



Getting Credit – Secured Transactions in Malawi

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Investment Climate Advisory Services

Getting Credit in Malawi

Section 1: Introduction

I. Background

The Doing Business Reform Advisory (DBRA) team is a unit of the Investment Climate Department of the World Bank Group that provides technical assistance to countries looking to improve their business environment. The DBRA Unit is currently providing technical assistance to the Government of Malawi in different areas relevant for the investment climate including in the area of secured transactions. In order to complement the existing initiatives, the Government of Malawi requested technical assistance to the DBRA Unit.

Yair Baranes, consultant of the Secured Transactions Program (CICRA) World Bank Group, visited Lilongwe and Blantyre in Malawi from February 1-5, 2010. The objective of the visit was to take stock of Malawi's existing secured transactions legislation and analyze the existing practices in this area in order to identify their principal weaknesses. Moreover, a key task was to identify the requirements of the Government of Malawi, and design an intervention that could assist them in achieving their goals going forward. The report sets out the following:

1. An analysis of the weaknesses and strengths of Malawi's secured transactions system including recommendations;
2. An analysis of the weaknesses and strengths of Malawi's registration of security interests using movable property as collateral including recommendations; and
3. A discussion of proposed next steps/potential interventions by the Secured Transactions Program to assist the Government of Malawi in its secured lending reform agenda.

This memorandum summarizes the mission's findings. Section 2 outlines the existing legislation governing secured lending. Section 3, 4, 5 and 6 provide detailed reform recommendations for the successful implementation of Malawi's future secured transactions law. Finally, Section 7 presents possible next steps in reform.

II. Main findings

Access to finance is one of the most important components for economic development and expansion in Malawi. Farmers need to purchase new equipment such as fertilizers and farming equipment, new and existing small and medium enterprises need startup capital, manufacturers need financing to purchase new equipment and consumers need to purchase new consumer goods or replace existing ones. The risk endemic to the advancement of credit in Malawi can be substantially mitigated by providing security for the credit. Since land is not available for most Malawian people and businesses, movable property such as machinery, automobiles, inventory and account receivables can provide the necessary security. This will encourage financial institutions such as banks, leasing companies and micro credit organizations to increase the volume of their credit activities and provide them with lower interest rates and for longer periods.

Most financial institutions recognized the potential of movable collateral (movable property securing credit). However, some expressed skepticism regarding their ability to rely on this type of property as it is “inherently risky”. Malawian financial institutions reported very modest use of movable property to secure credit. The rationale was that movable property is risky as it depreciates in value over time and can be hidden or moved to other jurisdictions. Some financial institutions mentioned poor public sector services in terms of registrations, court administrations and enforcements of property rights as reasons for the high credit risk. However, the main objection arises out of the perception that credit secured with movables is more risky as borrowers are less likely to repay loans secured with movable property rather than immovable property. As a result, interest rates on loans are high and terms of loans are short (e.g. the average market rate on a microloan runs at around 3%-4% per month).

The current legal system in Malawi is old and was never reformed to promote modern economic policies such as increasing access to finance. Malawi's common law legal system was inherited from England. There was never a focused and concentrated legal reform in the area of asset based financing involving movable collateral. Multiple pieces of legislation are organized based on type of property, type of borrowers, and type of transaction (see Section 2) but not based on the criteria of modern secured transactions law uses – security rights on movable property rights. As a result, various property rights are created in multiple legislations with respect to various properties and various debtors. Each of the legislations has its own priority regime with its own underlying policy considerations. The rules are often inconsistent or contradict each other.

There are multiple registries in Malawi involving the registration of security interests in movable collateral. All these registries operate under obsolete IT systems or papers based systems; and therefore, are not capable of providing the information creditors need in order to rely on movable property as collateral. Malawi has a number of registries (see Section 2) recording property rights against movable property. Each of these registries operates under a specialized legislation as described in the previous paragraph. The registries are multiple and operate based on type of assets or type of borrowers. Further, the registries do not communicate with each other. For the most part, the registration and search procedures are paper based and cumbersome. There are no means to collect reliable information in a centralized registry.

Creditors expressed dissatisfaction with the operation of the courts in general. However, some mentioned that the commercial division of the High Court in Blantyre is more efficient. Modern secured financing based on movable collateral requires quick and efficient enforcement of creditors' rights. In Malawi the commercial division of the High Court has been dealing over the last two years with commercial cases. The interviewees expressed satisfaction with the speed of the judges providing judgments. The commercial division of the High Court and its elected judges specialize in commercial cases and also has orientation towards efficiency with mandate to employ modern technology to facilitate their work.

The sheriff's office operating under current enforcement law is unable to execute efficiently court orders against movable property. One of the main complaints by financial institutions is the enforcement law and the sheriff's office. The issues related to efficiency of enforcement are

amplified in the context of movable property. Almost all interviewees described deficiencies in the legislation and the enforcement office being inefficient in enforcing court judgments against movable property.

III. Recommendations

- 1) Legal Reform** - A modern, conceptually integrated secured financing system should be adopted as a statute by the Malawian Government. It should provide for a single conceptual right, a “security interest”, which arises under any transaction that in substance is a financial transaction secured with movable property. The new law will provide for a set of predictable priority rules under a single legislation.
- 2) Creation of Modern Registry** – A centralised, modern, computerized registry should be created under the future reformed law for publication of claims against movable property. The registry database should be accessible from any location in Malawi through computer and Internet facilities and through access points for persons who do not have means to access the registry electronically. Electronic access should also be available for investors located outside Malawi.
- 3) Awareness on Secured Financing Using Movable Property as Collateral and Training Program** – An awareness campaign targeting public and private sector stakeholders should be developed. Likewise, a training program should be developed and implemented. The training program should provide opportunities to all interested parties including members of the legal, business, banking and consumer sectors to learn about the various features of the new system and the opportunities movable collateral introduces under modern secured transactions systems.
- 4) Reform of Enforcement Law and Sheriff’s Office** – A reform of the enforcement law and the sheriff’s office shall take place. The reform will modernize the law dealing with enforcement of rights against movable collateral. It will also target the office of the sheriff itself in terms of procedure, logistics and building capacity.

