



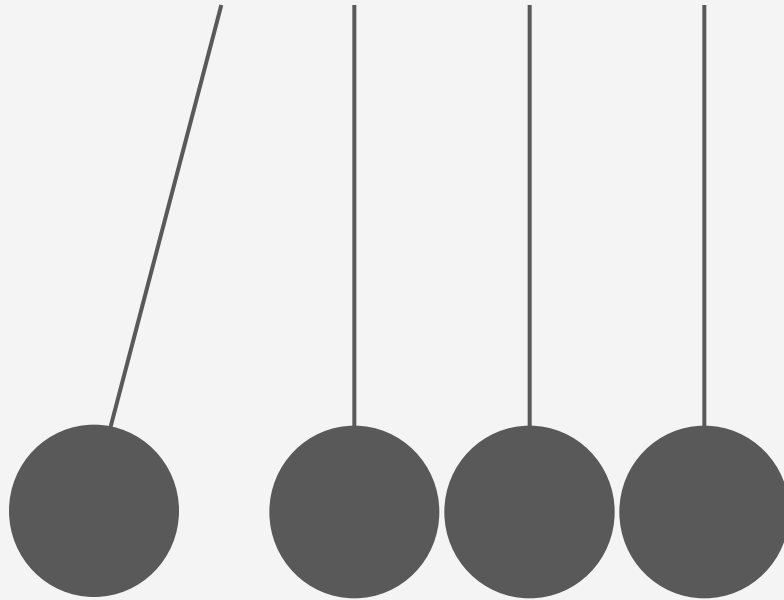
< Making it easier to obtain credit for MSMEs >

UNCITRAL's work on MSMEs and secured transactions regimes

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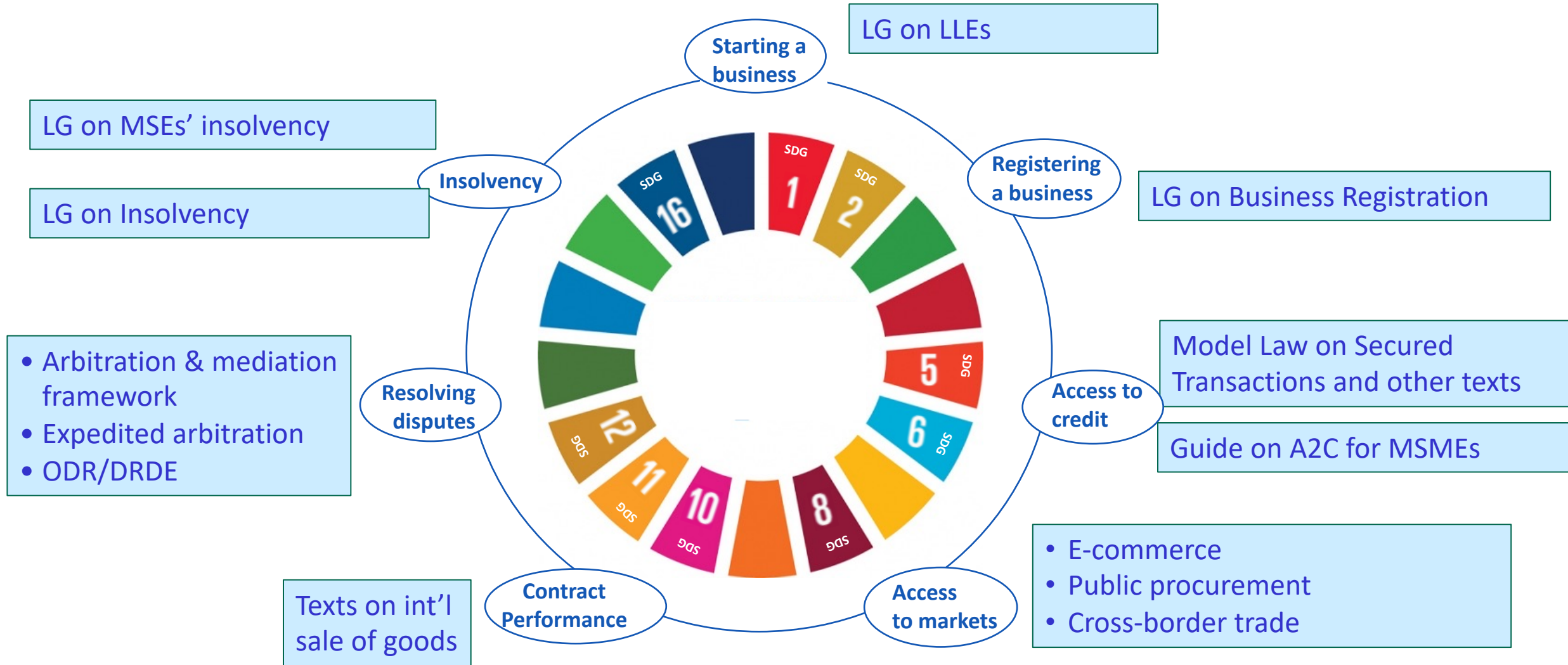
Why supporting MSMEs?





