

# **INTERNATIONAL COORDINATION OF SECURED TRANSACTIONS LAW REFORM**

*Problems in Coordination, Implementation and  
Quality of Reforms*

*University of Pennsylvania*

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# PROBLEMS RE THE FUNCTIONING OF ST SYSTEM

- Digitalization key: (i) to lower cost (MSME); (ii) to reduce corruption; but...
  - The capacity problem (enough done on this front by donors?)
  - The passivity problem (too many donors: lack of ownership; ex. Kenya)
- Failure at implementation finds poor substitutes:
  - The use of preventive prison in Africa as collection mechanism
  - The use of post-dated cheques (Bangladesh)
  - The “Fiducia”: problems of characterization and scope
  - Receivables as the preferred asset. The problem of lack of formality/difficulties in notification/the need for a registry
- The often forgotten importance of the banking regulatory framework:
  - At inception (% of non-collateralized lending; follow up; generates info)
  - When provisioning

# PROBLEMS RE THE FUNCTIONING OF ST SYSTEM II

- Problems of enforcement:
  - Problems of notification
  - Problems to repossess the asset. A police/bailiff problem
  - Problems in valuation
  - Problems of speed: the constant appeal practice (Latin America: Peru, Mexico)
  - Alternative depends on who to trust: supervision/agencies or judiciary?

# ENDURANCE OF ST REGIME AT THE THRESHOLD

- ST system and contractual remedies: the endurance of covenants and their destructive potential
  - Examples: information/ratios/affecting performance. Reason for a difference?
  - Overprotection of financial collateral? The EU Directive example
- New kid on the Block: the EC Directive Proposal
  - Stay affects pre-insolvency, out of court
  - The contours of the Directive
  - Application of general regime of executory contracts outside the court
  - The expected practical effect of the novelty

# ST SYSTEMS AND INSOLVENCY PROCEEDINGS

- GR: respect + absolute priority + exceptions
  - The problem of the AP vis a vis administration costs/other priorities
  - The Proposal: priority over SR by new financing?
  - The stay of executions according to the standard (limited in time and scope)
  - Protection against avoidance
- Problems in practice:
  - Preserving the value of the collateral (always takes longer to release execution; procedural problems to get release)
  - Makes sense to have different rules depending on the asset
  - Rules for the sale of the business as a going concern

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