

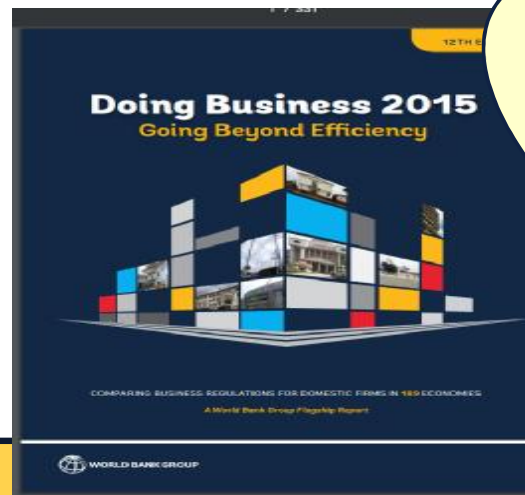
## SESSION 5

# PERSONAL PROPERTY SECURITIES REGISTRATION FRAMEWORK : EMERGENCE OF INTERNATIONAL STANDARDS FOR ACCESS TO FINANCING AND ECONOMIC GROWTH

**MODERATOR:**

Nor Azimah Abdul Aziz  
Deputy Chief Executive Officer  
Regulatory and Enforcement  
Companies Commission of Malaysia (SSM)

# Background



The World Bank Doing Business 2015 Report under Getting Credit Indicator, highlighted the following shortcomings for Malaysia:

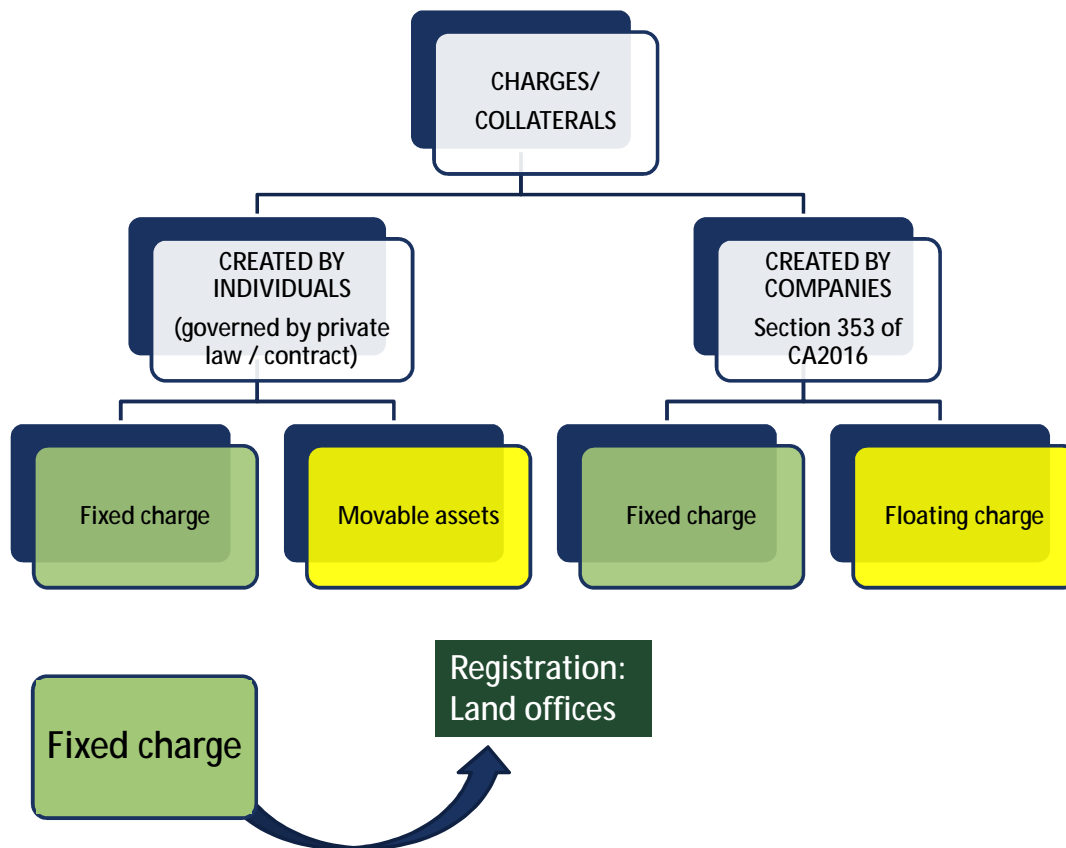
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The availability of a collateral registry in operation for both incorporated and unincorporated entities, which is unified by the type of assets with an electronic data base indexed by debtor's name

