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Panel Category	:	Banking and Finance
Panel Title	:	Modern Principles and Local Diversity in Secured Transactions Laws of Asia
Participation Type	:	Panel Submission – Panel 1

Panel Abstract

The availability of access to credit to every sector at all levels of society enables an all-inclusive society. It is especially crucial that micro and small businesses, including women-owned or minorities-owned businesses, have ample access to credit. An effective law on secured transactions that allows for any and all assets as collateral is one important way to ensure such access to credit. It is against this background that the international law-making institutions, such as the UNCITRAL (United Nations Commission on the International Trade Law) and Unidroit (International Institute for the Unification of Private Law) have made efforts on the production of guiding instruments on the secured transactions law. Some commentators argue that the “modern principles” of the secured transactions law have emerged through such activities.

Still, the legislation that implemented these modern principles through reform of their secured transactions law is not identical across jurisdictions in Asia. There may be local conditions affecting the literal transposition of the modern principles and the globally adopted instruments cannot avoid being compromised by the recipient legal system when it comes down to practice. Or possibly, the existence of the modern principles itself is simply illusory.

The proposed panel discusses the apparent global uniformity in the principles of secured transactions law and the diversity in the actual law on the subject in Asian jurisdictions. The first paper, co-presented by Masami Okino (The University of Tokyo) & Megumi Hara (Chuo University), will review the modern principles and consider whether they are clearly established. The second paper, presented by Dora Neo (NUS), gives an overview of the law on secured transactions in the region, analyzing the impact of the international instruments as well as the influence of the local circumstances. The third and fourth papers, each presented by Youngjoon Kwon (SNU) and Noriyuki Aoki (Waseda University), focus on several jurisdictions in Asia and closely examine the laws on secured transactions in respective jurisdictions, including the proposed law reform. The combination of macro and micro perspectives is expected to offer an ideal basis for the active exchange of views involving the participants in the session.

Five panelists are all confirmed. The panelists all have experience participating in the global fora working on the law on secured transactions and are all familiar with the instruments produced therefrom. Thus, the panel will be a unique opportunity of considering the status of Asian law against the global context on such an important subject in the achievement of the inclusive society.

Name of Author	:	Masami OKINO (Convenor)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	The University of Tokyo, Graduate Schools for Law and Politics
Name of Author	:	Megumi HARA (Panellist # 2)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	Chuo University
Title of Paper (Convenor and Panellist #2)		
Rethinking Modern Principles of Secured Transactions Law		
Abstract (Convenor and Panellist #2)		
<p>'The “modern principles” of secured transactions law are emerging out of international and regional efforts. These efforts include UNCITRAL’s Model Law on Secured Transactions and UNIDROIT’s Cape Town Convention, or regional works such as the DCFR. Implementation of these modern principles has now become a driving force behind the reform of the secured transaction law in many jurisdictions, including Asia. This is observed as the “modernization” of secured transactions law. However, we recognize that while a State may see that it has indeed implemented the modern principles by reforming its law, whether and to what extent laws embrace these modern principles is very diverse. This divergence can be due to circumstances that each State faces, but it may be that, to begin with, what constitutes modern principles are interpreted differently. For one, the multiplicity and diversity of international instruments may result in a different interpretation of what these modern principles are. Furthermore, even scholars who agree with the existence of modern principles, seem to differ on the substance of the modern principles, depending on the approaches they take: One emphasizes the significance of modern principles for ideal codification whereas another emphasizes the usefulness of modern principles to promote access to credit. All of these lead to the basic question of what really are the modern principles of secured transactions law. This presentation attempts to establish a concrete list of ideal modern principles, clarifying the similarities and differences in the existing international or regional instruments and scholarly works. In our attempt, we focus to distinguish and determine whether the modern principles are in functional terms or if the principles rely on certain (doctrinal-based) institutions. For example, a notice-based registry system, which is normally considered to constitute a modern principle, may not be, in functional terms, a necessary requirement as a modern principle.</p>		
Brief Biography of Authors (Convenor and Panellist #2)		
<p>Masami OKINO Masami Okino is a professor at the Graduate Schools for Law and Politics, the University of Tokyo. She teaches civil law (contract law, law of obligations, secured transaction law and so on), trust law and consumer law. She served as a delegate of Japan for the UNCITRAL Working Group VI on Secured Transactions Law (legislative guide). She is a member of the Working Group on the Secured Transaction Law Reform, the Legislative Council of the Ministry of Justice Japan.</p> <p>Megumi HARA Megumi Hara is a professor at the Law School of Chuo University, Tokyo. She teaches property law, contract law, secured transaction law, and trust law. She served as a delegate of Japan for the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment (MAC Protocol). She has also participated as either a delegate for Japan or as an observer for UNCITRAL Working Group VI on Secured Transactions. She represents Japan for UNCITRAL Working Group I on access to credit. She is also a member of the Factoring Model Law working group for UNIDROIT. She was also involved in Japan's recent property law reform as a researcher appointed by the Ministry of Justice.</p>		

