agreements and other securities affecting tangible and intangible personal property. The PPSA took effect in May 2016 with the official launch of the Collateral Registry that was made available for testing in January 2016.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Security interests in personal property as well as a number of deemed security interests, including operating leases for a term of more than one year, are subject to registration in a single notice-based PPSA Registry. An explanatory report to Part VII of the PPSA indicates that *“The purpose of this Part is to establish and provide for the governance of an electronic notice registry. The registry receives notices and maintains them for public search.”*

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. Part VII of the PPSA provides for the establishment of a single, electronic and notice-based registry. Under Section 76, even the claims of execution creditors are subject to registration so the PPSA Registry will register not only the classical security interests, but also deemed security interests and some non-consensual interests.. Under Section 77, the fees are to be established in the Regulations that have not yet been published. Nonetheless, Section 77 clearly stipulates that *“fees for registering notices shall not exceed a reasonable estimate of the cost of maintaining the registry.”* Furthermore, the Registry shall charge fees for uncertified search reports..

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Yes. Under Section 64 of the PPSA, anti-assignment clauses that restrict or prohibit assignments of receivables and chattel paper bind only the assignor but only to the extent of making the assignor liable in damages for breach of contract and is unenforceable against third parties.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Part VIII of the PPSA governs enforcement of security interests. Under Section 96, the secured creditor may resort to the remedies set forth in the security agreement, utilize any remedies provided in Part VIII or even utilize remedies available under other laws to the extent they are not inconsistent with the PPSA. Section 98 that governs repossession of the collateral and Section 99 that deals with its disposal do not require the secured creditor to obtain a court order to enforce its rights.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The debtor may remain in possession of tangible collateral subject to a security interest that may be perfected by filing and may retain control of intangible assets. Section 13(2) of the PPSA expressly states that *“A security interest is not invalid or fraudulent against creditors*

and other third parties because the debtor has the right or ability to use, commingle, or dispose of all or part of the collateral."

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. The definition of collateral provides that any personal property may be encumbered under a security interest. Personal property is defined to include goods, chattel paper, investment property, a document of title, an instrument, money or an intangible. Section 11 sets out some limitations on the application of the PPSA excluding from its scope the creation or a transfer of an interest in wages, salary and other compensation, the creation or transfer of an interest in a tenement governed by the Mining Act 1992, and the creation or transfer of an interest in a license governed by the Oil and Gas Act 1998.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The PPSA definition of goods also includes crops and farm products. Section 72 explicitly provides "*A perfected security interest in crops is not extinguished or prejudicially affected by a subsequent sale, lease, mortgage, or other encumbrance of or upon the land on which the crops are growing.*" The same Section also gives priority to the security interest in crops perfected under the PPSA over a conflicting interest of a mortgagee.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest is created upon execution of a written security agreement as long as the collateral description is sufficient (e.g., a description by type would be sufficient). Under Section 15, the security agreement may provide for security interests in after-acquired property that will attach "*without any specific appropriation of the debtor.*" Under 14(4), the security interest automatically continues in proceeds, even though the security agreement "is silent about proceeds."

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Yes. Part 6 includes comprehensive priority rules divided into seven divisions that respectively govern general conflicts between secured creditors, conflicts that involve holders of purchase money security interests, the rights of buyers and other transferees of collateral, and other special cases such as priorities in fixtures, crops and commingled goods.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Section 6 of the PPSA sets out the requirements for a collateral description in security agreements and notices. Under Section 6, the collateral may be described by "*a statement that a security interest is taken in all of the debtor's present and after-acquired property*" or

any other description that enables the collateral to be identified. Under Section 6(2), the security agreement and notice may also include a serial number that is limited to a serial-numbered vehicle. Furthermore, the secured creditor may also identify the relevant real property identification number if the notice covers fixtures.

PERU

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	Yes
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	8
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

Yes. The Secured Transactions Law No. 28677 governs all security interests including non-consensual liens and any agreement that utilizes movable property to serve security functions regardless of their name, including assignment of rights, trusts, leasing agreements, financial leases, consignment agreements, precautionary measures, purchase options agreements, and other transactions related to movable assets. However the Secured Transactions Law does not expressly specify if it governs retention-of-title clauses other than

leases and consignments and the Administrative Court for Registries Issues has determined that those clauses must be classified as conditional clauses governed by the Civil Code and not as security interests governed by the Secured Transactions Law.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Even though under the Secured Transactions Law all security interests are subject to registration, the retention-of-title clauses are not because they are not considered security interests. Conversely, consignments and financial leasing, which are essentially retention-of-title devices, are governed by the Secured Transactions Law. Additionally the registry system created by the Secured Transactions Law is cumbersome because it consists of two registries: Registry of Agreements and Registry of Assets. The registration process must be performed by a notary public who certifies the capacity of the parties to enter into an agreement and verifies that the information is complete. Once the registration is received, it must be reviewed by the registrar. This procedure is not compatible with notice-filing systems.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. In Peru there are two different registries for security interests: Registry of Agreements and Registry of Assets. In principle, security interests are registered in the Registry of Agreements except for those encumbering assets subject to registration in the Registry of Assets (e.g. vehicles and aircrafts), in which the security interest must be filed. In some cases, a security interest must be filed in the two registries (e.g. a security interest over future assets subject to registration in the Registry of Assets, must be filed in the Registry of Agreements and once the assets come to exist, the registration must then be moved to the Registry of Assets). Registrations may be done electronically or on a paper-basis. Searches are available online through the Integrated System of Security Interests and Agreements. The costs associated with the registration of security interests are high; the fees are based on the amount of the secured obligation. For instance, the fees to file a security interest may include: i) a flat fee of 31 Peruvian Sol (\$10 USD) for the registrar’s review, ii) a differentiated rate for the registration ranges from 0.75% to 1.5% of the amount of the lease, and iii) the fees for notarial services.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Article 27 of the Secured Transactions Law expressly invalidates any transfer of receivables pursuant to non-assignment clauses.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Title III of the Secured Transaction Law provides for extra-judicial enforcement and also allows for arbitration to solve controversies arising during the enforcement of a security

