Secured Transactions Law in Asia

26 & 27 July 2018
Faculty of Law, National University of Singapore

Convened by:
Associate Professor Dora Neo, National University of Singapore
Professor Louise Gullifer, University of Oxford

Jointly organised by:
Centre for Banking & Finance Law, Faculty of Law, National University of Singapore
EW Barker Centre for Law & Business, Faculty of Law, National University of Singapore
Commercial Law Centre, Harris Manchester College, University of Oxford
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PROGRAMME

DAY 1
26 July 2018, Thursday

0845  Registration

0900 – 0920  Welcome & Introduction
Professor Simon Chesterman
Dean, Faculty of Law, National University of Singapore
Associate Professor Dora Neo
Convenor, National University of Singapore

0920 – 1000  Keynote Address
Chair: Professor Louise Gu
llifer
Convenor, University of Oxford

“How exportable is the Article 9 system?”
Professor Charles Mooney, University of Pennsylvania, USA

Morning session
Chair: Professor Louise Gullifer

1000 – 1040  Secured transactions law reform in civil jurisdictions
Professor Teresa Rodríguez de la Heras Ballell, University Carlos III of Madrid, Spain

1040 – 1100  Coffee break

1100 – 1300  Thailand
Ms Parawee Kasitinon, Thammasat University, Thailand

Vietnam
Ms Huyen Pham, World Bank Group, Vietnam

Indonesia
Mr Ibrahim Assegaf, Assegaf Hamzah & Partners, Indonesia and Mr Aria Suyudi,
World Bank Group, Indonesia

Commentator: Professor Ignacio Tirado, Autonomous University of Madrid, Spain

1300 – 1400  Lunch
BTC Staff Lounge, Block B
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Observer's Copy
## DAY 2
27 July 2018, Friday

### Morning session 1
Chair: Professor Tony Duggan

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### Morning session 2
Chair: Professor Louise Gullifer

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<td><strong>Comparison of International instruments</strong></td>
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<td><strong>The connection between secured transactions and insolvency in modern and unreformed insolvency regimes</strong></td>
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### Conclusion

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**Convenors**

**Louise Gullifer** is Professor of Commercial Law at the University of Oxford and a fellow of Harris Manchester College, Oxford. She holds one of the temporary chairs of the Business and Law Research Centre, International Commercial Law, at Radboud University, Nijmegen. She is the director of the Commercial Law Centre at Harris Manchester College and executive director of the Secured Transaction Law Reform Project, as well as the Oxford academic lead of the Cape Town Convention Academic Project, and one of the UK delegates to both UNCITRAL (working group VI) and Unidroit. She has co-authored a number of books on commercial law and debt financing, including Goode and Gullifer on Legal Problems of Credit and Security, The Law of Security and Title Financing, The Law of Personal Property and Corporate Finance Law: Principles and Policy.

**Dora Neo** is an Associate Professor and the founding Director of the Centre for Banking & Finance Law at the Faculty of Law, National University of Singapore (NUS). She convenes the ‘Credit and Security’ module at NUS Law and co-teaches the elective on ‘Security and Insolvency Law’ for the faculty’s International Business Law LLM programme at the East China University of Political Science and Law in Shanghai. She has served on various law reform committees in Singapore, and contributed to discussions on topics such as pawnbroking, hire purchase, aircraft financing and financial collateral. She is a graduate of Oxford and Harvard Universities, and was called to the Bar in England and in Singapore.

**Speakers**

**Chester Abellera** is with the Asian Development Bank, working on the preparation and conduct of the ADB Annual and Board Meetings, and implementing the Philippine Country Partnership Strategy through the Philippine loan program. He previously worked in the International Finance Corporation as legal counsel for the Philippine secured transactions reform project, while advising the Vietnamese Finance Ministry as an ADB Public Finance Specialist in preparing the agenda for 2017 APEC Finance Ministers’ Process meetings. He also worked as economist at Philippine Department of Finance’s International Finance Group, and as economist/legal advisor at the Global CCS Institute in Australia. A lawyer and economist, Chester has worked across public, private, not-for-profit, and multilateral development banks, in developing and developed economies. He holds master’s Degrees in International and Development Economics, and in Diplomacy from the Australian National University, and bachelor’s degrees in Psychology and of laws from the University of the Philippines.
Orkun Akseli is an Associate Professor of Commercial Law at Durham University Law School. He is also the Director of Research Funding at Durham Law School and the Co-Director of Durham Institute for Commercial and Corporate Law. He has published extensively on the modernisation and harmonisation of secured transactions law. Some of his publications include International and Comparative Secured Transactions Law (Hart 2017, with Spyridon V. Bazinas); Secured Transactions Law Reform: Principles, Policies and Practice (Hart 2016, with Louise Gullifer); Availability of Credit and Secured Transactions in a Time of Crisis (CUP 2013); International Secured Transactions Law: Facilitation of Credit and International Conventions and Instruments (Routledge 2011). He studied law in Turkey, USA and the UK. He is a member of the International Academy of Comparative Law and the Chartered Institute of Arbitrators. He has a limited arbitration practice and is a member of Turkish Bar.

