



**International
Finance Corporation**
World Bank Group

Challenges in Developing Effective Secured Transactions system in MENA Countries

Case of Palestine

Access to Finance, IFC

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Economic Context for the ST Law

- The idea of the ST Law in Palestine started back in 1996
- Part of a World Bank initiative to provide numerous new vehicles to increase access to capital as part of a general commercial legal development and modernization
- Promote development of the Palestinian economic and its growth by creating new tools and opportunities
- The project closed in 1999 because the draft law did not get needed support

Various Forms of Support

- USAID did some work after the WB intervention was suspended in 2000 due to the political context
- USAID focused on both the draft law and the registry of movable assets:
 - Prepared two drafts; the second was approved by the line ministry

Various Forms of Support

- An interim draft (law by decree) was also prepared for the President's office to enable the registry to operate pending the adoption of the law
- USAID's project ran from late 2004 to early 2006—after the Hamas election where aid was suspended for political reasons

IFC Support

- IFC has, since 2010, been involved in completion of the entire legal regime including:
 - rules and regulations
 - allocated resources to developing the software for the registry
 - Meetings with stakeholders from the public and private sectors
 - Close coordination with the line ministry, Council of Ministers and the President Office (in the absence of the Legislative Council)

Sources of Law and legal Philosophy

- Unify the West Bank and Gaza Strip Law
 - excluding EJ-under illegal Israeli legal annexation
- Legal system in 1994 was
 - Anglo Saxon-Common in Gaza
 - Hybrid between Anglo Saxon and Continental-Civil (1948-1967)
 - 1967-1994, no legal development
 - 1994 to date, a modern mixtures of laws with the national legislative initiative to modernize

Opportunities

- Demand by the private sector
 - Borrowers and lenders
- Support by the public sector
 - Recognition for a legal framework due to:
 - Insufficiency of existing legal framework
 - Constraints in respect of pledging movables
 - Absence of registration unlike immovables
 - Complexity in enforcement unlike immovables

Opportunities, cont'd

- Opportunity to increase access to credit
- Reduce cost of credit
- Traditional collateral limited in nature in the Palestinian economy
 - Limited land with clear title
 - Few personal guarantors willing to guarantee
 - Scarc availability of cash collateral
- Support much needed economic growth

Challenges

- Legislative process
 - Political context and setbacks 2000/2007/2011 to date:
 - Role of Council of Ministers
 - Role of president's Office
 - Novelty of subject matter
 - Limited experience of policy and decision makers
 - Lack of coordination among official institutions involved in the legislative process

Challenges

- Institutional
 - Power sharing among public institutions involved
 - Movable assets registry
 - Location: Ministry of Economy vs. Capital Market Authority (non-bank regulator where financial leases are recorded)
 - Limited experience of civil servants
 - Learning curve and capacity
 - Awareness of novel legal principles
 - Resistance to change

Challenges

- Technical/Mechanical Rules
 - Many rules
 - Many steps
 - Much detail embed in the law
 - Thus requires command of complex subject matter that is novel to the officials involved in the review
 - Not familiar with the review of complex laws containing technical/mechanical provision
 - Laws are traditionally drafted in simple policy statement with the technical rules left for regulations and instructions

Challenges

- Subject Matter and Content
 - How to pledge certain property because the ST law broadens the scope permissible collateral
 - Cattle
 - Inventory
 - Accounts Receivable
 - Equipment
 - Better understanding for the pledge of traditional movable assets
 - Vehicles
 - shares

Challenges

- Struggle with pledge of future assets
 - Not quiet yet quantified and tangible

Challenges

- Perfection Methods of the Security Interest
 - Ease of creation through a basic and simple information to be recorded through a written agreement with no bureaucracy involved
- Secured vs Unsecured creditors
 - Multiple creditors with a security interest over the same asset
 - Priority rules: 1st in time-1st in priority

Challenges

- Public access to the registry for notice purposes
 - Novel approach as all public registries including land are not public

Challenges

- Procedural and Enforcement
 - Conflict with some existing principles of enforcement law in terms enforcement through the judiciary (enforcement department of the courts)
 - ST Law introduces speedy, effective and enforcement mechanisms which are essential to realizing collateral interests
 - Assuming parties agree on rights and remedies including seizure and sale outside the judicial process upon borrower default
 - Notion of self- help by creditor posed significant challenges to policy and decision makers
 - Familiar with a process where debtor can contest and object
 - Concern that debtor is the weaker party

Challenges

- Reasonable safeguards against creditor misbehavior are necessary
 - to ensure that self-help remedies are exercised peacefully
 - that commercially fair value is obtained through private or public sale of the collateral

Challenges

- When judicial intervention is necessary in the seizure and disposition of the collateral, expedited summary legal proceedings are provided by the Law
 - to ensure that scope of judicial interventions is limited to:
 - existence of a security agreement
 - event of default.

Registry

- Notice Function
- Establishes priority among creditors
- Government role (limited vs expanded)
- The draft ST law and the draft Leasing law both provide separately for registration of notices in the same registry - hence the provision in the registry, whose function of SW provides an indication of whether it is a lease or a security interest

Addressing Challenges and Impact on the ST Regime

- The challenges have been addressed through
 - Capacity building over a number of year
 - Simplifying certain provisions of the law
 - Reducing some of the purely technical and mechanical rules to regulations
 - Adapting certain provision to limit conflict with existing principles without detracting from the ST law regime
 - Self-help notion

Addressing Challenges and Impact on the ST Regime

- Addressing the challenges
 - Draft law has been approved by line ministry
 - Draft law has passed all required reviews by the Council of Ministries (in the absence of the Legislative Council)
 - Draft law is pending adoption by the President
 - Regulations are ready and prepared
 - Registry is up and running

How to Address Final Challenge

- Adoption by the President's Office
 - Political question?
 - Technical question?

No reason for any further delays!