THE IMPACT OF THE LEGAL FRAMEWORK ON THE SECURED CREDIT MARKET IN POLAND

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National Bank of Poland

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The report reflects the status of law as of 1st of July 2005.

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Introduction

The Polish market for secured credit is not working effectively and, surprisingly for outsiders, there has not yet been any real determination to recognise the scale of the problems and to tackle them appropriately. It is increasingly recognised that a strong legal environment and effective enforcement are important for access to external finance and that improvement in the legal environment positively affects the costs of borrowing.1 One of the areas to be explored in Poland is the secured transactions legal and institutional framework.

The functional problems that have for a long time beset the use of collateral are well identified: creation of security interests is a time-consuming and often complex process, creditors have little confidence in their ability to recover on enforcement and there are practical and legal limitations on the use of mortgage. In 1996 Poland was one of the first countries in the region to adopt a modern law on pledge, yet in 2005 it finds itself well behind other countries in central Europe in the development of its secured credit market. Polish economic players express strong doubts about the support they can receive from the legal and judicial system, and they all complain of a situation which seriously restrains economic activity. Yet no real consensus has emerged as to why the situation is so and what needs to be done.

The EBRD was requested by the National Bank of Poland to assess the impact of the legal framework in Poland on the secured credit sector. The objective was to seek a dispassionate examination of the situation in Poland and to put it in the context of the rest of the region.

Since 1991, the EBRD has followed and encouraged legal reform on secured transactions in all of the former Socialist bloc and, as a key investor in Poland, has first hand experience of the difficulties faced by lenders when providing finance.

The work of the EBRD has been carried out in parallel with an initiative led by the World Bank that examines the regulatory framework relevant to contract enforcement in Poland. While the World Bank has been examining the broader issues, the EBRD has sought to gain an understanding of the causes of the particular problems that affect collateral and to find feasible ways of addressing them. Building on existing research and available data, the functioning of the relevant laws and institutions has been analysed against modern market practices, and information and views have been collected from numerous sources (we are most grateful to all those who have assisted us in our work, see appendix H). An extra dimension has been added by making constant comparison with other countries in the region, in particular Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Romania and the Slovak Republic (referred to as “reference countries”). It is important to obtain not only an insular view from within Poland but also to set the issues against the context of other transition economies. Although some within Poland tend to play down the problems, the Polish legal framework, when seen from a regional perspective, appears to be particularly ill-adapted to the needs of the market.

Poland, like other countries in central Europe has an unprecedented opportunity to shape its commercial and financial laws to the needs of modern markets. By doing so it will benefit all market players, and most of all, the consumer. If it fails to do so it will lose out to its central European neighbours who seize the opportunity.

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Asset-backed finance is an important segment of the credit sector. Pledge and mortgage play an important role in stimulating the availability of credit by reaching further to borrowers who may not have the required credit history, and improving the terms on which credit is granted (for example lower interest and/or longer term) because the lenders see their risk reduced. But pledge and mortgage only serve this role effectively if they provide an efficient means of reducing risk. Poland seems to stand out as the country in the region where pledge and mortgage fail to do this. The cost to the Polish economy of that failure may be difficult to quantify, but it is without doubt considerable.

This report starts by describing the principal issues identified. These issues are then looked at in greater depth by analysing the impact they have on the use of security in Poland, drawing comparisons with the reference countries. Finally, recommendations are set out on the steps that might be taken to improve the efficiency of the legal framework for pledges and mortgages.

It is convenient when a report such as this concludes with a set of precise and concrete recommendations which, if agreed, can be passed to the appropriate agency for implementation. This approach, however, would not be appropriate in the present case. In the recommendations set out below we instead seek to indicate both the broad lines of what we see as the solutions to the issues that this report identifies and also the results that those solutions should aim to achieve. If the recommendations find approval, the detail of the solutions and the way in which they are implemented is a matter to be taken forward by Poland.

Much detailed material has been examined and we are aware of the many reforms that have been made or that are currently proposed affecting pledge and mortgage. There is still a need, though, to stand back and to examine the root cause of the problems. Why do pledge and mortgage regimes in Poland rate so poorly in comparative studies, in spite of all the effort and goodwill that has been expended on making them work? How can a consensus be built among participants in the Polish credit market as to the changes that have to be implemented in order to make pledge and mortgage as useful to borrowers and lenders as in other central European countries?

The economic impact of an inefficient legal framework

The request by the National Bank of Poland to the EBRD was to assess the impact of the legal framework in Poland on the secured credit sector. It is evident from the findings set out in this report that in a number of ways the legal framework for pledge and mortgage imposes costs, complexities, delays and uncertainties which are considerably greater than those in the reference countries. One can surmise that those deficiencies negatively impact the market. While available macroeconomic data is sparse and there are necessarily limitations on the ability to quantify the impact of the deficiencies, it is possible to make a simple analysis of the nature of the impact and to look at evidence which may give some indication of how it affects the market.

Banks, like any other business in the market, seek to recover their costs from their customers and to make a profit. The higher their costs, the higher the price will be that they have to charge to the customer. Various abnormal costs concerning pledge and mortgage exist in Poland, including costs, not just in the form of fees, but more importantly in the form of the time and effort involved in the long and onerous registration process, the costs...
of taking alternative security or insurance to cover risk pending registration and the costs of long and complex enforcement procedures. There can be little doubt that these costs are passed on to the customer, either as specific transaction costs or by way of higher interest.

One of the determinants of the cost of credit is the risk of the borrower failing to repay. It is this risk that can be reduced by pledge and mortgage. Where a bank can rely, in case of default by the debtor, on obtaining payment out of the pledged or mortgaged assets, the part of the price for credit which reflects the risk of default can be reduced. But when, as in Poland, there is uncertainty as to the outcome of enforcement, the risk remains higher and there is less scope for price reduction. The effect of pledge and mortgage is not limited to reducing the interest rate. By reducing risk, pledge and mortgage may transform an unacceptable risk into an acceptable one, and thus may become the critical factor for determining whether or not credit is available. This is particularly the case for small and medium-sized enterprises where the unsecured risk is often high. In addition if the risk is reduced the duration for which a bank is prepared to commit may be lengthened. Pledge and mortgage will only have these effects if the bank is satisfied that the risk is sufficiently reduced.

An extensive survey prepared by the World Bank and the EBRD (Business Environment and Enterprise Performance Survey or BEEPS) since 1999 has gathered valuable data from enterprises in all of the EBRD’s countries of operations on a wide range of issues regarding the business environment in which these enterprises are operating, and in particular on access to finance (see appendix G for selected results from the 2002 and 2005 surveys).

When asked to provide information about the most recent bank loan or overdraft that they had received, the aggregate results of Polish enterprises on the availability of credit from banks and other lending institutions are comparable with other countries in the region. The results are also comparable on the need to provide collateral to secure this loan and on the approximate ratio of the collateral value to the amount of the loan. The costs of such a loan (including interest rate), however, is on average significantly higher in Poland than in the rest of central Europe and the Baltics and the length of such loans significantly shorter.2 As this trend is confirmed from survey to survey, it cannot be ignored.

A reinforcing finding is the perception by Polish enterprises of obstacles to business: access to financing is perceived as being between a minor to a moderate obstacle (still the highest rate of any other country in central Europe), whereas the cost of financing is perceived as a moderate to major obstacle – considerably greater than in the rest of the region. Tax rate, economic policy uncertainty and macro instability (in 2002 only for the last two) were the only obstacles rated higher than the costs of financing.

These findings would seem to indicate that the costs of legal inefficiencies which are peculiar to Poland are passed onto Polish businesses, thus making the cost of financing in Poland higher than in other central European countries. Polish enterprises appear to have comparable access to credit, but they have to pay significantly more for it and the available credit is for a shorter duration.

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2 In 2002, costs in Poland were 14.9 per cent of the loan while elsewhere in Central Europe and the Baltics (CEB) average costs were 10.42 per cent. In 2005, these figures were respectively 12.77 per cent and 8.13 per cent. The duration of the loan in Poland was 24.18 months in 2002 while the average was just over 32 months. This trend was confirmed in 2005, with Polish data showing a loan duration of 31.09 months with an average of 41.5 months in the CEB.
In April 2005 the National Bank of Poland, as part of a broader regular survey it conducts, put questions concerning collateral to a range of almost 600 enterprises representative of the business landscape in Poland. Out of those who answered, over 80 per cent thought that giving security to a creditor was significant in obtaining access to a loan which would otherwise be inaccessible, but just over half thought that security played no significant role in reducing the interest rate. When asked about the disadvantages of granting security, approximately three quarters rated as significant the high costs, the complexity and the rigid regulations (see appendix G).

We do not attempt to quantify the impact of the various deficiencies in the legal system that affect pledge and mortgage on the Polish economy but there are many indications that these problems increase the cost of credit, and this is likely to have significant impact on the economy as a whole.
Principal Issues

The EBRD and the National Bank of Poland deliberately took the view that the research should be limited to the two core institutions in the context of secured credit: registered pledge and mortgage and that the recommendations should be selective as to the issues which would need addressing. The point of the exercise was not to make a detailed review of relevant laws and regulations and to point out every aspect where improvement could be made. The objective was to help Poland to prepare a selective agenda for reform which, if properly conducted, would radically change the use of pledge and mortgage in the country. We have thus identified six issues specifically related to pledge and mortgage laws and practice, plus four further issues of a more general nature but equally pervasive.

1. Pledge registration

Pledges are registered at the courts through a judicial process which is in marked contrast to the system of “notice” registration used in most of the reference countries. Delays and inefficiencies occur in the registration process, which have greatly discouraged the use of the registered pledge by lenders and creditors. The registration system by its very nature is incompatible with the requirements of the market for a fast and simple system for publicising pledges. In Hungary and Slovakia for instance, a pledge is registered in a matter of minutes in a simple and efficient administrative process. In Poland registration requires a court decision, takes on average two weeks and is fraught with bureaucratic inefficiencies.

2. Mortgage registration

The formalities required for registration of mortgages are unduly onerous and the time the registration process takes is excessive. Mortgage registration differs from pledge registration since it is made against the title to the asset over which security is granted. The situation in Poland is aggravated by the current transfer of land records to electronic form. Yet there are underlying problems with the registration process which need to be addressed separately.

3. Inelasticity of mortgage law

The mortgage law imposes rigid requirements which unnecessarily limit the possibility of using mortgage as security - the rules and practice concerning the definition and quantification of the secured debt are one example. The proposal to introduce “land debt” as an alternative form of security over land does not address the problems in the mortgage law.

4. Obtaining possession upon enforcement

A creditor who seeks to enforce his claim and realise his security cannot be sure that possession or control of the collateral can be obtained from the debtor. The court process involved and the way the bailiff system operates cause delays and uncertainty. As a result the creditor may be deprived of the ability to protect the pledged assets pending realisation, or even to effect realisation at all.
5. Court procedure on enforcement

The court procedure for enforcing security is slow and allows many opportunities for the debtor to frustrate the intention of the parties as provided in the security agreement. Creditors do not have confidence that enforcement procedures will result in an efficient realisation of the collateral with the proceeds being used to pay the secured debt.

6. Limitations on possibilities for out-of-court realisation

The mortgage and pledge laws, and the way they are implemented, give only limited scope for the creditor to realise the collateral otherwise than through a court-led auction. This deprives creditors (and debtors) of alternative means of realisation which may increase the likelihood of realisation at a fair value and within a reasonable time. Private sale is increasingly becoming accepted in other countries where it is encouraging more efficient realisation of security.

There are certain other, more general issues which underlie the practical operation of pledge and mortgage and which, if not addressed, may undermine any attempts to introduce change.

7. Lack of support for market from legal system

There appears to be little correlation between the legal framework for secured transactions and the economic needs of the secured credit market.

This may be a sign that economic reforms have been made at a pace that legal reforms have been unable to sustain. Both the legal rules and the practice often operate to hinder or prevent the efficient use of security as a means of supporting credit transactions. “Legal tradition” is often raised as a justification for opposing the economic intention of legislation, but it seems without analysis or understanding of the damage that such an inflexible approach can cause.