Ibrahim Assegaf is a partner at Assegaf Hamzah & Partner. Heading the banking finance practice group, he has represented international and Indonesian financial institution in bilateral, syndication, project finance as well as structured finance matters. He is also a lecturer at Indonesia Jentera School of Law, Jakarta. Ibrahim has been involved in several law reform studies and initiatives on contract, secured transactions and insolvency laws.

Marek Dubovec earned a law degree from Slovakia in 2003, the Master’s degree (LL.M.) in International Trade Law in 2004, and the Doctor of Juridical Science degree (S.J.D.) in 2009 both from the James E. Rogers College of Law, University of Arizona. Since 2004, he has been working at NatLaw in Tucson (Arizona) where he is now the Executive Director. Marek has been involved in a number of secured transactions reform projects in Africa, Asia, the Middle East, and Latin America. He teaches UCC Article 9 Secured Transactions and International Commercial Transactions at the James E. Rogers College of Law. He has been assisting Unidroit with the development of the MAC Protocol to the Cape Town Convention, and has regularly represented NatLaw at UNCITRAL’s Working Group VI since 2010. Marek has written books and articles on secured transactions and related areas.

Tony Duggan holds the Hon. Frank H. Iacobucci Chair in the Faculty of Law at the University of Toronto and is a Professorial Fellow at the Melbourne Law School and a senior research fellow at the Commercial Law Centre and Harris Manchester College, Oxford University. He was Associate Dean of the University of Toronto Faculty of Law from 2002-2004. His main teaching and research interests are secured transactions (PPSA), bankruptcy and insolvency law and equity and trusts. He won the Mewett Teaching Award at the University of Toronto in 2009-2010, 2010-2011 and 2013-2014. Recent PPSA-related books include: Australian Personal Property Securities Law (2nd ed., Lexis Nexis Australia, 2015) (with David Brown) and Anthony Duggan, Secured Transactions in Personal Property: Cases, Text and Materials (7th ed. 2018, Emond Montgomery, Toronto). Professor Duggan is Editor-in-Chief of the Canadian Business Law Journal, is a member of the American Law Institute and is a past President of the International Academy of Commercial and Consumer Law.
Megumi Hara is professor at the Law School of Gakushuin University, Tokyo, where she teaches secured transaction law, contract law, and trust law. She also is appointed by the Ministry of Justice as researcher on the project to reform the property law and its registration. She has published numerous articles in the field of secured transaction as well as other topics concerning civil law. Recently, she served as delegate of Japan at the UNIDROIT Committee of Governmental Experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment (the “MAC Protocol”), where she was also the member of the drafting committee. She has also participated in the deliberations of Working Group VI on security interests for UNCITRAL either as delegate of Japan or as an observer.

Parawee Kasitinon is a law lecturer at the Faculty of Law, Thammasat University, Thailand. She has broad-based interests in private and secured transactions law. She has been the recipient of a full scholarship from the Royal Thai Government to pursue her legal education at the University of Pennsylvania Law School, USA. She completed the LL.M. Program in 2014 and is now an S.J.D. candidate. Her stellar academic record also includes a Master of Laws Degree (LL.M.) in private law from Thammasat University and Bachelor of Laws Degree (LL.B., 1st class honors) from Chulalongkorn University in Thailand.

Youngjoon Kwon is a Professor of Law at Seoul National University. He earned his LL.B., LL.M., and Ph. D from Seoul National University, and LL.M. from Harvard Law School. He did his research at Max-Planck Institute, Duke Law School, University of Tokyo as a visiting scholar and taught at Harvard Law School as a visiting professor. He does his research in the field of private law, mainly on contract, tort, property, and secured transaction. He also writes on intellectual property law, privacy, and personal data protection. He previously worked as a Judge advocate in the Navy, a Judge in various courts where he sat as either an associate judge or as a presiding judge dealing with civil and criminal cases. He was also the director for international affairs in the Supreme Court of Korea. He has also been a delegate to the UNCITRAL Working Group VI (Secured Transaction) since 2010.

