 Asia-Pacific
Economic Cooperation

THE ADVISORY GROUP ON APEC FINANCIAL SYSTEM
CAPACITY-BUILDING
A Public-Private Sector Initiative



DRAFT

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**Legal Infrastructure for
Promoting SME Finance**
US National Center for APEC (NCAPEC)

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Executive Summary



- In general, security enforcement regimes in most APEC jurisdictions are intended to encourage provision of credit to commercial borrowers by recognising and protecting the expectations of senior-secured lenders and providing legal certainty in the event of borrower insolvency.
- However, a number of important gaps remain. Absence of a clear legal framework to enforce rights of secured lenders is an impediment to credit availability, disproportionately affecting SME's and other businesses that have historically had difficulty accessing bank credit.
- An APEC initiative to improve and harmonize standards for perfection and enforcement of security interests in collateral, as part of a system for developing a robust commercial finance market, would promote innovative financial products, enhance overall liquidity for the SME sector, and advance the goal of financial sector inclusion and sustainable growth.
- In addition to facilitating financing for SMEs, a harmonized approach would promote regional investment and trade in financial services in the APEC region.



● ABAC 2009 Report to Economic Leaders

■ (R) Strengthening and Deepening the Region's Capital Markets

• 2. Improving Regulatory Frameworks

- (c) Building Financial System Infrastructure to Facilitate SME Finance

The development of financial system infrastructure as well as appropriate supporting regulatory and legal frameworks, will be vital to facilitating the financing of enterprises, particularly SMEs, and eventually to restoring confidence and growth. Key areas that should be given attention are promoting commercial lending through an enhanced secured lending framework; promoting improved risk management through modernized credit information; and improving the regulatory process, transparency and predictability of the judicial system.

Secured lending requires legal and judicial infrastructure to ensure predictability. Asset-based lending and secured financing remain in many cases at less than their full potential to provide needed corporate liquidity, particularly for SMEs.

Recommendation

Undertake initiatives to promote a more predictable legal architecture for secured lending, including an exclusively available system for registering and perfecting security interests in both movables and receivables as collateral, efficient judicial procedures for enforcement of security interests, and clear regulations around asset-based lending requirements to further enable both lenders and borrowers to assess risk and enhance sound credit and lending activities.



Some Issues in Secured Lending Legal Infrastructure

- Absence of Exclusive Security Interest Registry
 - “Hidden Lien” Problem
- Voidable Conversion/Preference
- Unclear Perfection Rules for Certain Types of Collateral
 - Movables
 - Receivables
 - Goodwill
- Absence of Blocked Account Security Precedence
- Untested Debtor-in-Possession (“DIP”) Process
- Treatment of Floating Charges



Proposal for APEC SME Financing Initiative

- Survey of Global Best Practices on Secured Lending Regimes and Link to Financing Availability
- Model Elements of “APEC Code” of Security Interest Creation, Perfection and Enforcement
 - Clear Perfection Rules
 - Broad Coverage of Collateral Types
 - Exclusivity (Eliminate “Hidden Liens”)
- Model Treatment of Floating Charges/AR Financing
- Public/Private Dialogue to Validate Improvements
- APEC “Checklist” for Statutory/Regulatory Implementation