Section 2: Laws and registries regulating secured lending in Malawi

1) Applicable legislation

Law ¹	Definition	Example	Creditor/Debtor	Property used as collateral	Registry	Priority Rules
Companies Act, 1984	The Companies Act regulates the constitution of companies and their administration. Under this Act an incorporated company may charge its assets in favor of a creditor by issuing debentures or through a floating or fixed charge.	<ul style="list-style-type: none"> A fixed charge is a type of charge under which the creditor has an interest that attaches to the collateral immediately upon the conclusion of the agreement. The owner of the property has no authority to dispose of the collateral without the consent of the creditor. <i>E.g.</i> Construction Company gives a specific vehicle as collateral for a loan. The floating charge will “float” over present and future movable assets. This type of charge will crystallize on the existing property upon the occurrence of a particular event – usually a default by the borrower. <i>E.g.</i> Construction Company grants a floating charge over its inventory to secure a loan. If the company defaults, the floating charge will become a fixed charge on the existing inventory at the time of default. A debenture is an unsecured investment because there are no pledges (guarantee) or liens available on particular assets. Nonetheless, a debenture is backed by all the assets of the borrower which have not been pledged otherwise. 	The Companies Act only applies to registered corporations. Therefore, only registered companies can grant a fixed or floating charge over their assets. Any bank or financial institution can be the holders of a fixed or floating charge.	Any type of movable property can be subject to a fixed or floating charge (<i>e.g.</i> goods, machinery, shares, etc.)	Companies Registry.	The Companies Act stipulates that priority among conflicting claims are determined “in accordance with the time they are respectively registered in the registry.” However, if the asset secured by the charge needs to be registered in another registry (<i>e.g.</i> vehicles), the priority provisions of the Companies Act do not apply. Instead, the special legislation that applies to the asset (For vehicles: The Road Traffic Act, 1998) will provide the priority rules. The registration in the Companies Registry would then be purely informational although mandatory.
Road Traffic Act, 1998	The Road Traffic Act regulates all self propelled vehicles including the conditions for operation, examinations and registrations. The Act provides for registration of ‘title holder’	A financial institution provides credit to one employee to buy a car. The financial institution will maintain the ownership of the vehicle (by registering the title at the Vehicles Registry) until repayment of the loan	There are no limitations with regards to creditors or debtors. Anyone who has a right over the vehicle will be able to use it as collateral and there are no restrictions regarding the creditors who can hold a vehicle as	Vehicles of any type, trucks, tractors, etc.	Vehicles Registry.	Upon default on the loan, the title holder is the one that can allow for the alienation of the automobile that was used as collateral. His right against the vehicle needs to be registered at the Vehicles Registry.

¹ Other relevant legislations that affect secured transactions but which are beyond the scope of the report: Tax law; labor law; sale of goods law; bankruptcy and insolvency law.

	and of owners.	is completed by the employee.	collateral.			Therefore, the priority rules affecting the creditors will be determined upon the registration of the title in the Vehicles Registry. These rules can contradict and supersede priority rules established in other legislations, such as the Companies Act.
Bills of Sale Act, 1967	The Bills of Sale Act regulates written instruments which evidences the transfer of title to personal property from the vendor, seller, to the vendee, buyer. The conditional bill of sale will be established for the purpose of securing the performance of obligation by debtor.	A creditor gives a loan and has transferred to himself, as collateral, the title of a specific personal property of the debtor. Under the Bills of Sale Act, the property remains with the debtor. The transaction is recorded at the Bills of Sale Registry within a defined period of time.	Any owner of a personal property can be a part of a bill of sale as well as any bank and financial institution can grant a loan under a bill of sale.	Any personal property can be subject to a bill of sale as long as it can be specifically described and is a part of a sale transaction.	Bills of Sale Registry.	Registration of the bill of sale will validate the bill and establish priority over third parties. Therefore, a conflict of law may arise between specific legislations such as the Companies Act and the Bills of Sale Act (<i>e.g.</i> a specific asset that is subject to a floating charge a later on to a bill of sale).
Commercial Credit Act, 1971	The Commercial Credits Act is a specialized legislation that deals with credit granted to any debtor “not being an incorporated company or society” who carries on trade or business as a retailer or wholesaler. The Act applies only to trading assets of the borrower (<i>e.g.</i> Inventory).	A non-incorporated company (<i>e.g.</i> a local artisan) grants a security interest over its inventory to secure a loan.	There are limitations regarding who can be a creditor or a debtor under this legislation. Incorporated companies are not subject to this legislation. There is also a limited list of designated creditors subject to this Act such as banks, statutory bodies etc.	Any movable property that is the object of the trade by the borrower.	Commercial Credit Registry.	Registration is precondition for priority against third parties. However, it is not required for the agreement to be valid between the parties to the security agreement. Conflict of law may arise between the Commercial Act and the Road Traffic Act when the collateral given is a vehicle. If the Bank doesn’t register its title at the Vehicles Registry as well, the bank will not have priority over subsequent creditors.
Farmer’s Stop – Order Act, 1955	The Farmers’ Stop – Order Act regulates any transaction entered into by a farmer who gives, as security for a debt, any right in or over his growing or future crops or the proceeds thereof.	A farmer gives his crops (<i>e.g.</i> corn) as collateral to secured loan that will allow him to build a new warehouse.	The creditor can be any person. However, debtors can only be farmers due to the type of collateral regulated by this act	Crops, future crops and the proceeds thereof.	Farmer’s Stop Orders Registry.	Stop orders must be registered and the priority between several stop orders is determined by the time of registration. Note that if the crops are subject to a bill of sale, the priority regime of the Bills of Sale Act does not apply. Conflict of law may arise in the case where a farmer issues a stop order to get a loan with a bank, and then transfers his crops to a company. The company might use them to secure a loan of its own through a floating charge. At this point, the second bank will not be able to know that the crops were first the object of a stop order. Under the current legislation, both banks would have priority.

2) Registries

Registries ²	Characteristics	Type of security interest registered	Registration	Searches	Cost	Satellite offices
Companies Registry	The Companies Registry under the Ministry of Trade and Industry is the institution where secured transactions involving assets of registered companies are registered. The registry lacks IT infrastructure such as computers or internet.	Fixed and floating charges, companies' debentures and mortgages on companies' assets are registered and maintained at the Companies Registry.	The process of registrations is manual. The agreement between the lender and the company is submitted and maintained under the company's file at the registry. The company's file is created when the company is incorporated. All files are paper based and are maintained in alphabetic order. A handwritten book is maintained with numbers given to each file (company) for reference.	Searches are also done manually upon presentation of a request for search. A copy of the documents pertaining to the searched company is given to the requesting person. Each applicant for registration or inquiry must be present at the premises of the registry.	Registration fees are based on a percentage of the value of the loan. The fee charged is 3% of the value of the loan. The percentage might decrease for some loans.	No satellite offices.
Vehicles Registry	The Vehicles Registry is run by the Director of Road Traffic. The registry has several functions: registration of old and new private vehicles imported to Malawi before operating on Malawian roads; registration of driver's licenses and registration of equitable rights over the vehicles. The Vehicle Registry has a qualified IT department and staff. It is also equipped with computers and internal network.	Vehicles of any type, trucks, tractors, etc.	Regarding equitable rights, Banks or other financial institutions holding a security interest over a vehicle will be endorsed on the license document of the vehicle as title holders. The same process applies for the lessor of a vehicle. Once the relevant documentation is submitted, the certificate issued by the Vehicles Registry will be a proof that the title owner has a right against the vehicle.	Registrations and searches cannot be done remotely. As a result any inquiry must be done in person. The requests are processed by registrars who feed or inquire the database themselves. The updated information is then submitted to the requesting person	A flat fee exists for the registrations of title holders and owners.	The registry has satellite offices throughout Malawi. While the information of the offices is not centralized, it is accessible via a network system.

