

Regional Secured Transactions Assessment – Tajikistan

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?	1
5.	Can the charge be established over future property?	3
6.	Can the charge be established over changing pool of assets?	2
7.	Can the charge be established over going concern (enterprise) or all present and future assets of the chargor?	3
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?	3
12.	Are subsequent charges permitted over same property?	3
13.	Can the charge creditor dispose of its priority position?	0
14.	In case of transfer of secured claim, does charge follow automatically?	2

B	Non-possessory charge - Creation / Registration	Grading
15.	Are charges registered?	2
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?	2
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?	1
20.	Does commencement of enforcement have to be publicised?	1
21.	Is out of court realisation of assets permitted?	3
22.	Can the charge creditor decide on the way the realisation will be done?	0
23.	Can the charge creditor exercise control over the realisation process?	0
24.	Is enforcement rapid?	0
25.	Is the purchaser protected?	2
26.	Is charge creditor protected against the chargor's obstruction?	0
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

Remarks

A4	The legislation requires that the description of the property must be sufficient to identify it, this standard is not always clear in practice.
A6	The total value of the charged assets provided in the security agreement must be maintained.
A14	Re-registration is necessary but not seen as a new charge.
B15	The legislation stipulates that the registration of the pledge (movables and rights) is carried out on the voluntary basis.
B17	The data is centralised, but not available online.
C19	The enforcement procedure is described by overlapping provisions of the Civil Code (general provisions on pledge, which include mortgage) and the Pledge Law. The manners of realisation in case of extra-judicial enforcement are not entirely clear.
C20	Commencement of enforcement does not have to be publicised, however the charge creditor initiating enforcement shall send a notice requesting performance to the chargor and forward such notice to all (prior and subsequent) charge creditors.
C25	The purchaser is protected in case of sale by public auction. It is not clear if in case of private sale, the purchaser enjoys the same level of protection.