

MAC PROTOCOL – SYMPOSIUM FOR UNIDROIT MEMBER STATES AND STATES PARTIES TO THE CAPE TOWN CONVENTION



THE IMPORTANCE OF SECURED TRANSACTIONS LAW REFORM

BY
DR. MAREK DUBOVEC
SENIOR RESEARCH ATTORNEY

AT



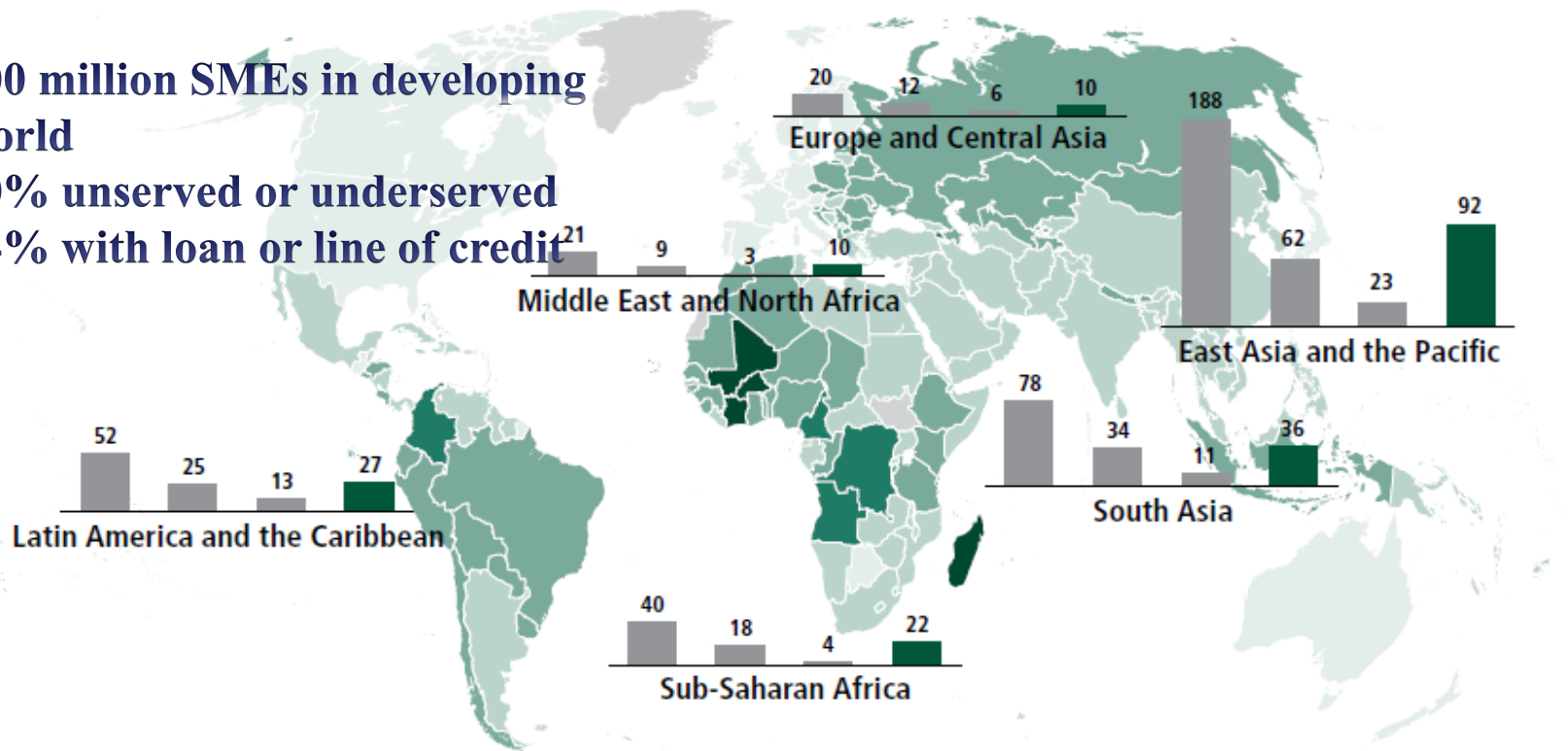
*National Law Center
for Inter-American Free Trade*



