

SECURED  
TRANSACTIONS  
LAW REFORM  
IN AFRICA

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Marek Dubovec  
and Louise Gullifer

## SECURED TRANSACTIONS LAW REFORM IN AFRICA

Over the last few decades, many countries have reformed their secured transactions law. One of the main reasons has been the clear link between reform and the availability of credit, and the drive to improve access to finance, particularly for micro, small and medium-sized enterprises. This book focuses particularly on developing economies in Africa, which have legal frameworks influenced by English, French, Belgian, Roman-Dutch and other laws. Reform in this area of law across African countries has taken a number of forms, which are explored and discussed in this book.

*Secured Transactions Law Reform in Africa* is a mixture of a critical description of the pre-reform law and practice, and the reform process itself. It also includes a comparative analysis of the legal provisions and an examination of the early results of the reforms. The book sets out a road map for the future of secured transactions reform; primarily in Africa, but also in other countries that have undertaken or are contemplating similar reforms.

This book is the second in a series of books about Secured Transactions Law in countries around the world, and its reform, both on a national and an international scale. The first book, *Secured Transactions Law Reform: Principles, Policies and Practice*, was published in 2016.



# Secured Transactions Law Reform in Africa

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## PREFACE

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Reform of secured transactions law is occurring all over the globe, largely because of the economic benefits it brings, especially to developing economies. Moreover, a consensus is growing as to the principles on which a modern secured transactions law should be based, exemplified by the work of UNCITRAL in its Model Law of Secured Transactions. Both of us have actively participated in the discussions that led to the adoption of this model. This book examines the reform initiatives in Africa, including analysing the law pre- and post-reform, as well as unreformed law in some African countries, and uses these principles to frame a critical analysis of the reformed and unreformed law. It also discusses the drivers for reform, and the undisputed need for implementation initiatives to complement the reform of the law if the economic benefits are to be realised. It also contains some discussion of different legal cultures, since African jurisdictions include civil law, common law and mixed jurisdictions. All these threads are drawn together in the conclusion, which contains a thematic analysis of the issues arising in relation to secured transactions law reform, particularly in developing economies, and uses the material in the country chapters to inform and illustrate the arguments.

The idea for this book came from two sources. First, since 2010, one of us, Marek Dubovec, has been involved in assisting African countries to reform their secured transactions law, setting up secured transactions (collateral) registries, and providing capacity building to various stakeholders, and has seen at first hand the benefits and challenges of reform. This direct involvement in the reforms allowed us to also explain some thinking of the local stakeholders behind certain rules and approaches taken. Some of these reforms, such as in Ghana and Sierra Leone, are entering their second phase, primarily to correct some mistakes made initially. Marek has been and is still involved in a number of other reforms in Africa, including those in Egypt, Lesotho, Mozambique, Somalia, South Sudan and Uganda, that could all learn valuable lessons from the regional experiences. New developments have continued in the countries covered in the book after it was too late to add any text, and we are pleased to report that what is referred to as the 'draft Proclamation' in chapter 12 on Ethiopia has now been enacted.

Second, in 2013, the other of us, Louise Gullifer, had taken over as Executive Director of the Secured Transactions Law Reform Project, a project set up to examine the English law relating to secured transactions and to consider the need for and shape of future reform. In 2013, the project ran two conferences in London and Durham, examining secured transaction law reform in other jurisdictions. The papers presented at those conferences, plus others dealing with other jurisdictions, were published in a book co-edited by Louise and Orkun Akseli. The book, entitled *Secured Transactions Law Reform: Principles, Policies and Practice*, was published by Hart Publishing in 2016. It considered some civil law jurisdictions in Europe and common law jurisdictions in Europe, North America and Australasia. However, there was also one chapter on Malawi, which was the first African jurisdiction to reform its secured transactions law according to modern principles,

co-written by Marek and Cyprian Kambili. This chapter was an indication that there was secured transactions law reform going on in many parts of the world not covered by the book, and led to the idea of producing a series of books about secured transactions law reform around the world.

