

Getting Credit - Legal Rights Questionnaire – Pakistan Karachi

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Dear Contributor ,

We would like to thank you for your participation in the *Doing Business* project. Your expertise in the field of Getting Credit – Legal Rights in Pakistan Karachi is essential to the success of the *Doing Business* report, one of the flagship publications of the World Bank Group that benchmarks business regulations in 190 economies worldwide. The Getting Credit – Legal Rights indicator, which measures the degree to which collateral and bankruptcy laws protect the rights of borrowers and lenders, is one of the 11 indicator sets published by the *Doing Business* report.

The report attracts much attention around the world. The latest edition, *Doing Business 2018: Reforming to Create Jobs*, was the 15th in a series of annual reports measuring the regulations that enhance business activity and those that constrain it. It received over 10,000 media citations within just a week of its publication on October 31, 2017. Within that same period the *Doing Business* website was viewed over a million times and the report was downloaded over 15,000 times. One hundred and nineteen economies implemented a total of 264 reforms easing the process of doing business. Europe and Central Asia continues to be the region with the highest share of economies reforming – i.e. 79%, followed by South Asia and Sub-Saharan Africa.

Governments worldwide read the report with interest every year, and your contribution makes it possible for the *Doing Business* project to disseminate the regulatory best practices that continue to inspire their regulatory reform efforts. In 2016/17, 18 economies made reforms improving the strength of legal rights of borrowers and lenders.

We are honored to be able to count on your expertise for *Doing Business 2019*. Please do the following in completing the questionnaire:

1. Review the assumptions of the case study before updating last year's information in the questionnaire.
2. Describe in detail any reform that has affected the areas of Getting Credit – Legal Rights since June 1, 2017.
3. Be sure to update your name and address if necessary, so that we can mail you a complimentary copy of the report.
4. Kindly return the questionnaire to dbcrcditlegalrights@worldbank.org.

We thank you again for your invaluable contribution to the work of the World Bank Group.

Sincerely,

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First name	Last name	Position	Firm	Address	Phone	E-mail
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The Getting Credit - Legal Rights indicator measures the legal framework for secured transactions by examining whether collateral and bankruptcy laws for movable assets facilitate lending.

Section 1. Reform Updates

a. Have there been any reforms or amendments of secured transactions law(s) or regulations in your economy between June 1, 2017 and now? (Please describe in detail, including the date of adoption, the date of official publication in the official gazette if this is required, and the date of entry into force. We would greatly appreciate it if you could also send us an electronic copy of the law.)

Companies Act, 2017 was promulgated on May 30, 2017 and came into force since that date . It was published in the official gazette on May 31, 2017. Further, a major change is the change in the definition of movable assets under section 100 of companies act 2017.

Rules under the Financial Institution(Secured Trasaction) Act,2016 are expected to be issued shortly.

Corporate Rehabilitation Act (CRA), 2018 has been passed by the parliament. The CRA provides mechanism for rehabilitation of the distressed comapnies

b. Are you aware of any plans to change the secured transactions and insolvency law(s) by May 1, 2018, or in the near future? (Please describe in detail, providing dates when possible.)

State Bank of Pakistan has issued a conditional licence to a private credit bureau which will be established shortly. Once the private credit bureau starts functioning the Government will issue notification regarding the collection of data from utility companies.

Corporate Restructuring Companies Act (CRCA) was promulgated in 2016. CRCA Rules 2018 have been notified vide S.R.O 35(I)/2018 dated January 17, 2018 for soliciting public opinion.

Amendments were made in section 15 of Financial Institutions Recovery Ordinance(FIRO) in 2016. Further,rules are being drafted for specifying the mode, conduct or method of sale of the mortgaged property under the FIRO.

Companies (General Provisions and Forms) Rules 1985 are being replaced with a new set of Regulations under the Companies Act, 2017. In this regard draft Companies(Compliance and reporting) Regulations, 2017 were notified vide S.R.O 1026(I)/2017 dated October 10, 2017 for soliciting public opinion.

Section 2. Secured Transactions System

Integrated and functional approach to secured transactions

(Secured transactions are here understood as all transactions that create a right in any type of asset meant to secure the performance of an obligation. For the purposes of our study, the focus is on non-possessory security interests, fiduciary transfer of title, financial leases, assignment of receivables, and sales with reservation of title.

1. FIDUCIARY TRANSFER OF TITLE

Fiduciary transfer of title means a transfer of ownership for security purposes until the debt is extinguished. The debtor may retain possession of the assets. *Example: Company/individual "A" transfers the title of machine "B" to bank "C" as security for the loan and expects to retrieve ownership following payment of the debt.*

1.1 Is there a regulation that covers fiduciary transfer of title? If yes, please provide the name.

Last year: Fiduciary transfer of title and related issues in respect of movable property are covered under The Financial Institutions (Secured Transactions Act, 2016. Similarly such transfer of title in respect of corporate entities for movable and immovable assets are covered under The Corporate Restructuring companies Act, 2016, particularly in matters involving the restructuring process.