FINANCE GAP

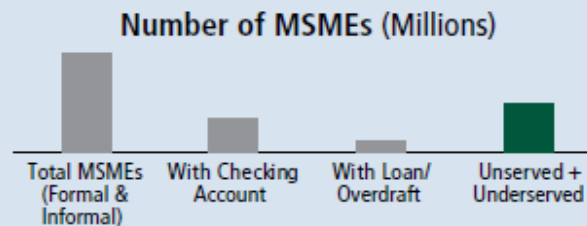
Figure 1. Formal and informal MSMEs sector—Total credit gap

400 million SMEs in developing world
50% unserved or underserved
14% with loan or line of credit

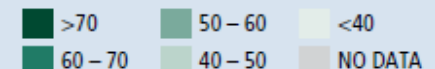


IBRD 40159 | JULY 2013

This map was produced by the Map Design Unit of The World Bank. The boundaries, colors, denominations and any other information shown on this map do not imply, on the part of The World Bank Group, any judgment on the legal status of any territory, or any endorsement or acceptance of such boundaries.



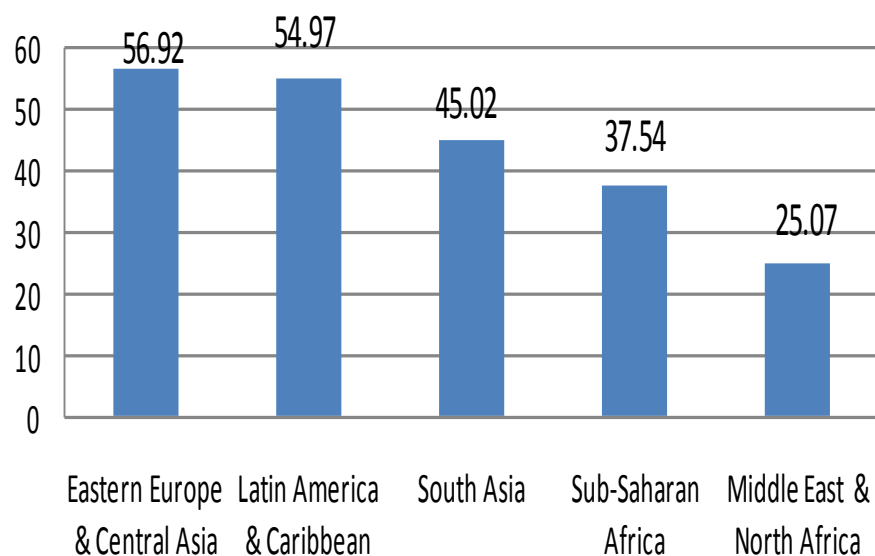
Credit Gap: Unserved & Underserved (Percent)