Name of Author	:	Youngjoon Kwon (Panellist #3)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	Seoul National University, School of Law
Title of Paper (Panellist #3)		
Review on Korean Legal Regime on Security Right on Movable and Receivable in Light of International Trend		
Abstract (Panellist #3)		
<p>In Korea, the 「Act on Security over Movable and Receivable, etc」 was enacted on 10 July 2010 and became effective on 11 June 2012. This legislative measure was obviously a landmark turning point in Korea's secured transaction law. However, this new legislation was not welcomed and utilized as much as expected at the outset of its enforcement. Despite the government's paternalistic intervention to boost secured transactions on movable and claims, it still accounts for insignificant volume of the whole secured transactions. It is not only governmental policy measures but also reshaping and improvement of the law itself that will motivate the market players to be more actively involved with the utilization of this new legal vehicle. Against this backdrop, I will evaluate and discuss the current legal regime in Korea in light of the international trend in the secured transactions law as well as fundamental principles enshrined therein. On this basis, I also wish to present some proposals for the improvement of the domestic legal regime. The basic principles underlying international standard can be summed up as comprehensiveness, efficiency, and autonomy. In addition, these norms adopted creditor-friendly provisions to ultimately broaden the path for debtor's financing.</p> <p>Korea has adopted this international trend to a large extent, but it still has its own internal and external limitations. Bearing this in mind, the Korean government recently employed and implemented various policies for revitalization of secured transactions based on the new law. The Korean government submitted, in March 2020, a revised bill of the law. Although the revision of the law did not take place due to the expiration of the term of office in the National Assembly, there remains a momentum for future legislative measures. In implementing these measures, ① expansion of the scope of the law so as to cover more debtors in more secured transactions on more assets, ② review of the possibility of adopting a notice registration system, albeit in a transformational form, ③ reinforcement of the preservation and monitoring of the assets (including the introduction of sanction provisions), ④ the vitalization of private enforcement, and ⑤ dealing with the issue of the transfer of ownership for security, which seems to be an obstacle in the utilization of the new law, are the topics to be addressed.</p>		
Brief Biography of Author (Panellist #3)		
<p>Youngjoon Kwon is a professor at School of Law, Seoul National University. He teaches civil law including contract, torts, secured transactions, and property law. He also does research in the field of data law and intellectual property law. He was a delegate of Japan for the UNCITRAL Working Group VI on Secured Transactions Law for many years. He is a chair person for the Legislative Advisory Council of the Ministry of Justice Korea.</p>		