8. Role of the courts

There is a general perception that the courts play a role in policing the taking, operating and enforcing of the security interests. The perception is also that courts place emphasis on “protecting” the debtor while giving the creditor no guarantee that the legitimate intentions of the creditor and the debtor under the pledge or mortgage agreement will be upheld.

9. Uncertainty as to the rules that apply

The multiplicity of rules and the variations in interpretation leave creditors and debtors in a position where they are uncertain as to their rights and obligations in respect of secured transactions. This further discourages their use.

10. Formalism

The formal approach in court-led procedures adds a significant extra burden on the parties increasing the complexity, cost and time required both for registration and for enforcement of pledge and mortgage.

One overriding issue that stands out above all others is that the problems are long standing and deep rooted, and no amount of superficial change aimed at improving the existing system is likely, by itself, to have any significant impact. As the recommendations of this report will
convey, changes to the system must be profound, radical and built on a broad consensus to ensure full and constructive implementation.
Development of specific issues

Back in the early 1990s, all the former communist countries faced an urgent need to introduce viable rules for secured transactions. New investment to regenerate the economies was dependent on credit. Few potential borrowers had the credit record, the balance sheet or the banking relationships that would persuade lenders to advance money on viable terms. Banks needed to rebuild their loan portfolios on a sound basis with limited, carefully mitigated risk. What was needed was a simple means of using assets to support credit thereby giving lenders the confidence to lend and giving borrowers access to more credit on more advantageous terms. Reform of pledge and mortgage laws has been motivated by this simple objective. Credit remains the lifeblood of a market-based economy and security has an ever-growing role in nourishing the market for credit.

In Poland the Pledge Law of 1996 was the result of a number of years of diligent work. When it was passed it was seen as one of the finest examples in the region of a modern pledge law. In most respects it still compares well with many other laws in neighbouring countries (see assessment in appendix A). However the registration system (examined in more detail below) makes the process for creation of a pledge much less efficient than in other countries and is probably one of the causes of the steady decline in the use of pledge in Poland. Moreover, the defects in the enforcement procedures (also examined in more detail below) effectively prevent creditors from having confidence in the ability to realise value from security in the case of creditor default.

The full significance of this is demonstrated when comparison is made against the reference countries (see appendix B).

The origins of the mortgage law in Poland go back much earlier than the pledge law and, although a number of changes have been made in recent years, many of its main provisions date from 1982 or even before. The mortgage law in many respects is less appropriate for methods of modern financing. On enforcement, similar problems exist for mortgage as for pledge: parties cannot be confident of the way in which the security will be enforced, the assets realised and the secured debt paid back.

The adoption in April 2004 of the Law on Certain Types of Financial Collateral, implementing the European Union Directive 2002/47/EC on Financial Collateral Arrangement, has provided a flexible instrument for taking and enforcing security over cash and financial instruments (shares, debentures and investment certificates), including in a cross-border context. However, the law has not (in Poland or in any other EU member state) made redundant the need for a flexible security instrument over all other types of movable assets available to all parties (including corporate and individual persons).\(^3\)

A recurring finding is that problems may arise more from the way the legal provisions are implemented than from the law itself. Both the pledge and the mortgage laws were clearly designed to enable credit to be supported by security.

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\(^3\) In fact, both the United Kingdom and France have, since the implementation of the Financial Collateral Directive in their respective laws, launched a full review of their provisions on security rights over movable property. See [www.lawcom.gov.uk](http://www.lawcom.gov.uk), Consultation on reform of the law on registration of security interests, 2003, and the report produced at the request of the French Ministry of Justice in March 2005 by the Groupe de travail relatif à la réforme du droit des sûretés.
The system could be functioning efficiently, but it is not. Currently onerous procedures and formalities on both registration and enforcement prevent this from happening. The situation is compounded by a lack of confidence, amongst banks and lawyers, in the effectiveness of the courts in upholding the legitimate intentions of the parties to market transactions.

A - Pledge registration

The number of new pledges being registered has declined from close to 350,000 in 1999 to approximately 74,000 in 2004. Compared with other countries in the region where we have been able to obtain registration statistics (Bulgaria, Hungary, Romania and the Slovak Republic), Poland is the only country where the use of pledge has been continuously declining and where the number of deletions of pledges now exceeds the number of new entries into the register (see appendix C).

Why has the number of new entries in the Polish Pledge Registry decreased by more than 75 per cent in just five years? For Polish market players, the answer is obvious: the process for registering a pledge in Poland is slow, complex and inefficient, which makes the costs of the registered pledge often outweigh its benefits.

The vision Poland had in 1996 of the registration of pledge was far sighted. The Law on Registered Pledge which entered into force on 1 January 1998 significantly expanded the notion of a pledge and created a centralised register for pledges. There was broad acceptance of the need to register pledges in order to publicise their existence. Publicity enables third parties to discover that the creditor claims a prior right in the pledged asset. It also enables the creditor to discover any existing pledges affecting pledged assets. Without an effective system for publicising pledges, the efficiency of the market for secured credit is impaired.\(^4\)

The pledge law also provided, however, that registration has constitutive effect and the data that have been registered are deemed exact, even if they in fact do not hold true. It is easy to understand the rationale that underpinned this provision. Traditionally, public registers are seen as sources of verified and guaranteed information. Information is only included in the register if its accuracy and integrity has been checked. Once included in the register it becomes “authenticated” and the public can rely on the information without making further enquiry.

Applying this rationale to pledge registers is a misconception; pledge registers simply serve to publicise data as provided by the parties. For their good functioning, it is not necessary to authenticate the information registered in relation to the pledge. In fact, any requirement to do so seriously limits the ability of the pledge register to meet the practical and economic needs of the secured credit market. It is for the pledgee to make all necessary enquiries to satisfy himself that a valid pledge will exist over the assets identified in the agreement. An entry in the pledge register serves only to give notice that a pledge right may exist over certain assets of the pledgor, that the parties declare that a pledge exists. There is no overriding need for that agreement to be reviewed and verified by an external authority, just as there is no need for a loan agreement or an agreement for the sale of a movable asset to be reviewed and verified. The position is different from that of a land or companies register, which has to establish a reliable record of the rights that exist in the land or the companies that have been created.

The concern with verification and authenticity has pervaded the entire

functioning of the registry in Poland and has prevented it from developing, as it has in other jurisdictions, to serve its economic purpose. As shown in appendix C, the number of new entries in the registry has continuously declined since 1998 when the system started operating, and the number of deletion of entries is now higher than the number of entries. Similar concerns have had to be addressed in all the reference countries. In some, no review of the pledge agreement is required. In others there is limited review. Lithuania is the only country where there is judicial review. It is clear from the comparative table in appendix E that the average time for registration tends to increase significantly when review of documents is required by the registrar.

Faced with this situation, there seem to be two different prevailing attitudes in Poland.

1) Some think that the registry is now “cruising” at its optimum capacity based on what the market actually needs, or even that the registry is “dying out” because using movable property as collateral is not “a tradition in Poland”. Experience in other countries tells another story. As shown in appendix C, the level of new registrations in other jurisdictions of the region has been rising or has been maintained throughout the years. There is little evidence of any lack of potential demand for new pledges in Poland.

2) Others, and especially those close to the credit market, are keen to improve the situation. The Ministry of Justice has tried hard in the last few years to encourage courts to improve on the time involved for registering a pledge. Official statistics provided by the ministry show that the average number of days required to complete the registration process has dropped from 27 in 2001 to 24 in 2002. In a survey provided to us by the ministry of all of the ten registration sections at the commercial courts, the average time throughout the country is between 4 and 30 days (see appendix C). In an attempt to make further improvements, various minor reforms are currently proposed. But such changes are only scratching the surface and are unlikely to have much impact on the overall efficiency of the pledge registration system or to lead to significant increase in the use of pledge.

As long as registration requires judicial scrutiny there is little chance that the system for creating pledges will ever respond adequately to the economic needs of the market. There is a fundamental incompatibility between authenticating the information entered in the register and providing a market efficient system of publicity. In most countries in the region the registration process is of an administrative nature, with the parties driving the process and the registrar’s role being limited to a minimum. Poland is the only country in central Europe and the Baltics (apart from Lithuania) to have adopted this judicial approach. It is paying a high price because, as shown by the World Bank’s on-going study on the judicial system, commercial courts are often unavailable, contributing to a lengthy registration process especially in large financial centres such as Warsaw and Poznań. In Lithuania the courts usually complete registration within one day. In all jurisdictions where registration is simply a clerical function, the process often takes a matter of minutes and rarely more than a day. The judicial process in Poland also means that there is a subjective interpretation by the judge as to whether or not registration should be permitted, which adds further to the uncertainty of the process. In no other country is such a disparity of approach reported.

Amongst the many specific issues that arose from our analysis and enquiries concerning pledge registration, we note in particular:
Costs

- The registration fee of PLN 200 (approximately €50) is relatively high. Among countries that charge a flat fee, Poland has the highest fee (see table in appendix E). This is off-putting for smaller transactions. There is also no evidence that the fees directly contribute to the operational costs of the registry. Given the level of revenues generated at the current level of use, it appears that fees are used as a source of taxation.

- The time-consuming nature of the registration process adds significantly to the costs of creation of pledge.

- It appears to be common practice for banks to require an alternative form of security pending registration of the pledge (for example a possessory pledge or a fiduciary transfer of assets). The inefficiency and unnecessary cost of such arrangements is obvious.

Complexity of the process

- The description of the collateral required on registration limits the freedom of parties to define pledged assets as they see fit for their transactions. There is a lengthy catalogue of asset categories which have to be used, failure to use the right category leads to rejection and there are often conflicting views as to which category applies. Use of such categorisation adds a significant bureaucratic burden to the registration process without an apparent advantage to pledgor or pledgee. No other country requires such a strict, inflexible description of assets (see table in appendix E).

- The requirements for filling the application forms and presenting additional documents are onerous.

- Registration applicants are often required to make minor formalistic or stylistic changes to their application, and even then there is still a high rate of rejection of applications. Inconsistent interpretations by judges on whether or not registration should be permitted are reported, adding to the uncertainty of the process.

- The search process is complex and does not always ensure fast and inexpensive access to the information in the register. Fields required for searching seem to be unnecessarily strict (for instance, only certain data can be used), and this could lead to search applications being rejected for purely formalistic reasons.

- Pledges created by tax offices against a debtor are registered in a separate Central Register of Treasury Pledges. As an earlier tax pledge would have priority against a later-registered contractual pledge, pledgees have to make separate inquiry into the Central Register of Treasury Pledges, adding time and costs to the process.

- The various levels of search certificates are confusing. No other country (except for Bulgaria) has established this system: in most jurisdictions, a search against the name of the debtor provides instantly full details of all pledges registered against this name. There is a clear corollary between the availability of the register on the internet and full and clear disclosure of search results.

It is evident that the person applying for registration of a pledge in Poland is faced with a much more time-consuming and onerous task than is the case in any of the reference countries. There is a cogent case for
fundamentally rethinking the registration and searching processes. By contrast, the registration system itself is well set up when analysed against modern benchmarks (see appendix E). We were particularly impressed by the information we received on the current IT system and the professional approach of the Ministry of Justice staff, who in the future are due to operate the system.
B - Mortgage related issues

There is considerably less comparative information readily available from the reference countries on mortgage than there is on pledge and our assessment of the mortgage law in Poland is of a more general nature. It is clear that users are not happy with the way the regime for taking mortgages works and this dissatisfaction is becoming more acute as the mortgage market continues to expand dramatically in Poland. We received many comments on the time and procedure for registration, but we also learnt of other respects in which the mortgage law, or the way it is implemented, fails to meet market needs.

1. Mortgage registration

The system for registration of mortgages is changing as the land registration system undergoes computerisation. Inevitably such a change is not without difficulties and it will take some time for it to be completed. Although the Ministry of Justice and the courts seem confident that computerisation of most of the existing records will be completed in a reasonable timescale (the date of 2010 was put forward), a number of pessimistic predictions were made by practitioners that significant delays in this process are likely. Within the scope of this study it was not possible to make a detailed analysis of the new system of electronic linked registries for mortgages but we did not become aware of any major problems with its basic design. At the operational level, however, many problems seemed to arise in practice. Some of these problems are linked with the accuracy of the records held at the land register (or sometimes the lack of records on a given piece of property - this is certainly the case in Warsaw), and these problems necessarily take time to be resolved. But there are other problems as well.

