

**EBRD's Model Law on Secured Transactions –  
Are There Lessons to be Learnt?**

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**Vienna, 2 March 2010**

# Why is EBRD concerned with secured transactions law reform?

- Established 1990
- Combining both the functions of World Bank (International Bank for Reconstruction and Development) and International Finance Corporation (IFC) in one international financial institution
- Regional focus on central and eastern Europe
- An investment bank ...
  - Direct (or indirect) experience in lending and structuring secured transactions
- ...with a development mission
  - International organisation which can relay concerns / views to government
- Need to facilitate the development of credit markets and the role of secured transaction already identified in 1992 as main target for reform efforts
  - Now 18 years of EBRD secured transactions law project!

# Elements of EBRD law reform work

## Principles

- EBRD Core Principles for a Secured Transactions Law (1997)
- Publicity of Security Rights. Guiding Principles (2004)
- Publicity of Security Rights. Setting Standards (2005)
- Mortgages in transition economies (2008)

## Model Law and Commentary

- EBRD Model Law on Secured Transactions (1994)
- Commentary to the EBRD Model Law on Secured Transactions (1994) (which was drafted alongside the model law)

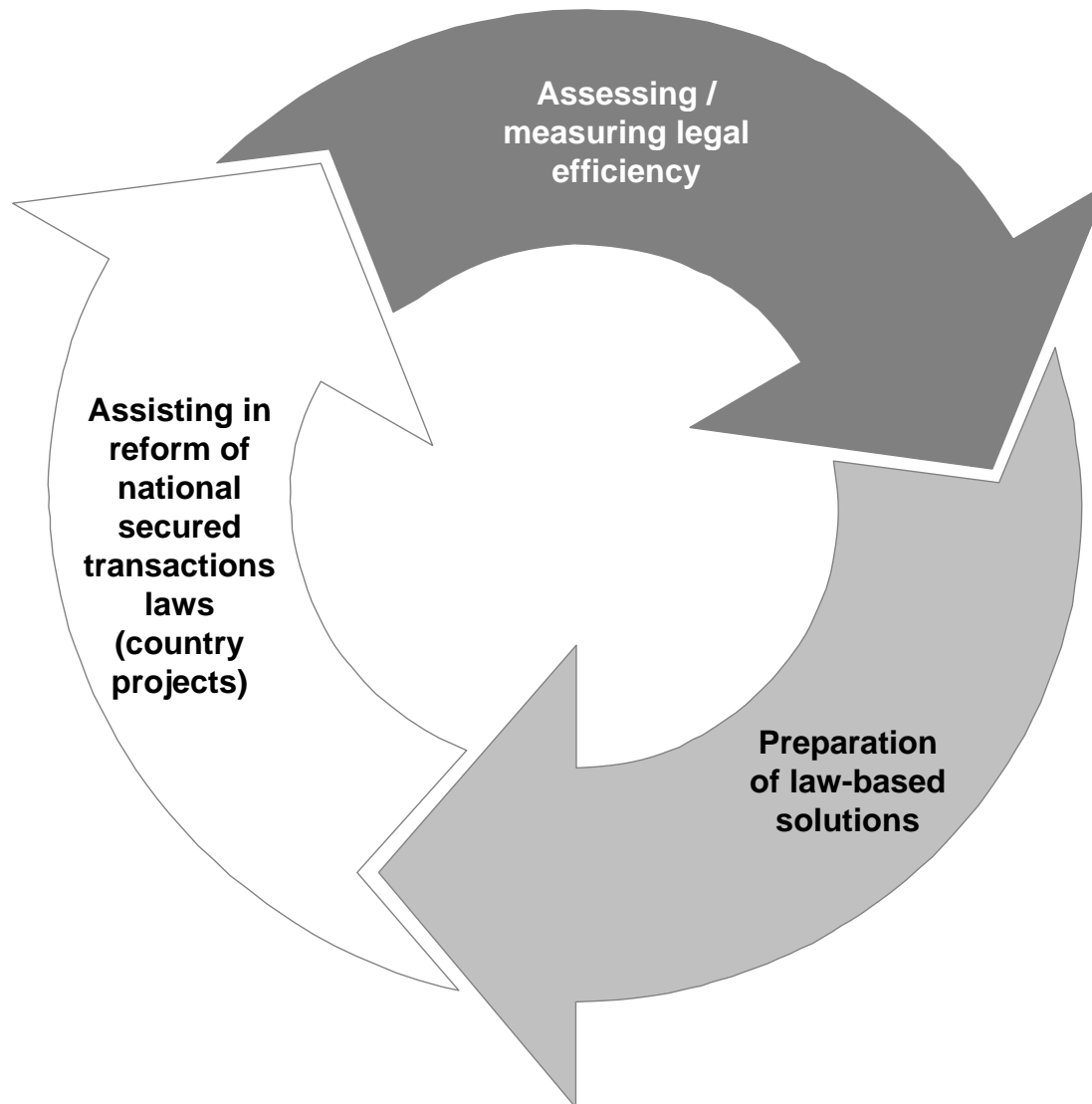
## Conferences and exchange with other national and international institutions