interest. The judicial enforcement is regulated by the Civil Procedure Code. The rules for extra-judicial enforcement are comprehensive overall and the process is expedited. However there are certain provisions which may complicate the process. For example, to enforce extra-judicially, the parties must grant a power of attorney to a third person to deal with the foreclosure and sale of the assets. The power of attorney must be granted at the time of the execution of the security agreement, which must indicate the form and particularities for the enforcement.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The Secured Transactions Law establishes that a security interest may be possessory or non-possessory (Article 3).

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Under the Secured Transactions Law all types of assets may be used as collateral, except for wages, saving funds for retirement, warrants and certificates of deposit, as well as the movable assets determined by the Civil Procedure Code, which include assets pertaining to the family patrimony, military decorations and medals, child support stipends, movable assets in religious temples and tombs.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Even before the enactment of the Secured Transactions Law, the Agricultural Pledge Law No. 2402 provided for the creation of agricultural pledges that are encumbrances on a farmer's assets, including machinery, equipment, tools, livestock and crops. Currently, the agricultural pledge is governed by the Secured Transactions Law.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. While the Secured Transactions Law provides for security interests in after-acquired property and for automatic extension into any assets resulting from the transformation process of an encumbered asset, whenever a future asset comes to exist, an amendment to the registration describing those assets must be registered. Similarly, if a transformation process occurs, the Secured Transactions Law requires the debtor to provide detailed notice within five days after such transformation to the secured creditor through a notarial document, and the secured creditor must amend the registration of the security interest to include the new resulting asset. These requirements make the creation of security interests expensive and burdensome for secured creditors.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. On the one hand, the Secured Transactions Law provides for the priority rules among competing secured creditors, in which case, the priority is established by the time of registration. For instance, the Article 27 of the Secured Transactions Law establishes that the priorities in case of accounts receivables are based solely on registration; as such, registration has priority over notification to the account debtor. On the other hand, the Secured Transactions Law fails to regulate priorities of statutory claims and to establish rules protecting third parties, such as buyers and other transferees of the collateral.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The Secured Transactions Law establishes that the security agreement and the registration of the security interest must provide a description of the collateral. The parties may choose to describe the collateral generically or specifically.

THE PHILIPPINES

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	No
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	No
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	3
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. At least three laws regulate security interests in The Philippines: the Civil Code, the Chattel Mortgage Act and the Warehouse Receipt Act. The Civil Code governs mortgages in general (i.e. real estate and chattel mortgages) as well as possessory pledges. The Chattel Mortgage Act on the other hand provides detailed provisions governing chattel mortgages.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Assignment of receivables does not require registration to gain effectiveness against third parties. Similarly leases do not have to be registered in order to be effective against third parties. Furthermore, the registration system is not notice-based since registration of the mortgage agreement itself is required and inspected for sufficiency purposes by registry officials.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. The Chattel Mortgage Registry is operated by the Land Registry Agency (LRA), a subdivision of the Department of Justice. The LRA operates hundreds of land registries throughout the economy. The registration of security interests over personal property must be performed in the local LRA of the province where the property is located. Furthermore, if the debtor is located in a different province, the security interest must also be registered there. The LRA is paper-based and requires the filing of the mortgage agreement. The registration fees are determined by a sliding scale based on the amount of the mortgage. It should be noted that the LRA is moving towards a web-based registry. The Civil Code, on the other hand, establishes the framework governing the “Registry of Property” in which acts and contracts relating to the ownership and other rights over immovable property (i.e. mortgages) must be registered.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Interests in receivables can only be transferred subject to the terms of the underlying contract. Thus, a non-assignment clause in the underlying contract restricts the effective transfer the receivables.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

No. Enforcement of a chattel mortgage is a two-step process involving the court system. First, the debtor must surrender possession of the collateral to the creditor. The creditor cannot obtain possession of the asset extra-judicially without the debtor’s consent, which is prohibited under Philippine law. If the debtor in possession refuses to surrender the collateral, replevin proceedings (i.e. proceedings to obtain possession of personal property) must be instituted in court by the creditor. Second, pursuant to Section 14 of the Chattel Mortgage Act, the asset needs to be sold in a foreclosure sale. The creditor must apply to the court in order to initiate the foreclosure sale. The court will appoint a public officer who will proceed to conduct the sale of the collateral through public auction. The sale of the asset must afterwards be reported by the public officer to the chattel mortgage registry. Article 2088 of the Civil Code provides that “[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and

void." Accordingly the secured creditor may not accept the collateral in satisfaction of the secured obligation.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The security device that allows the debtor to retain possession or control of the collateral is known as a chattel mortgage. A chattel mortgage defined as a "*conditional sale of personal property for the payment of a debt, or in the performance of some other obligation specified therein; and the sale becomes void upon the seller (debtor) paying to the purchaser (creditor) a sum of money or doing some other act. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title*".