Yes
Sections 2(1)(xlvi),11 and 19(2) of STA 2016. Benami Transactions

	<p>(Prohibitions) Act, 2016.</p> <p>Part VI, Sections 100-117 of Companies Act 2017. Chapter VIII and IX, Sections 124-127, 170-181 of Contract Act, 1872. Chapter V, Sections 45-54 of the Sale of Goods Act, 1930. Section 47 of the Provincial Insolvency Act, 1920. Sections 2(g)12(2) and 17 of The Insolvency (Karachi Division) Act 1909. Sections 17,18 and 93(D) of The Banking Companies Ordinance, 1962. Chapter IX Sections 89-96 of Trust Act 1882. Part II, Sections 60-64,65-67 Order 21, Rules 41-57,64-87 of The Code of Civil Procedure, 1908. Sections 2(1)(c),9(1)(b) of Corporate Rehabilitation Act 2018. Sections 6,7 and 12 of Central Depository Act 1997.</p>
<p>1.2 Do fiduciary transfers of title have to be registered to be enforceable against third parties? If yes, please specify the name of the registry.</p>	<p><i>Last year: For incorporated entities (i.e. limited liability companies incorporated under Companies Ordinance, 1984) such a charge has to be registered--otherwise (as per section 121 of Companies Ordinance, 1984) it would be void, i.e. unenforceable against third parties. SECP's Company Registration Office Lahore. For companies with provincial objects (i.e. activities and objects limited to one province by their articles/memorandum) registration occurs at the Office of the Joint Stock Registrar for Companies. In respect of other business entities such fiduciary transfer of title is required to be registered with Registry notified by the Federal government under section 19 of The Financial Institutions (Secured Transactions) Act, 2016.</i></p> <p>Yes Part IV, Sections 14 and 19 of STA, 2016.</p> <p>Part VI, Section 100 of Companies Act 2017. Chapter VIII and IX, Sections 124-127, 170-181 of Contract Act of 1872. Sections 6,7 and 12 of Central Depository Act 1997.</p>

2. FINANCIAL LEASE AGREEMENTS

Financial lease agreement means an agreement where the lessor receives payments to cover its ownership costs. *Example: Company/individual "A" agrees to lease machine "B" from company "C". The lease agreement guarantees the use of the vehicle and guarantees that "C" receives regular payments from "A" for a specified period of time. Both "A" and "C" must uphold the terms of the contract for the lease to remain valid.*

<p>2.1 Is there a regulation that covers financial lease agreements? If yes, please provide the name.</p>	<p><i>Last year: Companies Ordinance, 1984. Contract Act 1872 and Secured Transactions Act.</i></p> <p>Yes Definition of security interest under Section 2(1)(xlviii) and section 6 of the STA, 2016.</p> <p>Part VI, Section 100 of Companies Act 2017. Chapter VIII and IX, Sections 124-127, 170-181 of Contract Act of 1872. Sections 6,7 and 12 of Central Depository Act 1997.</p>
<p>2.2 Do financial leases have to be registered to be enforceable against third parties? If yes, please specify the name of the registry.</p>	<p><i>Last year: Yes for companies: Company Registration Office, Karachi. Other business entities and non-incorporated Entities: their registration is required under the Secured Transactions Act (yet to be implemented)</i></p> <p>Yes Part IV, Section 19 & 21(3b) of STA, 2016.</p> <p>Part VI, Section 100 of the Companies Act 2017.</p>

Sections 6,7 and12 of Central Depositories Act 1997.

3. ASSIGNMENT OF RECEIVABLES AND OUTRIGHT TRANSFER OF RECEIVABLES

Assignment of receivables means the creation of a security right in a receivable that secures the performance of an obligation. Although outright transfers of receivables are transfers not intended to secure an obligation, for convenience of reference the term is included in the assignment of receivables. *Example: Company/individual "A" assigns its accounts receivable "B" to lending company "C" in return for a loan. Company "C" gets the right to collect the receivables if "A" fails to repay the loan in time.*

3.1 Is there a regulation that covers assignment of receivables and outright transfer of receivables? If yes, please provide the name.

Last year: Companies Ordinance 1984 Transfer of Property Act 1882 Trusts Act 1882 SECP Act. In addition, Part vi of The Financial Institutions (Secured Transactions) Act, 2016

Yes
The definition of movable property under section 2(1)(v)(xxix) of the STA, 2016. Sections 53-56 of STA 2016 deals with assignment of receivables.

Part VI, Section 100 of the Companies Act 2017.
Chapter VIII and IX, Sections 124-127, 170-181 of Contract Act, 1872.
Chapter IX, Sections 80-96 and 130-137 of Trust Act 1882.

3.2 Do assignments of receivables and outright transfers of receivables have to be registered to be enforceable against third parties? If yes, please specify the steps of the notification process or the name of the registry.

Last year: Yes. Incorporated Entities: Documents to be registered with the Company Registration Office, Karachi. For "customers" Yes, under the Secured Transactions Act as far as "customers" are concerned which means a person to whom finance has been extended by a financial institution and includes a person on whose behalf a guarantee or letter of credit has been issued by a financial institution as well as a surety or an indemnifier, according to the Recovery Ordinance;

Yes
Section 2, 14 (C) ,54 and 55 of STA 2016

Part VI, Section 100 2(C) of the Companies Act, 2017.

4. RETENTION OF TITLE SALES

Retention of title sale means the sale of goods where the title to the goods remains vested in the seller until certain obligations (usually payment of the purchase price) are fulfilled by the buyer. *Example: The title of inventory remains vested with seller "A" until the purchase price has been paid in full by buyer company/individual "B".*

4.1 Is there a regulation that covers retention-of-title sales? If yes, please provide the name.

Last year: Companies Ordinance, 1984 Contract Act, 1872 and the Secured Transactions Act for customers.

Yes
Sections 2(1)(xlviii) and 11 of STA 2016. (The STA 2016 will only be applicable in the context of retention of title sales in favour of financial institutions.)

Part VI, Section 100(2)(i) of the Companies Act, 2017.
Section 25 of Sale of Goods Act,1930

4.2 Do retention-of-title sales have to be registered to be enforceable against third parties? If yes, please specify the name of the registry.

