

## Regional Secured Transactions Assessment – Serbia

### 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 - General	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?	3
5.	Can the charge be established over future property?	3
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?	3
11.	Does a third party acquire property free from security in the ordinary course of business?	3
12.	Are subsequent charges permitted over same property?	3
13.	Can the charge creditor dispose of its priority position?	1
14.	In case of transfer of secured claim, does charge follow automatically?	2

B	Non-possessory charge - Creation / Registration	Grading
15.	Are charges registered?	3
16.	Can a third party determine whether property is encumbered?	3
17.	Is the data centralised? Is the data from the register available on line?	3
18.	Is data in the register indexed against the name of the chargor?	3

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

### Remarks

A6	Although law specifically allows it the practice of the courts is very restrictive which create risks.
A13	The law is silent on this issue but the practice uses it.
A14	Re-registration is necessary but not seen as a new charge.
C26	Service of decision on enforcement is seen as practical problem as the debtors tend to avoid service of process, and procedural remedies in such case are somewhat inefficient.
C27	Complications related to concealing objects of pledge are faced in practice.
C28	The pledge law does not provide the creditor with remedies available to protect the charged assets, in particular via injunctions. However, the chargor is obliged to take good care of the charged asset, to maintain it in good condition and make the necessary repairs on it. The charge contract may stipulate the obligation of the chargor to insure the charged asset.