

Getting Credit - Legal Rights - Economy

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Dear Contributor,

We would like to thank you for your cooperation with the *Doing Business* project. Your contribution and expertise are essential to the success of the *Doing Business* report, an annual publication of the World Bank and the IFC that benchmarks business regulation in 183 economies worldwide.

Doing Business 2010: Reforming through Difficult Times was launched on September 9, 2009. This year's report received a record number of 2,517 media citations within one month of publication, including coverage from all major global, regional and local media outlets including TV, print, broadcast and web.

The positive feedback from governments around the world who are using the *Doing Business* reports as an input for policy debate about regulatory reform is only possible thanks to the generous contribution of over 8,000 experts like you, in 183 economies.

Since its inception in 2004, *Doing Business* has informed 270 reforms around the world, making it easier for small and medium sized entrepreneurs to do business. In 2008/09, eight economies reformed its secured transactions legislation.

For further information about the report, please visit our website on www.doingbusiness.org. We also invite you to read our quarterly newsletter for updates on the growing global network of *Doing Business* contributors around the world.

For *Doing Business 2011*, we are honored to be able to count on your expertise:

- Before completing the survey, please review the assumptions of the case study. We ask that you update last year's information, included in the survey.
- Please describe in detail any reform that affects the secured transactions and insolvency since June 2009.
- Please answer the Annex for research purposes regarding secured creditor's protection during reorganization/liquidation procedures.

We would appreciate if you could return the completed survey by February 12, 2010 to scroci@worldbank.org. Please make sure to complete your name and address, so we can mail you a complimentary copy of the report.

If you have any questions, do not hesitate to contact us. Thank you again for your invaluable contribution to the World Bank's work.

Sincerely,



Santiago Croci

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Primary Contributor Information

All information will be published. Please **check** the information you **do not** want us to **publish**. We do not publish mobile phone numbers.

Do not publish	Name		
<input type="checkbox"/>	Title (Mr., Ms., Mrs., etc.)	[]	[]
<input type="checkbox"/>	First Name	[]	[]
	Last Name	[]	[]
<i>Not published</i>	Position (e.g. manager, associate, partner)	[]	[]
<i>Not published</i>	Profession (e.g. judge, lawyer, architect)	[]	[]

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Additional Contributors' Information

Name	Occupation	Email	Phone	Address, if different than above
[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]
[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]
[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]

Case Study Assumptions

IMPORTANT: THIS SURVEY FOCUSES ON (NON-POSSESSORY) SECURITY INTERESTS IN MOVABLE PROPERTY. For the following sections please base your answers on fiduciary transfer-of-title arrangements *only if the law does not* allow non-possessory security interests in movable property.

CASE STUDY	
<p>ABC (the Debtor):</p> <ol style="list-style-type: none"> Is a Private Limited Liability Company. 200 employees work for the company. Has its registered office and only base of operations in: Dubai. To fund its business expansion plans, ABC obtains a loan from BizBank (the Creditor) of 10 times the current GNI per Capita: AED 96024.8575 (USD 26147). Both ABC and BizBank are 100% domestically owned. 	
SCENARIOS	
<p><i>Note: Please consider both scenarios when answering the survey. This will allow us to measure the flexibility of your country secured transaction system.</i></p>	
<p>Scenario A: Security interest in ONE CATEGORY of revolving movable assets</p> <ul style="list-style-type: none"> ➤ As collateral for a loan ABC grants BizBank a non-possessory security interest in <i>one category</i> of revolving movable assets, for example its accounts receivable or inventory. ➤ ABC keeps ownership and possession of the assets. 	<p>Scenario B: Security interest in a company's COMBINED assets</p> <ul style="list-style-type: none"> ➤ ABC grants BizBank a business charge, enterprise charge, floating charge, or any charge that gives a security interest over ABC's <u>combined assets</u>. ➤ ABC keeps ownership and possession of the assets.

Reform Update

Reforms in secured transactions and Insolvency laws
<p>1. Have there been any reforms/amendments in secured transactions law(s) or regulations between June 2009 and now?</p>
<p><i>(Please describe in detail and if possible, attach a copy of the legislation or regulation.)</i> Details: []</p>
<p>2. Are you aware of any plans to change the secured transactions law or regulations in your country between now and June 1, 2010?</p>
<p><i>(Please describe in detail, providing dates when possible.)</i> Details: []</p>
<p>3. Are you aware of any reform (in practice or in the laws and regulations) related to secured transactions and Insolvency that is ongoing and is expected to be adopted in the longer term?</p>

(Please describe in detail, providing dates when possible.)