Andrew Jen-Guang Lin, Professor of Law, National Taiwan University; LL.B., Soochow University 1987; LL.M. in International Banking Law Studies, Boston University 1991; LL.M., Duke University 1992; S.J.D., Duke University 1997. He also serve as a director at the Securities and Futures Investors Protection Center (2003~2011, 2018~); director of the Financial and Economic Law Committee of Taiwan Law Society (2002~2012); director of the Commercial Law Committee of Taiwan Law Society (2017~); member of the Petitions and Appeals Committee of the Financial Supervisory Commission (June 2008~). Professor Lin, together with two other professors, participated in a research project on the reform of Taiwan’s Personal Property Secured Transaction Act sponsored by the Financial Supervisory Commission in 2015. His current researches interests are related to corporate law reform, syndicated loan, director disqualified regime, securities class actions.
**Elaine Maceachern** is currently a Global Product Specialist for WBG’s financial infrastructure secured lending product based in Bangkok, Thailand. Elaine works with WBG clients and team in the Asia and Africa regions extensively and contributes regularly to the ongoing Financial Inclusion development agenda of ASEAN and APEC Financial Infrastructure working groups, as well as the G20 Joint Action Plan on SME Financing. Elaine has over twenty years of public and private sector experience in legislative and institutional reform projects, specifically in policy development and public registry implementations. Elaine was a former Registrar of both Land Titles (immoveable) and Personal Property (moveable) in Nova Scotia, Canada. She has participated in the design, development and implementation of secured transaction reform projects and registry systems in Canada, Russian, Caribbean, Asia and Africa regions under Common, Civil and Islamic law regimes. She has extensive experience in legislative and institutional reform projects involving various alternative operational and governance models.


**Huyen Pham** is based in Vietnam. She has great working experience with both public and private sectors in Asia countries, including Vietnam, Lao PDR, Cambodia, Myanmar and India. Joining International Finance Corporation, a member of WBG in 2005, Huyen Pham has worked extensively on financial infrastructure regulatory and policy. She has strong knowledge on Credit Information, Secured Transactions, Alternative Dispute Resolutions, Insolvency and Bankruptcy, Payments System, Capital Market, Microfinance, and Program Portfolio Management. Huyen Pham is a frequent speaker at various international and domestic conferences. Prior joining WBG, she had eight years working experience for UNDP and DANIDA on Vietnam’s legal and regulatory reform projects, providing capacity building for the National Assembly, the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Justice. Huyen Pham is the Lawyer and holds LLM and MBA degrees.

**Teresa Rodríguez de las Heras Ballell** Associate Professor of Commercial Law at University Carlos III of Madrid. 2017-2018 Chair of Excellence at Oxford University (Uc3m-Santander Program), affiliated to Harris Manchester College. Previously, James J. Coleman Sr. Distinguished Visiting Professor of Law at Tulane Law School, Visiting Fellow at Harris Manchester College, Oxford University, Fellow at Stanford Law School TTLF and Marie Curie Fellow at ZERP of University of Bremen, among others visiting professorships and fellowships - such as Columbia Law School, University of Washington, University of Tokyo or University College of London. Arbitrator at Madrid Court of Arbitration, member of Spanish Advertising Standards Tribunal (Autocontrol), member of UNIDROIT Study Group on MAC Protocol to the Cape Town Convention on international security interests, member of the Aviation Working Group’s Spanish Contact Group, member of the Rail Working Group, Spanish Delegate before UNIDROIT for MAC Protocol, representative of ASADIP/CEDEP at UNCITRAL Working Group VI on Security Interests.
Aria Suyudi is senior researcher for Centre for Indonesian Law and Policy Studies, he has been providing advice to government of Indonesia on various reforms initiatives such as judicial reform, secured transaction law, insolvency, since 2000. He also is lecturer at Indonesia Jentera School of Law, Jakarta.

