Outline

I. Objectives, scopes and approaches
   – Secured Transactions Law Reforms (UNCITRAL Model Law)
   – International Capital Requirements (Basel Accords)

II. The regulatory treatment of collateral
    – Collateral as eligible credit protection
    – Dissonances with modern secured transactions law

III. Coordination mechanisms
    – International, national, and firm-level
    – Building legal capacity at the national level
Secured Transactions Law Reforms and International Capital Requirements

I. OBJECTIVES, SCOPES AND APPROACHES

**Secured Transactions Law**
- UNCITRAL Model Law -
  - Access to credit
  - Concerning any individual or entity
  - Legal certainty
  - Transparency
  - Rights and obligations through consensual arrangements

**Capital Requirements**
- Basel Accords -
  - Financial stability
  - Concerning only regulated credit institutions (banks)
  - Soundness of banks and the banking system
  - Risk-based approach
  - Regulating banks from ‘within’
The Basel Framework

- Risk-Weighted Assets (RWA)
- To high risks correspond high levels of capital
- Collateral as credit protection
- Liquidity risk and operational risk (among others) to be assessed

II. THE REGULATORY TREATMENT OF COLLATERAL
Collateral As Eligible Credit Protection

- Eligible Collateral
- First Priority
- Clear Security Rights
- Liquid Secondary Market
- Rapidly Enforceable

- UNCITRAL Model Law is the first step
- Not all collateral reduce banks capital requirements

The Problem

- Suspicious attitude towards movables, due to:
  - Assumed limited liquidity
  - Assumed limited secondary markets
  - Fear of cyclical depreciation

- Regulation may establish different formalities
  - E.g., detailed description of encumbered assets

- Lack of coordination at the national level

Banks may not fully benefit from secured transactions law reforms

Policy Concerns
III. COORDINATION MECHANISMS

Building Legal Capacity

- UNCITRAL
- Basel Committee (BIS)

National
- Implementation of Model Law & Basel Accords
- Coordination among legislative acts
- Supervisory discretion

Firm-level
- Banks may use own internal models to calculate capital charges
- Contractual mechanisms to reduce credit risk
### Building Legal Capacity at the National Level

**Basel Accords**

<table>
<thead>
<tr>
<th>Supervisory Discretion (Pillar 2)</th>
<th>Internal Risk-Based (IRB) Methodologies</th>
</tr>
</thead>
</table>

**Supervisory Discretion (general approach)**

- List of ‘eligible collateral’ (low risk assets)
- Defining requirements in line with UNCITRAL
- ‘Provisioning’ rules

**IRB Methodologies (more sophisticated)**

- Guidance to identify sufficiently liquid assets
- Guidance over the models

---

Thank you!

Dr Giuliano G. Castellano

g.g.f.castellano(at)warwick.ac.uk