- ① Legislative Guide on Key Principles of a Business Registry (2018)
- ② Legislative Guide on Limited Liability Enterprises (LLE) (2021)
- ③ Legislative Guide on Insolvency Law for Micro and Small Enterprises (2021)
- ④ UNCITRAL Guide on Access to Credit for Micro, Small and Medium-sized Enterprises (2023)

UNCITRAL tools for MSME life-cycle



Key recommendations of the Guide on Access to Credit

Recommendation 1

The law should ensure that MSMEs have access to credit without discrimination based on any ground such as

Recommendation 2

The law should ensure that:

- (a) Women have equal and enforceable rights to access credit in order to start and operate a business; and
- (b) The requirements for access to credit do not discriminate against potential borrowers based on their gender.

Key recommendations of the Guide on Access to Credit

Recommendation 3

..., the law should **promote the formation of a business**, including MSMEs, in the formal economy by providing for an efficient and simplified system of business registration such as the UNCITRAL Legislative Guide on Key Principles of a Business Registry.

Recommendation 4

..., the law should provide for **simplified organizational forms** for MSMEs such as the form recommended by the UNCITRAL Legislative Guide on Limited Liability Enterprises.

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Key recommendations of the Guide on Access to Credit

Recommendation 6

The law should provide for a secured transactions regime with respect to **immovable assets** ...:

Recommendation 7

To help ensure that guarantors and financiers of MSMEs are aware of their rights and obligations, the law should:

- (a) Require **the terms and conditions of the guarantee** to be clear, understandable and legible; and
- (b) Identify both the formalities and content requirements necessary to make a guarantee effective.

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Key recommendations of the Guide on Access to Credit

Recommendation 8

To enable financiers to **more accurately assess the creditworthiness of MSMEs who are potential borrowers**, the law should:

- (a) Establish a legal and regulatory framework for ... commercial credit reporting systems; and
- (b) Specify the nature and scope of reporting obligations with respect to such systems.

Recommendation 9

In order to address **MSMEs' financial needs in the context of insolvency**, the law should reflect UNCITRAL standards on Insolvency.

Key recommendations of the Guide on Access to Credit

Recommendation 10

To help ensure that MSMEs are aware of their rights and obligations, the law should require **terms and conditions of the credit agreement** to be presented by financiers to MSMEs in a **clear, understandable and legible way**.

Recommendation 11

The law should identify both the **formalities and content requirements necessary to make a credit agreement effective** taking into account the MSME's interest in understanding the obligation it is incurring and in the avoidance of unfair terms or practices.

Recommendation 12

States should further enhance the legal and policy measures supporting MSME access to credit with relevant programmes and policies for **improving the legal and financial literacy of MSMEs and the capacity of financiers and regulators**.

Key recommendations of the Guide on Access to Credit

Recommendation 5

To enable MSMEs to utilize **movable assets as collateral**:

- (a) The law should provide for a modern and comprehensive secured transactions regime ..;
- (b) The secured transactions regime should:
 - i. Facilitate the **easy creation** of security rights in movable assets;
 - ii. Provide for the creation of a security right in **future assets**;
 - iii. Ensure that a security right can **easily be made effective against third parties** by registration of a notice;
 - iv. **Enable creditors to determine the priority** of their security rights when entering into the transaction by referring to the registry.; and
 - v. **Enable simple and economically efficient realization** on the collateral in the event of default; and
- (c) The secured transactions regime should apply to all transactions in which movable assets are provided as collateral to secure payment or other performance of an obligation,