Last year: Yes in the registry to be established under the Secured Transactions Act

Yes
Sections 2(1) (xlviii) and 14 (C) of STA 2016.
Part VI, Section 100(2)(i) of Companies Act,2017.

5. INCORPORATED AND NON-INCORPORATED DEBTORS

This section of the questionnaire focuses on the **secured transactions system** as a whole in reference to both incorporated and non-incorporated entities. (Debtors that are incorporated entities are understood as separate legal entities incorporated through a registration process established through legislation. Non-incorporated entities are considered non-registered partnerships, sole proprietorships, and individuals).

Are different rules and regulations applied if the debtor is an incorporated or non-incorporated entity? If yes, please indicate which of the above functional equivalents are affected, what are the differences, and what is the legal basis.	<p>Yes STA 2016 provides for all functional equivalents to security interests in movable assets.</p> <p>Section 100 of Companies Act, 2017 covers all the above functional equivalents. Central Depositories Act 1997 for pledging of book-entry securities in the central depository system (CDS).</p>
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Section 3 Case Study Assumptions

ABC (the Debtor):

1. Is a Private Limited Liability Company. The company has 50–100 employees and is an incorporated entity.
2. Is 100% domestically owned.
3. Has its registered office and only operates in Karachi.

BizBank (the Creditor):

- Is a commercial bank that is 100% domestically owned.

SCENARIOS

Note: Please consider Scenario A or B (as indicated) when completing Section 4 of the questionnaire.

Scenario A: Security interest in ONE CATEGORY of movable assets	Scenario B: Security interest in the company's COMBINED movable assets
<ul style="list-style-type: none"> • As collateral for a loan ABC grants BizBank a non-possessory security interest in one category of revolving movable assets, for example its accounts receivable or inventory. • ABC keeps ownership and possession of the assets. 	<ul style="list-style-type: none"> • ABC grants BizBank a business charge, enterprise charge, floating charge, or any other charge that gives a security interest over ABC's combined assets. • ABC keeps ownership and possession of the assets.

Section 4 Non-possessory Security Interests

In this section, please base your answers on non-possessory security interests in movable property – or, if these are not allowed in your economy, on fiduciary transfer-of-title arrangements.

1. SCENARIO A: SECURITY INTEREST IN ONE CATEGORY OF MOVABLE ASSETS

1.1 Security interest over only accounts receivable

a. Can ABC (the Debtor) grant BizBank (the Secured Creditor) a non-possessory security interest over only its accounts receivable or the	<p><i>Last year: Yes</i></p> <p>Yes</p>
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outstanding debts owed to ABC by third parties (e.g., the amounts that ABC expects to receive from third-party buyers for goods or services that ABC sold to them)?	Part II, Sections 2(1)(v),(xxi),(xxiv),53 - 56 of STA, 2016. Part VI, Section 100(2)(g) of the Companies Act, 2017.
b. According to the law, can the accounts receivable or outstanding debts be described in general terms both in the security agreement and when the security interest is registered, or do they need to be specified with particularity (e.g., "all accounts receivable")?	<p><i>Last year: Yes</i> <i>Companies Ordinance (s. 121) mentions that charges on "any book-debts" of companies have to be registered.</i></p> <p>Yes Section 6 (1)(c) and 23(2)(h) of STA 2016. Also the rules under the STA 2016 will provide further guidelines in relation to description of collateral in the security agreement and financing statement (Section 70(2)(b), STA 2016).</p> <p>Section 100(1)(c) of the Companies Act, 2017 and the Form 10 of Companies (General Provisions and Forms) Rules, 1985.</p>
1.2. Security interest over only inventory	
a. Can ABC (the Debtor) grant BizBank (the Secured Creditor) a non-possessory security interest over only its inventory?	<p><i>Last year: Yes</i></p> <p>Yes Sections 2(1)(xxi) and (xxiv) of STA 2016.</p>
b. Are there any major restrictions or requirements prescribed by law when using inventory as security? (e.g., preserving the stipulated value of inventory, specifically describing the storage location, updating lists)	<p><i>Last year: No</i> <i>No, but mostly is subject to contract or agreement. When using inventory as security there are certain stipulations which need to be considered. For financial institutions, State Bank of Pakistan (under its Prudential Regulations) lays down, from time to time, requirements for banks to follow when they use inventory as security.</i></p> <p>No</p> <p>STA 2016 does provide that ABC cannot conduct a bulk sale of the collateral in the ordinary course of business without prior consent of BizBank (Section 50, STA 2016).</p> <p>Part VI, Section 100 of the Companies Act, 2017.</p>
c. According to the law, can the inventory be described in general terms both in the security agreement and when the security interest is registered? (e.g., "all laptop inventories" rather than "PXS laptop, serial number 3278632, metal-colored, 14-inch screen")	<p><i>Last year: Yes</i> <i>General description is allowed by law and is enforceable.</i></p> <p>Yes General description would suffice under general law and STA 2016 (Sections 6(1)(c) and 23(2)(h)). Also the rules under the STA 2016 will provide further guidelines in relation to description of collateral in the security agreement and financing statement (Section 70(2)(b), STA 2016).</p> <p>Part VI, Section 100 of the Companies Act, 2017 and Form 10 of Companies (General Provisions and Forms) Rules, 1985.</p>
1.3 Security interest over only tangible movable property	
a. Can ABC (the Debtor) grant BizBank (the Secured Creditor) a non-possessory security interest over only its tangible movable property? (e.g., machinery, furniture, livestock, crops, etc.)	<p><i>Last year: Yes</i></p> <p>Yes Sections 2(1)(xxi) and (xxiv) of STA 2016 Section 100(2)(g) of the Companies Act, 2017</p>
b. According to the law, can tangible	<p><i>Last year: Yes</i></p>