[]

Note: For your convenience, last year's answers are included in this survey. They represent a unified answer, based on the answers we received from various contributors.

Available legal mechanisms for securing a loan with movable property in your country	
<p>4. For securing a loan with movable property by keeping both ownership and possession of the collateral. <i>e.g. Security Interest, fixed charge, mortgage on personal property or any mechanism that fulfills the requirements above.</i></p>	
Last year's answer: []	This year's answer: []
<p>5. For securing a loan with movable property by keeping possession but not ownership of the collateral: <i>e.g. fiduciary transfer of title or any mechanism that fulfills the requirements above.</i></p>	
Last year's answer: []	This year's answer: []
<p>6. For securing a loan with all or a combined category of movable property, keeping ownership and possession of the collateral. <i>e.g. Security interest, floating charge, business charge, enterprise charge or any mechanism that fulfills the requirements above.</i></p>	
Last year's answer: []	This year's answer: []
<p>7. Other mechanisms used as security interest <i>(used for information purposes only.)</i></p>	
Last year's answer: []	This year's answer: []
<p>Please provide the legal basis to you answers <i>(e.g. articles, regulations, etc.):</i> []</p>	
<p>Did you make any changes from last year's answer? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please indicate whether it is a correction or a reform and explain.</p> <p>Correction <input type="checkbox"/> or Reform <input type="checkbox"/></p> <p>Comments: []</p>	

Data Update

Note: For your convenience, last year's answers are included in this survey. They represent a unified answer, based on the answers we received from various contributors.

Please update the data, taking into account the assumptions of the case study. Please describe in detail any change to the data and indicate since when the change took effect. We ask you to specify if the data were erroneous ("correction"), or if the change resulted from a modification in by law which occurred after June 1, 2009 ("reform").

Definitions (for the purpose of this survey)

- **After-acquired property:** any property that a borrower might acquire after an agreement granting a security interest in its existing property.
- **Accounts receivable:** is one of a series of accounting transactions dealing with the billing of customers who owe money to a person, company or organization for goods and services that have been provided to the customer.
- **Collateral:** the property that is the object of a security interest.
- **Fiduciary transfer of title:** a security interest, where the borrower keeps the secured asset in its possession but transfers legal ownership to the lender.
- **Floating charge:** a security interest over all or part, of the assets of a company. It does not fix to specific assets (*i.e.* it "floats") until the borrower defaults, when it "crystallizes" on the collateral covered by the charge at the moment of default.
- **Future interest:** a property interest that entitles its holder to own, possess, or use the property at some time in the future (but not at the time the interest is created).
- **Line of credit:** a loan arrangement in which a lender specifies a maximum amount up to which a debtor can borrow. A debtor generally can draw against its line of credit periodically, and for an unspecified length of time.
- **Non-possessory security interest:** a security interest where the borrower keeps both ownership and possession of the secured asset (collateral). The lender has the right to enforce its security if the borrower defaults.
- **Revolving movable assets:** a group of movable property or assets whose contents are constantly changing, such as accounts receivable or inventory.
- **Security interest:** a right or interest in movable property, granted by a borrower to a lender, that secures repayment (or other performance) of a loan from the lender to the borrower.

1. Parties to a security agreement

a. Are there any restrictions on who can legally grant a security interest in movable property? *(This question relates to individuals and companies. Please do not take into account minors or mentally impaired individuals)*

Last year's answer:

[]

This year's answer:

[]

b. Are there any restrictions on who may legally hold a security interest in movable property? *(This question relates to individuals, companies and any financial institution or bank. Please do not take into account minors or mentally impaired individuals)*

Last year's answer:

[]

This year's answer:

[]

Did you make any changes from last year's answer? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please indicate whether it is a correction or a reform and explain. Correction <input type="checkbox"/> or Reform <input type="checkbox"/> Comment []	

2. Assets and their description

For the following sections, please base your answers on fiduciary transfer-of-title arrangements **only if** the law **does not** allow non-possessory security interests in movable property.

