

SECURED TRANSACTIONS REFORM IN THE AMERICAS

Department of International Law
Secretariat for Legal Affairs



Foreign Affairs, Trade and
Development Canada

Affaires étrangères, Commerce
et Développement Canada

Organization of
American States



Secured Transactions and Collateral Registries Reform based on the Model Inter-American Law on Secured Transactions and its Model Registry Regulations

The OAS Secured Financing Project is intended to play a major role in the development of secured transactions and collateral registries throughout the Americas, improving the capacity of Member States to implement policies and secured financing frameworks that stimulate access to equitable credit, especially for micro, small and medium enterprises (MSMEs), and are attentive to the modern financing needs of women-owned businesses.

1 Economic Impact of Secured Transactions in the Americas

In a highly competitive and global environment, with cross-border lending activity becoming increasingly prevalent, access to secured credit provides a key source of capital for economic growth. To promote and facilitate adequate access to and maintain the flow of secured credit to the private sector, a modern secured transactions law is a fundamental legal mechanism for financing business, consumer and commercial transactions. Strengthening and modernization of legal frameworks and institutions for secured transactions are thus paramount for stimulating sustainable economic growth, job creation and raising living standards.

Wealth in Latin America has remained almost exclusively land-based. Consequently, when assets are physically located in Latin America or the Caribbean, lenders are constrained by outdated laws that are largely based on real property regimes. Developing modern legal frameworks will foster the necessary transition to enable financing secured by personal property in order to help businesses, especially MSMEs, gain access to affordable credit.

Credit constraints remain major challenges in Latin America and the Caribbean, making it difficult for local businesses to compete on an equal level playing field against foreign competitors governed by modern secured



financing laws. Many economies in this region are still weighed down by the lack of inexpensive credit across multiple sectors. The implementation of uniform, predictable and efficient rules that facilitate low-cost financing for both men and women entrepreneurs seeking access to collateralized finance plays a crucial role in creating incentives that encourage foreign investment, restore credit-market competitiveness and will put these economies on the path to sustained economic growth.

When addressing the problem of limited access to equitable credit, many countries face the challenge of modernizing their laws related to secured transactions while protecting

existing lending practices and facilitating the development of new practices at the same time. In addition, enhanced standards of transparency of information and capitalization in regard to lender's assets have introduced new reporting requirements that mandate banks to report to national authorities and relevant international bodies—in particular, central regulatory and supervisory agencies—and have strengthened policies on the classification of loans based on quality of collateral and credit risks. Implementing the aforementioned regulatory reforms goes hand in hand with the design of a balanced mix of sound secured transactions laws and unified centralized collateral registry mechanisms.

Looking ahead, it becomes evident just how important it is to move forward with secured transactions reform, particularly reform that is designed to assist Member States progress towards providing increased flexibility that addresses the financing needs of MSMEs through sound policies and fundamentals.



2 Legal Instruments

The OAS has promulgated legal instruments that form the basis for a predictable, fair and efficient system of secured financing. The centerpiece is the Model Inter-American Law on Secured Transactions (“Model Law”), which provides the necessary legal framework for satisfactory domestic implementation of secured transactions reforms. Approved by the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI) on February 8, 2002, the Model Law governs security rights in a broad range of encumbered assets (“collateral”), including present, future, tangible and intangible movable assets that are, in fact, widely used to secure domestic and international financing transactions.

Secured transactions reforms need to include the establishment of efficient, publicly accessible security rights registries in order to be effectively implemented. Based on this premise, the Model Law has been supplemented by the Model Registry Regulations (“Model Regulations”), which were approved by the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) on October 9, 2009, to provide urgently needed guidance to Member States with respect to the establishment and operation of security rights registries.

The establishment of a central registry serves the critical purpose of maintaining a reasonable degree of standardization of the security documentation to ensure fairness in enforcement and compatibility with the registries of other countries in the region. In this regard, the Model Regulations foster certainty and transparency of security rights in movable assets, which are key qualitative factors in establishing the suitability of these assets to serve as collateral for bank lending.



3 Mandate and Project Outlook

At the heart of its efforts to carry out the mandate of the OAS General Secretariat, namely, to assist OAS Member States in the local adoption and implementation of the Inter-American instruments on secured transactions, the Secretariat for Legal Affairs, through its Department of International Law, encourages Member States to consider both instruments when adopting or revising legislation relevant to secured transactions. In doing so, the Department promotes the establishment of predictable systems of secured lending in Member States through the reform of secured transactions law.

In this capacity, we provide technical assistance at the request of Member States in the local adoption and implementation of these legal instruments on secured credit aimed at improving economic efficiencies and strengthening credit market resilience by increasing the accessibility of finance.