Ignacio Tirado teaches Commercial, Corporate and Insolvency Law at the Universidad Autónoma of Madrid (Spain). Ignacio is Senior Legal Consultant at the World Bank’s Financial Sector Practice and Consultant on insolvency–related matters to the IMF’s Legal Department. A qualified lawyer, Ignacio was Of Counsel of the Business Restructuring and Insolvency Practice of Hogan Lovells LLP (Madrid Office, then Lovells LLP), until he joined the World Bank. Ignacio is a Member of the Executive Committee and a Director of the International Insolvency Institute, where he is also co-Chair of the Academic Committee. He is the Vice-Chair of the pan–European think tank Conference of European Restructuring and Insolvency Law. He has represented the World Bank in UNCITRAL’s Working Group V (insolvency) and Spain and the III in Working Group VI (secured transactions). A founding member of the Academic Board of the European Banking Institute, Ignacio is International Fellow of the American College of Bankruptcy.

Madhukar R Umarji was Chief Advisor – Legal of the Indian Banks’ Association for the last twelve years and has rich experience in banking and other financial sector related laws. A post-graduate in Law from Bombay University, Mr. Umarji was Legal Adviser of Banks, and a Central Banker as Executive Director, Reserve Bank of India. He has been actively involved in the process of financial and banking sector reforms in India undertaken by the Ministry of Finance and has represented the banking industry on various Committees. He was also member of the Bankruptcy Law Reforms Committee. He was involved with the UNCITRAL in preparation of Legislative Guide on Model Law for Secured Transactions, as a delegate from India and also UNIDROIT in preparation of Model Law on Lease of Movables. Seventh Edition of his book on SARFAESI Act has been published in July, 2017.

Lebing Wang is the Assistant Dean of the University of International Business and Economics, School of Law. He is also the visiting professor of University of Bologna and University of Palermo in Italy. His research focuses on the law on secured transaction and commercial law. He has published eight articles on the regulation of financial derivatives, pledge on account receivables, covered bond and securitization, pledge on intermediated securities and so on. He is now undertaking as the government expert of China in the draft of “The Protocol to The Cape Town Convention on Matters Specific to Agricultural, Construction and Mining Equipment”. He is also undertaking a national project, in cooperation with the newly established Ministry of Justice, to collect and study the domestic laws in the “B&R” countries, so as to facilitate the trade and investment by Chinese companies in these countries.
**How exportable (importable) is the Article 9 system?**  
Charles Mooney

The paper will evaluate the exportability (and importability) of Uniform Commercial Code Article 9. By any measure Article 9 has been an enormously successful legislative achievement. From its original promulgation in 1954 through several major revisions it has been adopted in all U.S. jurisdictions in substantially uniform fashion. Outside of the U.S., Article 9’s principles have been successfully exported. This is evidenced by the influence of these principles on the laws actually adopted in other jurisdictions and on international harmonization efforts, including model laws promulgated by organizations such as the European Bank for Reconstruction and Development and by UNCITRAL in its Model Law on Secured Transactions. The paper will consider the acceptance of Article 9’s principles through the lens of Alan Watson’s pathbreaking book, Legal Transplants: An Approach to Comparative Law (1974, 1993). It particular, it will identify the most significant challenges for the exportation (and importation) of Article 9.

**Secured transactions law reform in civil jurisdictions**  
Teresa Rodríguez de las Heras Ballell

Credit availability and access to credit in reasonable conditions heavily depend upon a sound, reliable and efficient secured transactions system. Supranational organizations have striven to devise a harmonized legal framework to facilitate cross-border secured transactions and formulate modern rules and solutions best suited to contemporary market needs. Concurrently, law reforms are undertaken in domestic jurisdictions. Within the frame of these instruments, civil law jurisdictions have to face challenges and intricacies of reconciling tradition with reality and aligning existing rules with harmonized modern principles and standards. In this process, law reform pace, scope, and outcomes have amply differed in civil jurisdictions. The Paper aims to examine how civil jurisdictions embrace the modernisation of secured transactions law to adapt to the reality of global markets, complex transactions, and changing environment, and to what extent international standards for a modern secured transaction system challenge tradition or give the opportunity to enhance existing models.

**Adherence to the form of transactions and compliance with international standards of Thailand’s secured credit law reform**  
Parawee Kasitinon

The Civil and Commercial Code has long played the key role in assets-based lending in Thailand. But, those earlier legal devices no longer serve today’s needs of businesses and financing practice. Therefore, several supplementary acts and, in 2015, the Business Security Act were enacted. Nevertheless, an internationally recognized functional approach has not been adopted. Title devices and transfer of receivables are not integrated into a unified law on security interests, thus possibly hindering access to credit.