It is not feasible for mortgage registration to use merely a notice system. It is inherent in the function of the land register that third parties can rely on its contents. When a mortgage is registered it is more than just a notice by the parties that they have entered into a mortgage: it represents confirmation that a mortgage exists. It is therefore inevitable that registration of a mortgage requires greater verification and often cannot be carried out instantly as should be the case for pledge. Registering a mortgage should however be as streamlined and fast as possible, within these constraints. Yet, the procedures for registration in Poland are currently onerous and formalistic. In fact, they are so slow that banks systematically require the debtor to provide insurance protection for the time while registration is pending, which adds to the overall costs of credit. Few perceive that the registration process is designed to respond to a market need for speed and efficiency.

Specific problems mentioned with the registration of mortgage were:

- Method of payment of registration fee is outdated and the time taken in obtaining appropriate confirmation that the fee has been paid is unduly long.
- Rigid formal requirements regarding completion of application forms and presentation of information mean that applications are often rejected for non-substantial reasons.
- Inconsistencies of practice - even persons who regularly apply for registration have little confidence that their application will be accepted the first time.
- Limited time for making any required amendments to the application often leads to starting...
again with a new application following rejection.

- Time taken for registration - although this is considerably shorter where the records are computerised, it seems it can still take a number of weeks. Conflicting views on the time taken were expressed by the courts and users.

- Level of registration fees, in particular the need to pay a full registration fee in case of transfer of mortgage or other change to the mortgage.

2. Inelasticity of the mortgage law

The requirements for an efficient legal framework for mortgage are very similar to those for pledge. Traditionally many countries, like Poland, have regulated mortgage and pledge by distinct legal provisions, although there is recognition that such separation is not compulsory (for example, Hungary and the Slovak Republic apply the same rules to both mortgage and pledge). Whenever a restriction or limitation is made for mortgage which is not applicable to pledge the natural reaction is to seek out the economic or legal rationale behind it. Often such a rationale is hard to find. The EBRD’s “Core Principles for a Secured Transactions Law” are used as the basis for the assessment of the mortgage law and the way it is applied in practice that is set out in appendix D. It highlights a number of ways in which the mortgage law is ill adapted to modern practice.

An issue that creates much difficulty is the inflexibility of the law and practice as concerns the secured debt. The requirements for defining the secured debt are more rigid than for pledge and this leads to problems in securing multiple, future or fluctuating debts and in taking security over more than one property to secure the same debt. The distinction between ordinary fixed amount mortgages (hipoteka zwykła) and capped amount mortgages (hipoteka kaucyjna) gives rise to unnecessary complications in practice without providing any benefit to the mortgagor, the mortgagee or any other person. Many lenders we spoke to reported routinely entering into two mortgages for each transaction, one fixed amount mortgage to secure the debt’s capital, and one capped amount mortgage to secure interest and other fluctuating amounts. This practice is a peculiarity of Poland and has no obvious justification.

In modern market practice the types of debt are innumerable: fixed amount loan, revolving credit, bank overdraft, trade credit, fixed rate interest, variable rate interest, financial guarantee, contracts for differences, etc. A mortgage should be able to secure any type of debt. Clearly the debt must be defined to give certainty as to what is, and what is not, secured. But the law should allow for a definition which is sufficiently flexible to enable mortgage to be used to secure any type of present or future debt that the parties may wish to secure.

It is a fair and normal requirement that the definition of the secured debt includes an indication of the amount - for future debts or credit lines, this is often done by indicating a maximum amount. But the amount indicated should be the principal amount. A requirement to quantify interest and expenses is unduly onerous and is also of little use to anyone involved. It suffices to state (if not implicit from the law) that interest and expenses are secured in the same way as the principal.

An example of the lack of flexibility in the use of mortgage is the difficulty in using a mortgage to secure a credit line. A credit line established by general agreement cannot be secured
by mortgage unless the agreement defines precisely the obligation subject to mortgage and the upper amount of the debt. Thus where a bank grants a credit facility to provide for unspecified future financing needs of the debtor, a mortgage will not be valid unless a new agreement is entered into at the time each advance is made. Credit facilities which give the debtor access to money as and to the extent required are an established feature of business finance. A provision of law which hinders the ability to secure such credit through mortgage should only be maintained if there are good objective arguments for doing so.

There is no obvious reason to limit the use of mortgage to certain types of debt or to be more restrictive in this respect for mortgage than for other types of security such as pledge. The pledge law evidently aims to permit all types and forms of debt to be secured by pledge and we heard no arguments why the position should not be the same for mortgage.

Other issues raised included problems with establishing a mortgage over different properties as security for the same claim and problems of transferring mortgages in case of syndication or securitisation. Again, these problems cause practical limitations on the use of mortgage without any apparent good reason.

The unsatisfactory predicament of mortgage providers is demonstrated strikingly by the groundswell of support for the current proposal for introducing legislation on a non-accessory form of security called “land debt” (Grundschiuld). This may provide an alternative form of security over land, which is a useful new instrument for asset-backed financing since it would disconnect the security from the debt. It will be a new instrument, however, quite different from mortgage.

Discussions with market players indicate that the main objective of the reform is to circumvent the problems posed by the mortgage law (just as when such instrument was introduced in the past in Germany and Switzerland). To some extent it may, but core problems such as initial registration and enforcement which will be the same for land debt as for mortgage will remain. However welcome land debt may be for some transactions, it is illogical and potentially counter-productive to use land debt for transactions where a mortgage would be used if it were not for the deficiencies of the mortgage system.

There is a conceptual leap between a classic mortgage and non-accessory land debt which will need to be understood by users and reflected in changes in practice. For transactions where land debt is genuinely the appropriate option, such a leap may be justified but the market still needs the instrument of mortgage (as experience shows in Hungary, where the use of so-called independent charges has been limited). Introduction of land debt does not alter the need to address issues on the mortgage law and there is no obvious reason why the mortgage legal regime could not be reformed to provide market players the flexibility they need.

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5 At the time of writing, the bill was still being debated before parliament.
6 See the comments and materials produced by the Mortgage Foundation at www.fukrehip.pl.
C- Enforcement of pledge and mortgage

In this section we develop the enforcement and realisation issues for both pledge and mortgage. Although technically subject to different rules the practical issues are essentially the same. Three of the principal issues set out at the beginning of this paper relate specifically to enforcement (obtaining possession, court procedure and out-of-court realisation) but they are so entwined that it makes more sense to look at them together.

As for registration of pledges, problems of enforcing pledge and mortgage in Poland are well known. A recent study by the National Bank of Poland has dramatically highlighted the problem of bad debts in the banking sector and the importance of efficient and reliable mechanisms for debt recovery (see appendix F). Banks which participated in the survey carried out as part of the study had clear views as to the causes for the low effectiveness of the enforcement process. These causes ranked by order of importance included:

- protracted court procedures;
- problems of endorsing bank enforcement titles;
- dilatory nature and low effectiveness of bailiffs' work;
- overly formalised enforcement procedures; and
- high court and enforcement costs.

A survey conducted by the EBRD in 2003 focusing on the enforcement of a pledge over movable assets (production equipment, machinery and inventory) showed Poland as remarkably deficient amongst the countries of central and south eastern Europe. Rating the efficiency of the enforcement system by reference to financial return, simplicity of the process and time involved, Poland ranked 20th out of the 26 former communist countries covered by the survey, behind the Kyrgyz Republic, FYR Macedonia and Moldova among others (see appendix B). The countries which were rated lower were Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Turkmenistan and Uzbekistan.

The World Bank’s report “Doing Business in 2006” is just as concerning, as enforcement of a simple contract is reported to take no fewer than 41 procedures spread over 980 days. The initial findings of the World Bank’s on-going study on contract enforcement and the courts reveal a similarly gloomy picture.

The conclusions of the National Bank of Poland, the EBRD and the World Bank were supported and confirmed by the detailed analysis and enquiries we made. Issues which arose in relation to enforcement of pledges and mortgages included:

- The inevitability of court involvement during the enforcement process. Paradoxically, the system does offer routes by which court involvement can be reduced (for example power given to notaries and banks to issue execution titles), yet in practice court involvement remains compulsory (a court must still affix an executory clause on the execution title). The result is severe delay in the process. This compares unfavourably with the regimes in the Slovak Republic or Hungary, where the only requirement for the secured creditor upon default is to notify the beginning of the procedure to the debtor and to publicise it in the register.

- The lack of viable out-of-court realisation procedures. For registered pledges such procedures are foreseen in the law (article 24), but the requisite implementing decree has not been passed. For mortgages, selling without court involvement is not possible in any circumstance. In
comparison, all of the reference countries offer the option of out-of-court sale, at least for pledges. Only in Estonia, do many parties prefer to go through a court-led procedure, and there it is because this proves efficient (see appendix B).

- Lack of appreciation of the importance for the creditor to obtain possession or control of the movable assets upon enforcement. The pledge laws in all of the reference countries (except the Czech Republic) give explicit right to the pledgee upon default to take possession of the pledged assets. Polish law relies on the bailiff to prevent loss of the assets. Given the gross inefficiency of the bailiff system in Poland (as amply developed in the World Bank’s ongoing study), this leads to pledgor abuse, further delay and considerable costs.

- The scope given by the system for an unscrupulous debtor to obstruct proceedings at every step of the process. Key participants reported that debtors would typically appeal against all steps of the enforcement process, from bailiff appointment to organisation of the auction, in order to cause delay. In the EBRD survey, only Slovenia and Commonwealth of Independent States (CIS) countries present the same severe problem with debtor obstruction. Unscrupulous debtors are not exclusive to Poland, but other countries have found ways to deter debtors from abusing procedural rules.

- Inefficient and overly formalistic public auction sales which in many cases end in the asset not being sold at all. This problem is not new; public auctions are a notoriously inefficient means for the sale of assets. In the EBRD survey, respondents in all of the central European countries recommended that the pledged assets be realised by direct sale in order to maximise the proceeds (with the exception of Estonia).

The picture that emerges in Poland is of creditors having little confidence in their ability, in case of need, to translate their security into money for payment of their claim, of inordinately long proceedings where the net recovery is likely to be low and of a complex and burdensome process that has to be suffered to achieve even a poor result. The direct costs of these enforcement inefficiencies are almost invariably passed on to the debtor and, in addition, the increased risk is reflected in higher interest rates and borrowing costs.

One of the principal factors which drive the market for credit is the credit provider’s assessment of the risk of non-recovery. A debtor with a good credit rating or who gives valuable security should be able to expect better access to credit. But rating creditworthiness or valuing security normally assumes that there exist reliable means to enforce claims and realise security. If confidence is lacking not in the debtor’s ability to repay or the value of the security, but in the ability of legal institutions to give effect to creditors’ claims, then it becomes difficult for the credit market to operate efficiently. For the borrower this is likely to mean high interest rates, shorter duration or simply no credit at all.

To qualify as efficient, an enforcement system has to allow for simple, fast and inexpensive realisation of the assets at or near to market value, whilst at the same time affording adequate protection to the debtor. There is no one-size-fits-all, ideal solution for enforcement. Each country has to adapt a system which is best suited to its own context and traditions, but the objective of the creditor when taking security is always the same: to
obtain the means to recover money out of the pledged or mortgaged asset in order to satisfy the claim. The likelihood of having to use that means is relatively remote, but when it has to be used it is in the interests of creditor and debtor alike that enforcement leads to the recovery out of the pledged or mortgaged assets of as much as possible, as rapidly as possible and as simply as possible. Enforcement is not a means of punishing the debtor; it is no more than putting into effect the agreement of the parties, agreement which has led to the debtor receiving better credit terms (or receiving credit which would not otherwise have been available).