2.1. Scenario A : Security interest in ONE CATEGORY of movable assets Can ABC (the Debtor), grant BizBank (the Secured Creditor) a non-possessory security interest over:	
a.1. Only its accounts receivable (e.g. amounts that ABC expects to receive from third-party buyers for goods or services that ABC sold to them) or its outstanding debts owed to ABC (Debtor) by third parties.	
Last year's answer: []	This year's answer: []
a. 2. According to the law can the accounts receivable/outstanding debts be described in general terms both in the security agreement and when it is registered (e.g. "all accounts receivable") or do they need to be specified with particularity?	
Last year's answer: []	This year's answer: []
b. Only its inventory	
Last year's answer: []	This year's answer: []
b. 1. Are there any major restrictions/requirements prescribed by law when using inventory as security? (e.g. specific description of storage location, updating of lists, etc.)	
Last year's answer: []	This year's answer: []
b. 2. According to the law can the inventory be described in general terms both in the security agreement and when it is registered? (e.g. "all inventory")	
Last year's answer: []	This year's answer: []
c. Only its tangible movable property (e.g. Machinery, furniture, etc.)	
Last year's answer: []	This year's answer: []

c. 1. According to the law can tangible movable property be described in general terms both in the security agreement and when it is registered? (e.g. "all machinery")

Last year's answer:
[]

This year's answer:
[]

Did you make any changes from last year's answer? Yes No

If yes, please indicate whether it is a correction or a reform and explain.

Correction or Reform

Comment []

2.2 Scenario B: Security interests in a COMBINED CATEGORIES of movable assets

a. Can ABC (the Debtor), grant BizBank (the Secured Creditor) a security interest in a combined categories of assets? (e.g. a security interest over a combined category of assets, a floating charge or enterprise charge)

French: *nantissement sur fonds de commerce, etc.*

Spanish: *garantía flotante, etc.*

Last year's answer:
[]

This year's answer:
[]

b. Is there a limitation on the assets that can be included in this security interest?

Last year's answer:
[]

This year's answer:
[]

c. According to the law can this collateral be described in general terms both in the security agreement and when it is registered? (e.g., "all combined assets of the enterprise")

Last year's answer:
[]

This year's answer:
[]

d. Is this security interest also enforceable against the "product, proceeds and replacements" of the original assets? (e.g. if the original asset is a pile of lumber, the products of this asset could be wooden furniture made from it; the proceeds could be money received from selling the furniture or the lumber; and the replacements could be another pile of lumber given in replacement after the original pile of lumber was destroyed.)

Last year's answer:
[]

This year's answer:
[]

Did you make any changes from last year's answer? Yes No

If yes, please indicate whether it is a correction or a reform and explain.

Correction or Reform

Comment []

2.3 Can ABC (the Debtor) use the following movable assets to secure a loan?

a. Future assets (e.g. ABC knows that it will receive a fleet of trucks in January 2010 and uses its future ownership as security)

Last year's answer:
[]

This year's answer:
[]

b. After-acquired property: (e.g. Property that it has not yet acquired and that it may never acquire, "all present and future inventory")

Last year's answer:
[]

This year's answer:
[]

c. By law, does the security interest automatically extend to "products, proceeds, and replacements" of the original asset?

(e.g. if the original asset is a pile of lumber, the products of this asset could be wooden furniture made from it; the proceeds could be money received from selling the furniture or the lumber; and the replacements could be another pile of lumber given in replacement after the original pile of lumber was destroyed.)

Last year's answer:
[]

This year's answer:
[]

d. Can future assets, after-acquired assets and products, proceeds and replacements be described in general terms both in the security agreement and when it is registered? (e.g. "all future, all after acquired, all products, proceeds and replacements")

Last year's answer:
[]

This year's answer:
[]

Did you make any changes from last year's answer? Yes No

If yes, please indicate whether it is a correction or a reform and explain.

Correction or Reform

Comment []

3. Debts and obligations.

a. Scenario A: Are there any restrictions on the types of debt and obligations that can be the subject of ABC and BizBank's security agreement for a single category of movable assets? (e.g. future obligations, conditional obligations, present obligations, fluctuating obligations, etc.)

Last year's answer:
[]

This year's answer:
[]

b. Scenario B: Are there any restrictions on the types of debt and obligations that can be the subject of ABC and BizBank's security agreement for all or the combined assets of the company? (e.g. future obligations, conditional obligations, present obligations, fluctuating obligations, etc.)

