Secured Transactions Law in Asia: Principles, Perspectives and Reform, edited by Louise Gullifer and Dora Neo, (Oxford: Hart Publishing, 2021), xlix + 502 pp., hardback, £00.00, ISBN: 978-1-509-92649-7.

Secured Transactions in Asia is the third in a trilogy of edited volumes charting reforms in the law of secured transactions, following *Secured Transactions Law Reform* (2016) and *Secured Transactions Law Reform in Africa* (2019). The present volume grew out of a conference hosted by the National University of Singapore, and surveys the chequered landscape of secured transactions law reform in major Asian economies.

In secured transactions law, there is a strong tension between two basic impulses. The first is to adopt the "modern" legal principles championed by legal reformers, which were first identified in Article 9 of the Uniform Commercial Code (U.C.C.) in the US and adopted in the Personal Property Securities Acts (P.P.S.A.s) in Australia and a number of Canadian provinces as well as the UNCITRAL Model Law. Proponents of reform argue that the expansion of formal secured lending to include personal property and intangible property such as "receivables" produces clear economic benefits. This is because predictable and efficient rules which are backed up by effective publicity and enforcement mechanisms are likely to encourage creditors to lend to small and medium-sized enterprises (S.M.E.s) as well as private individuals. The second impulse resisting change stems from the fact that many of the functional goals of modern law might already be achieved under existing law. As Ben McFarlane and Robert Stevens point out in the context of intermediated securities ("Interests in Securities" [2010]), statutory interventions which challenge the existing structure of property law may lead to conceptual indeterminacy at the margins, and invite opposition from stakeholders including legal practitioners.

The economic importance of the Indo-Pacific region, which is home to many of the world's largest and fastest growing economies, makes the volume's regional focus a sensible one. The challenges of imposing a coherent analytical framework on a diverse region are partly alleviated by the familiar pattern which the country reports fall into, namely rules on the creation (or "attachment") of security interests, perfection (conditions for effectiveness against third parties), registration, priority and enforcement. Furthermore, the volume is rich in socio-legal insights which are crucial in making "Asia" a comprehensible analytic category. At the same time, the features addressed, including excessive dependence on secured loans on immovables (mortgages), reputational stigma against secured lending and the paramount importance of government action, are not unique to the region but are common challenges across many developing economies.

The volume is divided into three parts, with the first part covering general questions concerning secured transactions law, and the second and third parts dealing with civil law and common law jurisdictions, respectively.

In the first part, Charles Mooney, the American jurist who is a leading proponent of reform and a co-reporter of the drafting committee of U.C.C. Article 9, sets out the challenges of secured transactions law reform in the framework of legal transplants, which is followed by reports on the process of reform in Commonwealth jurisdictions with P.P.S.A.s and the UNCITRAL Model Law. Particularly interesting are reflections by Elaine MacEachern as a World Bank consultant on the ground. In confronting a landscape of antiquated, patchy and conflicting laws, MacEachern emphasises the importance of building a supporting ecosystem,

which tends to be the most effective where reform enjoys high-level political backing as part of a national development strategy, such as in Vietnam.

The second part of the volume contains chapters on Asia's civil law jurisdictions. As Spanish jurist Teresa Rodríguez de las Heras Ballell explains, the civilian taxonomy is opposed to a unitary concept of the security interest in property law. In their response to changing market conditions, civilian legislators have tended to create new and siloed forms of security interests. These are often characterised by highly complex formality rules involving notaries, who perform a protective as well as an educative function to the public, and the pivotal role of the public registrar. The two features underline civilian systems' preference for *ex ante* legal certainty and the protection of debtors.