<p>movable property be described in general terms both in the security agreement and when the security interest is registered? (e.g., “300 head of Hereford cattle” rather than “Roger Prime Blue Ribbon Hereford bull, tattoo #125, breeding registry #456”)</p>	<p><i>General description is allowed by law. No express statute on the issue. In practice general descriptions are enforceable.</i></p> <p>Yes General description would suffice under general law and STA 2016 (Sections 6(1)(c) and 23(2)(h)). Also the rules under the STA 2016 will provide further guidelines in relation to description of collateral in the security agreement and financing statement (Section 70(2)(b), STA 2016).</p> <p>Section 101(c) of the Companies Act, 2017 and Form 10 of Companies (General Provisions and Forms) Rules, 1985.</p>
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2. SCENARIO B: SECURITY INTERESTS IN A COMBINED CATEGORY OF MOVABLE ASSETS

<p>2.1 According to the law, can ABC (the Debtor) grant BizBank (the Secured Creditor) a security interest in a combined category of assets (e.g., a floating charge or an enterprise charge)?</p>	<p><i>Last year: Yes</i></p> <p>Yes This can be done through a floating charge or hypothecation on all present and future assets of ABC (Sections 2(1)(xxi) and (xxiv), STA 2016)</p> <p>Part VI, Section 100 (2)(g) of the Companies Act, 2017.</p>
<p>2.2 According to the law, is there a limitation on the assets that can be included in this security interest? (e.g., collateral is accessory to a mortgage, specific description of location of movables, updating of lists of collateral upon change, limit in value)</p>	<p><i>Last year: No</i></p> <p>No Sections 2(1)(xxv) and (xxxviii) of STA 2016</p> <p>Part VI, Section 100 of the Companies Act, 2017 and Form 10 of Companies (General Provisions and Forms) Rules, 1985.</p>
<p>2.3 According to the law, can this collateral be described in general terms both in the security agreement and when the security interest is registered? (e.g., “all combined assets of the enterprise”)</p>	<p><i>Last year: Yes</i> <i>No express statute on this subject. The law operates by virtue of recognition of such practices under common law. Enforcement is possible with a general description too.</i></p> <p>Yes General description would suffice under general law and STA 2016 (Sections 6(1)(c) and 23(2)(h)). Also the rules under the STA 2016 will provide further guidelines in relation to description of collateral in the security agreement and financing statement (Section 70(2)(b), STA 2016).</p> <p>Part VI, Section 100 of the Companies Act, 2017 and the Form 10 of Companies (General Provisions and Forms) Rules, 1985.</p>

3. CAN ABC (THE DEBTOR) USE THE FOLLOWING MOVABLE ASSETS TO SECURE A LOAN?

<p>3.1 Future assets and after acquired property as security interests</p>	
<p>Can ABC (the Debtor) use the following movable assets to secure a loan: future assets (e.g., ABC knows that it will receive a fleet of trucks in the future and uses them as collateral) and after-acquired property (e.g., property that it has not yet acquired and that it may never acquire, or present and</p>	<p><i>Last year: No</i> <i>There is no specific provision in law that prohibits or allows this. This is a matter of practice under the common law recognized in Pakistan</i></p> <p>Yes Sec 2(1)(ii) and 9 of STA. Part VI, Section 100(2)(d) of the Companies Act, 2017.</p>

future inventory)?	
3.2 Automatic extension of the security interest to products, proceeds and replacements	
<p>By law, does the security interest automatically extend to “products, proceeds and replacements” of the original collateral? Does it apply to Scenarios A and B? (e.g., if the original collateral is a pile of lumber, the products of this asset could be the wooden furniture made from it; the proceeds could be the money received from selling the furniture or the lumber; and the replacements could be another pile of lumber given in replacement after the original pile of lumber was destroyed.)</p>	<p><i>Last year: No</i> <i>Only if it is part of the terms and conditions of the original agreement between the parties.</i></p> <p>Yes Sections 2(1)(xxxvii), 7 and 8 of STA 2016 Part VI, Section 100 of the Companies Act, 2017.</p>

4. DEBTS AND OBLIGATIONS	
<p>4.1 Can present and future debts and obligations be secured in Scenario A and Scenario B?</p>	<p><i>Last year: No</i> <i>No express statute exists on this.</i></p> <p>Yes Section 2(2) and 10 of STA, 2016). Sections 2(d) and (e) of Financial Institutions (Recovery of Finances) Ordinance, 2001 Part VI, Section 100(2)(C) of the Companies Act, 2017.</p>
<p>4.2 Can all types of conditional, monetary and non-monetary debts and obligations be secured in Scenario A and Scenario B?</p>	<p><i>Last year: No</i></p> <p>Yes Section 2(2), STA 2016. Sections 2(d) and (e), Financial Institutions (Recovery of Finances) Ordinance, 2001 Part VI, Section 100 2(g) of the Companies Act, 2017.</p>
<p>4.3 By law, can the obligations be described in general terms in the security agreement and when the security interest is registered? If no, please indicate what the description requirements are. (e.g., “all obligations between the parties,” or “obligations of a debt of up to US\$1,000,000 [as in a line of credit]; the obligations will fluctuate under that threshold without requiring a new agreement every time a new obligation is created”)</p>	<p><i>Last year: No</i> <i>The law is silent on this. In practice SECP will often require a specific description of the debt but there is nothing in the law that bars a general description. The law is therefore unclear and open to stumbling blocks.</i></p> <p>Yes Obligation can be described generally and by reference to the maximum amount secured by the security interest (Sections 6(2)(b) and 23(2)(g), STA 2016). Also the rules under the STA 2016 will provide further guidelines in relation to description of obligation in the security agreement and financing statement (Section 70, STA 2016).</p> <p>Section 100 of the Companies Act, 2017 and Form 10 of Companies (General Provisions and Forms) Rules, 1985.</p>