Last year's answer:
[]

This year's answer:
[]

c. By law, can the debt and obligations specify the maximum amount of the debt or obligation without setting a fixed amount both in the security agreement and when it is registered? (e.g. "a debt of up to USD 1,000,000 as in a line of credit")

Last year's answer: []	This year's answer: []
d. Can the debt and obligations be described in general terms in the security agreement and when the security interest is registered? (e.g. "all obligations between the parties")	
Last year's answer: []	This year's answer: []
Did you make any changes from last year's answer? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please indicate whether it is a correction or a reform and explain. Correction <input type="checkbox"/> or Reform <input type="checkbox"/> Comment []	

4. Notification and Collateral Registry

a. If your country allows non-possessory security interests in movable property, must BizBank register its security interest for the security interest to be valid and enforceable against third parties?	
Last year's answer: []	This year's answer: []
b. Please name the registry (or registries) where BizBank's security interest would be registered in Scenario A and Scenario B:	
Last year's answer: []	This year's answer: []
c. Could you please provide contact information of the main collateral registry (e.g. Collateral registry, Registre du Commerce et du Crédit Mobilier, Registro de Garantías Mobiliarias, Companies Registry, etc.) of movable property? (e.g. website, phone number, email, name of registrar, etc.)	
New question, please provide an answer.	This year's answer: []
d. Is the registry in operation?	
Last year's answer: []	This year's answer: []
e. Is the registry computerized? (e.g. "registry is accessible on-line")	
Last year's answer: []	This year's answer: []
f. Does it cover all types of movable assets (other than vehicles, ships, aircraft or intellectual property)?	
Last year's answer: []	This year's answer: []
g. Is the collateral registry limited to security interests granted by certain types of borrowers or creditors?	

Last year's answer: []	This year's answer: []
h. Is the collateral registry (the database) either centralized geographically for the entire country or linked among different geographical regions within the country?	
Last year's answer: []	This year's answer: []
i. Does the registry have an electronic database searchable by debtor's name?	
Last year's answer: []	This year's answer: []
j. Would BizBank have to record its security interest in more than one place for the interest to be valid and enforceable against other creditors?	
Last year's answer: []	This year's answer: []
Did you make any changes from last year's answer? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please indicate whether it is a correction or a reform and explain. Correction <input type="checkbox"/> or Reform <input type="checkbox"/> Comment []	

5. Priority Rules Outside of Insolvency/Bankruptcy

Assumption: ABC has defaulted on its loan but has *not* entered any kind of formal insolvency or bankruptcy procedure. In this part of the survey we want to know if the law stipulates clear priority rules between secured creditors and between secured creditors and statutory creditors (e.g.: *Debtor defaults. A secured creditor forecloses but during the enforcement the debtor doesn't pay its taxes. Can the State, by law, stop the enforcement in order to be paid first?*)

a. Scenario A: Security agreement for a <u>single category</u> of movable assets. Does BizBank have absolute priority over all other creditor claims? (e.g. the secured creditor with a pledge is paid before any other possible creditor claim such as labor wages or State taxes)	
Last year's answer: []	This year's answer: []
b. If not could you please provide us with the rankings? (e.g. Please note that since we are outside any insolvency/bankruptcy procedure, sometime the relevant articles might be found in different laws: Labor Code, Tax law, etc.)	
Last year's answer: []	This year's answer: []
c. Scenario B: Security agreement for all or the <u>combined assets</u> of the company. Does the ranking of secured creditors change if the security interest is a floating or enterprise charge? (e.g. a security interest over a combined category of assets. Fr: <i>nantissement sur fonds de commerce</i>. Sp: <i>garantía flotante</i>)	
Last year's answer: []	This year's answer: []

d. Scenario A and Scenario B security interest priority: do interests in specific collateral (e.g. a fixed charge) have priority over interests in a general pool of assets (e.g. a floating charge)?

Last year's answer: []	This year's answer: []
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Did you make any changes from last year's answer? Yes No
If yes, please indicate whether it is a correction or a reform and explain.
 Correction or Reform
 Comment []

6. Priority Rules within Insolvency/Bankruptcy proceedings

Assumption: ABC is now *in an insolvency/bankruptcy procedure* and creditors have been invited to file claims.

a. Does BizBank have absolute priority over all other creditor claims including the State and Employees? (e.g. the secured creditor is paid before any other possible creditor claim)

Last year's answer: []	This year's answer: []
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b. Do Labor claims (e.g. wages) have priority over BizBank's secured claim?

Last year's answer: []	This year's answer: []
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c. Do State claims (e.g. taxes) have priority over BizBank's secured claim?

