Current Legal Practice

A Register for Security Rights in Movables: Lessons from Comparative Law

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Why a Register for Security over Movables?

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Why a Register for Security over Movables?

As of today, the toolbox available for practitioners is limited and provides for a high degree of legal uncertainty…

- Civil law 101
  - Title = contract
  - Modus = act of publicity
  - Principle of possessory pledge (*Faustpfand*)

- Toolbox available
  - × Transfer of asset
  - × *Perfection by signs (if permitted)*
    - *Plaques, labels, book annotations*
  - × Third party possessor instruction *(Besitzanweisung)*

Why a Register for Security over Movables?

Transparency
Legal uncertainty due to lack of possibility to search whether assets are encumbered or subject to prior claims.

Priority
Legal uncertainty due to no clear legal framework to determine which creditor has superior claims.

Enforceability
Legal uncertainty due to difficulty to enforce security rights as remedies are uncertain and costly.

Financing barriers
Unnecessary limitations for SMEs and high-value assets due to unclear collateral status.

Cross-border complications
Uncertainty for international financiers and lessors seeking enforceable security.

Transaction costs spike
Increased cost in connection with reliance on possession, complex notarization, and dispute resolution.

Insights from daily practice

Five Key Asset Classes in Focus

- Renewable energy & infrastructure financing
- Transportation and logistics
- Industrial machinery
- Stock-in-Trade & Warehouse Goods
- Intellectual Property

Renewable energy & infrastructure

Case: Financing of wind parks

- × Financing Challenge
  - Capital-intensive wind parks require long-term, asset-based financing
  - Lenders depend on reliable security over movable and intangible assets

- × Legal Constraints
  - Emphasis on possessory pledge limits security over turbines, components and moveable machinery
  - Fragmented treatment of receivables and feed-in rights weakens credit certainty

- ✓ Solution
  - A register enables non-possessory security
  - Enhanced predictability lowers financing costs and supports the energy transition

Financing the energy transition requires certainty when it comes to transaction security…

… leading to a better solution for a cleaner future.

Transportation and logistics

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Case: Emergency restructuring of airline

In times of crisis, any restructuring depends on robust security over movable assets and receivables…

…enabling rapid liquidity support while preserving operational continuity.

× Financing Challenge
- Sudden liquidity needs threaten operational continuity and market access
- High-value movable assets are essential to maintaining airline operations

× Legal Constraints
- Limitations in creating non-possessory security over aircraft-related assets
- Uncertainty regarding priority and enforceability in restructuring scenarios

✓ Solution
- Registration of security rights in movables provides clarity over ranking and enforcement
- Predictable collateralization enables rapid bridge financing and orderly restructuring

Industrial machinery

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Case: Financing of paper factory

- × Financing Challenge
  - Capital-intensive machinery requires long-term, asset-based financing
  - Ongoing production depends on continuous access to credit

- × Legal Constraints
  - Possessory pledge requirements may restrict the use of installed machinery as collateral
  - Fragmented security mechanisms increase transaction costs for lenders

- ✓ Solution
  - A register for security rights in movables allows non-possessory security over machinery
  - Legal certainty enhances credit availability and supports industrial modernization

Modern industrial production relies on capital-intensive machinery that must be fully credit-worthy…

…in turn allowing manufacturers to unlock value and secure long-term investment.

Stock-in-Trade & Warehouse Goods

Case: Prevent insolvency of fashion retailer

- × Financing Challenge
  - – Retailers depend on short-term liquidity backed by rapidly changing inventory
  - – Timely financing is critical to maintaining supply chains and seasonal operations
- × Legal Constraints
  - – Traditional security concepts struggle with fluctuating stock and bulk goods
  - – Lack of publicity undermines lender confidence in inventory-based collateral
- ✓ Solution
  - – Registration enables effective security over ware-house goods
  - – Transparent priority rules facilitate working-capital financing and business continuity

Retail business depends on the ability to leverage inventory and warehouse goods as circulating collateral…

…thereby enabling timely financing and preventing value-destructive insolvency.

Intellectual Property

Case: Growth financing of tech start-up

- × Financing Challenge
  - Tech start-ups rely primarily on patents and other IP for growth financing
  - Lenders require certainty, publicity, and priority to accept intangibles as collateral

- × Legal Constraints
  - IP registers ensure publicity, security over other movable assets lacks comparable clarity
  - Divergent regimes fragment collateralization across asset classes

- ✓ Solution
  - IP registers demonstrate how clear registration enables IP to function as robust credit security
  - Extending these principles to a unified register for movables enhances access to liquidity and lowers financing costs

Patents have been available as robust credit security thanks to the register for decades…

… and thus, opening access to liquidity and cheaper financing.

Lessons learned

Key Benefits for Austria's Business Community

A post Christmas wishlist from the legal industry….