5. COLLATERAL REGISTRY	
5.1 General information on the collateral registry	
<p>a. Please name the registry (or registries) where BizBank’s security interest would be registered in Scenario A and Scenario B.</p>	<p><i>Last year: In case of companies, the registration must be completed with the concerned Company Registration Office of the Securities and Exchange Commission of Pakistan. However, Part IV of the Financial Institutions (secured transactions) Act, 2016, apply to an entity creating</i></p>

	<p><i>a security interest, and require the said entity to register the security interest in the register maintained and operated by the Secured Transactions Registry.</i></p> <p>Currently charge for companies in movable and immovable assets is registered with SECP CROs. However, charge on movable assets of non-incorporated entities will be registered with electronic Registry being set up under STA, 2016</p> <p>SECP is collateral registry for companies. Following is the link to online portal to file particulars of charge with the registrar. https://eservices.secp.gov.pk/eServices/</p> <p>In the case of pledging of book-entry securities in the Central Depository System(CDS), the Central Depository Company (CDC), as a central depository keeps records of all pledge transactions.</p>
<p>b. Please provide the website address and phone number for the main collateral registry for movable property.</p>	<p><i>Last year: www.secp.gov.pk UAN: (051)111-117-327</i></p> <p>SECP is collateral registry for companies. Its website is www.secp.gov.pk and UAN (051) 111-117-327.</p> <p>Following is the link to online portal to file particulars of charge with the registrar. https://eservices.secp.gov.pk/eServices/</p> <p>Central Depository Company(CDC) www.cdcpakistan.com</p>
<p>5.2 Unified collateral registry</p>	
<p>a. Is the registry in operation?</p>	<p><i>Last year: Yes</i></p> <p>Yes Yes it is operational</p>
<p>b. Must BizBank register its non-possessory security interest for the security interest to be enforceable against third parties?</p>	<p><i>Last year: Yes</i> <i>In case of incorporated entities, yes--otherwise charge would be void and unenforceable. However this does not apply to pledges which under the Companies Ordinance do not require registration.</i></p> <p>Yes The charge will be registered with the registrar of relevant Companies Registration Office of SECP.</p> <p>Part VI, Section 100 of Companies Act, 2017. Section 6, 7 and 12 of Central Depositories Act 1997.</p>
<p>c. Is the collateral registry limited to security interests granted by certain types of borrowers or creditors? (e.g., incorporated entities, only individuals, commercial banks)</p>	<p><i>Last year: Yes</i> <i>Limited to companies registered under the Companies Ordinance, 1984 and the Companies Act, 1913. The CR will similarly be limited to 'entity' as defined in the ST Act which excludes companies.</i></p> <p>Yes The Companies Registry is limited to security interests created by a company over its movable and immovable assets.</p> <p>Pledging of book-entry securities in the CDS can be made by any person in favour of banks, financial institutions, stock exchange and clearing house in Pakistan.</p>

<p>d. Is the collateral registry (the database) either centralized geographically for the entire economy or linked among different geographic regions within the economy?</p>	<p>Section 6, 7 and 12 of Central Depositories Act 1997.</p> <p><i>Last year: Yes</i> <i>Data base of The Security Exchange Commission is centralized for corporate entities. For non-corporate business, the Registries are notified for regions. The new CR will be a nation-wide system</i></p> <p>Yes The collateral registry under purview of SECP is centralized to the extent of companies.</p> <p>e-Registry once formed will be centralized and will be accessible online.</p> <p>For pledge of securities and shares the centralized registry is Central Depository Company(CDC) working under the Central Depositories Act 1997.</p> <p>Section 6, 7 and 12 of Central Depositories Act 1997.</p>
<p>e. Can everyone access the data in the registry without restriction from any geographic location in the economy? (i.e., without intermediary such as registrars, clerks, notaries... or without being limited to a certain type of users such as state agencies)</p>	<p><i>Last year: Yes</i> <i>Access to the Registry's data can only be done from the Company Registration Office only.</i></p> <p>Yes Section 102 of the Companies Act, 2017. The register of mortgage and charges under purview of SECP is accessible to the public by visiting the Company Registration Office.</p> <p>While under STA 2016 registry, the database of e-Registry would be available to be accessed by every one against certain payment.</p> <p>CDC can be accessed for data by the account holder (pledgor) and the concerned pledgee.</p>
<p>f. Does the registry have an electronic database searchable by debtor's name or unique identifier?</p>	<p><i>Last year: No</i> <i>The new CR will be searchable by the entity's unique number and a name</i></p> <p>Yes The register of mortgage and charges is being maintained in electronic form and will be searchable by the company name and registration number (Section 102, Companies Act, 2017; Chapter IV Regulation 16, Companies (Registration Offices) Regulations, 2018), Central Depositories Act 1997</p> <p>The e-Registry under STA 2016 is being set up which will allow online transactions.</p>
<p>5.3 Notice-based collateral registry</p>	
<p>a. Is this a notice-based registry (i.e., no documents, such as a copy of the contract, need to be submitted and the registry does not verify the legality of the transactions)?</p>	<p><i>Last year: No</i> <i>In case of individuals, copy of the contract is required to be submitted and the registry only verifies the execution of the documents. In case of companies registry does not verify execution.</i></p> <p>Yes Part VI, Section 100 of the Companies Act, 2017. The company creating charge on its assets is required to file only particulars of charge along with copy of instrument creating charge. The registrar doesn't verify the legality of transactions.</p> <p>e-Registry under STA 2016 is being set up which will allow online transactions.</p>

