

## ADVISORY GROUP MEETING PAPER 4-A

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### PROMOTING LEGAL, POLICY AND INSTITUTIONAL ECOSYSTEMS TO FACILITATE FINANCING OF MSMEs

Building MSMEs' capacity to grow requires addressing the most important constraint – financing. The work of APFF in this area focuses on the implementation of the CAP deliverable to reform and develop secured transactions systems and insolvency frameworks.

- The work of APFF has already resulted in legislation and policy reforms that are enabling lenders to use a wider range of collateral to expand lending to MSMEs, and further work is ongoing to advance this further. Related work on valuation of assets is also being undertaken.
- This year, the APFF started its work on another area that has important implications for MSMEs and entrepreneurship – promoting the reform of personal insolvency frameworks.

#### 2.1. MODERNIZING SECURED TRANSACTIONS ECOSYSTEMS

APFF's FIDN has been actively collaborating with several economies since 2015 to assist in designing and advocating the reform of secured transactions and other related laws and the development of the other parts of the enabling ecosystem. These efforts have resulted in concrete legislative achievements, and continue to promote follow-up measures and further reforms. Following are the activities that have been and are being undertaken and the results that have been achieved.

- *The Philippines:* The FIDN collaborated with the IFC/World Bank Group and the Philippine Government to develop a ***new modern secured transactions law based on international best practices (Personal Property Security Act) that was passed in both houses of the legislature (in the Senate by a 21-0 vote in May 2018). A Warehouse Receipts law has been lodged in the House and is at initial legislative stages.*** FIDN continues to work collaboratively with key Philippine stakeholders to build the financial community's capacity to leverage the expected passage of the law. The Philippine Government hosted the Fifth FIDN Conference held in November 2017 in Manila, Philippines and has confirmed the hosting of the Sixth ***FIDN Conference in November 2018 in Manila, which will be focusing on practical models and approaches to access finance using moveable assets to facilitate utilization of the new law*** by connecting financial institutions, MSMEs, farmers and the warehouse industry.
- *Brunei:* The FIDN had collaborated with Brunei in developing its modern Secured Transactions Order, supplemented by Regulations, which was enacted in 2016, as well as in establishing its modern collateral registry. FIDN is working collaboratively with the central bank to schedule a further ***FIDN workshop in the second half of 2018 for the local economy focused on expanding the use of the law and registry by the banking community to expand access to finance for Brunei's MSMEs.***
- *China:* The FIDN is currently following the development of the Property Chapter of the Civil Code, for which preparation by relevant authorities started after the Civil Code General Rules was enacted in March 2017. During the previous year, FIDN experts had contributed to several discussions among the legal and business communities on the secured transactions section.<sup>1</sup>

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<sup>1</sup> These included a focus group meeting in the Renmin University jointly sponsored by the China Society of Civil Law and IFC as well as a workshop on international best practice in secured translations law during the 3rd quarter of 2017 in Beijing. In addition, FIDN, IFC, the China Association of Warehousing and Delivery (CAWD) and the China Banking Association (CBA) organized the Fifth Warehouse Finance and Collateral Management Conference at the end of September 2017 in Beijing. A half-day was devoted to the discussions on the secured transactions part of the Civil Code, attended by UNCITRAL. Subsequently, FIDN experts also had dialogues with the authorities to advocate

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- Thailand: This year, the Thai Government undertook a review of its 2016 Secured Transactions Law and identified several changes that are needed to improve MSMEs' access to finance and ease of doing business. The World Bank has been engaged by the Thai Government to be an advisor in redrafting the secured transactions law, which is expected to be circulated for public review shortly and is expected to be announced this year. *As part of this initiative, the Director General of the Department of Enforcement is arranging a seminar on Secured Transactions, expected to be attended by 400 participants, in which the FIDN will provide support. FIDN will continue to support Thailand by convening workshops and seminars in collaboration with the Department of Finance.*
- Vietnam: The FIDN is following efforts by the Vietnamese Government to expand usage of the secured transactions law that was issued in 2015. During the previous year, the FIDN contributed to these efforts through the mobilization of international and local experts and the convening of conferences to assist in the review of existing decrees on secured transactions.<sup>2</sup> Subsequently, a new decree (Decree 102 on Secured Devices Registration) was enacted to provide more consistent regulation of secured transactions registrations. Vietnam is currently reviewing another decree to align it with new provisions of the 2015 Civil Code. At present, the Ministry of Justice is working on a project proposal for drafting a Law on Property Registration, which is expected to elevate the provisions on secured transactions registrations into law, a higher level of normative legal document.