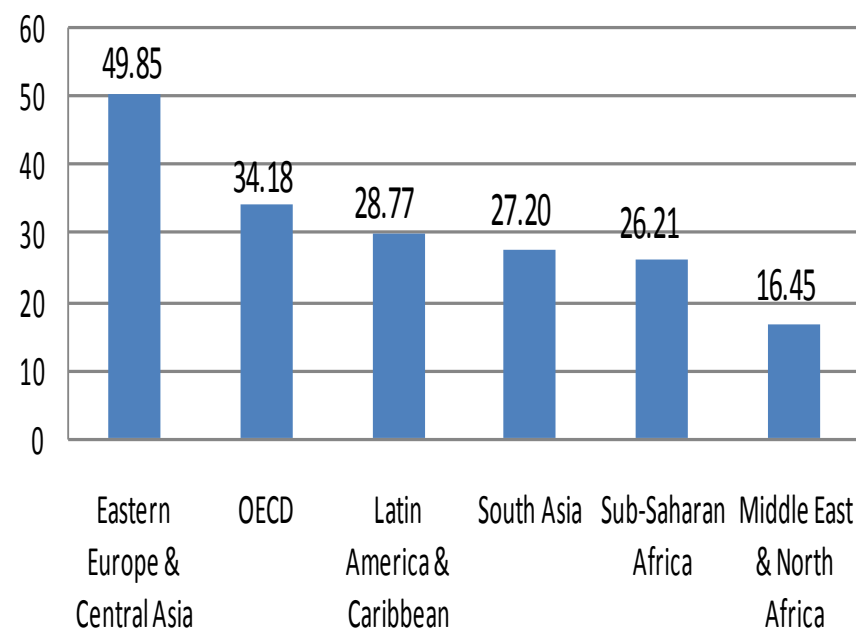
Source: IFC Enterprise Finance Gap Database (2011)