Certain features of an efficient enforcement system can be recognised:

1. The parties need to have considerable freedom in the pledge or mortgage agreement to determine the method of realisation on enforcement. In transition economies where the judicial system has been subject to immense changes in the last decade and continues to be under considerable pressure, there has been an increasing trend to allow the parties to agree to out-of-court realisation, either by investing the creditor with the right and responsibility upon default to lead the realisation process in a commercial and fair manner, or by granting private parties the right to do so (for example public notaries or credit institutions) in their professional capacity. Examples exist in all the reference countries. The aim of such out-of-court sale procedures is to achieve a sale of the pledged or mortgaged assets in a manner which approaches a normal market transaction, thereby increasing the likelihood of a realisation at market value.

The Polish pledge law goes some way in this direction but stops short of offering an efficient option to the parties:

- Article 21 provides that realisation can be carried out through judicial proceedings. This entails realisation by public auction. The procedure is unanimously described by users as inefficient and excessively formalistic, with many cases ending without the asset being sold at all.

- Article 22 allows the pledgee to take over title to the pledged asset in settlement for the secured debt. Upon such appropriation the creditor does not receive money to repay his claim but he becomes owner of the pledged asset which he is then free to keep or sell as he chooses. The procedure has a number of drawbacks compared to realisation of the pledged asset. Most often the pledgee becomes owner of an asset which he does not want. He may sell it but his security is effectively a gamble: if he sells it for more than the appropriation value he has won but it is a raw deal for the debtor; if, as is more likely, he sells it for less then it is unsatisfactory for him. In practice appropriation under article 22 may be difficult to effect because of problems with obtaining possession and delays in court proceedings which often result from a challenge by the debtor. Even without those difficulties, appropriation provides a less than satisfactory remedy. None of the reference countries relies on appropriation to ensure efficient enforcement.

- Article 24, as mentioned above, allows the parties to agree that the sale of a pledged asset can be conducted by a notary or court enforcement officer (bailiff), but the requisite decree of the Ministry of Justice has never been passed.

For mortgage the only method of enforcement is through court procedure and similar problems of delay and inefficiency are reported. In fact, the public auction on immovable
assets appears to be subject to even more inflexible (and thus impractical) rules.

2. The creditor needs to be assured that the pledged assets will be protected from the moment enforcement begins, both to prevent deterioration (or disappearance) of the assets during the enforcement process and to ensure the ability to deliver the assets on sale. In the case of a possessory pledge, these assurances are self-evident, but where the debtor is allowed to keep possession of the pledged assets (which is now the norm) the absence of such assurance removes much of the advantage of taking a pledge. It is evident that neither the courts nor the bailiff system currently provide such assurance in Poland. When the registered pledge is taken over an enterprise, as permitted by the law, it is unclear how the pledgee could ensure control of the enterprise pending realisation.

3. Both debtor and creditor need to be assured of protection against abusive action by the other. Controls must be in place to ensure that a creditor cannot enforce without regard to his contractual obligations and his legal duties. Likewise, a debtor should be prevented from taking obstructive action. Appeal procedures should not lead to automatic stay of enforcement and should generally be framed in a way which does not encourage the use of appeal as a means of frustrating legitimate proceedings. We were given many examples of how a pledgor or mortgagor in Poland can currently delay and obstruct enforcement in such a way as virtually to deprive the pledge or mortgage of any value.

4. The courts should provide the ultimate guarantee that enforcement can be effected as intended by the pledge or mortgage agreement.

- Where enforcement is through court procedure, the court has a duty directly to ensure efficient realisation of the pledged or mortgaged assets. Polish courts are currently failing the users in this regard.

- When enforcement is through out-of-court procedure the courts are not absolved from any role in enforcement. When so requested and when necessary, they should to give the parties assistance and/or protection, and allow the out-of-court procedure to resume as provided in the agreement. For example, if parties disagree as to one aspect of the procedure, they should be able to appeal to the court to solve that particular dispute and then resume the out of court procedure as provided in their agreement. If courts do not assure that role, out-of-court enforcement can never operate satisfactorily.

An irony of enforcement is that the better the enforcement procedure, the less it is likely to be used. A debtor who knows that, in case of default, enforcement will follow swiftly is more likely to make the necessary effort to fulfil his obligations. And if he is unable to do so he is more likely to cooperate in achieving satisfactory realisation of the pledged or mortgaged assets, which is in his interest as well as that of the creditor.
Recommendations

The recommendations we make naturally flow from the issues we have highlighted and the comparative approach we have taken throughout this study. Our recommendations are anchored in what we perceive as the present, and likely future, needs of the credit market. The objective of any change to the law or the legal system is to reduce the cost and increase the availability of credit. We have used as our base for comparison Poland’s neighbours in central Europe and the Baltics (the “reference countries”). Those are the countries with which Poland broadly shares its development path and with which it is most closely in competition. Western European jurisdictions may have developed advanced financial techniques for the secured credit market, but they have not always done so with the full support of their legal system. In fact, in many instances, the developments have happened in spite of the legal system and thus these jurisdictions are not the best source from which to draw.

Recommendation 1

The system for pledge registration should be changed to a “notice” system which enables:
- immediate registration of information as presented by the parties
- immediate access to all registered information by any member of the public.

Regardless of whether or not the courts remain in charge of the registration system, such a notice system should:
- preclude any requirement for judicial review of registration applications or examination of the pledge agreement. The sole objective of the process should be the publicity of the security to third parties and the role of the registrar should be limited to just this.
- draw from the experience of existing notice registries in the reference countries. There are many successful registries in the region which operate efficiently and are widely used. It is not necessary for Poland to copy from elsewhere but rather it should look for inspiration from those tried and tested systems which operate in broadly similar economies.
- give maximum flexibility to the system so that parties can tailor the pledge according to the context of their transaction (including collateral description) as was envisaged in the pledge law.
- include tax pledges, currently registered separately in the Central Register of Treasury Pledges, in the Pledge Registry so that the public can easily and quickly find all registered pledges in one single place.
- provide real time access by the public to all registered information via the internet and a user-friendly search engine.
- provide lower fees to encourage the use of pledge for micro and SME finance.

Recommendation 2

The processes for registration of mortgages and for accessing information in the mortgage registers should be made simple, fast and inexpensive.

Problems with mortgage registration are not all due to the outdated, paper-based land registries, thus they need to be tackled in parallel to the computerisation of the information. Superfluous requirements and
formality should be removed, and checking should be limited to necessary issues of substance. Despite the formalism associated with mortgage registration because of the nature of the land registry, the procedures should be adapted to market economy transactions. The public should be given easy and immediate access to all registered information concerning mortgage.

**Recommendation 3**

The mortgage law should be reviewed:
- to remove unnecessary or out-of-date restrictions and constraints, and
- to make mortgage an attractive and flexible instrument of security which gives maximum economic benefit to borrower and lender.

Unnecessary limitations surrounding the taking of mortgages have made the instrument unattractive to lenders. These limitations should be removed because they have no raison d’être. It should be made possible to secure any pecuniary claim by a single mortgage irrespective of its nature or form. The process for creation of a mortgage should be made as simple as possible with maximum scope for the parties to tailor the detail of their agreement to fit the actual needs of their transaction. A similar level of flexibility should be introduced for mortgage as currently exists for pledge. Some countries in the region (for example the Slovak Republic and Hungary) provide the same or similar provisions to regulate both instruments of pledge and mortgage and have drawn many benefits from this approach. The introduction of other instruments such as the land debt (Grundschaft) should not divert from the need to reform the mortgage law.

**Recommendation 4**

Simple, fast and inexpensive procedures should be introduced allowing out-of-court sale of pledged and mortgaged assets under the control of the secured creditor, aiming at rapid realisation at market value in a manner which is fair for creditor and debtor alike.

The ability to enforce is ultimately what gives pledge or mortgage its value. The severe limitations on such ability in Poland are one of the prime causes of the ineffectiveness of pledge and mortgage in supporting credit markets and they considerably increase the cost of borrowing. Alternative methods introduced by the pledge law have failed to serve the needs of the users, for a variety of reasons. Poland should take a fresh look at what can be offered to the parties, in the context of both pledge and mortgage. Successful examples of out-of-court realisation procedures can be found in all of the reference countries. Typically, the creditor can initiate sale of the collateral without going to court, and he or some other third party designated by the parties can effect the sale either at auction or as a direct sale. Similar procedures should apply for mortgage as for pledge as there is no reason to submit one instrument to different rules than the other.
Recommendation 5

The rules and procedures for court involvement on enforcement of pledges and mortgages should be revised to ensure that the courts will provide practical and timely assistance or protection if needed by either party during out-of-court enforcement so that:
- a creditor can rely on the realisation procedure giving him a viable means of recovering the money he is owed
- a debtor can be assured of adequate remedy if the actions of the creditor exceed what he is entitled to do under the terms of the law or the security agreement.

Ultimately parties will rely on the courts to guarantee that legal effect is given to their agreement for security. Currently, court involvement is seen by users as hampering the process through unjustified delays, chronic debtor obstruction, and lack of market understanding. Creditors have lost confidence in enforcement procedures enabling them to recover their unpaid claims. Whereas general reform of court procedures may be a gradual process, effort is needed now to design balanced rules defining clearly the rights and responsibilities of the parties on enforcement. In the case of dispute, the role of the courts should be only to ensure that those rules operate efficiently and fairly to give effect to the legitimate intentions of the parties.

Recommendation 6

The rules and practices for obtaining possession or control of pledged or mortgaged assets on enforcement should be changed to ensure that the basic right to obtain possession or control of secured assets is upheld and that the procedure for doing so is simple, fast and inexpensive.

The procedures available to the creditor for obtaining possession or control constitute an essential, complementary part of enforcement procedures. They need to provide a rapid and effective means of protecting the pledged or mortgaged assets during enforcement so that the assets can be delivered to a purchaser under the realisation process. Poland is relying on the work of bailiffs to provide such protection but this is failing the market.

General recommendation

Reform of the current system should be driven by the economic objective of reducing the cost and increasing the availability of credit. Any implementation of the recommendations of this report should be assessed against economic benchmarks.

This study has focused on a specific part of the legal system which has an important influence on the operation of the market for credit. It is evident that all is not well in the realm of pledge and mortgage and that the current shortcomings in the way the legal system operates are providing a drag on secured credit activity and are adding an unnecessary cost to credit. Policy makers need to show a determined commitment to address those shortcomings in an economic context. The way towards successful reform is likely to lie in an understanding by law-makers and law-implementers of the economic role played by pledge and mortgage and a willingness to ensure that the law supports that role.
APPENDICES
First produced in 1999, the Regional Survey was motivated by a number of factors:

- EBRD staff have accumulated considerable knowledge about secured transactions law and practice in the region which can usefully be shared.

- Basic information about secured transactions helps credit providers and their advisers assess the potential advantages of taking security.

- Responses to simple practical questions highlight the strengths and weaknesses of the legal framework for collateral in any country. They also give a clear indication of the changes that are needed if the economic benefits of a secured credit market are to be maximised.

- A uniform survey covering all countries in central and eastern Europe and the CIS gives a basis for objective comparison and encourages mutual assistance between transition countries in legal reform.

- The survey covers consensual charges over movable and intangible property. Five tables are used to give an immediate overview of the charges law in each country. The first table gives an overview of certain key elements of the charge which are then amplified in the following three tables covering creation, commercial effectiveness and the effect on third parties. An intentional distinction is made between the nature and effect of the charge as a proprietary right which is covered in the first four tables and the means by which it can be realised, the remedies, which is covered in the final table on enforcement.

We set out below the composite tables of the survey results for Poland and the reference countries. The full survey, including explanatory notes and annotated tables for each country, is available on www.ebrd.com/st.

