Secured Transactions for the Marshall Islands

It is planned to implement changes in the Marshall Islands to allow "Secured Transactions" to operate. Establishment of secured transactions is part of a project aimed at improving the environment for private sector development in the Marshall Islands.

So what is a secured transaction? A secured transaction is an agreement between a debtor and a creditor where the debtor gives the creditor an enforceable interest in movable property (such as equipment, inventory, fixtures etc) to secure an obligation (i.e. a loan).

How can secured transactions improve the investment climate and give businesses and consumers greater access to credit? By allowing debtors, including borrowers, to obtain credit at reasonable interest rates by using their movable assets as collateral. In a secured transaction, the debtor agrees that the creditor can take and sell the collateral if the debtor defaults on the obligation.

A modern secured transactions system increases access to credit by providing three important advantages:

- First, it expands the range of assets that can be used as collateral. It allows borrowers, such as small enterprises that do not have conventional collateral – generally title to real estate – to use their movable property as collateral for loans or other forms of credit. They can to use their movable property such as equipment, inventory, fixtures, crops, livestock, accounts receivable, or intellectual property rights as collateral. For example, small businesses may be able to lease or buy equipment by giving the financer a security interest in the equipment to secure the purchase price, or they can give a security interest in existing equipment as collateral for a new loan. Or a wholesaler, retailer or service provider that sells to its customers on credit may use its present and future accounts receivable as security for an operating line of credit. A modern secured transactions law also makes it possible for individuals to get loans for automobiles and other durable goods.
- Second, it allows creditors to be certain of their priority in collateral. The law gives a clear and unambiguous way to determine the relative rights of competing interests in collateral. The general rule is that a security interest's priority is determined by when it becomes transparent. That is, the priority of a security interest dates from the time it is publicly disclosed. Disclosure of the security interest may be by filing a simple notice in a filing office or by other means of publicity such as possession or control of the collateral by the creditor.
- Third, it reduces the time and cost of recovery against the collateral if the debtor defaults. It simplifies and speeds up the process of collecting and disposing of collateral, and minimizes the need to resort to the judicial system.

In a well-designed secured transactions system, cost of creation of a security interest is low, priorities are clear and publicly known, and enforcement is quick, simple and inexpensive. When a borrower defaults, the lender takes the asset through either self-help or a simple, expedited judicial process. The creditor can sell the collateral and distribute the proceeds in order of priority.

It is hoped that the implementation of a system of secured transactions in the Marshall Islands will improve the investment climate and increase access to credit for private sector businesses across the spectrum of size from large to micro enterprises.