- E.g. Moscow (1994), London (1994, 1995); Zagreb (1995), Bratislava (1995), Moscow (2007), Washington (2008)
- E.g. World Bank, IMF, ADB, UNCITRAL (convention on assignment on receivables), Unidroit (convention on international interests in mobile equipment)

## Country specific work

- Web-based EBRD collection of central and eastern European laws
- Region-wide legal efficiency assessments (see annual Transition Reports, newsletter Law in Transition)
- EBRD country comments (e.g. Azerbaijan (1996), Bulgaria (1995), Hungary (1996), Russian Federation (1996))
- EBRD involvement in local law reform (e.g. Azerbaijan, Georgia, Hungary, Kyrgyzstan, Latvia, Moldova, Mongolia, Poland, Russian Federation, Serbia and Montenegro, Slovak Republic)

## EBRD secured transactions reform work cycle



# Economic functions of secured transactions law 1

## ■ **Micro-economic** functions of security

- **Reduction of risks of losses** of lender with respect to performance of debt, in particular debt service (repayment of interest payments) in the case of loans
  - ... Dependent on legal efficiency of security right
  - ... Dependent on value of collateral
- Successful reduction of risk of lender's losses leads to
  - ... Reduction of interest rate
  - ... Increase of loan amount
  - ... Extension of credit tenor
  - ... Decrease of borrower's equity contributions
  - ... Improvement of other terms and conditions (e.g. financial cover ratios in loan agreements such as the debt service cover ratio)

# Economic functions of secured transactions law 2

## ■ Macro-economic functions of security

- Security has positive effects on the whole economy if the risk reduction is achieved efficiently
  - ...**Investment effect:** security interests support investments in an economy
  - ...**Allocation effect:** secured transactions support economically efficient allocation of credit (a scarce economic resource)
    - credit is extended to creditworthy borrowers
      - »Borrowers which are able and prepared to provide security rights in valuable assets
      - »Requires transparency of secured transactions (ideally publicity)
- However, decrease in risk of losses of the securityholder is achieved at the **expense of third persons** whose risk of losses is increased; therefore, economic effects on the whole economy sometimes are put into doubt

# Core Principles for a Secured Transactions Law of the European Bank for Reconstruction and Development (1997)

- Core Principles provide catalogue for the legal efficiency of a secured transactions law; it is particularly useful in assisting to formulate major reform goals

## Purpose of security and objectives of reform

1. Security should reduce the risk of giving credit leading to an increased availability of credit on improved terms

## Effectiveness of security law

2. The law should enable the quick, cheap and simple creation of a proprietary security right without depriving the person giving the security of the use of his asset
6. The costs of taking, maintaining and enforcing security should be low
4. Enforcement procedures should enable prompt realisation at market value of the assets given as security

## Encouraging the use of security in the widest possible range of circumstances

10. As far as possible the parties should be able to adapt security to the needs of their particular transaction
7. Security should be available (a) over all types of assets (b) to secure all types of debts and (c) between all types of person
8. There should be an effective means of publicising the existence of security rights
9. The law should establish rules governing competing rights of persons holding security and other persons claiming rights in the assets given as security
3. If the secured debt is not paid the holder of security should be able to have the charged assets realised and to have the proceeds applied towards satisfaction of his claim prior to the other creditors
5. The security right should continue to be effective and enforceable after the bankruptcy or insolvency of the person who has given it