<table>
<thead>
<tr>
<th>KEY</th>
<th>Description</th>
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<tr>
<td>✓✓✓</td>
<td>Yes.</td>
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<tr>
<td>✓✓</td>
<td>Yes, but with some reservations.</td>
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<tr>
<td>✗✗</td>
<td>Indicates that response is negative, but there are some mitigating factors in law or practice.</td>
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### 1. Key elements of a charge

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<td><strong>2. Can the charge be granted by any person?</strong></td>
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<td><strong>3. Can the charge be granted to any person?</strong></td>
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<td><strong>4. Can the charge secure any debt?</strong></td>
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<td><strong>5. Can the charge cover all types of asset?</strong></td>
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<td>✓ ✓</td>
<td>✗ ✗</td>
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<tr>
<td><strong>6. Does the charge give priority over all other creditors?</strong></td>
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<td>✓ ✓</td>
<td>✓✓ ✓</td>
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### 2. Creation of the charge

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<td><strong>5. Are costs of creation low enough not to dissuade?</strong></td>
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3. Commercial effectiveness

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<td>✗ ✗</td>
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<tr>
<td>3. Can charge be given over after-acquired property?</td>
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<td>✔✔✔</td>
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<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>4. Can charge cover fluctuating pool of assets?</td>
<td>✔✔✔</td>
<td>✗ ✗</td>
<td>✗ ✗</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✗ ✗</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>5. Can the secured debt be defined generally?</td>
<td>✔✔✔</td>
<td>✗ ✗</td>
<td>✗ ✗</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>6. Can a future debt be secured?</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>7. Can the debt be in a foreign currency?</td>
<td>✔✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>8. Can a fluctuating pool of debt be secured?</td>
<td>✔✔✔</td>
<td>✗ ✗</td>
<td>✗ ✗</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>9. Do parties have wide flexibility to agree commercial terms?</td>
<td>✔✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
<tr>
<td>10. Are subsequent charges permitted over same property?</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
<td>✔✔</td>
</tr>
</tbody>
</table>
4. Effect of the security right on third parties

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does charge give priority in charged property?</td>
<td>✓✓✓</td>
<td>✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
</tr>
<tr>
<td>2. Does the secured creditor have priority in bankruptcy?</td>
<td>✓✓✓</td>
<td>✗ ✗</td>
<td>✗ ✗</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓ ✗</td>
<td>✓ ✓</td>
</tr>
<tr>
<td>3. Can a third party determine whether property is charged?</td>
<td>✓✓✓</td>
<td>✗ ✗</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
</tr>
<tr>
<td>4. Does a third party acquire property free from charges in the ordinary course of business?</td>
<td>✓✓✓</td>
<td>✗ ✗ ✗</td>
<td>✓ ✗</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✗ ✗</td>
<td>✓ ✓</td>
</tr>
<tr>
<td>5. Is person acquiring bona fide without notice of charge protected?</td>
<td>✓✓✓</td>
<td>✗ ✗</td>
<td>✓ ✗</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✓✓✓</td>
<td>✗ ✗</td>
<td>✓ ✓</td>
</tr>
</tbody>
</table>
5. Enforcement of the charge

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Is the manner of enforcement of charge clearly defined?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>2. Is there tried practice?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>3. Can chargeholder protect assets?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>4. Can chargeholder obtain rapid realisation?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>5. Can the creditor exercise control on the way realisation takes place?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>6. Does enforcement procedure allow expectation of reasonable realisation proceeds after costs?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>7. Does commencement of enforcement have to be publicised?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
<tr>
<td>8. Is purchaser in enforcement procedure protected?</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
<td>✔ ✔ ✔</td>
</tr>
</tbody>
</table>
APPENDIX B

EBRD survey on enforcement of pledges

In 2003 the annual EBRD Legal Indicator Survey focused on enforcement of pledge (charge). The survey was based on a case study of pledge enforcement. Extracts from the survey are set out below. For the full survey and background material see www.ebrd.com/st.

For secured transactions, the practical effects of the law appear most clearly on the question of enforcement of a security interest. The key issue for a creditor whose claim is not satisfied is how much and how fast he can recover through realisation of the charged assets, and how simple the whole process will be. Therefore, the primary evaluation of the responses concentrated on these three dimensions of enforcement. It also took in a number of other factors, which could not be overlooked.

Results are first presented on the basis of summary indicators relating to the amount a debtor could be expected to recover from the general case as described, the time needed to realise recovery and the simplicity of the legal process to be followed. The amount indicator reflects the likely return on the realisation of the assets minus the enforcement costs (since the costs will be recovered out of the sale price and will therefore diminish what the secured creditor will recover from the collateral). The amount has been adjusted on a scale of 0-10 where 10 equals the maximum possible return. The time indicator reflects the estimated length of the process necessary for successful enforcement, from the commencement of the enforcement procedure to the collection of the proceeds of sale. The time has been adjusted on a scale of 0-10 where 0 equals the longest estimated time (24 months) and 10 the shortest (one month). The simplicity indicator summarises a range of factors, including the number of procedural steps to be taken, the number of places to visit or persons to contact, the availability of information, clarity of the law and regulations, uniformity of practice, the adoption of necessary implementing regulations and the ease of ascertaining the existence of competing claims. To simplify the scoring, countries were given a 10 where the enforcement process was considered overall to be clear and with only a minor level of complexity; 5 where there was a significant likelihood of complexity or uncertainty which might prejudice the enforcement process; and 1 where there was a major level of complexity or uncertainty that could deter creditors from commencing enforcement (see chart 1).

The same results are also shown with countries grouped by regions (central Europe and the Baltic States, south eastern Europe, and the CIS) (see chart 2).

These comparisons are then refined and qualified by looking at how results might be affected if the circumstances of the case changed (scope) and how the process of enforcement is affected by taking into account other interested parties, as well as the quality and integrity of the courts (see chart 3). This is the only way the survey can give a fair and realistic picture of the situation on the ground.
Chart 1: Enforcement of charged asset, by country

Notes: Data for Tajikistan were not available.
Data for Serbia and Montenegro include the Republic of Serbia only.
Data for Montenegro and Kosovo were not available.
Ratings for each dimension range from 0 (worst) to 10 (best).

The remaining six qualifiers relate to the scope of enforcement, that is, how effective enforcement would be when conducted on various types of collateral and in the case of debtor insolvency. The relevance of insolvency is self-evident. A creditor’s assessment of his security will change if, on examination, it appears that the relatively good enforcement that might be expected would be radically curtailed should the debtor be declared insolvent. Limitations on the kinds of assets that can be pledged, and variations in the legal procedures relating to different classes of assets similarly provide necessary qualification to the assessment presented above.

Results are presented on a country basis (reference countries only).
### Process Factors

| **Debtor obstruction:** possibility for the debtor to prevent, slow down or otherwise obstruct the enforcement proceedings to the detriment of the chargeholder. Legitimate exercise of right of defence or appeal is not included. | **Insolvency procedure:** the impact of the debtor's insolvency on the enforcement process. |
| **Preferential creditors:** impact of claims of other creditors (other than prior-ranking secured claims) on the satisfaction of the secured creditor's claim. | **Insolvency ranking:** the priority of the secured creditor's claim upon insolvency of the debtor. |
| **Creditor control:** ability of the creditor to control or influence the conduct of the enforcement procedure. | **Receivables:** an assessment of the simplicity and certainty of the enforcement process for a charge over receivables. |
| **Institutions:** reliability of the courts and other institutions necessary to support the enforcement process. | **Immovables:** an assessment of the simplicity and certainty of the enforcement process for a charge over immovables. |
| **Practical experience:** the general level of practical experience with the enforcement process in the country in question. | **Inventory:** an assessment of the simplicity and certainty of the enforcement process for a charge over inventory. |
| **Corruption:** the impact of corruption within the court system on the enforcement process.* | **Scope of collateral:** the possibility to enforce against replacement and subsequently acquired assets included in the general description of the collateral. |

* Although the assessment was based on the replies from the respondents, reference was also made to the joint EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) and, where applicable, Transparency International’s Corruption Perceptions Index. For Turkmenistan, which was not covered by these surveys, no assessment was given for corruption or institutions.
Chart 3: Qualifying factors in the enforcement process (selected jurisdictions)

**Note:** The extent of the problems with process factors is indicated by the amount of blue on the right hand side of the web, and similarly for scope factors by red on the left hand side. The greater the area coloured, the more serious the problems are.

**Source:** EBRD New Legal Indicator Survey 2003.
Estonia

Hungary

Poland


Romania

## APPENDIX C

Pledge registration statistics in Poland and other reference countries

### Table 1: Number of registrations in the pledge register in Poland and average time required: 2002-04

<table>
<thead>
<tr>
<th>Court Name (Pledge Registry Division)</th>
<th>Number of applications lodged per year</th>
<th>Average time required for completing entry</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2002</td>
<td>2003</td>
</tr>
<tr>
<td>Białystok</td>
<td>5,264</td>
<td>4,556</td>
</tr>
<tr>
<td>Gdańsk</td>
<td>10,820</td>
<td>9,343</td>
</tr>
<tr>
<td>Katowice</td>
<td>10141</td>
<td>11,392</td>
</tr>
<tr>
<td>Kraków</td>
<td>No data received</td>
<td>No data received</td>
</tr>
<tr>
<td>Łódź</td>
<td>7,354</td>
<td>7,719</td>
</tr>
<tr>
<td>Lublin</td>
<td>7,667</td>
<td>7,156</td>
</tr>
<tr>
<td>Poznań</td>
<td>No data received</td>
<td>No data received</td>
</tr>
<tr>
<td>Rzeszów</td>
<td>No data received</td>
<td>No data received</td>
</tr>
<tr>
<td>Warszawa</td>
<td>No data received</td>
<td>No data received</td>
</tr>
<tr>
<td>Wrocław</td>
<td>8,699</td>
<td>8,890</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice, Poland
Chart 4: Number of entries and deletions in pledge register in Poland between 1998-2004

Source: Ministry of Justice, Poland

Chart 5: Number of entries and deletions in pledge registers in reference countries in 2003

Sources: Ministry of Justice, Bulgaria
Chamber of Notaries, Hungary
Ministry of Justice, Poland
Ministry of Justice, Romania
Chamber of Notaries, Slovak

Note: No data could be collected in the Czech Republic, Estonia, Latvia and Lithuania.
Chart 6: Number of entries in pledge registers in reference countries between 1998 and 2003

Sources: Ministry of Justice, Bulgaria
Chamber of Notaries, Hungary
Ministry of Justice, Poland
Ministry of Justice, Romania

Note: No data could be collected in the Czech Republic, Estonia, Latvia and Lithuania. In the Slovak Republic, the registry started operating only in 2003.
### EBRD core principles for a secured transactions law

<table>
<thead>
<tr>
<th>EBRD core principles for a secured transactions law</th>
<th>Analysis of Polish 1982 Mortgage Law (as amended)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Security should reduce the risk of giving credit leading to an increased availability of credit on improved terms.</td>
<td>The registration system for mortgages as currently operated often leads to creation being slow, expensive, and relatively time consuming and complex.</td>
</tr>
<tr>
<td>2. The law should enable the quick, cheap and simple creation of a proprietary security right without depriving the person giving the security of the use of his assets.</td>
<td></td>
</tr>
<tr>
<td>3. If the secured debt is not paid the holder of security should be able to have the charged assets realised and to have the proceeds applied towards satisfaction of his claim prior to other creditors.</td>
<td>This principle is respected in the mortgage law. There are certain exceptions on priority (claims for alimony, last three month's employee wages and invalidity pensions take priority over the mortgagee's claim).</td>
</tr>
<tr>
<td>4. Enforcement procedures should enable prompt realisation at market value of the assets given as security.</td>
<td>They do not. Enforcement procedures tend to be very slow and drawn out and the amount recovered well short of market value.</td>
</tr>
<tr>
<td>5. The security right should continue to be effective and enforceable after the bankruptcy or insolvency of the person who has given it.</td>
<td>This principle is respected in the law.</td>
</tr>
<tr>
<td>6. The costs of taking, maintaining and enforcing security should be low.</td>
<td>On creation the court fees and civil acts tax payable on registration are, when combined, high; in addition notary fees are payable when the mortgagee is not a bank. The time consuming and bureaucratic nature of the registration process de facto adds to the costs. Enforcement costs tend to be high, especially the bailiff fees.</td>
</tr>
<tr>
<td>7. Security should be available (a) over all types of assets (b) to secure all types of debts and (c) between all types of person.</td>
<td>This principle is respected for assets and persons (accepting that a mortgage law is necessarily restricted to immovable assets). It is not respected</td>
</tr>
</tbody>
</table>
for debts. The requirements for defining the secured debt, the limits on securing interest and enforcement costs, and the distinction between ordinary fixed amount mortgages (hipoteka zwykła) and capped amount mortgages (hipoteka kaucyjna) all limit the type of debt that can be secured by mortgage.