The main activities of the OAS Secured Financing Project include:

- Providing expert advice to Member States and drafting recommendations for the local adoption of the Model

Law and Model Regulations, based on disparities between these models and the current legal and regulatory frameworks, including considerations relating to the uses of credit and collateral, the establishment of priorities among security interests and the rules governing default and enforcement;

- Organizing seminars for the local and regional implementation of secured transactions law reform designed to share the expertise of secured transactions experts, local and foreign governmental officials, forward-looking political champions, key beneficiaries, international organizations, co-sponsors and national mechanisms for women's rights on a wide array of topics that are critical to effective access to finance. Through a broad-based "participatory law reform process", these seminars will result in recommendations for the reform of existing local laws and financing practices that are in line with internationally recognized standards and best practices. Participants will also discuss approaches to better



integrating the work of their organizations into the secured transactions dialogue;

- Offering technical assistance and training at the request of Member States to help build the expertise and institutions necessary to implement key recommendations that emanate from the seminars described above;
- Raising awareness on the importance of increasing the accessibility of credit to women, and in particular, to women-owned MSMEs; and
- Drafting of a proposed framework for the regional implementation of the Model Law and Model

Regulations based on the findings, best practices, and successes of the Member States participating in the Project, with a continuing emphasis on mobilization and democratization of credit, maximum use of collateral value, and a widely applicable design of the operational features of the registry system and enforcement measures.

We also collaborate with and support the efforts of other international and multinational bodies, including the United Nations Commission on International Trade Law (UNCITRAL), development banks, and bilateral and multilateral aid agencies in their efforts to encourage Member States to adopt legislation that facilitates secured lending.



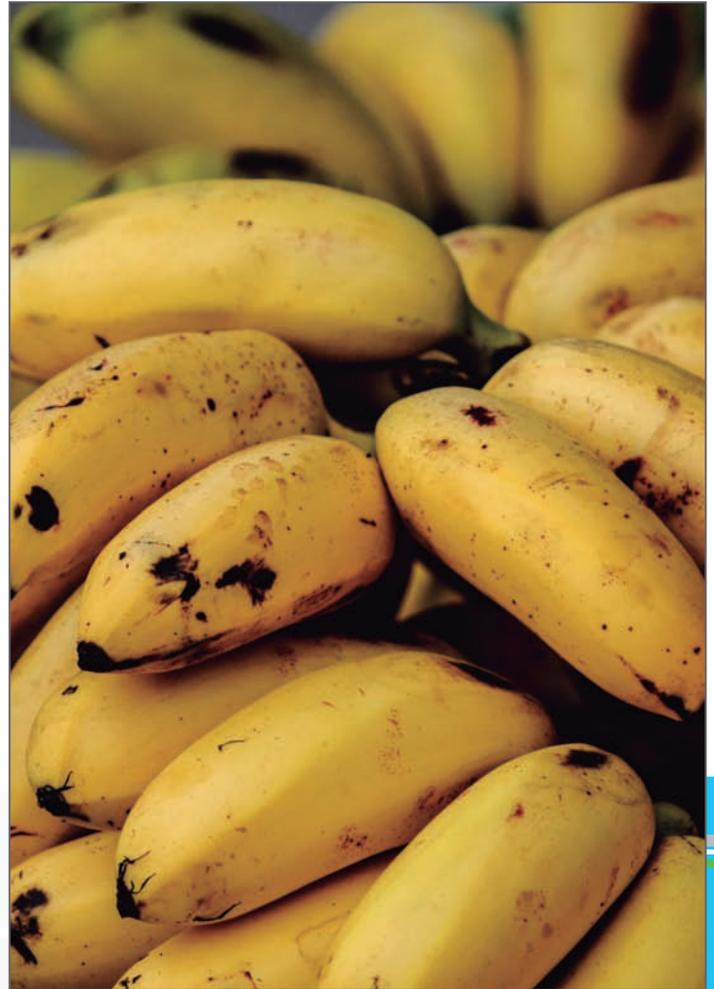
4 Success Stories

A number of countries in the Hemisphere, including Guatemala, Honduras, Peru and most recently Colombia, have enacted modern secured transactions laws (Ley de Garantías Mobiliarias) to better address rapidly changing commercial and financing needs. In 2010, Mexico put into operation its moveable assets registry (Registro Único de Garantías Mobiliarias), making financing readily available to MSMEs to help them address their modern day needs. In recent years, Costa Rica and El Salvador made significant progress toward enactment of effective and efficient secured transactions laws, with the latest version of their respective secured transactions laws being presented before Congress, which is a major step in the right direction for these economies.

5 Features of a Well-Functioning Secured Financing Regime

The Model Inter-American Law on Secured Transactions and its Model Registry Regulations provide the necessary framework to alleviate current legal shortcomings in Latin American and Caribbean countries by creating a non-possessory security interest and form the basis for a uniform system that eliminates competing devices, provides flexibility, protects third parties and broadens the type of property that may serve as collateral; this system also provides fast and effective enforcement remedies.

In contrast with the current high cost of registration under several registry systems, the Inter-American instruments also facilitate the creation of computerized registry systems that would ensure uniformity in registration procedures, facilitate multiple jurisdiction registrations and enable an interconnectedness among similar registries in the Americas; this will make the registration process more effective, flexible, simpler, faster and less expensive. Additionally, these instruments enable development of a reliable system that would alert third parties to the existence of security rights, with a clear priority scheme, improving its effectiveness in establishing priorities between secured parties and against third parties.