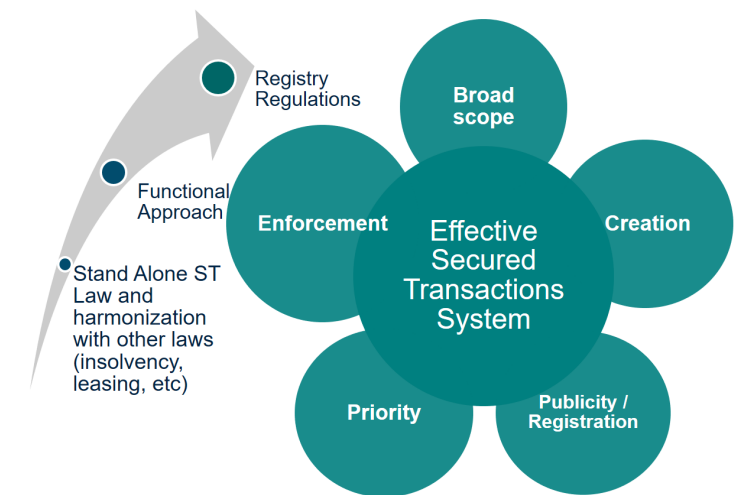
Key elements of a successful secured transaction legislative reform

- Comprehensive regime for all types of movable assets
- Certainty and predictability about transactions, including the rights and obligations of the parties as well as third parties
- Balancing the interests of all parties involved
- Respecting party autonomy