2

The need for integrated or unified legal framework that extends to the creation, publicity and enforcement of movable assets as security interest exists in the economy

# Existing Scenario In Malaysia



In Malaysia, there is **no single legal framework** that governs the creation and enforcement of **movable assets** as security interests created by **unincorporated entities/individuals**.

For incorporated entities, section 353 of the Companies Act 2016 currently regulates the creation, publicity and enforcement of assets for both movable and immovable assets.

Apart from registration of charges existing under the Companies Act 2016, there are other collateral registries that register different types of assets (e.g):

- § MOT (vessels, aircrafts etc)
- § JPJ (motor vehicles)
- § Mylpo (Intellectual Properties)

# Basic concept of secured transaction framework



Fixed assets (land and buildings) are extensively accepted as collateral for loans. However, movable collaterals (such as inventory, accounts receivable, livestock, crops, equipment, and machinery) are unpopular in many jurisdictions due to absence of a legal framework that governs security interests/ secured transactions.

## Basic concept of secured transaction framework



A secured transaction framework will improve access to finance for businesses. It ensures that movable assets (tangible or intangible) which often account for most SME's capital stock can be effectively used or recognised as collaterals for loans by lenders / financial institutions.



A comprehensive secured transactions law would also provide an effective registration mechanism for registration of interests in personal property (movable assets) to enable the secured party to provide notice of their claim and enable others to discover the existence of such notice.

## Chronology of events



2015

- 16 November 2015: PEMUDAH's request for SSM and BNM to conduct preliminary study to address shortcomings raised in WBDB 2015 Report.

2016

- 19 January 2016: Study findings were presented to PEMUDAH where it was concluded that SSM is to undertake the Registry function under the new legislation.

2017

- 8 September 2017: Consultative Document on the Introduction of Personal Property Securities Registration Law in Malaysia was published by SSM (closing date: 13 October 2017)

2018

- 19 February 2018: Special Committee on Development of secured transaction law for Malaysia convened its 1st Meeting and established the Working Committee on the proposed policy to be adopted



## Policy Statement Recommendations

The **21 policy statement recommendations** (clustered into **5 key policy statements**) :

- (i) POLICY STATEMENT 1 – scope of the framework [*applicability, exception*]
- (ii) POLICY STATEMENT 2 – creation of security interest [*How is interest created, etc.*]
- (iii) POLICY STATEMENT 3 – registration system and the Registry
- (iv) POLICY STATEMENT 4 – priority [*Who takes priority in the event of default*]
- (v) POLICY STATEMENT 5 – enforcement of a security interest and transition provisions

## Way Forward



To address issues relating to cross-jurisdictional functionality, further consultations with the following organisations:

§ Road Transport Department (JPJ)

To deliberate on the impact of the proposed legal framework on the Road Transport Act 1987

§ Ministry of Transport (Maritime)

To deliberate on the applicability of private aircraft, vessel, floating vessel, seine purse vessel as movable property under the legal framework

§ Leasing and factoring industry players and Development Financial Institutions (e.g ORIX Leasing (M) Bhd, IFS Capital (Malaysia) Sdn Bhd)

To deliberate on the applicability of this legal framework on this industry

§ Ministry of Agriculture

To deliberate on the applicability of crops and livestock in the legal framework

§ Consumer credit providers (e.g BMW Credit, AEON Credit and Courts Mammoth)

To deliberate on the threshold amount for consumer products.



## Way Forward – cont/d



- § Obtain policy approval by Cabinet;
- § Finalise drafting of the Movable Property Security Interest (MPSI) Bill, conduct Regulatory Impact Assessment (RIA), undertake further public consultations on the draft Bill and thereafter embark on legislative and Parliamentary processes.
- § Conduct workshops, conference, media outreach and training events for public and private sector, development of subsidiary legislations, PNs, Guidelines etc., MPSI Registry/system, operational SOPs in preparation of effective / implementation date.