	<p>Pledge over shares and securities can be created in favour of an eligible pledgee (normally banks and financial institutions) in CDS. The owner of the securities should give written authorization for pledging of his securities. CDC, as a central depository, monitors the pledge transactions to see that authorization of owner of securities has been obtained.</p> <p>Section 6, 7 and 12 of Central Depositories Act 1997.</p>
<p>b. Does the registry cover all types of security interests in movable assets (other than vehicles, ships, aircraft, or intellectual property)?</p>	<p><i>Last year: Yes</i></p> <p>Yes Part VI, Section 100 of the Companies Act, 2017 cover all types of security interests in movable assets including security interests over vehicles, ships, aircraft and intellectual property</p> <p>The e-Registry being set up under STA 2016 will cover all types of security interests.</p> <p>Definition Clause 2(5) of Central Depositories Act 1997.</p>
<p>5.4 Modern collateral registry</p>	
<p>a. Who can perform the registration? (e.g., the secured creditor, its representatives)</p>	<p><i>Last year: Either party or their representatives.</i></p> <p>The company which creates charge gets it registered with the registrar.</p> <p>Under STA, 2016 secured creditor will register charge online in e-Registry.</p> <p>For shares and securities the account holder / participant can pledge securities in the CDS in favour of a bank or a financial institution on their own account or on account of their clients. Where client's securities are pledged, then authorization of the client is required</p>
<p>b. When is a new registration reflected and retrievable in the database? Please provide an estimate (e.g., within 1 hour, 24 hours, 3 business days, etc.).</p>	<p><i>Last year: 3-5 business days</i></p> <p>The Companies (Registration Offices) Regulations, 2018 stipulates timeframe of 1 day with normal fee or 4 hours under Fast Track Registration System for registration of charge by registrar.</p> <p>Under the STA 2016 e-Registry, it will be assigned registration number immediately on real time basis after submission of notice filing by the secured creditor.</p> <p>The pledge transaction is recorded in the CDS and shown in the system-generated report as soon as the pledge transaction is made in the CDS.</p>
<p>c. Does the collateral registry have an online system for registrations, amendments, renewals, cancellations, and searches of security interests?</p>	<p><i>Last year: No</i></p> <p>Yes The Collateral Registry under the purview of SECP has online system eServices for registration, rectification, modification and satisfaction of charge.</p> <p>The system operated under CDC is online subject to designated times schedule where access is only allowed to entities admitted as CDS Elements i.e. Pledgee, Account Holder, Participant etc..</p>

6. PRIORITY OF CLAIMS OUTSIDE OF INSOLVENCY OR BANKRUPTCY PROCEEDINGS

Assumption: ABC has defaulted on its loan but has not entered any kind of formal insolvency or bankruptcy procedure.

<p>6.1 Does BizBank have absolute priority over all other creditor claims that were never registered or that were registered afterward in both Scenarios A and B before any court proceedings are initiated (i.e., is the secured creditor with a pledge paid before any other possible creditor claim, such as labor wages or state taxes?)?</p>	<p><i>Last year: No</i></p> <p>Yes There are consistent judgments that a secured creditor takes precedence over all claims including those of the Government created or accrued subsequent to his charge. Few such Judgments are given as below:</p> <p>(i) Tax matter: 1999 PTD 2940, (Karachi High Court) “---government liabilities arising subsequent to a charge on the properties cannot have preference over the claims of secured creditors.”</p> <p>(ii) Civil/Tax matter: 2000 PTD 1193, (Karachi High Court) “---Preference to government liability over claim of secured creditors---Scope---Such liabilities of the government arising subsequent to a charge on the properties cannot have preference over the claim of secured creditors.”</p>
<p>6.2 If not, please provide the priority rankings of different types of creditor claims. (Please note that since the debtor is outside any insolvency or bankruptcy procedure, the relevant articles might be found in different laws, such as the labor code or tax law.)</p>	<p><i>Last year: General tax and labor claims have super-priority. In addition, the ST Act does not address the priority of all claims, including wages and taxes.</i></p>

7. PRIORITY RULES WITHIN INSOLVENCY OR BANKRUPTCY PROCEEDINGS

Assumption: ABC is now in a formal insolvency or bankruptcy procedure and creditors have been invited to file claims.

<p>7.1 Does BizBank’s secured claim have absolute priority over the claims of all other creditors, including the state and employees, in both Scenarios A and B (i.e., is the secured creditor paid before any other possible creditors with claims)?</p>	<p><i>Last year: No</i></p> <p>Yes BizBank has right to stand outside the insolvency proceedings, in which case, it shall (save where the security interest is in the nature of a floating charge and the assets of ABC are insufficient to meet preferential claims) have priority over other creditor claims (Section 66, STA 2016).</p> <p>There are also judgements that a secured claim have priority over other claims when formal insolvency procedure have been initiated. One such judgement is as follows;</p> <p>2015 SCMR 1376, (Supreme Court of Pakistan) “---In the absence of a specific law that may have given preference to the claims of the government at the relevant time, priority would depend on which encumbrance was earlier in time---However, where the claim of the government was cotemporaneous with any other claimant, the claim of the government would prevail--”</p>
<p>7.2 Do labor claims (e.g., wages) have priority over BizBank’s secured claim even if they were never registered or were registered</p>	<p><i>Last year: Yes</i> Yes. (i) all wages or salary (including wages payable for tiem or piece work and salary earned wholly or in part by way of commission) of any employee in respect of services rendered to the company and due for a</p>