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

No. A "floating charge" type of security interest covering all assets of the debtor is not recognized under the laws of the Philippines. Theoretically, any asset not characterized as immovable property can be subject to a chattel mortgage.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Crops can be subject to a chattel mortgage or an assignment by way of security. A chattel mortgage will only cover what is specifically described in the chattel mortgage registry.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. There are specific requirements for the chattel mortgage contract to be effective between a debtor and secured creditor, such as the inclusion of what is known as "Chattel Mortgage Form and Affidavit" in the contract. It is also required that the debtor (i.e. mortgagor) be the "absolute owner" of the asset. Furthermore, Section 7 of the Chattel Mortgage Act explicitly excludes the use of after-acquired property as collateral.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. There are no clear and predictable priority rules among competing security interests in the Civil Code and the Chattel Mortgage Act.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. The chattel mortgage affidavit must include a "specific description" of the property being mortgaged. For instance, according to Section 7 of the Chattel Mortgage Act, the description of livestock must include brand, class, sex, age and the owner mark.

RUSSIA

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	Yes
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	6
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The Amendments of 2013 to the Civil Code of Russia that relate to pledges of movable property mainly govern security interest in all types of movable property in the economy. The Civil Code provides that a pledge may arise by the party's agreement or by virtue of law. It provides rules for the registration of pledges in a registry of pledges that was created by a law governing the notary public (the Federal Law No. 166). However the rules governing the

pledge are not applicable to other devices governed by the Civil Code that are functionally equivalent to security interests like financial leases.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Despite of the existence of a notice-based registry for pledges in movable assets, there is no requirement to register other devices that functionally serve as security interests such as financial leases or retentions of title.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Federal Law No. 166 and the Civil Code provide the rules for the registration of notices of pledges in a centralized electronic registry named the Registry of Notices of Pledges in Movable Property that is hosted by the Federal Notary Chamber. Other security devices, such as financial leases and retentions of title are not subject to registration in this registry. Registrations are done exclusively by notaries at the request of the debtor or the secured creditor, but the notaries do not verify the veracity of the information and only enter the information to the system. The request may be in paper, in which case it must be signed in the presence of a notary, or may be electronic in which case it must be signed with a certified digital signature and sent to the notary. Searches are available through the internet free of charge or through notaries, who charge a service fee. The notarial fee for registrations is approximately USD \$10. There are also special registries for certain types of assets such as shares and intellectual property.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Yes. Under Article 358 of the Civil Code, the consent of the account debtor is necessary for the assignment of receivables if the agreement under which the receivable was generated contained such a requirement. However, an assignment of a receivable arising under a contract relating to commercial activity, even if it contains a prohibition on the assignment, does not render such assignment void and may not serve as a ground for termination of the underlying contract. It only provides the grounds to hold the debtor/assignor liable for the breach of an agreement with the account debtor.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. The Civil Code allows the parties to enter into an agreement for out of court enforcement at any time, prior or after default. The sale of the assets may be realized by public or private auction and the secured creditor may take title to the pledged property in satisfaction of the secured obligation. Should a debtor refuse to cooperate with the secured

creditor (e.g. refuses to deliver the collateral), the secured creditor must obtain a notarized executive endorsement in order to proceed extra-judicially.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. Under the Civil Code, the debtor may remain in possession of the collateral and it is possible to create security interests in intangible assets including over either the whole or part of an account balance and even over an account that at the time of entering into the pledge agreement that has no balance yet. The debtor may retain the right to dispose of the account balance subject to the pledge.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Any types of assets may be provided as collateral, including industrial equipment, shares, partnership's participation interests, securities, receivables, and bank accounts. In general, there are no restrictions to create security interests in those assets, and corporate debtors (companies and entrepreneurs) are allowed to encumber all of their assets. Also, later-in-time competing security interests may be created over the same asset.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Crops, future harvests of crops, as well as farm animals may be pledged and the security interest is subject to registration in the Registry, independently from the land.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest may be created by a security agreement and the law allows the parties to agree on the terms and conditions. The Civil Code provides for an automatic extension of the security interest to proceeds. Article 341 allows for the encumbering of after-acquired property, in which case, a security interest is deemed to be created when the asset comes to exist or the debtor acquires rights in such property. In most cases, notarization of a pledge agreement is not mandatory except for pledges in limited liability companies' participatory interests.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The Civil Code provides that the priority of creditors' claims is to be determined primarily by the date of registration. The priority of secured creditors can be changed in an agreement as long as it does not affect the rights of third parties. Article 352 protects purchasers in good faith that were not aware, or could not have been expected to be aware of the encumbrance, in which case the security interest terminates. However the priority of statutory rights holders as against secured creditors is unclear. However, the multiplicity of

security devices available under the Russian legal framework and not subject to the pledge provisions of the Civil Code undermines the predictability, including the priority status, of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The Civil Code establishes that the secured debt and the collateral may be described in any way as long as they are identifiable. Secured obligations may be described simply by reference to the agreement they arise under (e.g. facility agreement), without the need to further identify the secured obligations in exhaustive details. However general descriptions, such as "all existing and future obligations of the debtor" and "all or certain part of the debtor's assets," are available only for pledges granted by corporate debtors. With regards to security interests in motor vehicles, the Russian framework requires inclusion of vehicle identification numbers.