² The Bill of Sale Registry, the Commercial Credit Registry and the Farmers Stop Orders Registry were not visited during the mission. If these registries do not function properly, they might affect the effectiveness of a new secured transactions law.

			There are 5000 registrations where the title holder and the owner of a vehicle are two different persons on the vehicle license document.			
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Section 3: Legal Reform

I. General Overview

A new modern legislation on secured transactions shall be adopted in Malawi. The law will be designed to promote ease of using movable property as collateral. The law will provide the framework for priorities, registrations and will introduce modern methods to engage in secured transactions. Other legislation such as the Companies Act, the Road Traffic Act and the Farmers' Stop-Order Act will continue to operate to the extent that they are not in conflict with the new legislation.

Secured transactions involving movable property in Malawi is scattered in a number of laws. Each of the current Acts targets either special type of property (e.g. Farmers' Stop-Order Act, Road Traffic Act), type of borrower (Companies Act, Commercial Credits Act) or types of transactions (Hire Purchase Act, Bills of Sale Act). The legislation was developed in an uncoordinated fashion resulting in multiple rules affecting all areas of secured transactions. The legislation is complex and often inconsistent in the areas of creation of charges on movable property, priorities and registration.

Malawi should have a new secured transactions law (hereinafter STL). A modern legislation which will focus on efficient implementation of modern policies designed to increase access to finance among businesses, farmers and consumers. The new legislation shall focus on efficiency by reorganizing the provisions scattered in the existing legislation and by introducing a modern new mechanism to allow efficient use of secured transactions – all under one act.

The STL will harmonize the existing legislation. The STL reform in Malawi will not replace existing laws. Existing laws will continue to regulate the transactions it deals with as between the parties to the transaction. However, priorities between conflicting claims against the property (third parties claims) and registrations will be regulated by the new legislation.

This approach is similar to reform efforts completed and underway worldwide in both common and civil law jurisdictions. To a large extent, the proposed reform program is similar to the reforms that took place in a number of common law jurisdictions such as Canada, United States and New-Zealand.

II. The Main Components of the Future Malawian Secured Transactions Law

The STL shall be simple comprehensive and will provide one piece of legislation dealing primarily with creation, registration, priority and enforcement of security interests.

1) General Overview

While there are many components in modern secured transactions legal system that will have to be crafted and included in the future reform, some are particularly important. In the following paragraphs these components are discussed in order to help the Malawian government understand the main areas for reform.

2) Simplicity and Comprehensiveness

The STL should be simple and at the same time as complete as possible. It will address the way in which modern security interests can be created but will not contradict charges created according to existing legislation such as the Companies or the Bills of Sale Acts. In other words, contract law and property rights will be established based on the existing laws or based on the new procedure to establish a security interest. The following is a list of the components of the future STL:

Definitions – the future STL will have a set of definitions. New definitions will set the conceptual basis of the law. The most important among these definitions is a new legal term that will encompass all transactions that have the same function – the use of movable property to secure performance of an obligation. Different terms are used in different jurisdictions (e.g. securing charge, pledge), with the most common among common law jurisdictions being ‘security interest’.

Creation of a Security Interest – this section will deal with the components leading to the creation of a security interest. As mentioned earlier, this will be an addition rather than a substitute to the way that property rights are created in Malawi.

Registration – this section will set the legal basis for valid registration of security interests. It will regulate the new Secured Transactions Registry (hereinafter, STR) where all types of security interest will be recorded.

Priorities – this section will deal with priorities among conflicting claims. It will be strongly linked to the new STR since priorities will be determined by the chronological order of registrations.

Enforcement – the last section will deal with enforcing rights against movable property (including tangible, intangible and perishable property) based on modern concepts of efficient enforcement and successful operation in other jurisdictions.

3) The Functional Approach

Hire-Purchase Act, 1964 shall not be repealed. However, it should be subject to the registration and priority rules of the future STL.

In addition, the provision of the Sale of Goods Act under which title held by conditional seller can be passed to a good faith buyer should be subject to the registration and priority rules of the future STL.

As mentioned earlier, the current laws that deal with secured transaction are divided among various acts based on the type of property, transaction or debtor. For example, The Commercial Credit Act applies only when the borrower is not an incorporated body; or the Companies Act applies only when the borrower is registered at the Companies Registry. In both scenarios, the transaction involves movable property that secures performance of an obligation.

The future STL will be comprehensive and will apply to *any transaction that has the function of securing performance of obligation with movable property*. The use of traditional common law forms of agreement such as bill of sale, floating charge, conditional sales contract, *etc.*, will be regulated by the provisions of the STL. Parties should be free to continue using the forms of agreements recognized by current Malawian legislation. Thus, companies may still raise loans by issuing debentures or using floating charges under the Companies Act. Financial institutions may continue to use stop orders under the Farmers' Stop-Order Act. However, the form of the contract between lender and borrower will not dictate how third parties are affected by it. For example, it should make no difference to the rights of a third party that the agreement provides a transfer of title from the debtor to the creditor. The effect on third parties will be determined by the rules within the STL.

4) Examples

i) Conditional Sale Agreements

Should the recommendations in this report be implemented, there would be no practical reason for retaining hire-purchase as a separate method of financing the acquisition of high value goods in either the small business or consumer context. The reason being is that the provisions of the Sales of Goods Act, under which a conditional buyer is able to pass or encumber the seller's title to goods in the buyer's possession, would no longer be applicable where the seller's interest is registered as a security interest.

The Hire-Purchase Act, 1964 should not be repealed. Some hire-purchase companies will want to continue to use this form of financing for the foreseeable future. However, hire-purchase transactions should be brought within the registration and priority rules of the future STL.

A future STL will recognize the *true* creditor-debtor relationship between the parties and will regulate it on that basis rather than on the basis of a fictitious relationship between the financier and the buyer.

ii) Sales of Goods Act

The *Sale of Goods Act* provisions that allow transfer of title will be subjected to the priority rules of the future STL. Essentially, a purchaser of property will not be able to claim the protection of the good faith purchaser for value provision if a registration was performed already in the STR with respect to the purchased property.

5) Leasing Law

Existing and future provisions of registration and publication (registration) of the future STL should apply to financial leases.