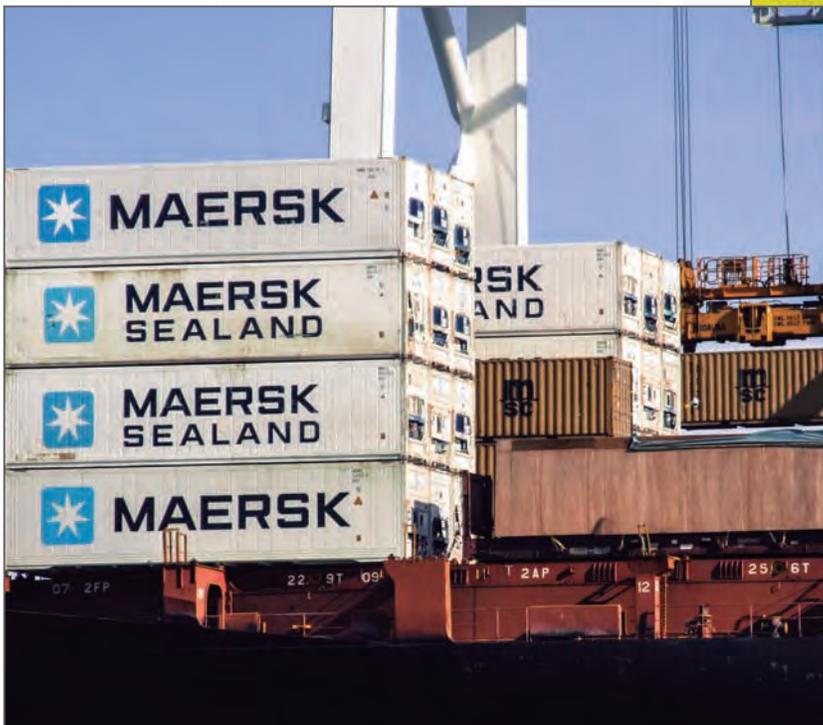
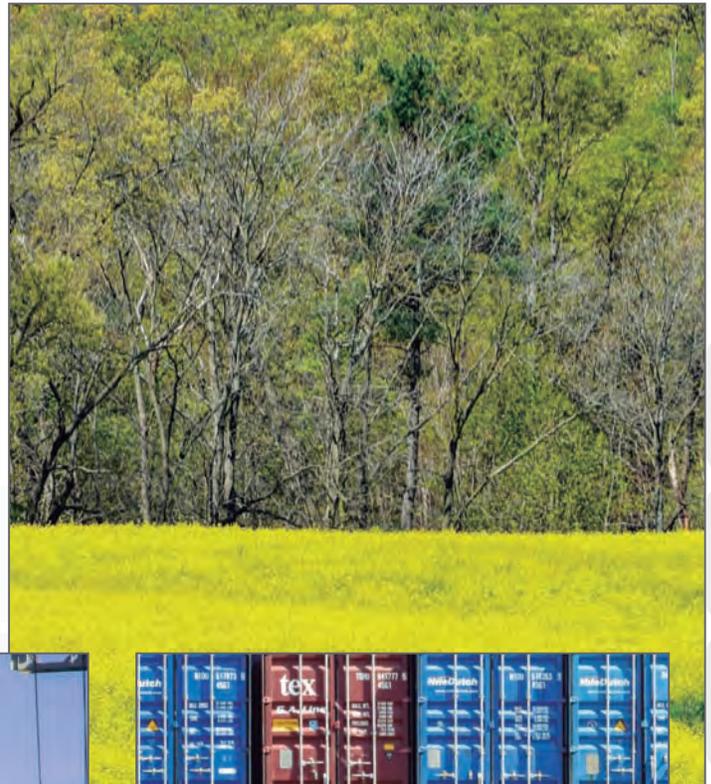


Partnerships

The OAS Secured Financing Project is made possible through funding from the Government of Canada. The Department of International Law has built enhanced effective partnerships with international transactions experts, national governments, the private sector, women's business groups, non-governmental organizations and multilateral institutions, to ensure effective support for the Member States participating in the Project.

At the OAS, we are pursuing many avenues to engage with a broad network of stakeholders to improve the quality of secured transactions systems in the Americas. These stakeholders include the following:

- OAS Member States that may request capacity building to improve their current secured transactions regimes and collateral registry systems;
- Potential donors that may consider the possibility of funding one or various activities of the Project;
- National, regional and international organizations, Member State officials, high-level speakers and panelists from recipient countries willing to recount their experiences with OAS technical assistance or to contribute their expertise to the Project; and
- Other potential participants and partners.





Please contact the OAS Secured Financing Project to learn more about the domestic and regional benefits associated with its implementation and issues affecting key stakeholders in Member States, particularly women-owned MSMEs, which are among those most affected by credit shortage.

Contact

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*Additional information about the OAS
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