### 8. There should be an effective means of publicising the existence of security rights.

The computerised registration system provides the basis for such a means, but it remains to be seen whether the information in the register is easily and immediately available to the general public.

### 9. The law should establish rules governing competing rights of persons holding security and other persons claiming rights in the assets given as security.

This principle is respected in the law.

### 10. As far as possible the parties should be able to adapt security to the needs of their particular transaction.

The mortgage law and the way it is applied in practice seem to be fairly rigid with many restrictions on how the parties can adapt the mortgage to the needs of their transaction. Problems with establishing a mortgage over different properties as security for the same claim, and problems of transferring mortgages in case of syndication or securitisation are two examples that were cited where the law and practice are incompatible with the needs of modern financing.
## APPENDIX E

Pledge registration system - assessment and regional comparison

### Table 2: Comparative analysis of pledge registration system’s main features in Poland and reference countries

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Who is operating the registry?</td>
<td>Special section in 10 district commercial courts</td>
<td>Ministry of Justice</td>
<td>Chamber of Notaries</td>
<td>Chamber of Notaries</td>
<td>Register for Enterprises</td>
<td>Hypothecary divisions of 15 courts of first instance</td>
<td>Several operators who have been granted a licence (Chamber of Notaries, Law Society, Chamber of Commerce, etc.)</td>
<td>Chamber of Notaries</td>
</tr>
<tr>
<td>Who is supervising the registry?</td>
<td>Ministry of Justice</td>
<td>Ministry of Justice</td>
<td>Ministry of Justice</td>
<td>Ministry of Justice</td>
<td>Ministry of Justice</td>
<td>State</td>
<td>Ministry of Justice</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>How long does it take on average to register a pledge</td>
<td>14 days</td>
<td>less than 1 day</td>
<td>1 day or less</td>
<td>minutes</td>
<td>5 days max.</td>
<td>1 day</td>
<td>1 day or less</td>
<td>minutes</td>
</tr>
<tr>
<td>Does pledge agreement have to be produced?</td>
<td>Yes</td>
<td>No</td>
<td>No*</td>
<td>No*</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Does the registrar have to check information submitted by applicant?</td>
<td>Yes</td>
<td>No</td>
<td>No*</td>
<td>No*</td>
<td>Yes (but limited)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Is registered information deemed accurate?</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

* In practice the notary who performs the entry would have previously notarised the pledge agreement.
<table>
<thead>
<tr>
<th>Cost of registration (min/max) in Euros</th>
<th>48/48</th>
<th>15.40/ no max****</th>
<th>23/23</th>
<th>19.80/19.80</th>
<th>36/36</th>
<th>14.50/203**</th>
<th>18.30/18.30</th>
<th>12.80/377</th>
</tr>
</thead>
<tbody>
<tr>
<td>How are charged assets described in the application form?</td>
<td>Detailed description based on official catalogue of assets, pre-defined features and sub-features</td>
<td>As the parties wish to describe them - in practice, parties provide assets description on an annex which is scanned and attached to the registration form</td>
<td>As the parties wish to describe them</td>
<td>As the parties wish but the assets description is limited in space (A4 page format)</td>
<td>As the parties wish - except when the pledge covers movable items which are subject to separate registration, these items must be listed separately in the application</td>
<td>As the parties wish</td>
<td>As the parties wish, there is no size limit</td>
<td>As the parties wish but the assets description is limited in space (A4 page format)</td>
</tr>
<tr>
<td>Do searches clearly show the details of registered charges against chargor?</td>
<td>There are several levels of search certificate</td>
<td>There are several levels of search certificate</td>
<td>There are two different types of search certificates (1. only current charges, 2. full history)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Is information available instantly to anyone (via internet or direct electronic link)?</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>In some instances, yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

** This includes the notarisation fee.
*** Each operator sets its own fee.
**** It depends on length of application - there is a charge of €3.60 for each additional page.
Analysis of Polish pledge register against EBRD guiding principles for the development of a charges registry

NB – In this table, the terms “pledge” and “charge” are interchangeable

<table>
<thead>
<tr>
<th>EBRD guiding principles for the development of a charges registry</th>
<th>Polish register for pledges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A regime for secured credit should provide for effective publicity of charges.</td>
<td>The time-consuming and complex process for registering pledges seriously compromises the effectiveness of the publicity system. The persistent decline in the use of the register gives evidence of this and also indicates that the system for publicising charges is not playing the economic role it was intended to.</td>
</tr>
</tbody>
</table>

The development of a publicity system is essentially an economic exercise, not a legal one, where the ultimate objective is the reduction of risk.

- Charges are useful because they can reduce the risk attached to credit.
- Risk reduction is dependent upon certainty of the creditor’s right in charged assets.
- Publicity enables third parties to discover that the creditor has a prior right in the asset.
- Publicity also enables the creditor to ascertain existing charges affecting charged assets.

Without publicity a creditor is unlikely to have sufficient certainty in his rights in the charged assets. The situation is different where he takes them into his possession or control, for example in the case of security over shares or bonds.

A publicity system can only operate effectively in a market economy if:

- it is simple, fast and easy for all parties to use
- it supports the needs of the whole of the credit sector and does not, for example, restrict access to only a few privileged users (for example, large domestic banks)
- the market is willing to use the publicity system
- the system actually enables the public to become aware that charges exist.

The willingness of the market to use the publicity system and the extent, in practice, to which the system actually enables the public to become aware that charges exist are key indicators of the effectiveness of the system.
2. As a result of publicity it should be possible to find out what charges are claimed over a person's assets and their chronological order of ranking.

The need for publicity derives from the desire to avoid the problems that arise when one person who has, or wishes to acquire, rights in an asset is not able to ascertain what rights others may have in the same asset. If this is to be achieved, the publicity system must not only identify the person who is giving the charge, but also give the means to identify the assets which are encumbered by describing them specifically or generally.

The publicity system also provides a convenient method for determining the order of ranking between competing rights claimed in the same asset.

- The order of ranking is normally determined by the chronological order of publication.
- A person with an existing charge should not find that his priority has been harmed without his consent.

A person acquiring a right in the asset should not acquire it subject to a charge of which he had no notice.

The use of a separate publicity system for tax pledges means that two registries have to be searched in order to ascertain existing pledges and their ranking. Otherwise the publicity system respects this principle, both from the legal provisions and the way they are being applied in practice.

3. Publicity is best achieved by registration, most often against the person granting the charge.

The publicity system should:

- make it possible to give notice of a charge over any asset belonging to any person
- render the information in the notice easily and universally accessible to the public.

The only means of publicity which permits this is some form of centrally held, publicly accessible register. The register has to be designed in a way which enables it best to fulfil this function. In particular, it should be computer-based - this will greatly increase the simplicity, speed and efficiency of recording and retrieving information as compared to a paper-based system.

There has to be a basis for primary classification (and thus later recovery) of the information:

- In theory the choice is to classify by person (as in a company or commercial register) or by asset (as in a land register).

The system was designed with this concept in mind and generally fulfils this principle. However, the requirements for describing the pledged assets in the registration application, in particular the very strict catalogue of assets, features and sub-features, may limit the type of assets which parties are likely to pledge.
• It is relatively easy to construct a simple and uniform method for uniquely classifying and indexing all chargors, that is the persons (physical and legal) who create charges (by reference to name, ID or commercial registration number, address, date of birth, and so on).
• It is much more difficult to do so for assets. Some assets may have a unique identification number (vehicles, machines) or other unique identity feature (works of art), but for many assets unique identification is impractical (for example, stock in trade, small equipment, grain, oil).
• If a charge over the universality of the debtor's assets is to be possible, registration cannot be made against the assets.

In practice classification by person is the only solution which can be of general application.

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<th>4. Failure to publicise a charge makes it ineffective against third parties.</th>
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<td>In some legal systems publicity is a condition for the creation of a charge, or is even the act which creates the charge.</td>
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<td>In others it is merely the means by which the chargeholder acquires prior ranking against other persons with a claim in the charged asset.</td>
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<td>Whatever the approach adopted, the effect in practice of a failure to publicise should be the same: no charge in the register means no security right that can be effective against third parties.</td>
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<td>This is essential for ensuring a sufficient level of certainty for assets to be freely bought and sold, or offered as collateral.</td>
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<th>5. The system for giving publicity and for accessing the publicised information should be simple.</th>
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<td>Simplicity is fundamental to any publicity method. Each element of unnecessary complexity for the user or the registrar (and its agents) reduces efficiency. Respect of the principle of simplicity should pervade every aspect of the design of the registry, for example:</td>
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<td>• Rules governing registration should be defined in clear and simple terms, any instructions, guidelines, manuals should be fully consistent.</td>
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This function is fully fulfilled by the existing system, both from the legal provisions and the way they are being applied in practice.
• Procedures for registration should be kept simple and easy to follow. Any temptation to supplement the procedures with unnecessary requirements (for example, production of documents to accompany registration) should be strongly resisted.
• The nature and amount of the information to be registered, and the form in which it is registered and retrieved, should remain simple (while being useful to the public).
• An entry in the register serves only to give notice that a security right may exist over certain assets of the chargor. There is no need for anyone other than the parties to check or confirm the validity of the security right or the accuracy of the information to be publicised. The fact that information appears in the register does not authenticate it or validate the security right.
• The technical structure should be made simple for the registrar (within the constraints of cost effectiveness).
• The registration service should be widely available, to ensure easy access by all citizens and businesses.
• Immediately upon registration the person requesting registration should be able to obtain a print out of the information as entered into the register, confirming the entry that has been made.

Procedures for searching should be kept simple, should be clearly explained and easy to follow. There should be no requirement to justify a search.

6. **The system for giving publicity and for accessing the publicised information should be fast and inexpensive.**

Any person should be able to make a registration or a search without unnecessary delay or cost.

Using modern technology it should be possible for a new entry to be available in the register within a few minutes of the registration request being made. Searches should be quasi instantaneous.

The costs of registering and searching should be kept to the minimum level that is feasible. Unless the registry is subsidised the fee will have to cover the capital and operating costs of providing the registration service but it should not include any element of taxation or excessive profit for the registrar.

The time required to complete an entry is on average 14 days, which, compared with other central European countries is extremely slow. Registration costs may be too high for small transactions. There is no information available as to the capital and operating costs of the register, which compounds the perception that registration fees are unacceptable taxation as opposed to a fair contribution to the cost of the registration process. Searching is relatively quick but there is a cost associated with it. No data is available as to the frequency of searches.
The capital and maintenance costs of the computer system should be carefully assessed with a cost/benefit analysis for each feature.

It is desirable that the fees for the registration service are determined on a transparent basis and that the income and expenditure accounts of the registry are open to the public. This provides a means of control and also strengthens public confidence.

Ultimately the fees for registration should not deter the public from using the system, especially for smaller transactions where the role of collateral as a facilitator of credit is often at its greatest.

7. **The register should be accessible for all persons and all registered information should be public.**

There should be no restriction as to who can search the register. The purpose of registration is to provide information to the public, so neither the registrar nor any other person should be entitled to limit the right of access to any registered information.

The search procedures should be designed to facilitate retrieval of information. Current information in the register should be available immediately on screen and with the facility for any member of the public to obtain an immediate printout.

Searching points should be organised so that any person, wherever situated in the jurisdiction, can have easy access. The internet is likely to provide the most efficient and accessible search medium.

8. **The method of recording, storing and accessing information should protect against error, abuse and fraud.**

The computer system should be designed to avoid registration of incomplete, irrelevant or incompatible information and to minimise the possibility for human error (for example, by using drop down menus, compulsory fields, clear guidelines).

Search procedures should facilitate information retrieval (for example, by showing names with similar spellings, permitting the use of wild
The reliance placed on negative search results makes this especially important.