STATUS OF ACCESS TO CREDIT

**Access to a Line of Credit or Loans
from Financial Institutions (% of
Firms)**

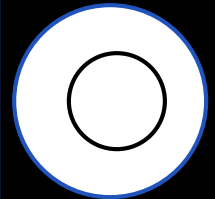


**Use of Bank Loans to Finance
Investments (% of Firms)**

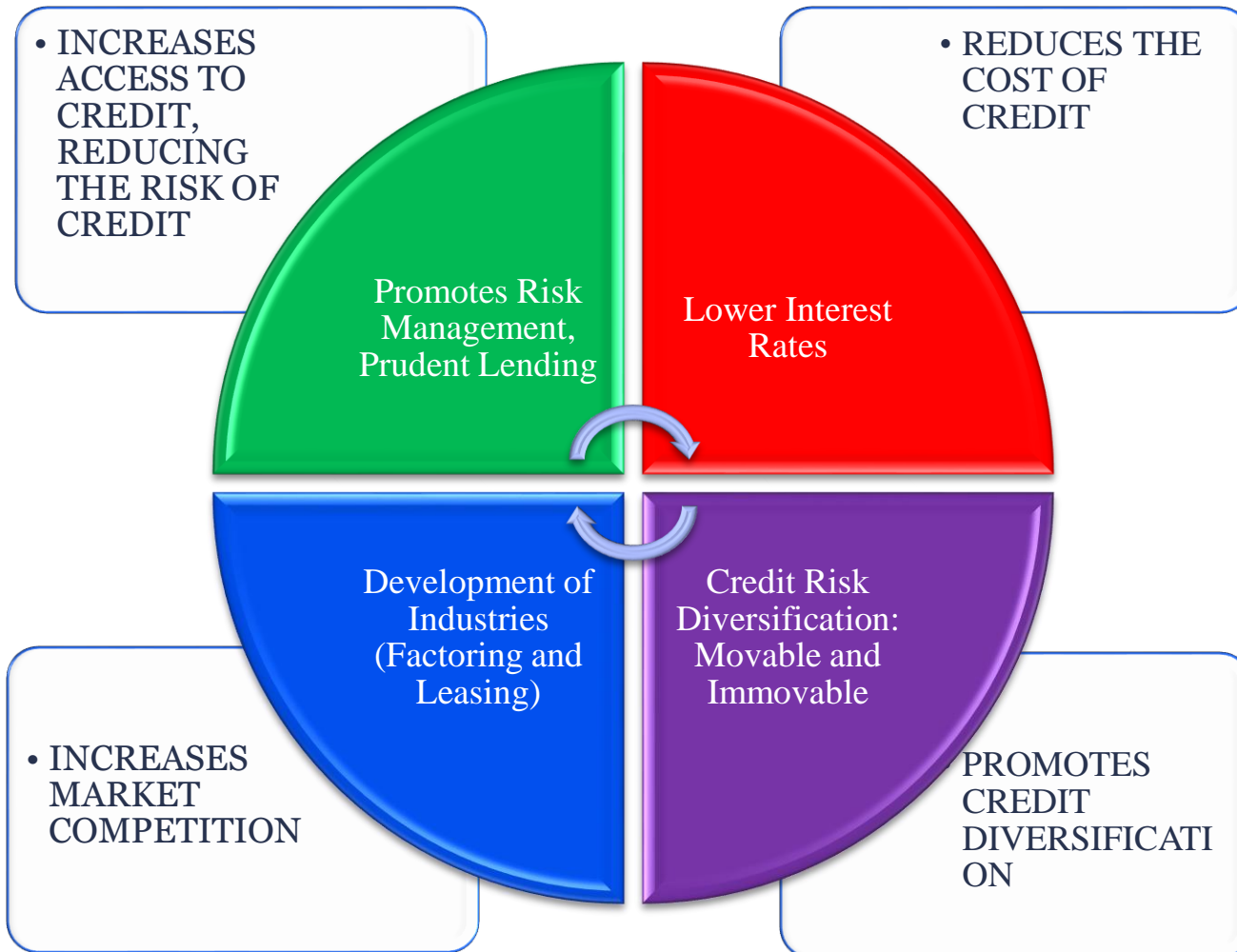


WORLD BANK HELPS GHANA INTRODUCE AFRICA'S FIRST ELECTRONIC COLLATERAL REGISTRY

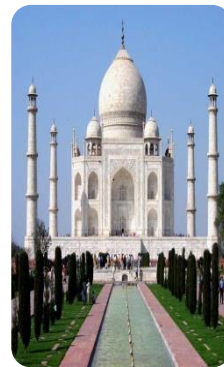
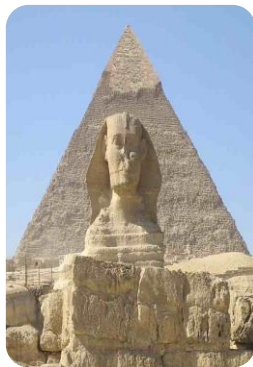
https://www.youtube.com/watch?v=HB0LQtv71_c



BENEFITS OF A MODERN COLLATERAL REGIME



REFORM PROJECTS OF THE WORLD BANK (Coordination)



AFRICA
Burundi
Ethiopia
Ghana
Malawi
Nigeria
Sierra Leone
South Africa
Zambia
Zimbabwe