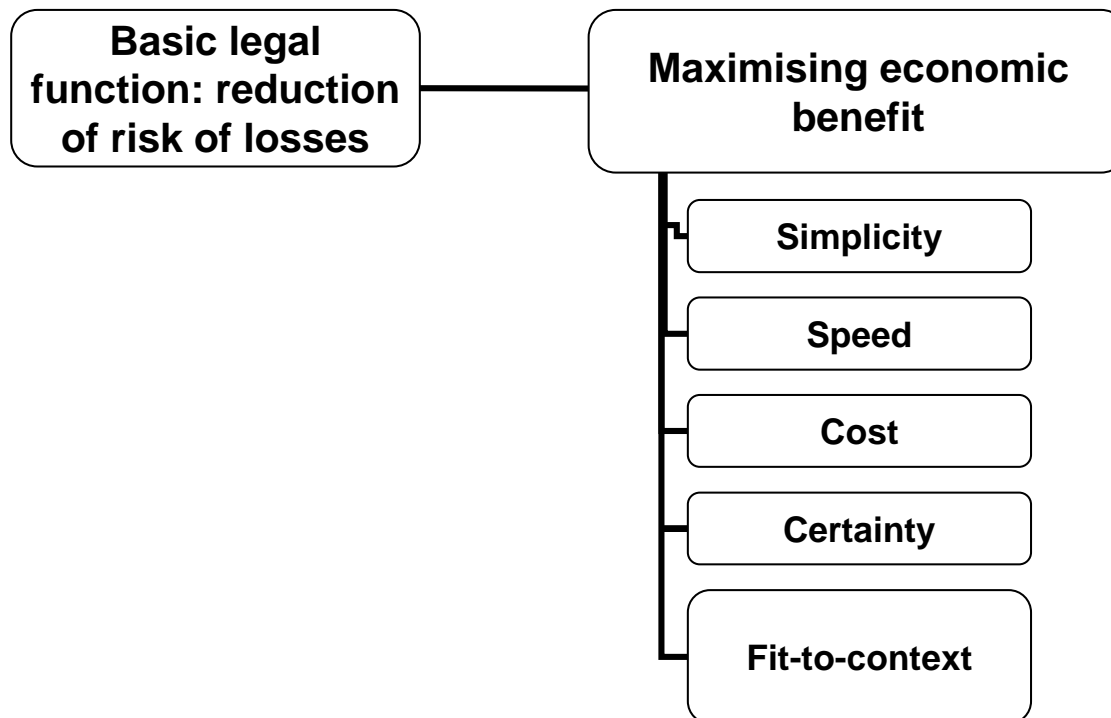
# Legal efficiency macro-criteria to guide / assess reform

- Legal efficiency measured by “the extent to which

- (i) a law and
- (ii) the way it is used

provide the (economic) benefits that it was intended to achieve” (EBRD, *Mortgages in Transition Economies*, 2008)

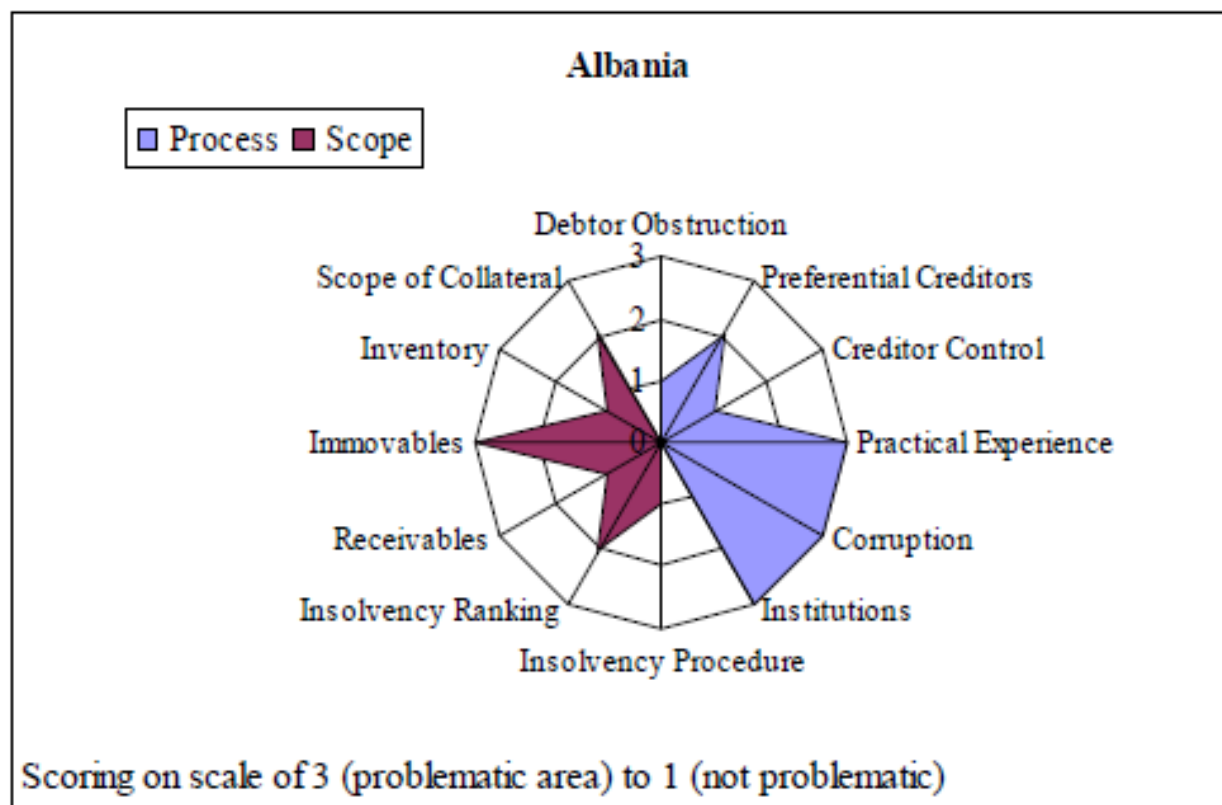
- Legal efficiency not measured against model law but against reform goals