Last year's answer: []	This year's answer: []
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d. Does the Law establish any restrictions, in time or monetary value, on the extent that Labor claims and State claims rank ahead of secured creditors claims? (e.g. employees claims up to X amount will have priority)

Last year's answer: []	This year's answer: []
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e. Would any of these answers change for *Scenario B*, when the security interest is a floating charge or enterprise charge? (e.g. a security interest over a combined category of assets. FR: nantissement sur fonds de commerce. SP: garantía flotante)

Last year's answer: []	This year's answer: []
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f. Scenario A and Scenario B security interest priority: do interests in specific collateral (e.g. a fixed charge) have priority over interests in a general pool of assets (e.g. a floating charge)?

Last year's answer: []	This year's answer: []
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Did you make any changes from last year's answer? Yes No
If yes, please indicate whether it is a correction or a reform and explain.
 Correction or Reform
 Comment []

7. Secured Creditors' Exemption from Automatic Stays in Reorganization

<p>a. Is a <i>judicial</i> reorganization procedure available, either within a general insolvency/bankruptcy procedure or as a separate process? (Please do not consider informal workouts. If there is no judicial reorganization procedure available, only refer to general insolvency/bankruptcy procedure)</p>	
<p>Last year's answer: []</p>	<p>This year's answer: []</p>
<p>c. Are enforcement actions by secured creditors subject to an automatic stay (or automatic suspension, moratorium, asset freeze, etc.) in reorganization?</p>	
<p>Last year's answer: []</p>	<p>This year's answer: []</p>
<p>d. Would any of these answers change for <i>Scenario B</i>? (e.g. a security interest over a combined category of assets.)</p>	
<p>Last year's answer: []</p>	<p>This year's answer: []</p>
<p>Did you make any changes from last year's answer? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please indicate whether it is a correction or a reform and explain. Correction <input type="checkbox"/> or Reform <input type="checkbox"/> Comment []</p>	

8. Enforcement of Security Rights

<p>a. Does the law allow parties to a security agreement to agree to enforce the security interest outside of court if the debtor defaults, at the time a security interest is created? (e.g. Upon default the secured party may: (i) take possession of the collateral; (ii) sell, exchange, convert into money or otherwise realize the collateral privately or by auction)</p>	
<p>Last year's answer: []</p>	<p>This year's answer: []</p>
<p>b. If the law is silent in this regards, is this kind of arrangement common practice in your country?</p>	
<p>Last year's answer: []</p>	<p>This year's answer: []</p>
<p>c. Scenario B: Would these answer change for <i>Scenario B</i>? (e.g. a security interest over a combined category of assets)</p>	
<p>Last year's answer: []</p>	<p>This year's answer: []</p>

d. Does the law provide for expedited judicial proceedings in cases where the debtor opposes the secured creditor's enforcement (seizure and sell of the collateral)? If yes, please explain:

New question, please provide an answer.	This year's answer: []
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e. Does the law limit the legal grounds that can be used by the debtor to oppose enforcement (e.g. the default itself, the interest to pay, etc.)? If yes, please list them:

New question, please provide an answer.	This year's answer: []
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f. Does the law provide that creditors and debtors must enforce their rights and perform their obligations in good faith and in commercially reasonable manner? Please refer us to the article in the law.

New question please provide an answer.	This year's answer: []
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g. Are there procedural mechanisms that discourage debtors from unfounded claims, such as adding the costs of the proceedings to the secured obligation, in the event that they are unsuccessful? Does the law allow secured creditors to seek damages against debtors that bring unfounded claims to delay enforcement?

New question, please provide an answer.	This year's answer: []
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h. Does the law provide for a limited time within which the debtor can make a claim or oppose the enforcement by secured creditors?

New question, please provide an answer.	This year's answer: []
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Did you make any changes from last year's answer? Yes No
If yes, please indicate whether it is a correction or a reform and explain.
 Correction or Reform
 Comment []

<p>6. In cases where the value of the secured claim is superior to the secured assets and the stay will cause a diminishment of the collateral's value: Does the law allow for the insolvency representatives to provide additional or substitute assets corresponding to the diminution of the value of the encumbered asset? Comments/ details: []</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>7. Does the law impose the payment of interests during the period of the automatic stay (or stay imposed by the court) to secured creditors? If yes, please explain in detail the process: []</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>8. In liquidation, can a secured creditor hold the insolvency representative (e.g. trustee) or even the debtor liable for the amount of proceeds recovered from the sale of the assets? If yes, please explain on which grounds the creditor can do it: []</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Any clarifications/comments: []</p>		

Thank you for completing the survey!

We appreciate your contribution to the Doing Business project.
The results will appear in *Doing Business 2011* and on our website:
<http://www.doingbusiness.org>.
Your work will be gratefully acknowledged in both.