MENA
Afghanistan
Jordan
Lebanon
Palestine
Morocco
Egypt
Pakistan

EAST ASIA AND PACIFIC
China
Lao PDR
Mongolia
Philippines
Vietnam
Indonesia

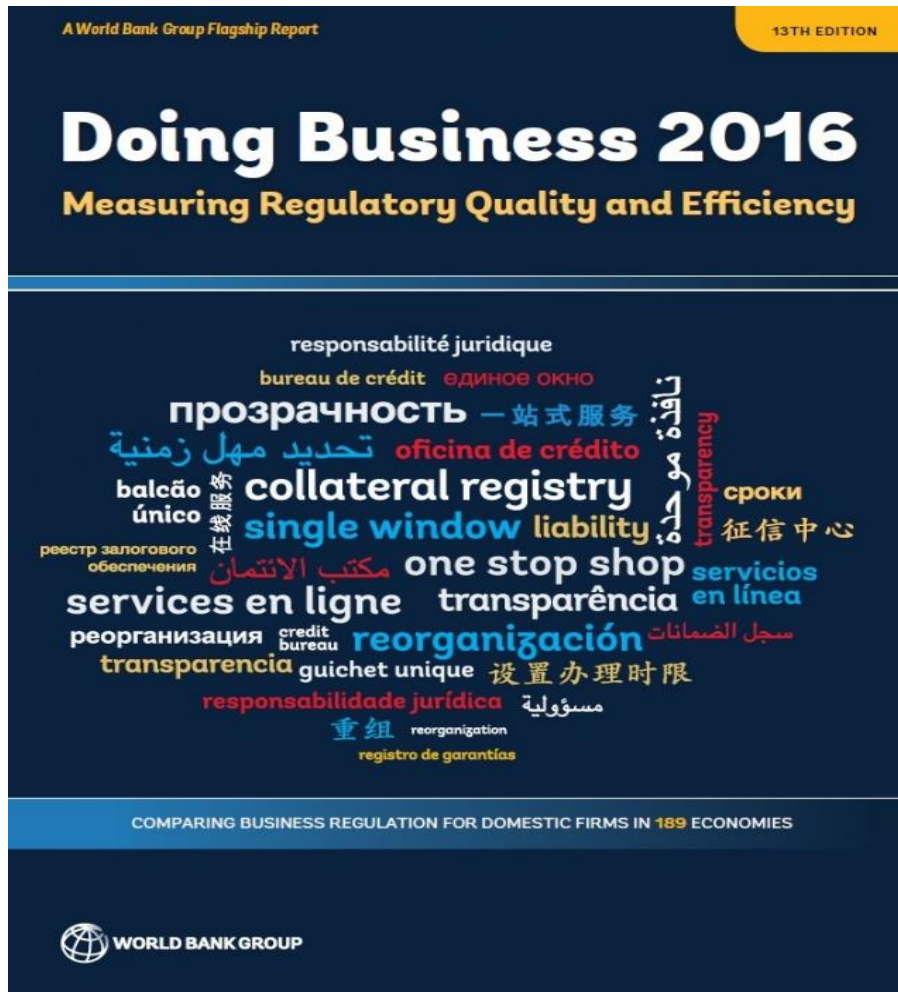
SOUTH ASIA
India
Sri Lanka
Bangladesh
Nepal
Bhutan

ECA
Azerbaijan
Belarus
Tajikistan
Uzbekistan
Kyrgyzstan
Armenia

LAC
Belize
Chile
Colombia
Costa Rica
Dominican Republic
Haiti
Trinidad and Tobago
Mexico
Paraguay
Peru
St. Lucia

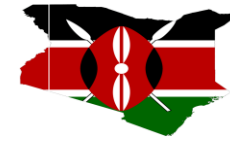
Pipeline: Kosovo, South Sudan, Uganda, Cape Verde, Cambodia

WORLD BANK'S DOING BUSINESS REPORT: ACCESS TO CREDIT



Borrowers and Creditors Right Index (0-12)	
OECD	6
Europe & Central Asia	6.2
East Asia & Pacific	6.2
Latin America & Caribbean	5.3
South Asia	4.9
Sub-Saharan Africa	4.9
Middle East & North Africa	1.3

THE KENYAN EXAMPLE



**FRAGMENTED AND OUTDATED
LEGAL FRAMEWORK (Chattel
mortgage over sheep)**

**DYSFUNCTIONAL AND PAPER-BASED
REGISTRATION SYSTEM (Suitcases)**

**RISKY ENVIRONMENT (Neighbor's
cattle)**

Table 7: Laws relevant to the collateral process in Kenya

1	Indian Transfer of Property Act, 1882
2	Law of Contract Act (Chapter 23, Laws of Kenya)
3	Registered Land Act (Chapter 300, Laws of Kenya)
4	Registration of Titles Act (Chapter 281, Laws of Kenya)
5	Government Lands Act (Chapter 280, Laws of Kenya)
6	Land Titles Act (Chapter 282, Laws of Kenya)
7	Sectional Properties Act (Act No. 21 of 1987)
8	Limitation of Actions Act (Chapter 22, Laws of Kenya)
9	Companies Act (Chapter 486, Laws of Kenya)
10	Evidence Act (Chapter 80, Laws of Kenya)
11	Stamp Duty Act (Chapter 480, Laws of Kenya)
12	Registration of Documents Act (Chapter 285, Laws of Kenya)
13	Banking Act (Chapter 488, Laws of Kenya)
14	Traffic Act (Chapter 403, Laws of Kenya)
15	Land Control Act (Chapter 302, Laws of Kenya)
16	Chattels Transfer Act (Chapter 28, Laws of Kenya)
17	Advocates Act
18	Notaries Public Act
19	Arbitration Act (Act No. 4 of 1995)
20	Agriculture Act (Chapter 318, Laws of Kenya)