Since some types of leases are functional equivalents to secured purchase contracts, leases should be brought within the scope of the future STL. This issue has been addressed in other countries that have engaged in secured financing law reform (*e.g.* Canadian provinces, New Zealand).

Leases will still be subject to contract law or to a special statute dealing with leasing -- in the case that Malawi introduces such an instrument in the future in addition to its Hire Purchase Act. However, financial leases will be subject to the priority and registry provisions of the future STL including the provisions that require disclosure in a modern, efficient public registry as condition for priority.

III. The Function of Registration

The future STL should provide for three ways to effect publication:

- *Publication of a notice relating to the security interest in the future computerized registry (available for any kind of collateral that is deemed to be within the scope of the future STL);*
- *Delivery of possession of the collateral to the secured party where the collateral is negotiable documents of title;*
- *Warehouse receipts, land usage rights shall be examined for inclusion within the publication rules of the future STL.*

The Companies Act, the Farmer's Stop-order Act, the Commercial Credits Act and the Bills of Sale Act have all provisions for registration in separate registries. The future STL should provide dominant rules that a security interest in any type of collateral, can acquire priority status through publication. Publication shall be by way of registration in the case of non-negotiable instruments while with respect to negotiable instruments, publication shall be by way of possession by the creditor.

During the mission a number of ideas were raised regarding the specialized types of property that shall be subject to publication. First, it was decided that further examination of specified properties will determine if some types of property shall be exempted from the publication requirement of the future STL (e.g. vehicles, airplanes ships). Second, it may be important to include warehouse receipts as subject to publication under a special provision of the future STL. Third, because the land law reform is and will fall behind the reform on secure transactions, it is recommended to examine whether land usage rights shall be subject to the publication provisions of the future STL. This may free existing usage rights on land; thereby, increasing dramatically access to finance in Malawian rural areas.

IV. Priorities among Conflicting Claims

The future STL should include priority rules that offer a high level of certainty without the need for judicial interpretation and application. These rules should be designed to allow a credit grantor, and other persons who deal with a debtor, the opportunity to assess risk on the basis of publicly disclosed information regarding the existence of prior interests in the debtor's property.

These goals should be achieved through a system of priority rules composed of a general priority rule and a series of specialized rules designed to facilitate particular business practices or public policies. These rules shall be placed in the future STL and supersede any inconsistency in other legislation.

The general priority rule that addresses priority competitions between secured creditors should employ a "first in time" principle. Under this rule, priority is given to the competing secured party who is the first to do a valid registration in the public registry (or in specific cases, take possession of the collateral). This priority is recognized even though the security interest held by the secured party was not the first to be created. While creation of the security interest is a requirement for priority, the date of creation does not determine the priority.

1) The General Rule - first to publish - first to have priority

Under the existing legislation, it is difficult to determine who has priority rights over a property. For example, a claim of a lessor or hirer under common law or the Hire-Purchase Act may not be discovered by a person who subsequently tries to deal with the property. Furthermore, creditors may lose their rights to a good faith purchaser of their collateral (Sale of Goods Act).

Priorities on collateral play a critical role in creditors' ability to assess credit risk before advancing credit. Credit grantors will grant more credit if they can easily establish their legal position should their interests come into conflicts with those of other claimants to the collateral. This accuracy of legal risk assessment can be achieved in the future STL through a set of simple and easily applied priority rules that, for the most part, do not require judicial amplification or definition through costly litigation.

The future STL would include a structure that provides a set of priority rules dealing with specific situations and general principles for all other situations. The specialized rules will implement policies based on commercial practice and convenience. The general principle, with regards to priority rules, gives priority to the competing party who is the first to constitute a valid registration in the public registry (or to take possession with respect to negotiable instruments). This priority is given even though the security interest held by the secured party was not the first to be created. This is one of the fundamental principles in modern secured transactions law.

Nowhere in the Malawian legal system does this concept exist. Currently, registrations can be done only after the right is established. Combined with the lengthy procedure of publication, as reported in some of the interviews, this creates a risk of loss of priority between the time the right is created and the time it is published. Under the future STL, while creation of the security interest will be a requirement for priority, the date of creation will not be the determining factor. What determines priority will be the date of publication.

The simplicity and functionality of this approach are clear. Once publication (by registration or possession of the collateral by the secured party) has been concluded, the priority is established. All third parties who wish to deal with the debtor will be fully aware that any interest they take in the property may be subject to a security interest (or potential security) disclosed through the publication. Any dealing with the debtor will be subject to the rights of the secured party. The operation of this rule is displayed in the following scenario:

Example: Creditor 1 (K1) concludes a registration including Debtor (D) as debtor and describing the collateral as automobiles, even though D has not executed a security agreement giving a security interest to K1. Creditor 2 (K2) enters into a security agreement with D providing for a security

interest in automobiles owned by D. K2 effects a registration relating to the security interest and enters in a security agreement with D. At this point K2 has a security interest in D's automobiles, while K1 does not since a security agreement has not been executed between K1 and D. Later, K1 enters into a security agreement with D in which K1 is given a security interest in D's automobiles. In the event of default by D under both security agreements, K1 has priority over K2 since K1 was the first to register its claim.

Given this clear potential outcome, K2 would not lend money to D unless K1's registration is first discharged or K1 agrees to subordinate its claim to that of K2. This gives complete predictability to both K1 and K2. The priority given to K1 would not be affected by the determination whether or not he or she was aware of K2's interest when it executed the security agreement with D.

2) Exception - Credit provided to specific asset (purchase money security)

The future STL should include, a special priority rule, under which a published security interest of credit grantor who provides credit to the debtor to acquire collateral, is given first priority to the collateral over any other security interest in the collateral regardless of the order of registration.

Malawian secured transactions law recognizes the difference between a general and a specific charge (Companies Act: floating versus fixed charge; Bills of Sale Article 11: future property cannot be charged). Furthermore, the concept of purchase money credit is also recognized in the Bills of Sale Act (where the obligation secured is credit or a loan granted to the debtor to acquire the collateral). It is vital for any supplier of purchase money credit to not be subject to the first-in-time rule when a prior registered security interest automatically attaches to after-acquired property of the debtor.

The special status given to suppliers of purchase money credit is not difficult to justify. A creditor who has provided the credit needed by a debtor to acquire the property in which the creditor holds a security interest should be given first priority. Without this priority, it is unlikely that the creditor would be willing to grant secured credit when the debtor has given a prior security agreement that contains an after-acquired property clause. In the absence of a special rule, the prior security interest would attach to the property acquired with the purchase money credit and would be entitled to priority. A corollary of this is that the purchase money priority allows the debtor to obtain secured credit from additional sources in situations where a prior registered security interest has been given in the debtor's present and after-acquired personal property. This is an important feature of the system because it is very easy for a creditor to take and register a security interest in all of a debtor's present and after-acquired property as stated in the Companies Act.