<p>afterward?</p>	<p><i>period not exceeding four months within the twelve months next before the relevant date and any compensation payable to any workman under any law for the time being in force;</i></p> <p><i>(ii) all accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;</i></p> <p><i>(iii) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company:</i></p> <p><i>Subject to a maximum of two thousand rupees: Provided that, where a claimant is a laborer in husbandry who has entered into contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof as the Court may decide to be due under the contract, proportionate to the time of service up to the relevant date.</i></p> <p><i>(iv) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions towards insurance payable during the twelve months next before relevant date, by the company as employer of any persons, under any other law for the time being in force;</i></p> <p><i>(v) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 , rights capable of being transfer red to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company</i></p> <p>No</p>
<p>7.3 Do state claims (e.g., taxes) have priority over BizBank's secured claim even if they were never registered or were registered afterward?</p>	<p>Last year: Yes</p> <p>No</p> <p>Please refer to the answer in 7.1</p>
<p>7.4 Does the law provide for an actual ranking of claims during a bankruptcy procedure? If yes, please provide the rankings. (e.g., 1. bankruptcy costs; 2. labor claims; 3. tax claims; 4. secured creditors; 5. judgment claims)</p>	<p>Last year: Yes</p> <p><i>Section 405 of the 1984 Ordinance, inter alia, provides, that in winding up of a company, the following shall be paid in priority to all other debts:</i></p> <p><i>(a) all revenues, taxes, cesses and rates due from the company to the Federal Government or a Provincial Government or to a local authority;</i></p> <p><i>(b) all wages or salary of any employee in respect of services rendered to the company and any compensation payable to any workman under any law for the time being in force; (c) all accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution; (d) (unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company) all amounts due, in respect of contributions towards insurance payable by the company as employer of any persons; (e) (unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workman) all amounts due in respect of any compensation or liability for</i></p>

	<p><i>compensation in respect of the death or disablement of any employee of the company; (f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and (g) the expenses of any investigation in so far as they are payable by the company.</i></p> <p><i>(Section 61 of the 1920 Act too recognizes the priority of payment of debts due to the Government or local authority and salary/wages of workers and laborers of the company)</i></p> <p><i>So far as a secured creditor is concerned, sufficient protection of his rights has been provided and he may under Section 47 of the 1920 Act adopt any one of the following course of actions:</i></p> <p><i>(a) realise his security independently of the insolvency proceedings. Where a secured creditor realises his security by remaining outside the insolvency proceedings, he is entitled to prove the balance due to him, in the insolvency proceedings, after deducting the net amount realised by him from his security;</i></p> <p><i>(b) the secured creditor, may at his option, relinquish his security for the general benefit of all creditors. In such event, he is entitled to prove his whole debt in the insolvency proceedings; or</i></p> <p><i>(c) where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule of creditors, state in his proof the particulars of the security and the value at which he assesses it. The secured creditor, in such event, is only entitled to receive a dividend in respect of the balance due to him after deducting the value assessed by him for his security.</i></p> <p>Yes</p> <p>In the context of insolvency proceedings, the ranking will broadly be as follows: 1. liquidation costs; 2. preferential claims, including government claims, employee claims, etc. (Section 390 of Companies Act, 2017); 3. secured creditors; 4. other unsecured creditors. However, the above ranking will not apply where BizBank exercises its right to stand outside the insolvency proceedings.</p>
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8. SECURED CREDITORS' EXEMPTION FROM AUTOMATIC STAYS IN REORGANIZATION	
8.1 Judicial reorganization	
<p>a. Is a judicial reorganization procedure available, either within a general insolvency or bankruptcy procedure or as a separate process? <i>(Please do not consider informal workouts. If there is no judicial reorganization procedure available, consider only a general insolvency or bankruptcy procedure.)</i></p>	<p><i>Last year: Yes</i> <i>Court cannot order reorganization, however, if agreed between parties, Court can approve and enforce it.</i></p> <p>Yes Section 279 of the Companies Act, 2017. Corporate Rehabilitation Act 2018(Entire law).</p>
<p>b. If there is more than one reorganization procedure available, please indicate which would be the most commonly used in your jurisdiction, taking into account the assumptions of our case study.</p>	<p><i>Last year: Due to the lengthily nature of the Judicial process, a compromise proceeding under s. 284 seems most viable. The section allows for , "where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up,</i></p>

	<p><i>of the liquidator, order a meeting of the creditors or class of creditors, or of the member of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs".</i></p> <p>Schedule III and Section 279-283 of the Companies Act, 2017.</p> <p>In order to facilitate the corporate sector as well as to secure the interest of creditors, the matters to approve reorganization and reconstruction are being given under the jurisdiction of the SECP for small sized companies for the disposal of such cases in a shortest possible time.</p> <p>Whereas for medium sized and large sized companies, such powers lies with the Company Bench of the High Court (Government S.R.O. 840(i)/2017), Corporate Rehabilitation Act 2018.</p>
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8.2 Automatic stay

<p>Are enforcement actions by secured creditors subject to an automatic stay (or an automatic suspension, moratorium, etc.) in reorganization (or in bankruptcy if a reorganization procedure is not available)?</p>	<p><i>Last year: No</i> <i>Not automatically. Section 316 of Companies Ordinance, 1984.</i></p> <p>Yes Under the Corporate Rehabilitation Act 2018, the High Court can stay the proceeding against debtor on an application made by the debtor under CRA.</p>
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8.3 Relief from automatic stay