SINGAPORE

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	8
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Security interests created by companies are governed by the Companies Act. On the other hand, security interests created by individuals are governed by the Bills of Sale Act. There are other security interests regulated separately, such as hire-purchase and conditional sale agreements, which are governed by the Hire-Purchase Act of 1969. In addition, the assignment of receivables is governed by Article 4(8) of the Civil Law Act.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. The Hire-Purchase Act of 1969 does not require registration of hire-purchase agreements and conditional sale agreements. Similarly, the Civil Law Act does not require registration of the assignment of receivables. However the registry governed by the Companies Act is a notice-based system since it does not require filing of the instrument under which the charge is created.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. There are at least two security interest registries in Singapore—a registry for security interests created by companies maintained by the Accounting and Corporate Regulatory Authority and another registry for security interests created by individuals under the Bills of Sale Act maintained by Supreme Court of Singapore. The Accounting and Corporate Regulatory Authority has electronic capabilities and charges US\$45 per registration.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. A prohibition against assignment in the underlying contract affects the validity of the assignment. Such an assignment is void and ineffective against the debtor of the receivable. In practice, creditors may avoid this prohibition by creating a security interest (charge) over the proceeds of the receivables.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. The enforcement procedure is subject to the terms of the security agreement and may or may not necessarily involve court proceedings. For instance, if the terms of the loan or security provide for certain rights to be exercised upon an event of default, such rights may be enforced as a matter of contract without court proceedings. Out-of-court enforcement under the Companies Act generally requires the appointment of a receiver who enters into possession of assets of the company for the purpose of enforcing a security interest (i.e. charge). It should be noted that the Hire-Purchase Act of 1969 also provides for extra judicial remedies such as repossession.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. A security interest known as a charge may be constituted by an agreement between the creditor and the debtor without the possession or title in the property passing to the chargee. Fixed charges give the chargor control over the asset, whereas floating charges allow the chargee to continue to deal with the charged assets until crystallization. The Bills of

Sale and Hire-Purchase Acts also allow the individual debtor to take possession of the asset subject to a security interest created under the Acts.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Under the Companies Act, all types of personal property (i.e. present and future, tangible or intangible property) may be available to secure obligations, provided the grant thereof is not against public policy. On the other hand, the Bill of Sale Act is limited in scope since it does not allow the creation of a security interest over future/after-acquired property.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. According to the Bill of Sale Act, the term personal chattel includes growing crops that are separately assigned. The Companies Act, on the other hand, is silent on this matter.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. The creation procedure of security interests varies according to the asset used as collateral. For instance, a security interest can be created over machinery and equipment through a contractual agreement (e.g. deed). It should also be noted that after-acquired property can be used as collateral by means of a floating charge which will extend to proceeds as well. The assets secured by a floating charge are always generally identified in the charging document by referring to all of, or, as the case may be, all of an identifiable class or type of, the 'undertaking and assets' of the chargee, both present and future.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. Registrable security interests that have been registered will have the following priority: i) fixed charges, mortgages or pledges will have priority over uncrystallized floating charges even if subsequently created; ii) fixed charges and mortgages rank according to the date of creation although care needs to be taken regarding the priority of future advances if subsequent security is taken; and iii) floating charges rank according to the date of creation. Creditors may enter into subordination arrangements in order to contractually modify the priority position that the law confers on them. On the other hand, the Bills of Sale Act provides that in a case in which two or more bills of sale are given comprising in whole or in part any of the same chattels, they shall have priority in the order in which they were registered. However, the multiplicity of security devices available under Singapore's legal framework, many of which are not subject to any registration requirement, undermines the predictability, including the priority status, of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. The Statement Containing Particulars of Charge—information filed with Accounting and Corporate Regulatory Authority—must include “a short description of the property/properties” used as collateral. There are no specific requirements on the description of secured obligation.