The computer system and its operating procedures should include adequate protection against loss or corruption of data in the registry database, whether through technical fault, unauthorised access or tampering, or occurrence of disaster. It should not be possible to register a charge over a person’s assets without authorisation, which may come from the person himself or from a judicial or administrative decision. The registration procedure may require that evidence of such authorisation be produced to the registrar or his agent. If a charge is registered without authorisation, the person against whom it is registered should be able to obtain deletion through a fast and simple procedure and to obtain compensation.

Procedures for registration of amendments and cancellation (termination) should incorporate similar protection against error, abuse and fraud. It should not be possible to cancel a charge without the chargeholder’s authorisation, or other appropriate safeguards.

Correction of factual errors directly by the registrar should be limitatively defined and duly documented.

9. The registry should be operated and managed transparently as a public service.

Operation may be delegated in whole or in part to persons in the public or private sector but the responsible government department should ensure that there is an effective system of supervision and that the registration system operates in the manner intended by the law and relevant regulations.

The ownership and licensing of the software, hardware and data must be clearly defined. The general public should be made aware of the existence of the registry, the way it operates and the consequences of registration.

The registry should be reliable, available and operational during its defined service hours. Uncertainty as to the availability of the service, either for registering charges or searching, will quickly discourage potential users.

Standards of performance should be established, actual performance measured, and the results made publicly available.

Since registration is a judicial, as opposed to an administrative, process it is not subject to standard supervision, reporting requirements or audit. The judicial nature of the registration system means that the public service provided is incompatible with the requirements of the market for a fast and simple system for publicising pledges.
The registrar should be required to report regularly to provide information to the supervising authority on all aspects of the operation of the registry, and to demonstrate that the registry is performing as required by law. The registry should be subject to a regular independent audit.

The duties of the registrar should be clearly defined. The rights of government to terminate the appointment of the registrar in the case of default and to take over the operation of the registry or appoint a new registrar should also be defined.

The registry should be established in a way which ensures the sustainability of the registration system and the finance required for its continued operation and periodic upgrade.
Registered pledge in Poland: procedures applicable

Entries to the registry must be made by filling in an application. The form RZ-1 can be downloaded from the Ministry of Justice website www.cors.gov.pl. The form is compulsory and applications made otherwise would be rejected.

The information that must be included is:
- Court at which the application is being filed
- Date at which the application is received (to be filled in by the court)
- File reference number (to be filled in by the court)
- Whether the applicant is the chargor or the chargeholder (box to tick, it could be both)
- Number of entities acting as chargor
- Number of the entity in the section - when there are several chargors, a supplementary form needs to be filed (RZ-D), by which the same identification data will be given for all of them – RZ-1 containing ID details of the first one of the chargors.
- Designation of the entity – choice between two boxes to tick, one referring to the treasury and the other one for “other entity”.
- Identification of the chargor: the details required are names and identity number (relying on the electronic population recording system for natural persons PESEL and on the national business registry REGON for legal persons), place of residence or principal office. A correspondence address in Poland must be provided if different from the place of residence or principal office, including when the chargor is represented by a proxy, in which case the proxy’s details must also appear.
- Identification of the chargeholder: this information is a perfect replica of that required for the chargor.
- Identification of the debtor: this information is a perfect replica of that required for the chargor.
- Description of the subject matter: name of the asset object of the charge must be provided according to the Charge Description Standards Catalogue, and the afferent item number. As per the catalogue, there are 8 categories, with sub-categories: movable assets, collection of movable assets or rights, which constitute an organised part, co-ownership of movables and rights, claims and future rights, rights on intangible assets, securities, shares (participations) in a limited liability company, and other assets. In addition, features by which the subject matter of the charge is being further identified in the catalogue must be added, with the name of the feature (as per the catalogue) and the description of the feature as in the specific case of the charged asset. Such description seems to be limited in space (150 characters per feature maximum) and the number of features seems also not to exceed 6. Finally, the manner by which the charged asset is being designated in the charge agreement can be added.
- Details concerning the charge: the amount of the claim must be indicated (in figures and words) as well as whether this amount refers to the value of the claim or to the maximum amount (box to tick); the conditions for enforcement as provided in the charge agreement: reference must be made to the various options opened in the Pledge Law, arts 22, 24, 27(1), 27(2) and 28 (for each, option, one can tick either yes or no).
- Information must be provided as to whether the charge provides reservation concerning the sale of the charged assets (yes or no) and the further charging of the charged assets (yes or no).
- Details on appendixes: official forms (description and number of pages) and charges agreement (description and number of pages).
- Applicant signature: no special rules apply.

Detailed guidelines regarding the length, number of types of signs (symbols, capital letters, etc.) are contained in an ordinance of the Ministry of Justice.

The application can be submitted either directly or by post. The attached documents must be originals: photocopies will not be accepted. If application is made by post, the date of application of the submission will be the date of the actual receipt of the letter. There are as yet no means to deliver the application electronically.

Documents required are:

1) Power of attorney of the applicant (if not the pledgor, pledgee or debtor)
2) Corporate documents confirming the representation powers of the person who signs the application on the behalf of pledge or pledgor.
3) Sometimes a document confirming that the pledgee is an entity entitled to act as pledgee according to Pledge Law.
4) Sometimes, a copy of the loan agreement is required by the court.

These documents will be kept and archived by the court.

Courts require official transcripts from commercial registers to evidence right to sign registration applications (no reference to transcripts submitted with another application is allowed), articles of association of the banks, credit agreements, copies of car registration cards etc.

Registration of a pledge costs PLN 200.

A registration certificate (confirmation of registration) is issued to the applicant plus all persons concerned (chargeholder, chargor, etc). This is a written certificate containing the court decision and a statement confirming entry of the pledge in the Pledge Registry (including ID number of the registry). The certificate has the same value as a court order and can be appealed.

For changes to the pledge, the same procedure will apply, with a copy of the documents (for example a new schedule of description of assets if assets are modified). The court where the initial entry was made remains the competent court for all changes, regardless of whether the chargor may have moved to another district. The fee is lower: 100 PLN for changes, and 50 PLN for deletion of the charge.

To search the pledge register, the applicant must fill out a specific form designed by the Ministry of Justice.

There is a different form depending on the nature of the search. If it is based on the identity of the chargor (form DW-1), the charged property (DW-2), or the number of the entry (DW-3). The applicant must note his name and address, and then give details on the searched criteria. When the search is made based on the chargor's identity (form DW-1), details that can be provided are: surname and first name, address and individual identity number (either REGON or PESEL). If the chargor is a natural person, it will be compulsory to provide all (surname, first name and PESEL number); if the chargor is a legal person, the search can be made based on either the REGON number only, or based on the name, with the optional field of address.
The instructions mention that depending on the searched criteria, some fields will have to be left blank, and that the application whose fields have been filled in contrary to the chosen option, will be deemed incorrect and thus will not be processed.

There are different types of excerpts that can be obtained: short (will only contain the pledge number with no details, 10 PLN), current (giving current data regarding the pledge only: 15 PLN) or full (certificate giving full details, including all amendments that have been made, 20 PLN).

**Proposed internet access**

A proposal is currently being put forward by the Ministry of Justice to make the information in the register available to everybody via the internet. In principle this is strongly to be encouraged and is in line with existing practice in other countries (Latvia, Lithuania, Romania and the Slovak Republic) and is planned in others. However, there are a number of important issues to be resolved if internet access is to be useful in practice. It is essential that the information available to a person searching via the internet is exactly the same as the information that would be available by making a search at the same moment in time in the registration office. If there is any danger that the information is different (for example, because it is not completely up-to-date or because it has been edited or modified in some way) it will be of limited use to persons involved in secured transactions. A banker may take some comfort from what he sees on his screen but the information he really needs is what is on the registration office’s screen.
APPENDIX F

Debt recovery in Poland

In order to identify the causes of the difficulties encountered by banks in enforcing their due debts, the National Bank of Poland’s General Inspectorate of Banking Supervision (GINB) conducted in 2004 a survey of 25 commercial banks. For further information see www.nbp.pl. The sample included banks with the highest volume of overdue debts as well as several smaller ones that are subject to rehabilitation for, among other reasons, the poor quality of their portfolio. One of the survey’s questions asked the respondents as to, in their view, the causes of poor enforcement processes.

Chart 7: Main causes of low effectiveness of vindication

Source: General Inspectorate of Banking Supervision – Memorandum about the formal and practical aspects of the vindication of bank claims in Poland – Warsaw, October 2004
APPENDIX G

Economic data and enterprises’ perceptions

EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS)

The EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) compiles the experiences of more than 10,000 firms in 26 transition countries. It was carried out in 1999 and 2002. The 2005 Survey is under preparation, although some of the data were made available to us in the context of this study.

The dataset is provided by the European Bank for Reconstruction and Development (EBRD) and the World Bank to encourage continuing research and input into policy dialogue with countries in central and eastern Europe and the Commonwealth of Independent States.

The survey examined the quality of the business environment as determined by a wide range of interactions between firms and the state. Only a limited sample of questions was selected in the context of this study.

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<td>1. Thinking of the most recent bank loan or overdraft you obtained for which collateral was required, what was the approximate value of the collateral required as a percent of the loan value (in percent)?</td>
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<td>2. What is the loan's annual cost (i.e. rate of interest) (in percent of the loan)?</td>
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<td>3. What is the duration of the loan (in months)?</td>
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<td>4. How problematic are these different factors for the operation and growth of your business? (scale 1 to 4)</td>
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<td>a Access to financing (for example collateral required or no financing available from the banks)</td>
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<td>b Cost of financing (for example interest rates and charges)</td>
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<td>2.52</td>
<td>2.62</td>
<td>2.22</td>
<td>2.25</td>
<td>2.52</td>
<td>2.17</td>
<td>3.11</td>
</tr>
<tr>
<td>2005</td>
<td>2.91</td>
<td>2.52</td>
<td>2.62</td>
<td>2.22</td>
<td>1.63</td>
<td>2.60</td>
<td>2.17</td>
<td>2.02</td>
<td>2.16</td>
</tr>
<tr>
<td>g Functioning of the judiciary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>2.47</td>
<td>2.39</td>
<td>1.91</td>
<td>2.51</td>
<td>1.85</td>
<td>1.51</td>
<td>2.16</td>
<td>2.02</td>
<td>1.93</td>
</tr>
<tr>
<td>2005</td>
<td>2.39</td>
<td>1.91</td>
<td>2.51</td>
<td>1.85</td>
<td>1.46</td>
<td>1.61</td>
<td>2.21</td>
<td>2.03</td>
<td>1.88</td>
</tr>
</tbody>
</table>
When in spring 2005 the National Bank of Poland ran its regular survey in order to gauge changes and developments in the economic market, it added certain questions in the context of this report. The report was circulated to 594 companies, of representative size and activities and approximately 500 responses were received. We only publish here the questions relevant to this study. The full questionnaires and responses may be published separately.