3) Secured and unsecured Creditors

The future STL should provide a priority structure dealing with competing claims of secured parties who have failed to register their security interests and unsecured creditors and trustees in bankruptcy. The following should take place in Malawi:

- *Determination of policies underlying priorities between secured and unsecured creditors;*
and

- *Priority rules protecting unsecured creditors and trustees in bankruptcy (liquidators) shall be developed to reflect these policy choices in Malawi.*

As mentioned earlier in the report, the mission included an assessment and recommendations regarding reform to the bankruptcy and insolvency law in Malawi. Since the areas of secured transactions and bankruptcy deal with creditors' rights, it is important to ensure coherence between them in terms of policy considerations. Priorities among conflicting claims shall remain unchanged in bankruptcy proceedings. While the analysis of policy considerations underlying relative priorities among conflicting claims are beyond the scope of this report, a preliminary discussion is appropriate.

The policy issue that must be addressed in any modern secured financing regime is the relative priority between secured creditors and unsecured creditors or bankruptcy trustee (liquidator). In common law, a prior secured creditor is generally given priority over unsecured creditors (or their representatives) on the basis that the secured creditor has a property interest in the collateral. Judgment enforcement measures invoked by unsecured creditors can only affect the residual interest of the debtor. In the case of bankruptcy, it was only this interest that vested in the trustee or liquidator.

There is nothing in the Bills of Sale or Companies Act that modifies this approach. In Malawi, the priority of a security interest over unsecured creditor is given regardless of whether the security interest was registered or not. In jurisdictions with modern secured transactions systems, registration or publication plays a central role not only in determining priorities among similar creditors (like in the Bills of Sale or Companies Acts) but among all creditors, secured and unsecured.

In some jurisdictions that provided protection to unsecured creditors within the priority system of their secured transactions legislation, the invocation of judgment enforcement measures is treated as elevating the interest of the judgment creditor to the roughly equivalent of a secured party. If this measure is taken before a security interest has been registered, the unsecured creditor is given priority. The policy basis for giving priority to a trustee (liquidator) can be found in the representative capacity of the trustee and the effect of bankruptcy on the enforcement rights of unsecured creditors.

4) Buyers or lessees of the collateral

The future STL should contain priority rules protecting a buyer or lessee of collateral subject to security interests under the following circumstances:

- *where goods collateral has been acquired by the buyer or lessee in a transaction carried out in the ordinary course of business of the seller (or lessor); and*
- *where the security interest has not been published by registration*

A new conceptual approach is required in the future STL to regulate rights of buyers and lessees of the collateral. Currently, England's Sales of Goods Act allows good faith purchaser to receive good title to the property. Such provision renders any interest on property (other than inventory according to the Companies Act) risky. On the other end the Hire Purchase Act provides priority to the

‘owner’ of the property even if it not registered. These priority rules are inconsistent and do not provide the appropriate balance between a buyer and an earlier creditor (or lessor or hirer).

The operation of floating charges which is available to companies (under the Companies Act) and to individuals (under the Commercial Credit Act) shall become part of the priority regime of the future STL. The future STL should include special priority rules designed to provide an acceptable balance between the rights of secured creditors and the people who buy or lease collateral from debtors acting in the ordinary course of their businesses. The special principle should be that a buyer who acquires an interest in goods from a seller in the ordinary course of the seller's business should be exempted from prior security interests. This principle is required in order to avoid disruption to commerce and injustice to unsuspecting buyers. This would happen if such buyers or lessees were required every time to conduct a search at the registry before buying goods. This protection shall be part of the future STL in Malawi and the legislation shall provide that this protection cannot be nullified by agreement.

Buyers should also be able to rely on information provided by the secured transactions registry to assess the risk of buying goods that might be subject to a prior security interests. If a security interest in goods is not published, a buyer or lessee of the goods should be exempted of prior interests.

V. Proceeds of the collateral

The future STL should provide that a security interest in collateral automatically extends to the proceeds. Proceeds should include any identifiable property received by the debtor as a result of dealing with or loss or destruction of the collateral. All other legislation that deals with priority on proceeds and are inconsistent with the provisions of the future STL will be subordinated to it.

The current legislation does not deal appropriately with the concept of proceeds. The Companies Act, to some extent, has provisions regarding revolving collateral (particularly inventory) through the floating charge. However, there are no clear rules allowing creditors to assert their rights against proceeds (second generation collateral).

Furthermore, Section 89 (2) of the Companies Act states that priority provisions under the Companies Act do not apply to fixed charges against property when the charge has to be registered according to other legislation. In other words, proceeds of fixed charges are not captured by the original charge when the proceeds and charges on it are governed by other legislation. As a result, the credit may remain unsecured in case the original collateral is dealt with.

The importance of proceeds involves the recognition that a security interest in collateral automatically extends to property acquired by the debtor, either as a result of disposition or dealing with that collateral or its loss or damage. The right to assert a security interest in proceeds is important in inventory financing, where there is an express or implied power given to debtors to sell the original collateral (the floating charge allows the charge to extend to proceeds upon default but not prior to it). The secured party knows that the original collateral is going to be sold and, consequently, takes the proceeds in place of the original collateral. Rather than forcing secured parties to take separate security interests in each type of proceeds, or to take security interests in all

future personal property acquired by the debtor, the future STL should recognize that a security interest in collateral automatically extends to property received by the debtor as a result of using the collateral. The concept of "proceeds" should include any property received by the debtor as a result of dealing with the original collateral that can be identified as being connected to the original collateral.

Section 4: Electronic Secured Transactions Registry

I. General Overview

A modern centralized registry system of security interests around which the priority rules are established will provide easy, cheap and effective means to recording and retrieving important information for creditors to assess the credit worthiness of proposed collateral.

In this section, we offer an overview of the proposed features for a future electronic registry based on the experience of other jurisdictions with modern secured transactions systems. However, the discussion is provided in the context of existing Malawian registry institutions as discussed earlier in this report.

II. Main Conceptual Features of the Future Electronic Registry in Malawi

1) Centralization

There should be a single, modern, computerized secured transactions registry (STR) created under the future STL for publication of security interests.

Registrations of security interests in Malawi are done in different registries organized by type of property, transaction or borrower. The current institutional framework is not the most efficient with regards to modern computerization and credit practice. A central registry for the publication of security interests created against any movable property, under any legislation, will be more efficient. The consolidation in one database of all the information provided for registration purposes is vital for the reliability and usefulness of the registry. Other registries, such as the Companies Registry or the Vehicles Registry, in Malawi may still operate and record secured transactions. However, this will be primarily for information purposes since determination of priorities among conflicting claims will be based on the records of the future STR.