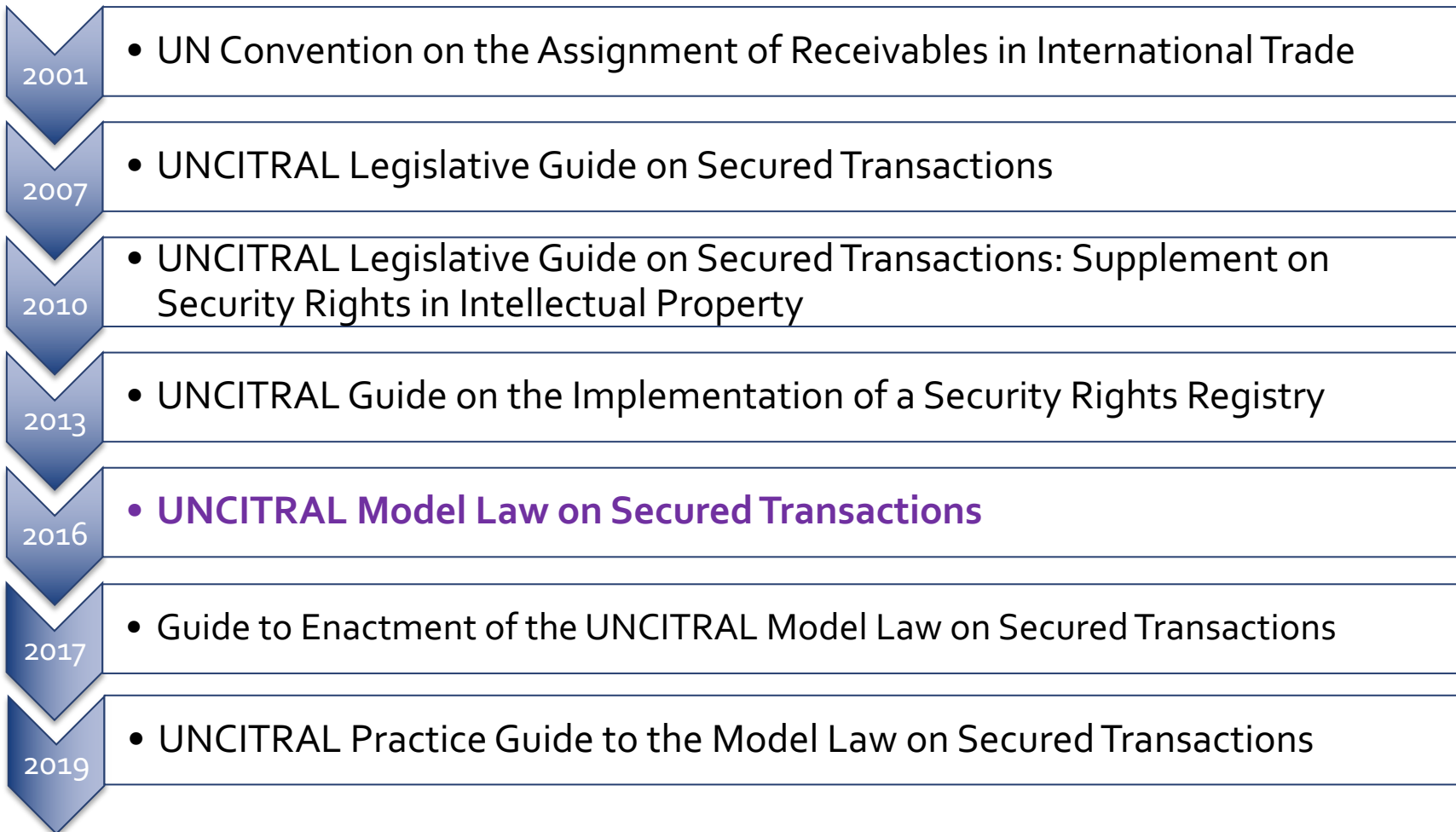
Perceived risk of creditors ▼

Availability of credit at a more affordable rate and
for longer periods ▲

LEGAL AND REGULATORY PRINCIPLES FOR AN EFFECTIVE SECURED TRANSACTIONS SYSTEM



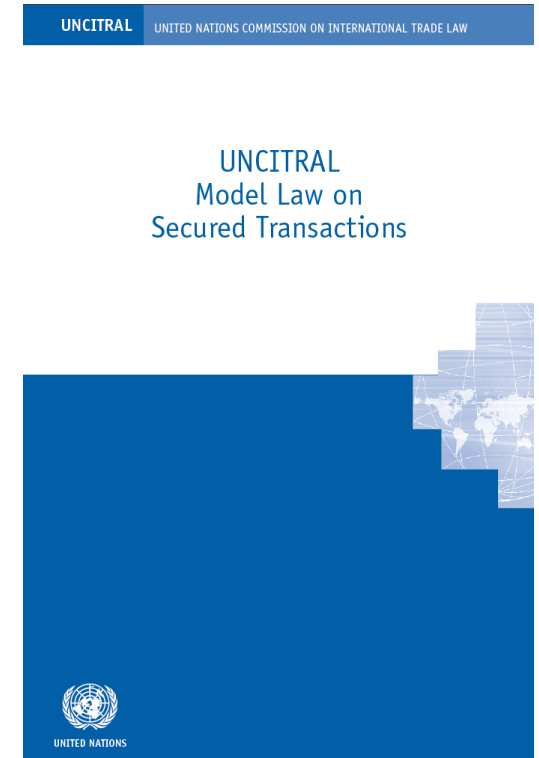
Creating a favorable environment for access to credit



[Explanatory text]
UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions (2011)

UNCITRAL Model Law on Secured Transactions

- A simple, concise text based on the Receivables Convention, Legislative Guide, Registry Guide and the IP Supplement
- Comprehensive and functional approach to address multiplicity of regimes which have created gaps and inconsistencies
- 140 articles including 33 registry-related provisions
- Guide to Enactment finalized in 2017 and the Practice Guide in 2019



The Model Law Approach

- ✓ Movable assets as collateral (**non-possessory security rights**)
- ✓ Functional approach (regardless of the form)

Article 1. Scope of application

1. This Law applies to security rights in **movable assets**.
2. ... , this Law applies to **outright transfers of receivables by agreement**.

Article 2. Definitions and rules of interpretation

(kk) "Security right" means a property right in a movable asset that is created by an agreement to secure payment or other performance of an obligation, **regardless of** whether the parties have denominated it as a security right, and **regardless of** the type of asset, the status of the grantor or secured creditor, or the nature of the secured obligation;

The Model Law Approach

- ✓ Security right in a single category of movable assets, in all assets of the grantor, in future assets

Article 6. Creation of a security right

1. A security right is created **by a security agreement**, provided that the grantor has rights in the asset to be encumbered or the power to encumber it.
2. A security agreement may provide for the creation of a security right **in a future asset**, but the security right in that asset is created only when the grantor acquires rights in it or the power to encumber it.

Article 9. Description of encumbered assets ...

1. ... described ... **in a manner that reasonably allows their identification**.
2. A description ... that indicates that the encumbered assets consist of **all the grantor's movable assets**, or of all the grantor's movable assets **within a generic category**, satisfies the standard in paragraph 1.

UNCITRAL Practice Guide to the MLST (2019)

- Provides practical guidance to parties involved in secured transactions and those whose rights might be affected
- Explains key features of the MLST and illustrates types of transactions possible under the MLST
- Provides step-by-step explanations on how to engage in the most common and commercially important secured transactions
- Includes a chapter primarily for regulated financial institutions and prudential regulatory authorities on the need for coordination between secured transactions law and prudential regulation

**For more information on the work of UNCITRAL
in the area of secured transactions, please visit**

<https://uncitral.un.org/en/texts/securityinterests>

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