Name of Author	:	Noriyuki AOKI (Panellist #4)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	Waseda University
Title of Paper (Panellist #4)		
Comparative Study of Secured Transactions Laws Reformation in Japan, Thai and Philippine		
Abstract (Panellist #4)		
<p>In this paper, I would compare the secured transactions laws among three jurisdictions: Japan, Thai and Philippine. The publication of UNCITRAL Model Law of Secured Transactions, along with the scoring project by the World Bank, has caused opportunities to review and reform the secured transactions law in each jurisdiction where people operate secured transactions under a legal system which is inconsistent with the Modern Principles as proposed in the international standard as in the Model Law. However, how and to what extent each jurisdiction can accept Model Law type rules are diverse among jurisdictions. Presumably there should be three possible grounds. First, the legal tradition on which each jurisdiction based. Most of the rules under the Model Law comes from American law which has common law tradition. For jurisdictions which share civil law tradition, the difference between the conventional legal system and the Model Law type rules themselves are difficult problem. Second, the extent to which the domestic style of legal transactions, which is admissibly fair if not reasonably effective, has developed should be taken into consideration the comparative difficulty of the acceptance. Third, the desirability and probability of extension of the direct investment from the international market should affect the incentive to achieve a drastic reformation. In this paper, the author will prospect and estimate the coming reformation of Japanese Secured Transactions Law (a part of Japanese Civil Code), in comparison with the case of Philippine as a jurisdiction which has common law friendly tradition, relatively small development of domestic movables secured transactions and high desirability of direct international investment and Thai which has civil law tradition, a hint of development of domestic whole business secured transactions derives from the currency crisis and relatively high desirability of direct international investment.</p>		
Brief Biography of Author (Panellist #4)		
<p>Noriyuki AOKI is a Professor of Civil Law at Waseda University School of Law. He joined the faculty in 2005. He mainly focuses his research on property law with special interests in mortgage law and secured transactions law. He has written over 30 articles on topics in this field through the approach of comparative study. He currently serves on the Committee of Secured Transactions Law Reform in the Legislative Council of the Ministry of Justice Japan.</p> <p>As is often the case with civil law professors working for academic institutions in their home countries, most of his publications have been for the internal academic and practical legal societies in Japan. However, he has plenty of experience, as a comparative law scholar, which allows him to contribute his opinions to global academic and practical legal societies. He has completed his research at the University of Pennsylvania Law School and Columbia Law School as a visiting scholar. He teaches several topics concerning the comparative study of property law for overseas students at LL.M. at Asian Economic Integration and Law, Graduate School of Law Waseda University. Also, he has been a frequent lecturer on the topic of the comparative study of transactional laws, including lecturing at Venice International University.</p>		

Name of Author	:	Dora Neo (Panellist #5)
Designation / Academic Post	:	Full-Time Professor
Institution / Organisation	:	National University of Singapore, Faculty of Law
Title of Paper (Panellist #5)		
Modern principles and the commonality and diversity in secured transactions law in Asia		
Abstract (Panellist #5)		
<p>From the start of the 21st century, a significant number of Asian countries, like others around the world, have embarked, in varying degrees, on law reform relating to personal property security. This can be attributed to a range of factors, for instance, the work of international organisations such as the World Bank to help economic development, particularly in less developed countries; the realisation by countries that a well-functioning secured transactions law is indispensable in order to increase access to credit; and the efforts of governments to improve the performance of their particular jurisdiction in international rankings such as the “getting credit” ranking associated with the World Bank’s ease of doing business index. The resultant reformed laws of Asian countries have been said to increasingly incorporate “modern principles” that are found in international instruments relating to secured transactions (eg the UNCITRAL Model Law on Secured Transactions) as well as personal property security statutes based broadly on Article 9 of the US Uniform Commercial Code (eg the Personal Property Securities Act 2009 of Australia). However, there is still substantial differences in the law that applies across various Asian jurisdictions. This paper will identify the main points of convergence and divergence in the secured transactions laws of various key jurisdictions in Asia, analyse the reasons for these similarities and differences, and assess how the “modern principles” have shaped the law reform process.</p>		
Brief Biography of Author (Panellist #5)		
<p>Dora Neo is Director of the Centre for Banking & Finance Law at the Faculty of Law, National University of Singapore, where she is an Associate Professor. Her recent publications include Gullifer & Neo (eds) <i>Secured Transactions Law in Asia: Principles, Perspectives and Reform</i> (Hart Publishing, 2021); Hare & Neo (eds), <i>Trade Finance: Technology, Innovation and Documentary Credits</i> (Oxford University Press, 2021); and Neo, Sauve & Strehö, <i>Services Trade in ASEAN</i> (Cambridge University Press, 2019). She is a member of the UNIDROIT Working Group on A Model Law on Warehouse Receipts and has taught at institutions such as the University of Aix Marseille III in France, the Center for Transnational Legal Studies in London and the East China University of Political Science and Law in Shanghai. She is a graduate of Oxford University and Harvard Law School and is a non-practicing member of the Bar in England and Wales (Gray's Inn) and in Singapore.</p>		