2) Electronic Means to Access the Registry Database

Submissions of registrations and searches shall be done only electronically through direct electronic access to the registry database by using Internet.

Users who wish to register or retrieve information from the registry will be given direct access to the database from their own computer. Casual users or those who have not made arrangements for direct access should be able to access the STR through private or public service providers.

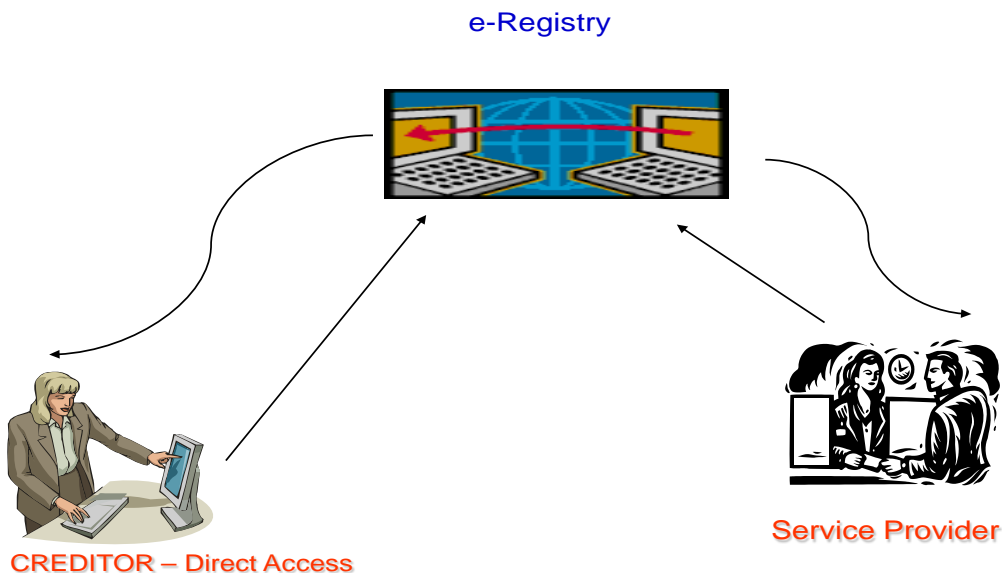
Modern registry systems allow electronic access to the register to record and retrieve information. If Malawi employs this approach, it will result in dramatic change to the way registries currently function. Further, users of the registry will have to shift their own practice from being fully paper based to fully electronic. Faxes and physical delivery of registration and search notices should *not* be an option.

The advantage of using electronic means in this type of system is that secured creditors enter their own data to effect registrations and conduct direct searches. Frequent users, such as large financing institutions, can be given direct access to the database from their own computer systems through Internet or through a specialized software communications system. Casual users, or those who will not make arrangements with the STR for direct access, can use computer access facilities located in government agencies or employ private agencies that will arrange registrations or search on their behalf.

An electronic system is considerably less expensive to operate since registration and searching are done by its users. Secured creditors and searchers have complete control over the timing of registration and searching. They also have much more control over error avoidance since they do not need to rely on registry staff to manually enter or scan information submitted in hardcopy form. The potential for error, omission or fraudulent conduct on the part of the STR staff dealing with registration data is eliminated. The need to provide compensation to users who suffer loss or damage as a result of a failure in the system is also dramatically reduced.

Modern e-Registry System

"Simplification is progress."



3) Registration of Notices Only

The Malawian STR created under the future STL should be a notice registration system. The information required to conclude a registration should be minimal to alert third parties, but shall not disclose sensitive private information. There will be no requirement for the registration to be effected only after the agreement is executed (although the security right will be created by the agreement). Further elaboration of the content of the registration will be made during the reform implementation.

Traditional registries, such as the current Companies Registry, require the secured creditor to send a copy of a charge agreement to the registry. The agreement is manually filed in a system that permits its retrieval on the basis of an alphabetical criterion which corresponds to a book containing numbers for each registered company. When a search is requested, a registry clerk retrieves the contract, or an abstract of it, and provides a copy to the person requesting the search. This type of system may work reasonably well when there are small volumes of registrations and labor costs are low. In any event, modern secured transactions practice requires a fast and effective process of registration. If Malawi experiences an increase of secured credit activity, creditors will run the risk of having their interest subordinated to intervening rights between the signing of their contract and its publication.

Experience in other countries demonstrates that modern “notice registration systems” can handle large number of registrations and provide public access to information with efficiency and cost-effectiveness (e.g. Canada or New Zealand). Unlike the paper based practice in Malawi, a notice registration system does not require the actual charge documentation, or agreement, to be filed or even rendered to the registry. Instead, registrants electronically submit the information in a standard format. This information is nothing more than the basic factual particulars needed to alert third parties of the potential existence of a security interest in the identified items of the debtor.

Currently, all main registries (in particular the Vehicles Registry and the Companies Registry) require significant amount of manual work and human resources to process registrations and search inquiries. In addition, a special archive is required in order to store all registrations. The future STR will significantly reduces the registry’s administrative and archival costs, since the data will be stored in electronic format, and the volume of data relating to individual registrations will be smaller.

The future STR will also reduce transaction costs for the users and will provide flexibility for secured creditors. Notice registration will make it possible for the registration to take place even before the security agreement is executed. This feature is important to potential credit grantors, since they can determine their priority before signing the agreement or advancing the credit.

Currently, the information recorded in the registries in Malawi is accessible to the public including private information. However, the STR will significantly reduce the need to disclose sensitive business information. The basic information included in the registration notice will be available to anyone willing to pay the search price. However, the details of the relationship between the parties to the security agreement (such as the amount of the loan, the terms of

repayment and, in some contexts, the details of the collateral involved) will be registered but not disclosed in a search.

4) Identification of Persons and Property

An important component of the future STR will be the criteria to identify persons and properties on the registry. It was noted during the mission that people do not have personal identification numbers. However, it was also noted that the Malawian government plans to implement a systems of identification numbers for its population. The reform shall take into account this possibility to avoid using persons' names as identification criteria. While some jurisdictions use name based identification criteria, it is by far more complicated to manage and may cause inaccuracies.

Regarding companies, there are two options for identification: the company registration number or the tax identification number. During the interviews, it was clear that using tax number is more reliable and could bring additional benefits. In particular, it was mentioned that the Malawian tax authorities would support tax number basis for search criteria. The reason is that companies and other business entities would have to get a tax number if they wish to receive credit. This will increase the number of compliances with the requirement for any business to obtain tax identification number.