## Example for EBRD legal efficiency assessment of national secured transactions laws

- Spider diagrammes visualise legal efficiency assessment
- Basis for assessment is typically questionnaires completed by relevant local experts



## EBRD guiding principles for the publicity of security rights (2004)

- **EBRD** gained extensive experience with the reform of registers for security in mobiles and the introduction of electronic registers in Hungary, Moldova and Slovakia. The reform goals of a register for security in mobiles was summarised in nine “guiding principles”

### Publicity

1. A regime for secured credit should provide for effective publicity of charges.
2. As a result of publicity it should be possible to find out what charges are claimed over a person's assets and their chronological order of ranking.
4. Failure to publicise a charge makes it ineffective against third parties.

### Registration

3. Publicity is best achieved by registration, most often against the person granting the charge.

### Operation of register

5. The system for giving publicity and for accessing the publicised information should be simple.
6. The system for giving publicity and for accessing the publicised information should be fast and inexpensive.
7. The register should be accessible for all persons and all registered information should be public.
8. The method of recording, storing and accessing information should protect against error, abuse and fraud.
9. The registry should be operated and managed transparently as a public service.

# Key concepts of the EBRD model law 1

- EBRD model law built on **nine key concepts**

**1**

## **Single security right**

Also covering real estate

But: no Art. 9 UCC type functional approach

**2**

## **Right in property**

Liability limited to charged property under charge

**3**

## **Securing business credits**

No security for consumer credits;  
however, rules on consumer protection  
can be added to the basic framework

**4**

## **Flexible definition of secured debt and charged property**

**5**

## **Public registration of charges**

„Medium degree of publicity“: Requirement  
for creation (modified to existence  
between parties in EBRD, Publicity  
of Security Rights. Setting Standards (2005));  
no basis for good faith acquisition; registration

# Key concepts of the EBRD model law 2

**6**

## **Unpaid vendor's charge**

Requalifying retention of title clauses as charges; vendor's security must be registered within 6 months from creation

**7**

## **Use of charged property**

Chargor can transfer title to charged property free from charge in the ordinary course of trading activities

**8**

## **Broad rights of enforcement**

Out-of-court enforcement; realisation of assets can be arranged privately  
Insolvency only covered in form of broad principles

**9**

## **Enterprise charge**

- Charge over all assets of enterprise
- Pool of charged assets may constantly change
- Enterprise administrator in enforcement proceedings

**10**

## **Minimum restrictions**

Parties allowed to structure security agreement to fit their purposes

# Reforms of secured transactions laws in central and eastern Europe

- There are mainly **four reform approaches** which can be distinguished in central and eastern Europe

Art. 9 UCC

- Some countries (Albania, Kosovo, Montenegro and to a limited extent Bulgaria and Romania) were strongly influenced by **Article 9 Uniform Commercial Code**

EBRD model law and  
Core Principles

- **EBRD Model Law on Secured Transactions** and Core Principles were particularly influential in Georgia, Hungary, Latvia, Moldova, Serbia and the Slovak Republic

Russian Pledge Act

- The **Russian Pledge Act** (1992) influenced the reforms in a number of CIS countries;
- However, most CIS countries (including the Russian Federation) have now further reformed their secured transactions laws

National solutions

- Some countries have developed their own, **national solutions** (in particular Czech Republic, Poland and the Baltic states)

## Influence of other EBRD instruments

- EBRD instruments other than the model law have also contributed to the legal reform efforts and play an important role in the EBRD secured transactions reform work cycle

Core principles for a  
secured transactions  
law

- Used as basis in various country projects

EBRD principles for  
the publicity of  
security rights

- Used in specific registration advisory projects

Mortgages in  
transition economies

- Used as basis in various country projects

Legal efficiency  
assessments

- Systematic reporting on reform progress since 2000

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