The Article will discuss the possibility of adopting the functional approach by analyzing theories regarding legal transplantation, civil law conception of security, and financing practice. Development of Thai laws on secured credit will be traced. Moreover, approaches to secured transactions accepted by international
instruments and Thailand’s non-compliance with the approaches will be explored. Furthermore, the causes and rationales of non-adoptions will be investigated. Finally, possible reforms in accordance with international standards will be proposed.

Secured transactions reform in Vietnam: Prominent achievements, experience, and lesson learnt
Huyen Pham

Consider Secured Transactions (STs) can support creation of more jobs and opportunities, and better innovation for growth. Subject to jurisdiction models, i.e. common law or civil law jurisdictions, a country will set up their own strategy for STs Reform. Presently, the United Nations Commission for International Trade Law (UNCITRAL) has developed the guidelines on international best practices in STs. Many countries in over the world, including Vietnam have referred to these guidelines for their reforms.

The paper will analyze Vietnam’s STs Reform in recent two decades to draw the country’s experience, lesson learnt and prominent achievements that support financial market development. It is the long journey that Vietnam Government has gone through to establish the eco-system. The paper will address the country’s reforms in several components including (i) improving legal framework for STs, (ii) building the first world class web-based system for STs, and (iii) capacity building for banking sector to move away from real estate secured lending.

Indonesia Secured Transaction Law Reform: In a Crossroad
Ibrahim Assegaf & Aria Suyudi

In the aftermath of the Asian economic crisis of 1997/8, Indonesia developed a raft of laws and regulations to support commercial activity and economic resilience. One of these reforms was the Indonesian secured transaction law (Law 42 of 1999 on Fiducia Security). It codified informal Indonesian practices that utilized a form of fiducia security and allowed for the creation and enforcement of these fiducia, as well as facilitating the registration of these obligations. Recently, small reforms have been implemented to cover consumer finance and create an electronic register of these obligations.

Despite these reforms, the law does not accommodate a broad enough range of activities and needs to provide a more comprehensive array of commercial protections. This paper will elaborate upon the salient features, theoretical debates, and practical issues that arose with the development of Fiducia Security Law, while also focus on the Indonesian Government’s reform initiatives designed to improve the effectiveness of these movable security rights.

The law reform on secured transactions regime in Taiwan: Modernization, controversies, and prospects
Andrew Jen-Guang Lin

Taiwan’s secured transaction regime is undergoing reform. Mainly because having not adopted floating charge, Taiwan’s ranking in the World Bank Doing Business Survey’s Ease of Getting Credit Index, particularly on the Strength of legal rights index, indicates that Taiwan has much room for improvement on secured transaction regime. In response, Government has proposed reforms and initiated studies on personal property secured transactions regime since 2009. This article first introduces the current state of
Taiwan’s Personal Property Secured Transactions Act (PPSTA) and Taiwan’s distance to the frontier in the Doing Business Survey to see what aspects Taiwan has to improve. It will also introduce the recent reforms initiated by the Financial Supervisory Commission, competent authority of PPSTA, and recommendations proposed by four most recent research reports sponsored by the government or Bankers Association. This articles will identify the contemporary issues, controversies and prospects of the reform.

**Dilemma of asset based lending in Japan: A closer look at secured transaction in tangible movables and claims**
Megumi Hara

The presentation consists of analysis on Japanese business credit in relation to secured transaction in tangible movables, especially inventory, and in claim (hereinafter, as Asset Based Lending, ABL). In practice, usage of ABL is scarce. Economically, it is the ultra-law interest rate environment and policy of Financial Service Agency that factor into this. Furthermore, there are legal issues that cause unpredictable and costly framework of ABL. First, ABL takes the form of title transfer (“Joto-tanpo”), but since there is no written law, the legal nature is still uncertain. Second, since 1998, Japan has established registration for assignments of movables and claims, but the identification requirement of collateral is overly strict. Moreover, the registration co-exists with other methods of third party effectiveness without public notice stipulated under Civil Code. The presentation will refer to traditional view of public notice and how this has affected the structure of the registration.

