

Project Finance in Emerging Market Countries: An Innovation of Security Law over Receivables to Facilitate International Capital Flows

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論 文 内 容 の 要 旨

Emerging Markets, nowadays being transformed from a closed economy to an open market, are in great demand of international capital to facilitate the execution of large-scale projects. Project finance is, obviously, one of the typical and practical techniques that makes international capital available to execute such projects. The essential key characteristic of any project scheme is that its true value for lenders relies on the predictable cash flow generated by the project as a source of debt repayment. Therefore, the lenders always attempt to maintain access to and control of the revenue stream in the relevant project. Typical mechanism of ensuring such access and control by the lenders is to have them acquire security interest over receivables of the project company from the project's debtor in the course of project's operation. This thesis seeks to find out the viable and practical method that can motivate foreign lenders by alleviating their uncertainty regarding the security rights on said receivables. Alleviating the said uncertainty confronted by lenders, most of which are located outside of the emerging market countries, will, in turn, lead to the facilitation of international capital flow to those countries. Solution suggested by this research is intended to improve the security law of the emerging market countries in order to satisfy the requirements as anticipated by foreign lenders in order to take part in the project finance to those countries.

The research firstly examines the viability of the conventional approaches to alleviate the said legal uncertainty problem concerning security interest over receivables by manipulating governing law and forum of a security agreement and any other project contracts, as well as those for the enforcement of security interests. The analysis revealed that these approaches cannot be a definitive solution. Neither of them are able to assure the enforceability of the security interests over receivables because such receivables are generated under domestic contracts. According to this finding, as well as the studies of the experience of well-developed jurisdictions in alleviating the uncertainty concerning the enforceability of the security interest over receivables, the author concludes that the viable and practical solution for emerging market countries is to establish a new legal regime effective enough to make foreign lenders have confidence in the enforceability of security interests on receivables. The author proposes that the essential components that must be incorporated into such a new legal regime is to assure the legal grounds for granting security interests over receivables and also to guarantee the enforceability of such security interests at the domestic court.