Q1  If your company signs agreements under which security must be established, how often does it establish such security on the following types of assets?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Never</th>
<th>Occasionally</th>
<th>Often</th>
<th>Most often</th>
<th>Always</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Real property</td>
<td>24.58</td>
<td>16.33</td>
<td>14.98</td>
<td>18.01</td>
<td>7.58</td>
<td>18.52</td>
</tr>
<tr>
<td>2. Movables</td>
<td>20.04</td>
<td>16.67</td>
<td>19.36</td>
<td>18.85</td>
<td>6.06</td>
<td>19.02</td>
</tr>
<tr>
<td>3. Trade Receivables</td>
<td>24.24</td>
<td>14.82</td>
<td>22.05</td>
<td>16.16</td>
<td>2.53</td>
<td>20.2</td>
</tr>
<tr>
<td>4. Bank accounts</td>
<td>27.6</td>
<td>18.52</td>
<td>13.8</td>
<td>14.81</td>
<td>4.9</td>
<td>20.37</td>
</tr>
<tr>
<td>5. Securities</td>
<td>50.34</td>
<td>12.29</td>
<td>8.08</td>
<td>6.23</td>
<td>1.01</td>
<td>22.05</td>
</tr>
<tr>
<td>6. Other</td>
<td>3.37</td>
<td>0.67</td>
<td>1.35</td>
<td>4.89</td>
<td>2.35</td>
<td>87.37</td>
</tr>
</tbody>
</table>

Q2  To whose benefit, and how often does your company establish security referred to in Q1?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Never</th>
<th>Occasionally</th>
<th>Often</th>
<th>Most often</th>
<th>Always</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bank - in order to secure a loan or an overdraft</td>
<td>9.76</td>
<td>6.73</td>
<td>7.74</td>
<td>15.33</td>
<td>39.22</td>
<td>21.22</td>
</tr>
<tr>
<td>2. Supplier - in order to secure payment for delivered goods</td>
<td>28.62</td>
<td>23.06</td>
<td>16.67</td>
<td>7.75</td>
<td>0.67</td>
<td>23.23</td>
</tr>
<tr>
<td>3. Ordering Party - in order to secure delivery of goods</td>
<td>37.2</td>
<td>18.18</td>
<td>10.44</td>
<td>6.9</td>
<td>1.85</td>
<td>25.42</td>
</tr>
<tr>
<td>4. Other</td>
<td>4.38</td>
<td>0.34</td>
<td>1.01</td>
<td>1.01</td>
<td>1.51</td>
<td>91.75</td>
</tr>
</tbody>
</table>

Q3  What are the advantages and benefits of establishing security on company’s own property?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Very insignificant</th>
<th>Insignificant</th>
<th>Significant</th>
<th>Very significant</th>
<th>Extremely significant</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. It gives access to a loan which is otherwise inaccessible</td>
<td>8.59</td>
<td>4.04</td>
<td>6.74</td>
<td>17</td>
<td>42.93</td>
<td>20.7</td>
</tr>
<tr>
<td>2. It reduces the loan interest rate</td>
<td>24.58</td>
<td>14.98</td>
<td>14.48</td>
<td>16.33</td>
<td>7.91</td>
<td>21.72</td>
</tr>
<tr>
<td>3. It gives more favourable terms and conditions in the loan agreement other than the interest rate (for example the repayment period)</td>
<td>19.53</td>
<td>15.15</td>
<td>19.36</td>
<td>14.14</td>
<td>8.92</td>
<td>22.9</td>
</tr>
<tr>
<td>4. Other</td>
<td>2.85</td>
<td>0</td>
<td>0.37</td>
<td>0.66</td>
<td>0.51</td>
<td>95.61</td>
</tr>
</tbody>
</table>
### Q4. What are the disadvantages of establishing security on company’s own property?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Very insignificant</th>
<th>Insignificant</th>
<th>Significant</th>
<th>Very significant</th>
<th>Extremely significant</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. High costs</td>
<td>11.78</td>
<td>11.28</td>
<td>18.85</td>
<td>18.35</td>
<td>17.85</td>
<td>21.89</td>
</tr>
<tr>
<td>2. Complexity of the process of establishing security</td>
<td>7.58</td>
<td>11.95</td>
<td>21.04</td>
<td>22.22</td>
<td>15.32</td>
<td>21.89</td>
</tr>
<tr>
<td>3. Too broad authorisations for banks/enterprises</td>
<td>5.56</td>
<td>6.9</td>
<td>17.34</td>
<td>24.07</td>
<td>24.24</td>
<td>21.89</td>
</tr>
<tr>
<td>4. Threat of wrong execution</td>
<td>12.63</td>
<td>20.54</td>
<td>16.5</td>
<td>15.66</td>
<td>12.96</td>
<td>21.71</td>
</tr>
<tr>
<td>5. Rigid regulations related to establishing security</td>
<td>6.9</td>
<td>9.09</td>
<td>22.73</td>
<td>20.37</td>
<td>17.34</td>
<td>23.57</td>
</tr>
<tr>
<td>6. Other</td>
<td>2.86</td>
<td>0.36</td>
<td>0.17</td>
<td>0.51</td>
<td>0.65</td>
<td>95.45</td>
</tr>
</tbody>
</table>

### Q5. Does your company agree/disagree with the following opinion: “Material and procedural regulations on establishing security, being in force in Poland do not hinder the companies from establishing security in agreements”?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Disagree</th>
<th>Rather Disagree</th>
<th>Rather Agree</th>
<th>Strongly Agree</th>
<th>No Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12.96</td>
<td>25.25</td>
<td>37.04</td>
<td>5.05</td>
<td>19.7</td>
</tr>
</tbody>
</table>

### Q6. How does your company evaluate the procedure of establishing mortgage on a real property?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Disagree</th>
<th>Rather disagree</th>
<th>Rather agree</th>
<th>Strongly agree</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Simple</td>
<td>17.17</td>
<td>25.08</td>
<td>29.8</td>
<td>7.08</td>
<td>20.87</td>
</tr>
<tr>
<td>2. Quick</td>
<td>27.1</td>
<td>33.84</td>
<td>15.83</td>
<td>2.19</td>
<td>21.04</td>
</tr>
<tr>
<td>3. Inexpensive</td>
<td>35.87</td>
<td>30.3</td>
<td>11.63</td>
<td>0.65</td>
<td>21.55</td>
</tr>
</tbody>
</table>

### Q7. How does your company evaluate the procedure of establishing a registered pledge?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Disagree</th>
<th>Rather disagree</th>
<th>Rather agree</th>
<th>Strongly agree</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Simple</td>
<td>11.95</td>
<td>29.29</td>
<td>29.63</td>
<td>6.4</td>
<td>22.73</td>
</tr>
<tr>
<td>2. Quick</td>
<td>14.82</td>
<td>32.32</td>
<td>25.25</td>
<td>3.37</td>
<td>24.24</td>
</tr>
<tr>
<td>3. Inexpensive</td>
<td>13.13</td>
<td>27.78</td>
<td>29.29</td>
<td>5.39</td>
<td>24.41</td>
</tr>
</tbody>
</table>
**Q8** How does your company evaluate the procedure of concluding a financial lease agreement with a buyout option?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Disagree</th>
<th>Rather disagree</th>
<th>Rather agree</th>
<th>Strongly agree</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Simple</td>
<td>5.05</td>
<td>19.87</td>
<td>38.55</td>
<td>8.92</td>
<td>27.61</td>
</tr>
<tr>
<td>2. Quick</td>
<td>4.39</td>
<td>19.19</td>
<td>40.74</td>
<td>7.4</td>
<td>28.28</td>
</tr>
<tr>
<td>3. Inexpensive</td>
<td>17.68</td>
<td>33.67</td>
<td>17</td>
<td>3.54</td>
<td>28.11</td>
</tr>
</tbody>
</table>

**Q9** How does your company evaluate the procedure of selling company's receivables (e.g., factoring)?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Disagree</th>
<th>Rather disagree</th>
<th>Rather agree</th>
<th>Strongly agree</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Simple</td>
<td>7.74</td>
<td>27.61</td>
<td>35.18</td>
<td>4.89</td>
<td>24.58</td>
</tr>
<tr>
<td>2. Quick</td>
<td>7.07</td>
<td>29.29</td>
<td>33.67</td>
<td>5.22</td>
<td>24.75</td>
</tr>
<tr>
<td>3. Inexpensive</td>
<td>21.88</td>
<td>38.38</td>
<td>13.48</td>
<td>1.18</td>
<td>25.08</td>
</tr>
</tbody>
</table>

**Q10** Does your company agree/disagree with the following opinion: “Banks and other creditors use established security in a proper way, requiring establishment thereof and seeking to exercise their rights in an honest way”?

<table>
<thead>
<tr>
<th>In per cent</th>
<th>Disagree</th>
<th>Rather disagree</th>
<th>Rather agree</th>
<th>Strongly agree</th>
<th>No answer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.56</td>
<td>21.04</td>
<td>42.93</td>
<td>6.56</td>
<td>23.91</td>
</tr>
</tbody>
</table>
APPENDIX H

Methodology and sources

The conduct of the present study fell broadly into three parts:

- collecting factual data (quantitative and qualitative) on how the secured transactions legal framework (with a specific emphasis on institutions) functions and is perceived to serve the financial market;
- analysing these data against EBRD and international standards
- expressing recommendations on how the Polish legal system can be made to work more efficiently.

The work was carried out in close collaboration with the National Bank of Poland and the World Bank. We would like to express our sincere thanks to Jarosław Bełdowski, Head of International Cooperation Division, Magdalena Safjan-Kaczorowska, Chief Specialist, and Anna Berkowska, Banking Inspector, National Bank of Poland, for their tireless support. We are of course indebted to Professor Leszek Balcerowicz, whose idea the project was as well as to Professor Stanisław Soltysiński and Dr Tomasz Stawecki for their helpful comments and guidance. We would also like to express thanks to Lubomira Beardsley, James Anderson, and Katarina Mathernova of the World Bank for their participation and constructive comments and finally special thanks to Radosław Illing, Office of the General Counsel at the EBRD, for his comments and helpful suggestions throughout the project.

Needless to say, all omissions and inaccuracies remain ours entirely.

Following initial review with the National Bank of Poland on the scope of the project, data was collected from:

- Existing materials and data held by the EBRD, including the regional Survey for Secured Transactions (see appendix A), the EBRD Survey of Enforcement of Pledges (see appendix B) and the EBRD-World Bank Business Environment and Enterprise Performance Survey for 2002 and 2005 (BEEPS) (see appendix G).

- Materials and data provided by the National Bank of Poland including the Memorandum on vindication of bank claims in Poland produced by the General Inspectorate of Banking Supervision of the National Bank of Poland in October 2004 (see appendix F) and the Survey of Enterprises conducted by the National Bank of Poland in spring 2005 (see Appendix G).

- Other materials and data from external sources including “Doing Business in 2006 - Creating Jobs” published by the World Bank, the working documents of the World Bank relating to their parallel project assessing contract enforcement and the robustness of related legal institutions in Poland, and the Analyses of the Economic Impact of the Registered Pledge System in Poland prepared by the Gdansk Institute for Market Economics and the Gdansk Academy of Banking in April 2002 and November 2003 (see http://www.pfsprogram.org/banking2.php). A number of specialised articles were translated for us.

- Meetings and correspondence exchanges with a number of banks and lawyers in Poland and with representatives of the National Bank of Poland, the Ministry of
The information and data collected were analysed with specific reference to the EBRD Core Principles for a Secured Transactions Law (see appendix D), the EBRD Guiding Principles for the Development of a Charges Registry (see appendix E), and more generally with reference to the laws and practices in other countries in the region, in particular Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania and the Slovak Republic.

After an initial analysis, the principal issues set out in section 2 of the report were identified and subjected to further analysis (except for the more general issues 7 – 10, which are covered by the World Bank on-going study).

We would like to thank all those people and organisations whose cooperation, support and assistance has made this report possible, in particular:

- Allen & Overy, A. Siemiątkowski sp. k.
- Baker & McKenzie Gruszczyński i Wspólnicy sp. k.
- BGŻ S.A.
- BPH Bank Hipoteczny S.A.
- BRE Bank Hipoteczny S.A.
- Cameron McKenna
- Chamber of Notaries in Warsaw
- Clifford Chance, Janicka, Namiotkiewicz i wspólncy sp. k.
- EBRD Warsaw Office
- ING Bank Śląski S.A.
- Mortgage Credit Foundation (Fundacja na Rzecz Kredytu Hipotecznego)
- Ministry of Justice, Registry of Pledges Division
- National Bank of Poland
- PEKAO S.A.
- Polish Bank’s Association
- Polish Confederation of Private Employers (Lewiatan)
- Kancelaria Radcy Prawnego Edyta Weronika-Karcz
- Raiffeisen Bank Polska S.A.
- Société Générale, Warsaw
- Sołtysiński Kawecki & Szlęzak
- Stolarek - Kancelaria Prawnicza sp. k. (Grupa Ożóg i Stolarek)
- Warsaw Municipal Court, Perpetual Books Department
- White & Case W. Danilowicz, W. Jurcewicz i Wspólnicy – Kancelaria Prawna sp. k.