III. Logistics of the future Secured Transactions Registry

1) General Overview

While further examination is required for the design and implementation of the project, the preliminary assessment is that the Vehicles Registry is the most suitable institution to host the future STR. The Companies Registry may become also suitable once it is computerized. Other registries were not inspected and may also be examined at a later stage. Modern secured transactions registries are designed and operated in accordance with a standard of efficiency and accuracy. It provides a secured environment, where information submitted is protected from unauthorized changes or loss (through error or omission) by the registry. For the new secured transactions law to accomplish its goal – providing incentives to creditors in and outside Malawi to advance credit– creditors must assume that their interests will not be negatively affected as a result of the registry's operation. Delays, malfunctions or errors can deter creditors from engaging in secured finance.

2) Design and Maintenance of the System

The design of the computer system is not directly related to the operation of the registry. However, since the software provides most of the system services and due to the level of sophistication required in developing computer programs, it is important to ensure that persons having a high level of information technology (IT) expertise are involved in the design, production and maintenance of the application. This expertise should be available to provide support in case of system failure and for further development of the system.

As mentioned earlier, during the mission it was observed that the Vehicles Registry has a competent IT department and developed IT operations. The operations of the IT Department are spread all over the country and are maintained centrally in Lilongwe. While it is not an internet based system, it is sophisticated and allows for operation as a local network. The Companies Registry is also undergoing computerization reform and it remains to be seen whether the new processes and logistics will allow the registry to also operate effectively as the future STR.

3) Registry Premises

The Companies Registry and the Vehicles Registry have suitable premises to host the STR. The adequacy of the registry premises is very important. Premises must be secure against breaking in or hazards that may threaten the registry's operations. Also, it must not be vulnerable to interruption of electrical supply. Premises must be able to accommodate the electronic equipment, computer facilities and have access to high-speed Internet connections as well as to local network environment. Further examination during the design of the project shall take place.

4) Fees

The Companies Registry charges a 3% fee based on the value of the credit. The Vehicles Registry utilized flat fee for registrations of title holder or ownership. The approach of the Vehicles Registry is simpler and more practical for a noticed based registry.

It was indicated at the Companies Registry that changes to the fee schedule may not be possible. In particular, the idea of dropping the proportional method of calculating fees (3%) may face objection. On the other hand, the Vehicles Registry already has flat fees as the standard of operation. In conclusion, it appears that the Vehicles Registry will be in a better position to host the registry and adopt a flat fee approach for the future STR.

Section 5: Building Local Capacity

I. General Overview

During the mission to Malawi, a preliminary assessment was done with regards to the capacity of local stakeholders to successfully implement a modern secured transactions system involving movable property. Meetings took place with credit managers, legal community (lawyers and commercial judges) and academic institutions in this regard.

It was concluded from all interviews that training was required and is in demand. Experience in other jurisdictions shows that successful implementation of modern secured financing systems is more likely to succeed when a well-designed training program involving all stakeholders is implemented prior and during the operation of the system. In the context of the secured financing system proposed in this report, stakeholders include all types of creditors (or their representatives) and potential borrowers who may wish to take advantage of the new system.

Training in Malawi shall have an important economic component to address the negative view that financial institutions have on movable property. During the interviews, it was clear that movable property is perceived as risky due to the lack of a modern secured transactions law and to the inherent nature of movable property. For instance, some creditors provided examples where movable collateral depreciated in value or just disappeared.

A well designed training campaign in Malawi will address these concerns. The training will increase awareness regarding types of valuable properties that are safer to deal with, such as intangible properties including intellectual property and account receivables. The program will introduce methods and actions that debtors must undertake to protect the property against depreciation or removal. Finally, methods to monitor collateral and the flow of cash proceeds (such as inspection of inventory or the use of special bank accounts for money proceeds) will be introduced.

II. Training for Stakeholders

a) Staff of the Secured Transactions Registry

After deciding where the registry will be located, the training of the registry staff shall follow. If the STR is located in an institution that has not electronic infrastructure (*e.g.* Companies Registry), training shall primarily focus on IT management systems. In case the STR is placed in an institution with existing IT infrastructure (*e.g.* the Vehicles Registry), the training will rather focus on the integration of the existing system. In any event, qualified IT staff will be required to address problems with the computerized registry system.

Training shall also be designed and provided to other registry employees who assist users with services such as conducting registrations and searches. Furthermore, management training needs to be provided to registrars including management of human resources, archive, reporting and basic maintenance of computer equipment.

The training of the registry staff should include one study tour. In-country training in Malawi might be possible through internet and in video conferences. The ideal training should be done in the premises of the registry and would involve testing the system by simulating registrations and performing on-line from different parts of the country.

An operators' guide should be developed by employees of the registry with support from the technical expert. The guide should be comprehensive and include all aspects of the registry's operation.

b) Legal Community

The legal community is familiar with common law principles such as floating charges, bill of sale and hire purchase. Therefore, minor training is necessary and can be provided by the Law Society (their representatives expressed willingness to facilitate the training). The countrywide membership of this organization and their publications are likely to provide a very suitable environment for an effective training.

c) The Judiciary

The commercial division of the High Court in Blantyre is best placed to provide quick and quality judgments regarding secured transactions cases on movable property. However, since the court is only composed by 4 judges there is a need to expand the availability of qualified judges. In addition, the monetary threshold of MWK 1,000,000 (US\$ 7079.70) for cases to be heard is high, representing almost 2458.2% of the country's per capita income. Therefore, more clarity on the jurisdiction of the commercial division of the High Court should be provided. The seminars and workshops should be offered to more judges in order to increase both their familiarity with the future STR and the trust that financial institutions have in their rulings.

The training methodology to be used for judges is similar to the one used for lawyers. The training sessions should provide an overview of the system with emphasis on areas such as debtor-creditor relationships, priorities disputes among several creditors and enforcement of security interests. The activities should be based primarily on case studies prepared in advance. Seminars and workshops for judges should be accompanied with written materials for the participants.

d) Enforcement Officers

Training of enforcement officers is fundamental for a country like Malawi, where there is a poor perception of the effectiveness of property rights enforcement. This was expressed in the meetings and interviews during the mission. The last recommendation stipulated in the executive summary aims to reform the enforcement law that deals with seizure and sale of movable collateral, in particular the sheriff's office. While much of the reform involves the legislation and the operation procedures within the sheriff's office, training shall also be performed.

According to the new STL, enforcement of security interests will be done optionally through a self-enforcement mechanism. The alternative way, enforcement through the sheriff's office, should not create disincentive to credit providers. Further, provisions that may be part of the procedure in the future (*e.g.* shorter or no pre-seizure notice to the debtor, short periods to seize the property, surrounding the collateral to the creditor for disposition) shall be explained through training provided to enforcement officers. The training will aim at increasing proficiency and familiarity with enforcement procedures.

e) Financial Institutions and Credit Officers

In Malawi most of the credit activity relies with the banks. Unlike other jurisdictions, banks also engage directly with financial leasing. However, additional financial institutions will enter the market as it becomes more attractive. Existing micro credit organizations in Malawi rely on high risk factors due to the current legal framework.

