

Regional Secured Transactions Assessment – Azerbaijan

Non-possessory charge over movable property

The following table relates to non-possessory security over movable assets and rights. The survey is best understood if read in conjunction with the EBRD Core Principles, which specify the basic criteria for a modern secured transactions law. The Explanatory Notes describe the methodological approach to the survey.

A	Non-possessory charge - Scope	Grading
1.	Can anyone grant a charge?	3
2.	Can anyone take a charge?	3
3.	Can the charge cover all types of tangible movable property?	3
4.	Can the property be described in general terms?	0
5.	Can the charge be established over future property?	1
6.	Can the charge be established over changing pool of assets?	1
7.	Can the charge be established over going concern (enterprise) or all present and future assets of the chargor?	0
8.	Can debts of any type be secured by charge?	3
9.	Can parties agree on the rights of the chargor over charged assets?	3
10.	Is the good faith charge creditor protected from subsequent claims which may adversely affect the charge?	0
11.	Does a third party acquire property free from security in the ordinary course of business?	?
12.	Are subsequent charges permitted over same property?	3
13.	Can the charge creditor dispose of its priority position?	?
14.	In case of transfer of secured claim, does charge follow automatically?	2

B	Non-possessory charge - Creation / Registration	Grading
15.	Are charges registered?	1
16.	Can a third party determine whether property is encumbered?	0
17.	Is the data centralised? Is the data from the register available on line?	0
18.	Is data in the register indexed against the name of the chargor?	0

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C	Non-possessory charge -Enforcement	Grading
19.	Are the manners of starting enforcement and the enforcement procedure clearly established?	1
20.	Does commencement of enforcement have to be publicised?	2
21.	Is out of court realisation of assets permitted?	3
22.	Can the charge creditor decide on the way the realisation will be done?	2
23.	Can the charge creditor exercise control over the realisation process?	0
24.	Is enforcement rapid?	0
25.	Is the purchaser protected?	3
26.	Is charge creditor protected against the chargor's obstruction?	?
27.	Is taking possession of charged asset simple and quick?	0
28.	Can the charge creditor actively protect the charged assets?	3
29.	Is the charge creditor right protected in case of third party initiated enforcement against the asset?	3

A5	Any agreements contemplating transfer of future assets are void unless such agreements are made in respect of certain objects of future property. The law and legal practice are unclear how such certainty must be achieved.
A6	Only in case of charge over inventory (goods for sale).
A8	It is not clear if a changing pool of debt can be secured by charge.
A14	Re-registration is needed but not seen as a new charge.
B15	There is no general register of non-possessory charges. Charges can be registered only over assets subject to registration in respective title registries.
C19	The enforcement is governed by different rules depending on the type of charged assets: (i) In case of charged assets not subject to registration – the Civil Code applies, which provides very few details in this respect; (ii) In case of charged assets subject to registration - the Mortgage Law applies..
C20	Only for assets subject to registration..
C22	The charge creditor can start realisation without court intervention, but the sale shall be conducted by specialised organizations.