UNCITRAL
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To Modernize or Not to Modernize: Secured Transactions Law in Japan
Yamagata University
Prof. Kumiko Koens
Introduction

1. The characteristics of Japan’s markets that would make a modern secured transactions law less beneficial.

2. The characteristics of credit markets that facilitate low-cost credit and easy access to credit even without a modern secured transactions law.
I. Secured Transactions Laws

a. Title Transfer in general.
b. Delivery/fictitious delivery
c. Registration
II. Business Credit/Loans

a. 9% of business have no outstanding debt.

b. 23.3% of borrowers provide no collateral.

c. The loans with collateral or guarantees.
   i. 1.6 – 2.5% are asset-based loans.
   ii. 51.9% are secured by real estate collateral.
   iii. 7.4% by bank deposits collateral.
   iv. 4.4% by private guarantees.
   v. 44.6 by public guarantees.
II. Business Credit/Loans (Cont’d)

- CGCs (Credit Guarantee Corporations) are public institutions that support SMEs by serving as public guarantors to facilitate borrowing from financial institutions for business operations.

- When a borrower defaults, the financial institution will receive payment of the secured obligation (as with insurance) by CGCs.
III. The Characteristics of Japan Business Credit markets (1)

- Reducing benefits of modern secured transactions laws and incentives for Japan to adopt such laws.
III. The Characteristics of Japan Business Credit markets (2)

- Facilitating low-cost credit and easy access to credit in the absence of a modern secured transactions law.
IV. Tentative Conclusions

a. Business credit is available notwithstanding the absence of modern secured transactions law.

b. Adopting modern secured transactions law principles still could be beneficial, especially if:
   i. CGC guarantees become less available because of financial burden on government.
   ii. Japanese lenders become more familiar with ABL.
   iii. Education of borrowers.
IV. Tentative Conclusions (Cont’d)

The emergence of the UNCITRAL Model Law, reflecting a consensus on principles of modern secured transactions laws, may encourage Japanese acceptance of benefits of those principles.
Thank you!