

Foreword

Access to credit and secured transactions may now be considered main stream components of law and finance reform, but it has not always been the case.

In 1991, when the European Bank for Reconstruction and Development (EBRD) started its operations in the transition economies of Central and Eastern Europe, it was obvious to all observers that private investment was required, and that this needed to be underpinned by sound financial laws and institutions. It was equally clear to the EBRD that these reforms required the offer of considerable and sustained technical assistance to these countries. This was the purpose of the Secured Transactions Reform Project set up by the EBRD's Office of the General Counsel in 1992.

Interestingly, what was initially seen as an arcane niche has now become a core component of international technical assistance. Financial institutions active in the field understand, of course, that sound banking principles require the use of collateral to maximise the certainty of repayment of debt, but the significance of legal reform in allowing for collateral has not always been appreciated. The choice of collateral is driven by the circumstances, such as the availability of assets, value, and market liquidity. At a minimum, the law should efficiently provide such a choice to lenders and borrowers. Yet, in 1992 this was not the case in any of the EBRD's countries of operations, and is still not the case in too many jurisdictions today. The Bank's first-hand experience of the business environment and enterprises operating in the region (as presented in the in-depth surveys that the Bank conducted in conjunction with the World Bank) also confirmed that access to finance was a major constraint to transition and growth. The considerable investment by the EBRD in financial banking and non-banking institutions in the region in the form of equity and debt reinforced the case for simultaneously fostering the development of sound laws and institutions that support the functioning of debt and equity markets. Over the years, the annual Transition Report published by the EBRD's Office of the Chief Economist has emphasised progress and gaps in this respect.

Much has happened in the last 15 years, but the task is not complete. We observe that secured transactions reform remains an area where better understanding and knowledge dissemination are required. This is the effort to which this volume seeks to contribute. Built on an international

workshop that took place at the EBRD's headquarters in London in 2006, the work brings together some of the best experts in the field and allows them to share their personal experience and understanding of the subject matter with great generosity and passion. We are sincerely grateful to them for their time and commitment.

As, in our view, this volume brings a new and truly global vision of secured transactions reform, it is essential reading for those working in development who want a first initiation to the subject. But it also challenges the pre-conceived views of those who think they know the subject – for instance, the assumption that mortgages and pledges are two different instruments which should be analysed and regulated separately; or those who think that measuring the economic impact of secured transactions reform is impossible or pointless. The book also brings together detailed case studies of reform – or, as interestingly, failed reforms – and puts forward suggestions as to what are the ingredients for, and obstacles to, the success of the reform.

The view of the EBRD is that reform is best initiated and led by local stakeholders, but one key obstacle for those involved, especially the countries themselves, is the lack of information. For this reason the workshop offered them an opportunity to share their experience. A key role for the international financial institutions and other assistance providers is also to make readily available core information (economic and survey data, legal analysis . . .) and give technical advice to enable the best use to be made of that information. Over the years, the EBRD has published a number of documents, starting with the *Model Law on Secured Transactions*, the *Guiding Principles for the Development of a Charges Register*, the *Core Principles for Secured Transactions Law* and several surveys, precisely to enable the countries to deepen their understanding of the subject and make informed choices.

It is not by accident that the work gives much space to voices and experiences from civil law countries: the legal traditions of all of the EBRD's countries of operations have civil law origins. While open to considering modern instruments developed in other systems, the EBRD is eager to propose civil-law-compatible solutions. Civil law countries have sometimes been depicted as unable to adapt to modern financial markets, but the developments in Central and Eastern Europe in the past 15 years show that countries with a civilian tradition are also capable of rapid evolution. In fact, the region is widely recognised to have made more progress in secured transactions reform than any other part of the world.

Most importantly, the volume is evidence of the formidable synergy that can be developed between lawyers and economists when they are prepared to listen to and learn from one another. The EBRD is very proud of the fact

that the Office of General Counsel and the Office of the Chief Economist have collaborated for many years, sharing data and analytical framework in order to ensure that both legal solutions are designed to address economic needs and that economic analysis takes into account the complexity and subtlety of legal and institutional systems.

Of course as some chapters explain, secured transactions is only one component of a complex modern financial system. Just reforming secured transactions is unlikely to bring about the economic benefits of deeper and broader access to credit that a developing country seeks. If, however, as some authors convincingly argue, secured transactions reform has been neglected in the past, this work will hopefully ensure that it is now given the prominence it deserves.

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