



DEFAULT AND ENFORCEMENT OF SECURITY

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PURPOSE

- Clear and simple methods for enforcement of security
- Procedures that maximize the realization value of the encumbered assets
- Expeditious judicial or subject to safeguards non-judicial methods of enforcement



STANDARD OF CONDUCT

- All actions in enforcement of security need to be undertaken:
 - In good faith and
 - In commercially reasonable manner



POST-DEFAULT RIGHTS OF SECURED CREDITORS

- Obtain possession of a tangible encumbered asset
- Sell, lease, license or otherwise dispose secured asset
- Propose to grantor to accept the asset in total or partial satisfaction of the obligation secured
- Collect receivable, negotiable instrument, right to payment of funds credited to bank account



RIGHTS OF GRANTOR

- To pay the defaulted loan and redeem the security
- Apply to Court or any other specified authority against the action of secured creditor
- Consider any proposal to accept property in lieu of debt



Judicial or Extra-Judicial Enforcement

- Judicial enforcement is in accordance with the national law for recovery of loan
- Extra-judicial enforcement is subject to following conditions:
 - Grantor has consented to such enforcement in the loan agreement
 - Secured creditor has given notice of default and its intention to obtain possession extra –judicially; and
 - When secured creditor seeks to obtain possession the grantor does not object

PRIORITY RULES IN DISTRIBUTION OF NET SALE PROCEEDS



- Preferential payments such as Government Claims or Workmen's dues to be paid as specified by National law
- Amongst secured creditors the first in time to register the security interest gets priority



INSOLVENCY

UNCITRAL Legislative Guide on Insolvency Law – 2005

Insolvency Proceedings may be initiated when:

- A Debtor is unable to pay its debts as they mature or
- Its liabilities exceed the value of its assets



INSOLVENCY...

Insolvency Proceedings involve following Steps:

- Identification of assets of debtor which constitutes insolvency estate
- Protection of estate against action by creditors
- Preservation of economic value of assets
- Right to avoid contract by insolvency representative



INSOLVENCY...

- Extent of set-off and netting that can be protected
- If reorganization is feasible prepare a plan and implement after approval by all stakeholders
- Disposal of assets and distribution of sale proceeds subject to priority rules
- Discharge the debtor

POLICY CONSIDERATIONS ON TREATMENT OF SECURED CREDITORS UNDER INSOLVENCY LAW



- Recommendations of Insolvency Guide and Guide on Secured transactions need to be considered together while formulating Insolvency and Security Interest Laws
- Protect priority and interest of secured creditors and allow them to enforce and realize secured loans or
- Encourage re-organization or turn-around of distressed business entity and stay all proceedings including by secured creditors – stipulate timeframe for re-organization and preserve value of secured assets



SOME ISSUES ON SECURITY INTERESTS OVER INTELLECTUAL PROPERTY RIGHTS

- Intellectual Property Law needs to provide for security over IP rights and each distinct segment of such rights
- Registration system needs to be strengthened for registration of security interest in each segment of IP rights
- Receivables from disposition of IP rights needs to be clearly defined to include income from licence or lease of IP rights and royalty payment for use of IP rights



SOME ISSUES ON SECURITY INTERESTS OVER INTELLECTUAL PROPERTY RIGHTS...

- Secured creditor to be empowered to sell mortgaged IP rights in the event of default and such sale to be statutorily recognized
- Debtor of receivables can pay the secured creditor and get valid discharge
- Adoption of UN Convention on Assignment of Receivables will facilitate financing receivables relating to IP rights



THANK YOU