CHINESE TAIPEI

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	No
8. Crops and Livestock may be Provided as Collateral Independently from Land	No
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	4
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. Chinese Taipei does not have a comprehensive unitary law that effectively regulates all security interests. However, the Personal Property Secured Transactions Act (hereinafter referred to as PPSTA) provides regulations for the taking of security interests in several categories of personal property. Article 2 of the Act defines a personal property secured transaction to include a mortgage of personal property (chattel mortgage), a conditional sale

of property, and trust. Article 42 of the PPSTA authorizes the issuance of related sets of legislation, a power that has been utilized to promulgate the Enforcement Rules of the PPSTA. Secured transactions outside the PPSTA are subject to the requirements of the Civil Code. As such, under chapter 7 of the Civil Code, tangible or intangible property may be encumbered under a pledge.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Article 8 of the PPSTA requires the registration of documents creating chattel mortgages, rather than notice-based filings. The various categories of personal property are subject to differing registries based on the relevant registration authority as stipulated by the Enforcement Rules of the PPSTA. For instance, the registration authority for automobiles is the Ministry of Transport and Communications. After completing the registration, the registration authority must publicly announce the registration on the Nationwide Property Secured Transactions Online Registration and Public Inquiry website, or other appropriate means, for a period of 30 days.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. The PPTSA has not created a single unitary registry. The PPTSA imposes a fee of NT\$900 (US\$27) on chattel mortgage registrations. The National Development Council and Financial Supervisory Commission have made plans to introduce an online registration system and some registration authorities are already using the online system. Under the 2015 amendment to the Enforcement Rules of the Personal Property Secured Transactions Act, the registration offices only conduct ‘simple checks’ of the information provided in the application documents. Additionally, the application for registration, amendment, cancellation, and issuance of certificates may be completed online.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. Interests in receivables are not freely transferable, particularly if there is a non-assignment clause in the contract. The creation of security interests in receivables may only be achieved by a pledge. As such, there is a requirement that the account debtor be notified of creation of the pledge.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. The PPSTA as well as the Civil Code recognize the right of the secured creditor to resort to out of court enforcement. Article 893 of the Civil Code permits a pledgee to sell the collateral to satisfy the secured obligation. In addition, Articles 17 and 18 of the PPSTA allow a mortgagee to take possession of the collateral and to sell the collateral. The parties may also provide for out of court enforcement in the contract.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. Under the various secured transactions covered by the PPSTA, the debtor may retain control and possession of the collateral.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

No. Certain intangible rights, such as account receivables, IP rights, and royalties, cannot be the subject of a security interest under the PPSTA. Furthermore, although the aforementioned rights may be pledged to create a security interest, there is a requirement that the intangible asset be identifiable, as a floating charge is not recognized under Chinese Taipei law. In other words, a security interest cannot be taken in the debtor's future property. However, the 2015 amendments to the Enforcement Rules of the Personal Property Secured Transactions repealed the 'List of Eligible Collateral for a Personal Property Secured Transaction' thus expanding the scope of eligible collateral.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. Although livestock may be provided as collateral independently from land, not all crops can be used as collateral. Crops that have been severed from the earth may be used as collateral, but crops that are attached to the soil or still in the ground cannot be used as collateral.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. Chinese Taipei does not recognize floating security interests. As a result, the security agreement must identify the specific asset subject to the security interest. Proceeds, replacements, and products do not automatically become subject to the security interest. For example, where a pledge is created over a cash deposit account of the debtor, only the funds held in the account at the time of the creation of the pledge will be subject to the pledge. Any other funds that are paid into the account after the creation will not be covered by the pledge. There is no requirement that the agreement be notarized or that a stamp duty be paid.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The existence of a dual regime for security interests affects the identification of clear priority rules between competing secured claims. Where personal property is the subject of a pledge, and is, at the same time, provided as collateral for a chattel mortgage, the PPSTA and the Civil Code do not provide predictable priority rules for resolving any conflicts that may arise between the competing secured claims. Secured creditors have priority over tax

claims and employee claims. A secured creditor may also enforce his security interests even though the debtor is the subject of bankruptcy proceedings.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Article 6 of the Enforcement Rules to the PPSTA allows the parties to describe the collateral in general terms as long as it is sufficiently identifiable. All types of debts and obligations may be secured. A general chattel mortgage or pledge may be used to secure only obligations that exist at the time of the creation of the mortgage.

THAILAND

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for all Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	No
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	3
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The Civil and Commercial Code BE 2468 (1925) governs secured transactions in the form of chattel mortgages, pledges, retentions of title and assignments of claims. In addition, the Business Collateral Act was adopted in November 2015 but not to unify all security devices and instead to merely to fill a gap in the legislation. As a result, security interests are not regulated in a unitary fashion, and some assets, such as machinery, may be subject to a

pledge, mortgage and security interest. The new Business Collateral Act further disintegrated the legal framework and increased legal complexity. As of July 2016, it has not taken effect and is awaiting establishment of a registry.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. For instance, there is no registration requirement for the assignments of rights, retentions of title, financial leases and similar devices under which the creditor purports to retain or acquire title to the collateral.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. The registration of mortgages must be performed in the registry specialized in the asset that is being covered by the mortgage. For instance, mortgages covering registered motor vehicles must be registered at the Department of Land Transport administered by the Ministry of Transport while the registration of mortgages covering machinery must be performed at the Central Office for Machinery Registration administered by the Department of Industrial Works (Ministry of Industry). A new collateral registry created under the Business Collateral Act is expected to be established in 2016 but that registry will operate independently from the existing systems thus creating a disintegrated registration system. Furthermore, pledges of securities issued by companies must also be recorded on the shareholders' register. The registration of mortgages over machinery is subject to a 0.1% of the secured obligation fee but capped at a maximum of 100,000 Bhat. In addition, the mortgage agreement is subject to a stamp duty payable on its execution. Pledge agreements are also subject to stamp duties.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. An assignment of obligations under the Civil and Commercial Code BE 2468 (1925) is invalid unless the assignment is executed in the form of a novation agreement to which the account debtor must provide consent. The new Business Collateral Act does not include any specific rules on the assignment of receivables.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

No. Under a mortgage the creditor must initiate court proceedings to request a writ of execution authorizing sale by auction of the mortgaged property. Under a pledge, if such pledged property is movable property without any registration, the enforcement can be done extra-judicially by the creditor itself. If the pledged property has been registered - i.e., shares, machinery - the creditor may not proceed extra-judicially.