<p>a. Is there a time limit prescribed by law on the automatic stay imposed on the secured claims in the reorganization procedure (or bankruptcy if reorganization is not available)? If yes, what is the time limit?</p>	<p><i>Last year: No</i> <i>Not Applicable</i></p> <p>No</p>
<p>b. Does the law stipulate that secured creditors may apply for a relief of the stay when the collateral is not needed for the reorganization or sale of the business as a going concern?</p>	<p><i>Last year: No</i> <i>Not Applicable</i></p> <p>Yes The CRA allows the qualifying creditor to file for a relief to prevent the company from irreparable harm or loss to the interest of the parties under Section 12 (3) of CRA 2018</p>
<p>c. Does the law stipulate that secured creditors can apply for a relief of the stay in reorganization (or bankruptcy if reorganization is not available) when the stay poses a great risk to the existence of the collateral (e.g., perishable goods)?</p>	<p><i>Last year: No</i> <i>Not Applicable</i></p> <p>Yes Same as 8.3 (b)</p>

9. ENFORCEMENT OF SECURITY INTERESTS

<p>9.1 Does the law allow parties to a security agreement, at the time a security interest is created, to agree to enforce the security interest outside of court if the debtor defaults in both Scenario A and Scenario B (i.e., upon default, may the secured party (i) take possession of the</p>	<p><i>Last year: No</i> <i>The law does not allow such procedure. Even Section 15 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 which granted authority to Financial Institutions to sell mortgaged property in case of default has been declared unconstitutional. See National Bank of Pakistan v. Saf Textile, PLD 2014 S.C. 283.</i></p> <p>Yes</p>
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<p><i>collateral or (ii) sell, exchange, convert into money, or otherwise enforce against the collateral privately or by auction)?</i></p>	<p>If the debtor and creditor has agreed to such terms and conditions at the time of entering into security agreement.</p> <p>Section 59 of STA 2016.</p> <p>Section 16(3) of FIRO 2016 allows creditor to recover possession of property, if the same is movable.</p> <p>As per Section 12 of the Central Depositories Act, 1997, a pledgee has a right, in addition to other rights under the Contract Act, 1872, to transfer the pledged securities upon default of the pledgor without giving any notice to the central depository as a registry. However, if a court order is in field disallowing the transfer, CDC will give effect to the order.</p>
<p>9.2 Can a sale of the asset take place through a public auction? <i>(A public auction is understood here as a method of selling assets in a public forum through open and competitive bidding and under the authority of a court or a government agency.)</i></p>	<p><i>Last year: No</i> <i>Assets can be sold by public auction only unless the Bank and the borrower agree on a different mode subject to approval of the court.</i></p> <p>Yes Secured creditor can sell collateral though public auction under Section 19(3) of the FIRO. It allows the financial institution to sell or cause sale of collateral with or without the intervention of the Banking Court through public auction or sealed tenders.</p> <p>In case of shares and securities the pledgee may sell the same through the stock exchange in case of listed securities. In case of unlisted securities, direct transfer can be made in the CDS.</p>
<p>9.3 Can a sale of the asset take place through a private sale? <i>(A private sale is understood here as a method of selling assets in which the buyer's and seller's identities are not disclosed and the procedure may not be monitored by a government agency.)</i></p>	<p><i>Last year: No</i> <i>Assets can be sold by public auction only unless the Bank and the borrower agree on a different mode subject to approval of the court.</i></p> <p>Yes However, where out of court enforcement is permissible (for example in the context of an assignment of receivables), there is no law that prescribes the mode of sale. The mode of sale will depend on the terms of the security agreement.</p> <p>The pledgee may sell the same through the stock exchange in case of listed securities. In case of unlisted securities, direct transfer can be made in the CDS.</p>
<p>9.4 Is a “pactum commissorium” possible in your economy (i.e., may the secured creditor automatically appropriate the encumbered asset upon default of the debtor)? Is the creditor allowed to acquire the asset as a full or partial repayment of the debt by agreement?</p>	<p><i>Last year: No</i> <i>Pactum commissorium is not possible in Pakistan. The creditor must follow the procedure provided by law to recover the default amount from the debtor through court.</i></p> <p>No However, under Section 12 of the Central Depositories Act, 1997, a pledgee has a right, in addition to other rights under the Contract Act, 1872, to transfer the pledged securities upon default of the pledgor without giving any notice to the central depository as a registry.</p> <p>However, if a court order is in field disallowing the transfer, CDC will give effect to the order.</p>

Section 5 Research Questions

1. When changes to the framework of secured transactions (e.g., new or amended secured transactions law, operation of the collateral registry) are introduced, how are they conveyed to stakeholders (including ministry of finance, central bank, judges, academia, lawyers, related government agencies, private sector, notaries, financial journalists, and others):

- Pilot test:	-Click to Select-
- Dissemination campaign (e.g., social media, billboards, etc.):	Yes
- Training/workshop:	Yes
- Through public broadcast (e.g., TV, radio, etc.):	Yes
- None of the above:	-Click to Select-
- Other, please explain:	
Comment:	

2. If you answered yes to any of the above, please list what the communication program included:

- New provisions of the Act:	Yes
- New internal credit policies:	-Click to Select-
- Use of online collateral registry website:	Yes
- Valuation of collateral:	-Click to Select-
- Field examining/Collateral management/Risk management:	-Click to Select-
- Enforcement/collection:	-Click to Select-
- Other, please explain:	
Comment:	

3. Are secured transactions courses taught in schools, colleges or universities for:

- Lawyers:	Yes
- Economists:	-Click to Select-
- Other, please explain:	
Comment:	

Thank you very much for completing the questionnaire!

We sincerely appreciate your contribution to the *Doing Business* project. The results will appear in the *Doing Business 2019* report and on our website: www.doingbusiness.org.

Your work will be gratefully acknowledged.