In the future, the series will continue with edited volumes on secured transactions law reform in Asia and Central and South America. However, Africa seemed an ideal contender for the second volume, and, given Marek's expertise in the area, a co-written volume seemed possible, with limited contribution from particular specialists. We are extremely grateful that Gavin McCosker, who has great experience of working with secured transactions registries from his work as Registrar of Personal Properties Securities in Australia and previously as a Senior Financial Sector Specialist and consultant for the World Bank Group focused on Africa, agreed to write a chapter on the infrastructure underpinning a modern secured transactions law. Equally, we are extremely fortunate that Anna Veneziano (Deputy Secretary General of UNIDROIT) and William Brydie-Watson (Senior Legal Officer at UNIDROIT) have contributed a chapter on the present and likely impact in Africa of the Cape Town Convention and its protocols. This very important private law treaty has the potential to transform the financing of high value mobile equipment in Africa, particularly aircraft and railway rolling stock as well as mining, agricultural and construction equipment, which is the subject of a new Protocol to be adopted at a Diplomatic Conference in November 2019.

The rest of the book was co-written by us, with a great deal of help and advice from experts on the ground. We would like to thank Benjamin Osei-Tutu, Fred Asiamah-Koranteng (Ghana), Fonsia Donzo (Liberia), Cyprian Kambili, Chiku Namelo, Daniel Nkosi (Malawi), Yusuf Dalhatu (Sierra Leone), Jean-François Riffard (OHADA and Burundi), Aroua Farhat (Burundi and Tunisia), Don Wallace (Rwanda), and Reghard Brits (South Africa) who read and commented on individual chapters and whose assistance has been invaluable. Some of them also provided recent statistics from the use of the collateral registries, which allowed us to more deeply assess the functioning of the systems post reform. We would also like to thank Chikezie Anachu, Simon Stanley and Perla Amaya (Natlaw) who acted as research assistants and who played an important part in preparing and checking the final manuscript. Lastly, we would like to thank all at Hart Publishing for their excellent help and support.

Marek Dubovec  
Louise Gullifer  
23rd September 2019

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## LIST OF ABBREVIATIONS

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2017 Bill	Ghana's Draft Borrowers and Lenders Bill of 2017
ABZ	Agricultural Bank of Zimbabwe
APEC	Asia-Pacific Economic Cooperation
B&L Act	Ghana's Borrowers and Lenders Act
BoG	Bank of Ghana
BoZ	Bank of Zambia
Cape Town Convention/ Convention/CTC	Convention on International Interests in Mobile Equipment
CBE	Commercial Bank of Ethiopia
CBL	Central Bank of Liberia
CC	Commercial Code
CCJA	Common Court of Justice and Arbitration
CR	Collateral Registry (Sierra Leone)
CSD	Central Securities Depository
DBE	Development Bank of Ethiopia
DCFR	Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference
EBRD	European Bank for Reconstruction and Development
ECX	Ethiopia Commodity Exchange
FinTech	Financial Technology
IACA	International Association of Commercial Administrators
IAIR	International Association of Insolvency Regulators
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
IFC	International Finance Corporation
ILO	International Labour Organization
IMF	International Monetary Fund

xx *List of Abbreviations*

Legislative Guide/LG	UNCITRAL Legislative Guide on Secured Transactions
MAC Protocol	Protocol to the Convention on Matters Specific to Mining, Agricultural and Construction Equipment
MFI	microfinance institution
MLE	middle-level enterprise
Model Law/ML	UNCITRAL Model Law on Secured Transactions
Model Registry Provision/MRP	UNCITRAL Model Law on Secured Transactions: Model Registry Provisions
MPSI	Zimbabwe's Movable Property Security Interests Act
MPSIA	Zambia's Movable Property (Security Interest) Act
MSME	micro, small and medium enterprise
National Registry	National Registry of Security Rights
NBE	National Bank of Ethiopia
NIALS	Nigerian Institute of Advanced Legal Studies
NPL	non-performing loans
OAS	Organization of American States
OHADA	Organisation for the Harmonisation of Business Law in Africa (Organisation pour l'harmonisation en Afrique du droit des affaires)
ORG	Rwanda Office of the Registrar General
OTIF	Intergovernmental Organisation for International Carriage by Rail
PACRA	Patents and Companies Registration Agency
PMSI	purchase money security interest
PPSA	Personal Property Security Act
RBZ	Reserve Bank of Zimbabwe
RCCM	Register of Commerce and Securities (Le Registre du Commerce et du Crédit Mobilier)
RDB	Rwanda Development Board
SIMP	Rwanda's Security Interests in Movable Property Act
SME	small and medium enterprises
UAGCL	Uniform Act on General Commercial Law ()

UCC	US Uniform Commercial Code
UNCITRAL	United Nations Commission on International Trade Law
UNECA	United Nations Economic Commission for Africa
UNIDROIT	International Institute for the Unification of Private Law
WBG	World Bank Group
ZAMACE	Zambian Commodity Exchange



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