**Secured Transaction Law in Korea**
Youngjoon Kwon

This paper aims to give general introduction on Korean secured transaction law on movables and receivables. A pledge is the only security right over those asset in the Korean Civil Code. There is another form of security right called Yangdodambo, which has long been recognized by court precedents and widely utilized in the secured transaction practice. Effective from June 2012, under the Act on Security over Moveable Property, Claims, etc., a security right over moveable and receivable can also be created pursuant to a security agreement and the registration of the security interest on the collateral security register. This new legislation was partly influenced by UNCITRAL Legislative Guide but not to an extent where key aspects of the Guide, such as notice registration, are reflected. This paper introduces and analyzes traditional and new security right regime and see if there is possibility for reform, in particular in connection with the recently published UNCITRAL Model Law.

**The law on secured transaction in China: Comparison and future reform**
Lebing Wang

The stagnant reform in the law on secured transaction laid institutional obstacles for the financing transactions in China. The rising new categories of assets, which are not listed in the real property and thus are not eligible collateral, are employed as collateral by the financial institutions and enterprises. The floating charge and pledge over tangible personal properties share similar functions and compete with each other in the practices, and thus lead to conflict of priorities among different creditors. The pledge over account receivables, which derive from the proceeds for the disposition of tangible good, also conflicts with the floating charge on personal property, as a result of the separated legislative framework on the secured transaction on tangible and intangible personal property. The financing practices requires China
to adopt a uniform legislative framework governing the secured transactions on personal properties, so as to cover the new collateral and resolve the conflict of priority.

**Secured transactions reform in the Philippines: Modernizing the chattel mortgage system**

Chester Abellera

The system of using of personal property like household goods, vehicles, agricultural crops, etc. as loan collateral in the Philippines has been in place for more than a century. The practice is not novel or unfamiliar; however, through the years, lenders’ confidence in the system has progressively declined, limiting the flow of much-needed credit to those who need it, including entrepreneurs. Philippine households and small businesses lacking immovable assets, are seen as credit risks, and are thus forced to borrow from informal lenders, who charge exorbitant interest rates, but do not require land or real property as collateral. While the Philippines is one of the fastest growing countries in the Asia Pacific region, its growth trajectory is only hindered by the prevailing chattel mortgage system. The Philippine government has thus embarked on strengthening its financial infrastructure system by undertaking the secured transactions reform using the UNCITRAL Model.

**Secured transactions reform in East Asia: Progress and challenges**

Elaine MacEachern

Over the last 20 years, steady progress has been made in reforming secured transactions legal and institutional frameworks in the ASEAN economies. However much remains to be done to reach the reform objectives set out by policy makers in the region. Viet Nam an early reformer, starting in 1999, chartered a path for the other two Mekong countries to follow, namely, Lao PDR and Cambodia both following some years later. However, the larger economies in the region, Thailand, Indonesia, Philippines, Malaysia, have been taking somewhat longer to adopt a modern secured transactions regime. This in the view of the author is mainly due to a lack of political will from the public-sector side and a lack of any real pressure from various financial market players on the private sector side. This chapter explores the trajectory of these reforms in terms of the progress and challenges faced thus far.

**Secured transactions law reform in common law jurisdictions (Brunei as example)**

Louise Gullifer

The unreformed law of secured transactions in most common law jurisdictions is based on English law, with all its historical accretions. While there are many benefits of English law – the flexibility of equity, the floating charge, liberal rules on out of court enforcement – it suffers from fragmentation and complexity. Further, many unreformed common law jurisdictions lack a registration system that met modern requirements. This paper examines the benefits, and difficulties, of moving from an unreformed common law system to a reformed one, with particular reference to the reform of the law of secured transactions in Brunei.
Secured transactions law in Singapore: Living with untidiness
Dora Neo

As a result of its legal history, the law of secured transactions in Singapore is similar to the traditional position under English law, with an approach that emphasises form rather than function. Title-based financing is not regarded as a security, and treatment of security interests varies according to whether the asset involved is a chattel or a chose in action. Different rules regarding creation, registration and party rights apply depending on whether the entity providing the security is incorporated or not. Company charges are governed under the Companies Act, whereas security granted by individuals and unincorporated businesses potentially fall under the archaic Bills of Sale Act. Priority rules are based on the interaction of principles of common law and equity, and are not always clear. This chapter explores the complexities of the law in Singapore, and the prospect and necessity of change.