The enactment of secured transactions legislation and creation of collateral registries in APEC jurisdictions have highlighted the challenge of valuing intangible assets, which are offered as security by MSMEs, and the need to develop capabilities in the valuation of intangible assets. The FIDN's Valuations Sub-stream *convened roundtables and workshops in Vietnam, Thailand and the Philippines* to demonstrate, through case studies and experience sharing, how the challenge might be addressed. The focus on intangible assets has also highlighted the need and the opportunity for professional training in the area of business valuation and the issuance of an appropriate internationally recognized business valuation (BV) qualification.

The FIDN's Valuations Sub-stream is involved in a special initiative to assist this year's APEC Chair, Papua New Guinea, to establish its valuation infrastructure, in view of the limited number of licensed valuers and the need to develop skills beyond valuing land and buildings. The FIDN supported the annual conference of the PNG Institute of Valuers in June 2018, and are looking to enhance the level of valuation training at Lae University of Technology. Moving ahead, the focus of work will be on the further development of capabilities in intangible asset valuation.

### 2.2. ESSENTIAL ELEMENTS OF AN EFFECTIVE PERSONAL INSOLVENCY REGIME

Studies confirm that roughly half of all business start-ups fail within five years after their establishment. Where personal insolvency regimes are inefficient, many entrepreneurs who fail are prevented from making a fresh start for many years. Where personal insolvency regimes are efficient, entrepreneurs that fail are able after a short time to start new businesses. More people are encouraged to start enterprises, and economies benefit from a large and dynamic entrepreneurial base and a continuous flow of innovation.

ABAC, through APFF, collaborated with the IFC/World Bank Group, the China Banking Law Society, the China Council for the Promotion of International Trade (CCPIT), and the Tiantong & Partners Law Firm to convene a conference of insolvency experts and practitioners from around the region on 15 June 2018 in Beijing. The conference identified the Essential Elements of an Effective Personal

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for the new secured transactions legislation to make further progress from the 2007 Property Law.

<sup>2</sup> These include the hosting in June 2017 of the Fourth FIDN Conference held in Hoi An and a session on "Leveraging Technologies to Scale up Supply Chain Finance" during the APEC SME Finance Forum in Ho Chi Minh City in September 2017.

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Insolvency Regime, which have been developed to assist jurisdictions in reforming or developing their legal frameworks. [See Attachment C.]

*Following is a summary of the Essential Elements:*

- *The personal insolvency regime (PIR) should strike a balance among the interests of the creditor, the debtor and the society. This balance should be reflected in the allocation of the costs of failure.*
- *Out-of-court procedures for dealing with insolvent debtors should be made available in conjunction with an effective legal framework for personal insolvency.*
- *Standards for commencement of insolvency proceedings for natural persons should be clear, transparent and reasonable, and entry barriers that could be prohibitive under existing conditions in any particular jurisdiction avoided.*
- *Discharge relief should be expedited to enable a “fresh start” for the debtor within a short a period of time as practicable, unless the debtor is found guilty of inappropriate behavior, or if there is an objection from the trustee or creditors on reasonable grounds.*
- *Dischargeable and non-dischargeable debt should be defined in ways that balance the interests of the debtor, the creditor and society.*
- *The delineation between the property of the estate and exempt property that the individual debtor may keep should be made in a way that enables the insolvent debtor to move as quickly forward into productive work as possible.*
- *The Trustee in bankruptcy should be given sufficient powers to investigate the debtor’s financial affairs and personal behavior and to access information on the debtors’ assets, and invested with the responsibility to deal with all matters regarding the administration of the bankrupt’s estate.*
- *The necessary infrastructure for obtaining sufficient information about debtors’ assets and financial conditions should be put in place in order to ensure effective implementation of laws and bankruptcy administration and minimize and deter fraud.*
- *Well-developed enforcement mechanisms play an important role in building the trust of debtors, creditors and the public in a more open and accommodating PIR.*
- *The development and reform of personal insolvency regimes across member economies should be coordinated, so as to provide mechanisms for the orderly liquidation and resolution of cross-border debt.*
- *A personal insolvency regime is a last resort for debtors who fall into insolvency. It is incumbent on policy makers to create an economic, political and social environment that can help people avoid becoming insolvent.*