Acceptance of the collateral in satisfaction of the secured obligations is available only when certain unrealistic conditions are satisfied including that the unpaid interest is in arrears for over five years, the collateral value does not exceed the redemption value and there is no other priority claim to the collateral. The Business Collateral Act includes a similar remedy for accepting collateral but notably mirrors these requirements.

Private sales of collateral are not permitted under Thailand's law. However secured creditors are able to participate in the public auction on an arm's length basis. Prior to enforcing a mortgage, reasonable written notice must be given to the debtor to comply with its obligations. If the debtor fails to comply with its obligations, the lender is entitled to request a court to enforce the mortgage, order a seizure of the mortgaged property and the subsequent sale of the property by way of public auction. With regards to the possessory pledge, the Civil and Commercial Code prohibits parties of a pledge agreement from entering into any agreement made prior to the date in which the obligation is due, stating that the pledgee shall become the owner of the pledged item or the pledged property by any way other than through public auction. Any agreement made in violation of the aforesaid provision shall be deemed invalid.

The Business Collateral Act introduced a new remedy for the enforcement of security interests in the entire business of a borrower through a security enforcer. The security enforcer must be designated in the security agreement and name included in the registration. Even though this form of enforcement is extra-judicial in nature, the security enforcer is in charge of the process and even possesses the power to investigate whether sufficient facts to declare the borrower in default exist. This mechanism does not appear to provide an efficient extra-judicial enforcement remedy.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. A mortgage is defined as a non-possessory security, available for all kinds of immovable assets and for certain movable assets for which the law requires registration. Among the assets that can be used as collateral under a mortgage are the following: land, plants, buildings, registered machinery, registered motor vehicles (specifically cars, steamrollers or tractors) registered ships and any other movables that are subject to registration. Under the new Business Collateral Act, any assets, including the entire business of the borrower may be encumbered. The Act defines collateral to include business, claim, any movable property, immovable property, intellectual property and other assets designated in the regulations. Section 5 expressly provides that delivery of an asset to the secured creditor is not necessary.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. In principle, any asset can be used as collateral. However the type of asset determines the type of security interest (i.e. chattel mortgage, possessory pledge, etc.) that can be created over that asset. Additionally, under the Business Collateral Act, the entire business of the debtor may be subject to a security interest.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Animals used as transportation, such as elephants, horses and buffalos, which have been registered with the competent authorities according to the applicable laws can be mortgaged. Other animals, crops and timber can be pledged only to the extent that the possession thereof can be passed to the pledgee or the pledgee's security keeper. As long as crops and livestock are used in business operations, they may be made subject to a security interest under the Business Collateral Act.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. A security mechanism, including under the Business Collateral Act, may be established upon execution of a contract. A mortgage agreement must be made in writing and registered with the relevant government authorities (i.e., Land Office in the case of a mortgage of land, building and/ or condominium unit). Accordingly, a security interest in the form of a mortgage is not created until it has been properly registered. The mortgage provides full force of effect when: i) the secured obligation comes into effect; and ii) the mortgagor acquires the right over the mortgaged assets. On the other hand, the pledged property must be delivered into the possession and control of the pledgee throughout the period of the pledge. For a pledge of the right represented by a written instrument, such as promissory note, bill of exchange etc., the instrument must be delivered to the pledgee and the pledge notified in writing to the debtor of right or endorsed upon the instrument.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The Civil and Commercial Code includes the relevant priority rules, even for the competitions of security interests under the Business Collateral Act. In distributing the assets amongst creditors with respect to a business debtor, the claims shall be paid in the following order: i) expenses of the receiver in managing the debtor's assets; ii) fee for collecting the assets; iii) fee of the petitioning creditor and counsel's fee; iv) taxes; and v) other debts. The secured creditor has the right over its collateral that must be satisfied ahead of any other claims. However, the multiplicity of security devices available under the Thai legal framework undermines the predictability, including the priority status, of security rights.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. Mortgaged property, such as machinery, must be described specifically. The new Business Collateral Act does not include any provisions on the description of collateral or secured obligations in a security agreement. However, it contemplates the registration of the contract creating the security interest and the registration must identify the collateral by, inter alia, its type, quantity and value.

