

# SSM leads the way to establish new secured transaction legal framework to promote economic growth and access to finance



Malaysia has a robust and advanced legal system. However, there is room for improvement to make it more comprehensive with the introduction of new legal frameworks. Such a necessity has been recognised in governing the registration and enforcement of security interest on movable properties utilised as collateral for financing purposes by unincorporated entities or individuals, as identified in the World Bank's Doing Business Report 2015.

The report highlighted two gaps based on the existing legal frameworks, namely the absence of an integrated legal framework for movable property that are used as collateral for a loan or an obligation as well as the lack of a unified collateral registry in operation for both incorporated and unincorporated entities.

To understand these gaps, the Companies Commission of Malaysia (SSM) and the Central Bank of Malaysia (BNM) conducted a joint study in the same year. The study confirmed the World Bank's findings and highlighted that the introduction of the new legal framework will benefit the business sector, particularly the small and medium enterprises (SMEs).

SSM was then given the mandate by the government to undertake the registry function under the proposed framework and introduce the new legal framework that will regulate the process of creation, registration and enforcement of security interests for movable property in Malaysia.

### The establishment of a special committee

On 19 February 2018, SSM established a special committee comprising of representatives from public and private organisations including several ministries and agencies.

The special committee was established with the objectives to address the issues and impact of the framework on the various registries under different ministries and agencies where movable assets are registered and to take measures to close the current gap where security interest is registered under different registries.

Thereafter, SSM had also issued a consultative document in the same year to receive feedbacks from the public on the proposed principles and the new secured transaction legal framework.

The final report from the committee was presented on 11 December 2018 which concluded 23 recommendations for the foundation of the new legal framework based on the deliberations reflective of the need, practice and operations of the business community in Malaysia.



The new legal framework would not only address the gaps identified in the World Bank's findings but also empower and aid the business community with more options to obtain financing.



SSM Chief Executive Officer  
Datuk Nor Azimah Abdul Aziz

Among others, the recommendations highlighted that the new legal framework would introduce a unified legal framework to govern the registration of movable properties used as collateral to secure a payment or performance of an obligation and the creation of a unified collateral registry. The recommendations also suggested that the legal framework shall be made available to any person, whether legal or natural persons, both incorporated and unincorporated.

The recommendations also stipulated that the legal framework will apply to all security interest in movable property created by an agreement that secures payment or other performance of an obligation regardless of the form of the transaction, the type of movable property, the status of the debtor, grantor or secured creditor or the nature of the secured transaction.

Furthermore, the recommendations also proposed that the legal framework will provide notice based filing. It is also crucial to highlight that the recommendations also proposed the priority principle with the general rule where a perfected security interest that has complied with all mandatory steps to register the security interest are completed, will have priority over an unperfected security interest in the same collateral.

Following the recommendations, SSM conducted further stakeholder consultations with representatives from ministries or agencies related to registrations of different types of assets including Ministry of Transport, Department of Director General of Lands and Mines and the Road Transport Department throughout 2019 to 2022.

These consultations enabled SSM to further refine provisions under the proposed new legal framework and ensure the applicability of the policies to suit the current financing landscape to balance with the business requirements in Malaysia.

### The proposed legal framework

The legal framework will provide for the registration of security interest in all movable properties used as collateral. Usually the most common type of collateral accepted for financing is immovable or fixed assets such as land or buildings. However, along with other benefits, the proposed Bill would provide more opportunities for businesses especially the SMEs to obtain financing by using their existing movable properties such as motor vehicles, crops, livestock and negotiable instruments, tangible and intangible assets as collateral. This will most importantly promote monetisation of intangible assets such as intellectual property rights be recognised as security.

In addition, the legal framework would also incorporate among others, an electronic registration filing system with search function online.

Other benefits from having a secured transaction legal framework include increasing in access to credit and reducing the risk of credit especially for unincorporated entities or SMEs, addressing the lack of adequate legal framework on the registration of moveable properties for unincorporated entities, diversifying of assets held by financial institutions to spread risks more efficiently.

The registry established under the new legal framework would provide additional information for creditors to assess the credit-worthiness of an applicant as currently there are information gaps where not all necessary information is available to the creditors. This in turn would lower the cost of obtaining financing.

### The way forward

On 12 July 2023, the 23 recommendations as finalised by the committee was tabled again to the present Cabinet after the first tabling on 17 February 2021. Following the re-tabling, the Cabinet had re-endorsed the introduction of a new legal framework on secured transaction for movable property in Malaysia based on the recommendations and for SSM to be the regulatory agency for the new Bill.

The Bill is currently in its drafting stage and is expected to be tabled in Parliament in 2024.

SSM Chief Executive Officer Datuk Nor Azimah Abdul Aziz said she hoped that once enforced, the new legal framework would not only address the gaps identified in the World Bank's findings but also empower and aid the business community with more options to obtain financing.

## TYPES OF COLLATERAL THAT CAN BE REGISTERED

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**MOTOR VEHICLE**  
Any road vehicle that is powered by a motor.  
Example: car, truck, motorcycle, tractor and trailer.
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**WATERCRAFT**  
A vehicle or vessel designed for navigation on water excluding any ship under the Merchant Shipping Ordinance 1952.  
Example: yacht, fishing boat and small ship.
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**CROPS**  
A plant or plant product that can be grown and harvested extensively for profit.  
Example: fruit or paddy production.
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**CHATEL PAPER**  
Chattel paper is a document to the underlying secured obligation.  
Example: hire-purchase agreements or conditional sales agreements.
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**NEGOTIABLE INSTRUMENT**  
A document that guarantees the payment of a specific amount of money.  
Example: promissory notes and letters of credit.
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**INTANGIBLES**  
Movable property that doesn't have physical form.  
Example: account receivables, copyrights, patent and trademark (intellectual properties).
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**ALL PRESENT AND AFTER-ACQUIRED PROPERTY (WITH EXCEPTION)**  
Describes present and future property of the debtor, but with exceptions.  
Example: 'All present and after-acquired property of the debtor excluding their account receivables'.
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**AIRCRAFT**  
Any machine designed for navigation in the air excluding any Malaysian aircraft under the Civil Aviation Act 1969.  
Example: agriculture aircraft and small airplane
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**LIVESTOCK**  
Domesticated animals raised in an agricultural setting to produce commodities such as meat, eggs and milk.  
Example: animals, including, cows, fish, goats, horses, ostriches, sheep and other animals.
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**SECURITIES**  
Example: shares, bonds, interest schemes, stocks or debentures.
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**DOCUMENT OF TITLE**  
Document of title is any written legal document that verifies ownership to the goods it represent. It may also be a written commercial document that allows for the transfer of ownership of goods from one party to another party in a transaction.  
Example: bills of lading and warehouse receipts.
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**MONEY**  
Money describes currency authorised as a medium of exchange by the law of Malaysia or of other country.  
Example: bank deposit of RM8 million in Japanese yen or New Zealand Dollar.
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**OTHER GOODS**  
Includes any tangible property that is not a motor vehicle, watercraft, aircraft, livestock or crops.  
Example: art, machinery, designer items and jewellery.
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**ALL PRESENT AND AFTER-ACQUIRED PROPERTY (WITHOUT EXCEPTION)**  
Describes all present and future property of the debtor, but without exceptions.  
Example: 'All present and after-acquired property of the debtor'.