A well developed training program for credit officers and financial institutions will demonstrate the effectiveness of the new implemented system. The training will illustrate the reliability of the electronic system with regards to recording security interests and retrieving information. It will also show the effectiveness judicial and enforcement procedure. Credit officers who are well

versed on the new secured transactions system will tend to factor it in their credit decision, resulting in a decreased risk and improved credit costs.

Finally, additional training can be provided to financial institutions on modern techniques of secured financing using movable property (e.g. account receivables, inventories, etc.).

f) Law Schools

During the visit, it was confirmed that law schools are willing to include secured transactions studies as a specialized course as a part of other commercial law courses. Such activities can be initiated during the implementation of the project.

While the specialized course may not show immediate impact, students in law school will become future judges and lawyers. Therefore, they must be familiar with the existing secured financing system when graduating. In jurisdictions with a modern secured transactions system, law schools usually offer basic level courses on secured transactions. A course of one semester (half academic year) should be sufficient. However, since secured financing law is based on contract and property law, a secured transactions course would better fit for upper year law students. In faculties where it is impossible to have a special secured transactions course, a section devoted to this can be included in the curriculum of general courses dealing with commercial law areas. It is recommended to prepare a handbook for teaching purposes.

Section 6: Enforcement Law and Sheriff's Office Reform

Property rights have little value unless they can be effectively and efficiently enforced. Regarding secured transactions, it entails seizing and selling the collateral expeditiously and at modest cost. This is not currently the case. During meetings in Lilongwe and Blantyre, it became evident that both financial institutions (e.g. banks and leasing companies) as well as the smaller institutions (e.g. micro credit organizations) considered the enforcement procedure of the sheriff's office to be ineffective, costly and cumbersome. Some interviewees reported months of delays in enforcement that caused depreciation of the collateral and even its disappearance.

The need for reform was also expressed by the commercial division of the High Court. Members of the court explained that self help concepts exist within the legislation (e.g. self help enforcement in the Bills of Sale Act). However, a modern approach for enforcement of property claims against movable collateral is absent in the current legislation.

The future STL introduces an excellent opportunity to dramatically improve the enforcement mechanisms. The STL shall also have a section dealing with enforcement of property rights against movable collateral. This will save the need to draft changes in other legislation. There are four main components for modern property rights' enforcement against movable property:

- **Self enforcement and out-of-court proceedings** shall not be confined to the Bills of Sale Act. Any agreement between the creditor and the debtor that aims to save expenses by resolving their potential dispute out-of-court shall be allowed by law.

- **No pre-seizure notice** - Another important concept that shall be introduced in the future STL is to allow seizure of the collateral by an enforcement officer without the need to provide prior notice to the debtor. If the debtor refuses to surrender the property, at least the officer can inspect its condition.
- **Disposition of property by creditor** - The concept of allowing the creditor to dispose of the property shall be introduced with the STL. In cases where an enforcement officer is requested to seize the property, the creditor shall have the right to dispose of the property despite any disagreement by the debtor. Of course, this will have to be done in accordance with a special procedure that will protect the debtors' equitable and ownership rights on the collateral.
- **The sheriff's office – procedure** - Examination of the sheriff's office and its operation was beyond the scope of the mission. However, preliminary observation can be made based on the conducted interviews. The level of concern regarding the *modus operandi* of the sheriff's office and its overall performance tends to signal the need for reforms. A complete and comprehensive program to reform the operations of the sheriff's office is fundamental in order to achieve a successful implementation of the new STL.

Section 8: Proposed next steps and action plan

Action Plan – Malawi Secured Transactions Reform		
Activity	Description	Time
1. Legal Reform	It is expected that a new secured financing law will be enacted in Malawi. Changes to other legislation may also be necessary. To effect this phase a period of 6 month shall be allocated to draft the primary legislation and related legislation. Changes to existing secured financing law will be necessary. The pieces of legislation mentioned in the report can remain functioning. However, they will have to comply with the new secured financing legislation.	6 months – 1 year
2. Establishment - Registry System	A new computerized registry will have to be established likely either at the Vehicles Registry or at the Companies Registry. Those are the ones that already have experience with these kinds of operations. The Vehicles Registry has the advantage of having very qualified IT department. Transactions such as <u>long term leases, hire-purchase transactions, chattel mortgage and loans secured with movable property will be subject to registration as condition for priority in case of conflicting claims.</u>	12 months
<i>2.1 Software</i>	Software will have to be installed on existing or new equipment. Procuring existing software will reduce the time for implementation while producing the software locally will increase local ownership and long terms IT expertise.	6-9 months
<i>2.2 Hardware</i>	Hardware equipment will have to be procured, tested, installed and tested again. However, it is likely that most of the existing hardware already exists.	3 month
<i>2.3 Regulations</i>	Administrative regulations of the electronic registry will have to be drafted in order to comply with the primary legislation. The regulations in Malawi should include the fees of the services provided by the registry. The regulations will be subject to ministerial approval and changes will not require parliament approval.	1 month
<i>2.4 User Guide and Manual</i>	The operation manual of the system, policy procedures and User Guide for registering and searching persons will have to be produced. It will also provide detailed day to day operations in terms of security and back up procedures. The guide will be designed to allow future new employees and IT staff to take on their new duties and perform them regularly.	2 month

3. Training and Capacity Building	Training in Malawi will include legal training to lawyers, judges and enforcement officers. It will include as well training to legal officers of public sector departments such as tax authorities. Training to credit officers will introduce method to use movable property as collateral and how to mitigate the risk involved. Finally training will be provided to registrars of the registry in learning how to operate modern electronic registry and the customer service involved. Cost may be less should Malawian academic or private institutions undertake some of the training and capacity building responsibilities (at least on the some of the academic institutions expressed interest in engaging in such activities).	8 months
4. Public Awareness Campaign	The extent of this component of the project will be determined at a later stage. Public awareness campaign through different medias will have to take place before the system start its operation to ensure the public is familiar with the new system.	2 weeks
5. Monitoring & Impact Assessment	Following the establishment of the system a monitoring and impact assessment activity should be established. The system can work based on periodic reviews by users of the system. The review will allow legislators, reformers and operators of the registry to learn about any necessary reform of the system. A public report can be then produced by the Registry with data, analysis and recommendations.	Periodic surveys following the establishment of the legal and registry system

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The contact person for questions and comments is Jean Michel Lobet, available at email: jlobet@worldbank.org, or by telephone in Washington DC at +1 202 458 0948.