On the ground, Asian civilian jurisdictions conform to this doctrinal description at a relatively general level. In China, as Lebing Wang highlights, while the Law of Real Property 2007 recognised new mechanisms such as the floating charge (a non-possessory security over equipment and goods), expanded the categories of persons eligible for secured lending, and created new systems of registration, the picture remains highly fragmented, even after a clarification of priority rules in the new Chinese Civil Code 2020. In Japan, which is the Asian jurisdiction with arguably the strongest civilian legal heritage, Megumi Hara observes that the easy availability of credit for S.M.E.s as mandated by the government has dampened the demand for secured lending. The same is true for Japanese companies' anxieties about reputational costs, given the public's conflation of the use of secured lending with credit uncertainty. Doctrinally, new methods of perfection by registration exist alongside the continuation of methods under the Civil Code, such as delivery or notification in the case of receivables, whereas the high cost of registration needed to establish priority acts as a strong deterrent to potential users.

The picture in civil law Southeast Asia is similarly varied. In the Philippines, which has a mixed legal system, there is a strong consensus on reform as a result of the inadequacies of the Chattel Mortgage Act 1906. The new P.P.S.A. of 2018 thus represents a genuine modernising effort, which relies in part on local contract law for the validity of security agreements. Similarly, in Vietnam the government has shown a strong political will in working with international partners to create the National Registration Agency for Secured Transactions (2001) and to reform the Civil Code in 2015 in line with modern principles. In Indonesia and Thailand, in contrast, reform has been much more haphazard. In the former, reform has not extended beyond the codification of the *fiducia* (1999), which was first developed by the Dutch in the early twentieth century, and the creation of a centralised registry. In the latter, the shallow goals of the Business Security Act of 2015 to improve the country's position in the Ease of Doing Business rankings have failed to lead to convergence with international standards.

The third part of the volume deals with Asia's common law jurisdictions. As Louise Gullifer identifies, the substantive changes which are required to bring common law rules in line with the modern law are in fact quite limited, being chiefly to collect rules into a single statute, and to replace the common law's formalistic approach with a functional one which disregards the specific characteristics of individual security rights. Furthermore, like in England, common law systems suffer from weaknesses such as the uneven development of registration systems for different types of personal property, the lack of a strict correlation between

priority rules and the timing of registration, and a reluctance to override anti-assignment clauses. There is also the issue of a thorny relationship with insolvency law.

Like their civilian counterparts, the decision of Asian common law jurisdictions to reform local laws reflects a matrix of doctrinal and socio-legal considerations. In Bangladesh, a draft Act based on two Canadian provincial P.P.S.A.s and the UNCITRAL Model Law was chosen with the support of the World Bank. Bangladesh's choice of Canada was motivated in part by the two countries' shared common law heritage, which allows easy borrowing from foreign legal sources. In India, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act 2002 also brought the law more closely in line with modern principles, although not to the same extent as Pakistan's Financial Institutions (Secured Transactions) Act 2016, which enjoys high-level political backing.

Ironically it is in Singapore, the financial and dispute resolution hub of Asia, where there is the greatest resistance to change. As Dora Neo highlights, the main reason for the inertia is found in the fact that the present law is working sufficiently well. This is notwithstanding the law's highly archaic and formalistic nature, for example a security interest would come under the radically different regimes of the Bills of Sale Act or the Companies Act depending on the status of the grantor. While stakeholders are not *per se* hostile to change, they are nonetheless cautious with respect to proposals for a radical overhaul of existing legislation. A stark contrast can be found in liens over sub-freights, where the Court of Appeal's identification of the existing law as damaging to the country's competitive edge (in *Diablo Fortune Inc. v Duncan, Cameron Lindsay* [2018] 2 S.L.R. 129 at [77]) led to swift action from the government.

Asia may not in itself be a coherent unit of legal analysis, although the focus on a geographical entity provides the scope for bringing out useful socio-legal and historical dimensions in the reform of the law of secured transactions. While discrepancy rather than similarity may characterise one's resulting overall impression of the process in Asia, this volume is a valuable contribution to the inclusivity of scholarly discussions on private and commercial law, and is useful to practitioners with an interest in Asian markets.

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