UNITED STATES

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	Yes
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	Yes
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	Yes
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	11
Level of Reform Needed	No Reform Needed

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

Yes. The Uniform Commercial Code Article 9 (UCC 9), last amended in 2010, has been adopted by every U.S. State. The U.S. Constitution delegated the power to legislate in areas of commerce to the States hence there is no single federal secured transactions law. UCC 9 was the pioneering statute to be based on a unitary and functional approach to security interests. However, it should be noted that several federal (e.g., the Perishable Agricultural

Commodities Act) and state statutes (e.g., agricultural lien statutes) provide the creation and perfection of interests in personal property that may not require any form of public notice.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Security interests in personal property as well as a significant majority of non-consensual liens, including tax liens given by the Internal Revenue Service under the Internal Revenue Code, must be properly publicized by filing in a UCC filing office of the relevant state. All UCC Filing Offices are notice-based.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. Given the absence of a federal secured transactions law, every state has its own UCC filing system. However, the conflict of law provisions included in state statutes clearly determine which registry is applicable to submit a notice in to perfect the relevant security interest. All UCC filing offices allow searches to be conducted electronically and a significant majority of them provide an electronic interface for filings. A few states (e.g., Colorado) do not allow financing statements to be submitted in paper. Filing fees are flat and low (e.g., \$9 in Arizona for filings) and about a half of the states do not charge for searchers. Furthermore, notices of liens over vehicles are not filed in the UCC filing offices but rather in the States’ Departments of Motor Vehicles, unless the vehicle is held as inventory.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

Yes. UCC 9-406 generally renders any contractual or legal restrictions on the creation, attachment, perfection, or enforcement of a security interest in the account, chattel paper, payment intangible, or promissory note ineffective.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. Under UCC 9-601, the secured party may avail itself of the rights included in Part 6 or resort to any remedies set forth in the security agreement. Part 6 provides for extra-judicial remedies in the form of self-help repossession of the collateral, collection of receivables, disposition of the collateral in a private or public auction as well as acceptance of collateral in full or partial satisfaction of the secured obligation. The judicial remedies are also generally effective entitling the secured party to petition a court for a replevin order authorizing repossession of the collateral without hearing and notice to the debtor.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. The debtor may remain in possession of tangible collateral subject to a security interest that may be perfected by filing and retain control of intangible assets, such as deposit accounts, that it may utilize in the ordinary course of its business.

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. UCC 9 does not impose any limitation on the debtor's ability to encumber all of its personal property. UCC 9-109(d) sets forth a number of exclusions from its scope, including an assignment of a claim for wages, salary, or other compensation of an employee, a transfer of an interest under a policy of insurance, an assignment of a claim arising in tort, other than a commercial tort claim, an assignment of a deposit account in a consumer transaction, etc. However, for most of these exclusions, a relevant framework that would allow the creation of security interests already exists (e.g., insurance policies and consumer deposit accounts).

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. UCC 9-334(i) expressly grants priority to a perfected security interest in crops over a conflicting interest of an encumbrancer or owner of the real property. UCC 9 also applies to security interest in livestock that expressly falls under the farm products collateral type.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. A security interest is created upon execution of a written security agreement, as long as the collateral description is sufficient (e.g., a description by type would be sufficient). In the case of possessory security interests and those perfected by control, an oral security agreement would be sufficient. UCC 9-204 expressly provides that a security interest may encumber after-acquired collateral and that a security agreement may provide that collateral secures future advances. Under UCC 9-315, a perfected security interest in the collateral extends automatically to its proceeds.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Yes. The entire Subpart 3 of Part 3, entitled Perfection and Priority, sets forth comprehensive priority rules to determine a wide range of conflicts between competing claims, including secured creditors, buyers of the collateral, transferees of funds, money and other assets, etc. The priority rules also apply to conflicts with non-consensual creditors, including holders of tax and statutory liens.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. UCC 9-108 allows the collateral to be described in a security agreement generically. However, a super-generic description such as "all assets" would not be sufficient in a security agreement. UCC 9-504 provides for even more flexible standard with respect to collateral descriptions in financing statements, authorizing "all assets" descriptions. UCC 9-204 permits security agreements to extend the security interest to any future advances does not impose any limiting language on the description of existing or future obligations.

VIET NAM

SUMMARY OF SECURED TRANSACTIONS FRAMEWORK

Secured Transactions Matrix Features	Feature Present in APEC Member Economy
1. Single Law that Regulates all Security Interests	No
2. Elimination of Secret Liens	Yes
3. One Registry for all Security Interests (including electronic capabilities and low fees)	Yes
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out of Court Enforcement	Yes
6. Debtor may Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets may be Provided as Collateral	Yes
8. Crops and Livestock may be Provided as Collateral Independently from Land	No
9. Future/After-acquired Assets and Proceeds may be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Member Economy Score in World Bank Doing Getting Credit Strength of Legal Rights Index (Out of 12)	7
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. **Single Law that Regulates all Security Interests: Whether a single law regulates all security interests in a unitary, functional and comprehensive manner**

No. The Vietnamese secured transactions framework is not comprehensive and unitary. Most secured transactions are generally governed by the Civil Code in Vietnam. However matters such as financial leases and their registration are entirely governed by regulations. Decree No. 16/2001/ND-CP of May 02, 2001 (on the organization and operation of financial leasing Companies)—completely unrelated to the Civil Code—defines the term “financial

lease” and requires the registration of financial leases in the Registration Centers of the National Registration Agency for Security Transactions (NRAST) administered by the Ministry of Justice—which is the secured transactions registry in Vietnam (Article 19).