THE REGISTRATION PROCESS

The image shows an open register book. The left page is titled "REGISTER OF" and the right page is titled "CHATEL S TRANSFER". Both pages have a grid of columns for recording transactions. The left page has columns for "No.", "By whom Given", "To whom Given", "Name", "Residence", "Occupation", "Name", "Residence", and "Occupation". The right page has columns for "Nature of Instrument", "Date", "Date and Time of Registration", and "Date of Renewal".

REGISTERED UNDER THE CHATELS
TRANSFER ACT

Reg No.: Vol: Folio:

30 JUN 2015

For Registrar - General

[illegible]





Collateral Registries for Movable Assets: Does their Introduction Spur Firms' Access to Finance? by Inessa Love, Sole Martínez Pería and Sandeep Singh

VARIABLE	EFFECT
Access to Finance	8 percentage points ↑
Access to a Loan	7 percentage points ↑
% of Working Capital Financed by Banks	10 percentage points ↑
Interest Rates	3 percentage points ↑
Loan Maturity	6 months ↑

COLLATERAL REGISTRIES - GHANA: IMPACT ON SMES



- Developed a Local Supply Chain for big mining corporations, through local SME service providers.
- Over 100 local SMEs have received more than US\$ 10 million. Created hundreds of new jobs.
- SMEs use movable assets (receivables, equipment) as collateral.



Firestone in Liberia

- Firestone Liberia – with 200 square miles is the largest rubber operation in the world
- Local farmer sells rubber to Firestone
- Firestone agrees to pay in 90 days
- Farmer gets financing from a bank



Energyst of the Netherlands Uses their CAT fleet to Service Locations Throughout Africa

Amount: \$17 million

Locations: Various Temporary Turnkey IPPs
(Mozambique, South Africa, Angola)

Approved: 2014

Export: 1.5 – 2 MW Diesel and Gas Generator Sets
(38 Generator sets for 40 MW Fleet)

Product: Loan Guarantee

Counter Party: Energyst Group

Buyer: Energyst Group

Lender: Rabobank

Exporter: CaterPillar



Sample Retail Values

- US\$14 million dump trucks (Mexico)
- US\$1-2 million drilling rigs (Peru)
- US\$500,000 cranes (Spain)
- US\$400,000 tractors (U.S.)
- US\$70,000 commercial tractors (Mexico)



CHALLENGES AND HINDRANCES TO REFORM EFFORTS



POLITICAL ISSUES
(Afghanistan and South Sudan)



BALANCE BETWEEN
INTERNATIONAL AND LOCAL
EXPERTISE (Chile and Ghana)



LEGAL (Nigeria and Pakistan) AND
REGISTRY ISSUES (Malawi and
Zambia)



EXCESSIVE COSTS (Central America)



LACK OF SUPPORT FROM
FINANCIAL INSTITUTIONS AND
INDUSTRY (Liberia)

NECESSARY STEPS

➤ General Awareness Workshops

➤ Special Training Modules:

- for Judges and Legal Practitioners
- for Financial Institutions on new Internal Credit Products, Valuation of Collateral/Field Examinations/Collateral Management, Risk Management and Enforcement/Collection

➤ Coordination:

- Insolvency
- Leasing, Warehouse Receipts, Companies Acts Projects





Dr. Marek Dubovec

mdubovec@natlaw.com



***National Law Center
for Inter-American Free Trade***