… introduce a register for security rights in movables to provide for:

Legal Certainty

Clear priority rules and transparent enforcement mechanisms reduce dispute risk

Cost Reduction

Lower transaction costs through streamlined registration vs. complex notarisation

Enhanced Credit Access

SMEs gain working capital financing against inventory, equipment, and IP assets

Competitive Advantage

Austria aligns with EU best practices; attracts international investors and financiers

Martin Ebner

Partner, Austria

"Always to the point. Very efficient, with a high standard of work."

Chambers Europe

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Laurenz Schwitzer is a partner in Schoenherr's Vienna office and part of its banking, finance & capital markets practice. He joined the firm in 2013 and has since amassed vast experience in complex asset financing and financial restructuring processes, with a specialised focus on real estate financing, mezzanine financing, direct lending and green finance. Prior to his engagement at Schoenherr, Laurenz was part of Deloitte's corporate finance practice in Vienna. Laurenz graduated from the University of Vienna (Mag. iur. 2010) and is admitted as an attorney to the Austrian Bar.

Legal areas & industries

finance & corporate finance, real estate finance, asset & commodity finance, green finance | special situations & debt restructuring | financial institutions

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"[...] Laurenz Schwitzer is very responsive and proactive and also does a very good job in managing the parties, running negotiations and finding solutions with all the different parties involved."

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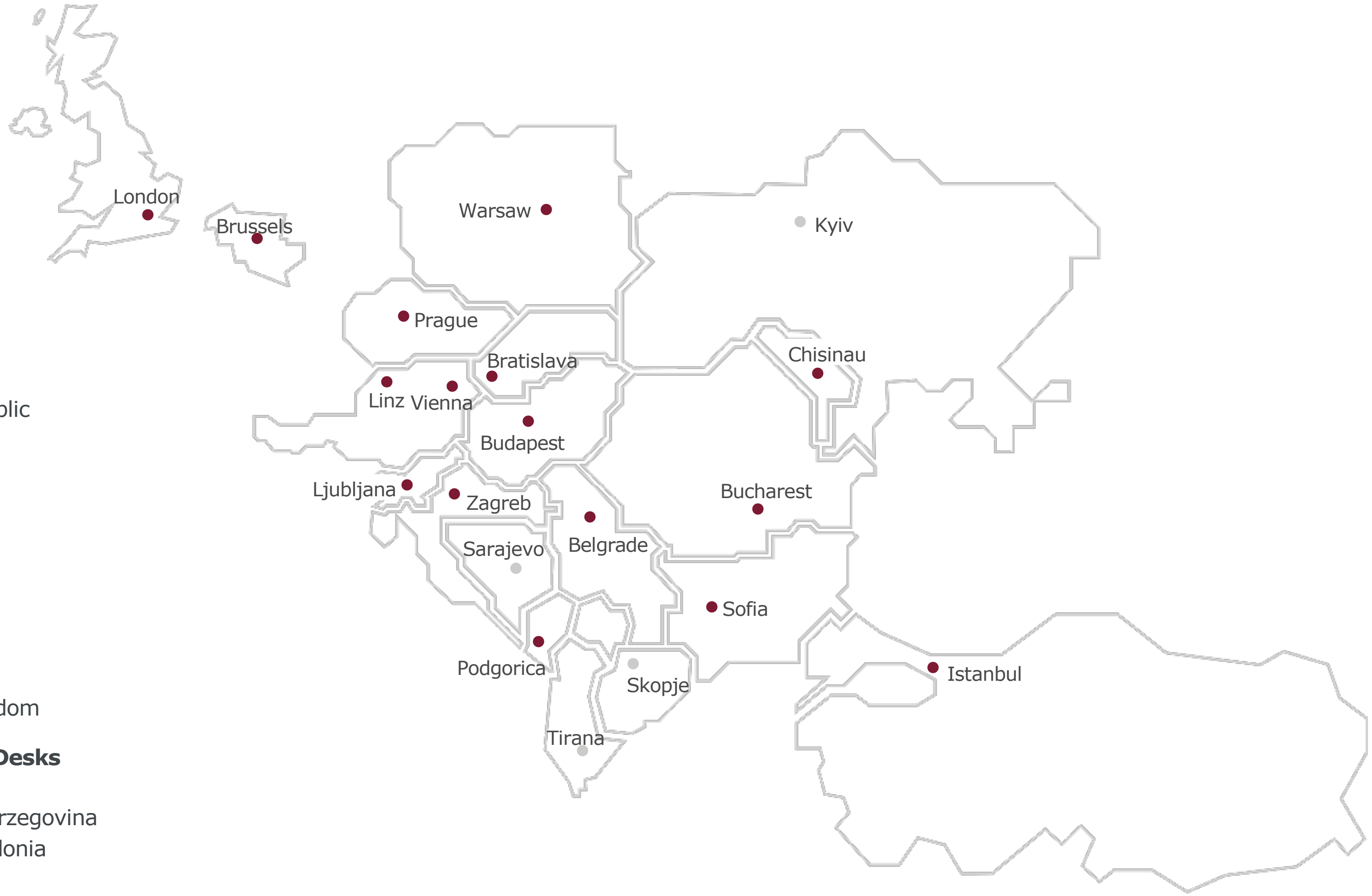

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