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. Pursuant to Article 13 of Decree No.163/2006/ND-CP (December 29, 2006) and Article 2 of Circular No. 05/2011/TT-BTP (February 16, 2011) financial leases and conditional sales are treated as security devices for which registration is required in order to be effective against third parties. Furthermore, according to Article 22 of Decree No.163/2006/ND-CP (December 29, 2006), assignments of receivables can also be registered in order to ensure their priority over other secured creditors. The main issue with the Registration Centers of the NRAST relates to the review of the financing statements’ legal sufficiency by a clerk as this practice introduces a level of uncertainty into the process. This requirement also undermines the notice-based nature of the registry.

3. One Registry for all Security Interests (including electronic capabilities and low fees): Whether the economy has established a single, unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

Yes. According to Circular No. 11/2015/TT-BTP (guiding the registration and provision of online information on secured transaction, contract and notification of property record for judgment enforcement), in order to be effective against third parties, security interests covering most types of assets must be registered at any Registration Center of the NRAST. Furthermore, Article 2.4 of Circular No. 05/2011/TTBTP of February 16, 2011 of the Ministry of Justice provides that contracts assigning future receivables may be registered at the NRAST. Some security devices covering assets such as land, ships, and aircrafts must be registered in specialized registries. The NRAST still allows the submission of financing statements in paper form however nearly all the registrations are performed electronically.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding non-assignment clauses in underlying contracts

No. According to Article 309(1)(b) of the Civil Code, interests in receivables can only be transferred subject to the terms of the underlying contract. Thus, a non-assignment clause in the underlying contract restricts the effectiveness of the transfer of receivables.

5. Out of Court Enforcement: Whether efficient enforcement mechanisms are available including out-of-court enforcement

Yes. While the Civil Code does allow for out of court enforcement, it is seldom used in practice. According to Joint Circular No. 16/2014/TTLT-BTP-BTNMT-NHNN (guiding a number of matters on disposal of security assets) the enforcement procedure of a mortgage covering personal property is generally the following: the secured creditor has to give notice and request the debtor to surrender the collateral before repossessing. This notice will establish a grace period for the debtor to return the collateral. If the party in possession fails

to surrender the collateral after the grace period expires, the secured party has the right to repossess the collateral and foreclose or bring a lawsuit. If the secured party decides not to bring a lawsuit and instead repossess the collateral, it must again give notice of repossession in a reasonable time before proceeding. This notice must include the reason for the repossession, the timeframe, and the rights and duties of the parties. The repossession must occur in the debtor's presence. If the debtor objects to the repossession in any way, the secured party has the right to request the assistance of the local authorities in order to facilitate repossession.

6. Debtor may Retain Possession or Control of Collateral: Whether the law recognizes non-possessory security interests allowing the debtor to retain possession or control of collateral

Yes. Article 342 of the Civil Code defines a mortgage as *"the use by a party (the mortgagor) of his/her own property to secure the performance of a civil obligation owed to the other party (the mortgagee) without transferring possession of such property to the mortgagee."*

7. All or Any of the Debtor's Assets may be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. There are no limitations as to the assets that can be taken as collateral. Pursuant to Article 320 of the Civil Code, existing and future assets can be used as collateral. Similarly, Article 321 provides that cash, bonds, shares and promissory notes can also be used as collateral to secure a loan.

8. Crops and Livestock may be provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. Crops are considered as immovable assets until they are harvested. Thus, they can only be subject to a real estate mortgage.

9. Future/After-acquired Assets and Proceeds may be provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. The mortgage agreement covering personal property must be in writing. Notarization is not required. According to Article 2 of the Decree No 11/2012 / ND – CP (Amending and supplementing some articles of Decree No. 163/2006 / ND – CP December 29, 2006 of the Government on security transactions) future/after-acquired property that can be provided as collateral includes the following: i) property acquired with credit provided by lenders and ii) property that does not exist at the time the secured agreement is entered into.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The priority of secured creditors (i.e. chattel mortgagees) is determined in chronological order of registration. If the security interest is not registered, priority is determined by the date the security agreement was entered into. There are rules protecting transferees (e.g. buyers in the ordinary course of business). For instance Article 2053 of Decree

No.163/2006/ND-CP (December 29, 2006) provides that “[i]f the mortgagor sells or exchanges the mortgaged asset being a goods circulated in the production or business process within the scope of its production or business activities; sells or exchanges the mortgaged asset of other types with the consent of the mortgagee...the buyer or the exchange may have the ownership over that asset.” However, the predictability of priority rules would be enhanced if Vietnam adopted a unified secured transactions law rather than regulating certain functional equivalents of security rights (e.g., financial leases) in regulations.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Under Article 33 of Decree No. 83/2010/ND-CP of July 23, 2010, on registration of secured interests as amended by Decree No. 05/2012/ND-CP of February 2, 2012, a general description of secured assets does not affect the validity of the registration of the security transaction. As such, except for motor vehicles (i.e. chassis number must be mentioned in the financing statement), parties to a security agreement do not have to identify the collateral in detail.