Reforms needed to bring Indian secured transactions law on par with UNCITRAL Model
Madhukar Umarji

Secured transactions law in India – Suggestions for reforms

Current status of the Indian secured transactions law

- The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- Registration system operating under the SARFAESI Act;
- The recent reforms extending the law to lease and hire-purchase transactions and intellectual property rights, widening the scope of registration system and recognizing priority of secured creditors over taxation dues;

Further reforms suggested to bring the Indian law in conformity with UNCITRAL Model

- Universal application of Law;
- Provisions relating to registration which are extended to all secured transactions and priority to secured creditors whose securities are registered need to be brought into force and made effective;
  o The SARFAESI, 2002 is also applicable to securitization of financial assets. It is necessary to segregate provisions relating to securitization whether classified as nonperforming or not into a separate law.

The secured transaction reform in Pakistan
Marek Dubovec

Pakistan enacted the Financial Institutions (Secured Transactions) Act in 2016, as part of a reform initiative that modernized the entire credit infrastructure of the country. The Secured Transactions Act was complemented by the Corporate Restructuring Companies Act, 2016 and the Companies Act, 2017. The Secured Transactions Act creates a framework that, in some material respects, departs from the UNCITRAL Model Law and Personal Property Security Acts, but those deviations are as a result of deliberate decisions taken by the drafters and stakeholders. This Chapter will explain why certain approaches were inevitable to follow, and how the drafters attempted to ensure that the Act provides a modernized and predictable
A framework for secured transactions that is tailored to the needs of the country. The supporting Rules and Regulations have been drafted, but the Act still awaits its implementation.

**The movable property secured transaction regime in Bangladesh**
Marek Dubovec

The secured transaction framework for movable property in Bangladesh is outdated and fragmented. Depending on the nature of movable property and the type of grantor, several laws address the creation, perfection, priority and enforcement of security rights. Often, the applicable regimes overlap, are inconsistent with each other, but also leave significant gaps. Bangladesh has undertaken a project to create an umbrella secured transaction legislation reflecting key principles of a modern secured transaction legal framework. The project aims to establish a single collateral registry for notices of security rights. The proposed Bill is aligned with the international best practice and also caters for unique local issues. Its implementation in the near future is expected to lead to increased access to credit especially for micro, small and medium-sized enterprises.

**PPSA reform in developed countries**
Anthony Duggan

The focus of this paper is on PPSA law reform, with particular reference to the position in Canada and Australia. In Canada, there have been no meaningful reforms for the past ten years. The situation is particularly acute in Ontario which has the oldest of the provincial PPSAs and a register based on outdated technology. In Canada, there are three main obstacles to timely PPSA law reform: (1) the challenges posed by Canada’s federal system to co-ordinating law reform efforts across the country; (2) the absence of an expert body to oversee the legislation and make recommendations for change; and (3) the lack of funding for register upgrades. The paper will identify and assess recent steps taken to address some of these problems. The paper will also compare Canada with Australia in relation to the three concerns.

**Secured transactions law reform in Asia and access to finance: What can international instruments offer?**
Orkun Akseli

The availability of credit and the consequent need to reform collateral laws are important factors in improving access to finance. The ability to give security influences both the cost of credit and the availability of credit. International instruments promote low-cost credit by creating certainty on the status of the asset (e.g. through registration), by increasing the types of assets available as collateral, by allowing the creation of security with minimum restrictions, by establishing certainty in creditors’ priority status and competition among different types of creditors.

This paper analyses the fundamental principles of the UNCITRAL’s legislative texts on secured transactions and provides a comparative perspective as to how these texts can assist Asian economies to have better access to finance.
The connection between secured transactions and insolvency in modern and unreformed insolvency regimes

Ignacio Tirado

A system of secured transactions cannot be effective unless it is adequately coordinated with other parts of the legal framework that regulate the market of credit. Contract law, procedural rules, financial regulation or insolvency law are amongst those where coordination is most necessary. Although the paper will at least briefly touch upon all of them, it will concentrate on the relationship between secured transactions and insolvency law. Special attention will be paid to the effects of the opening of pre-insolvency (hybrid/regulated out of court) and formal insolvency proceedings on the enforcement -and other rights- of the secured creditor. A general comparison of the different types of secured credit (floating vs fixed, etc.) and their legal treatment in insolvency will also be included. And the position of the secured credit in the decision-making process in out of court proceedings as well as in the hierarchy of claims of formal insolvency will be analyzed in detail.
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Network : NUSOPEN
UserID : NUSV71050
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Domain : NUSEXT

You may be prompted to configure your mobile device or laptop to access the NUSOPEN network.

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