

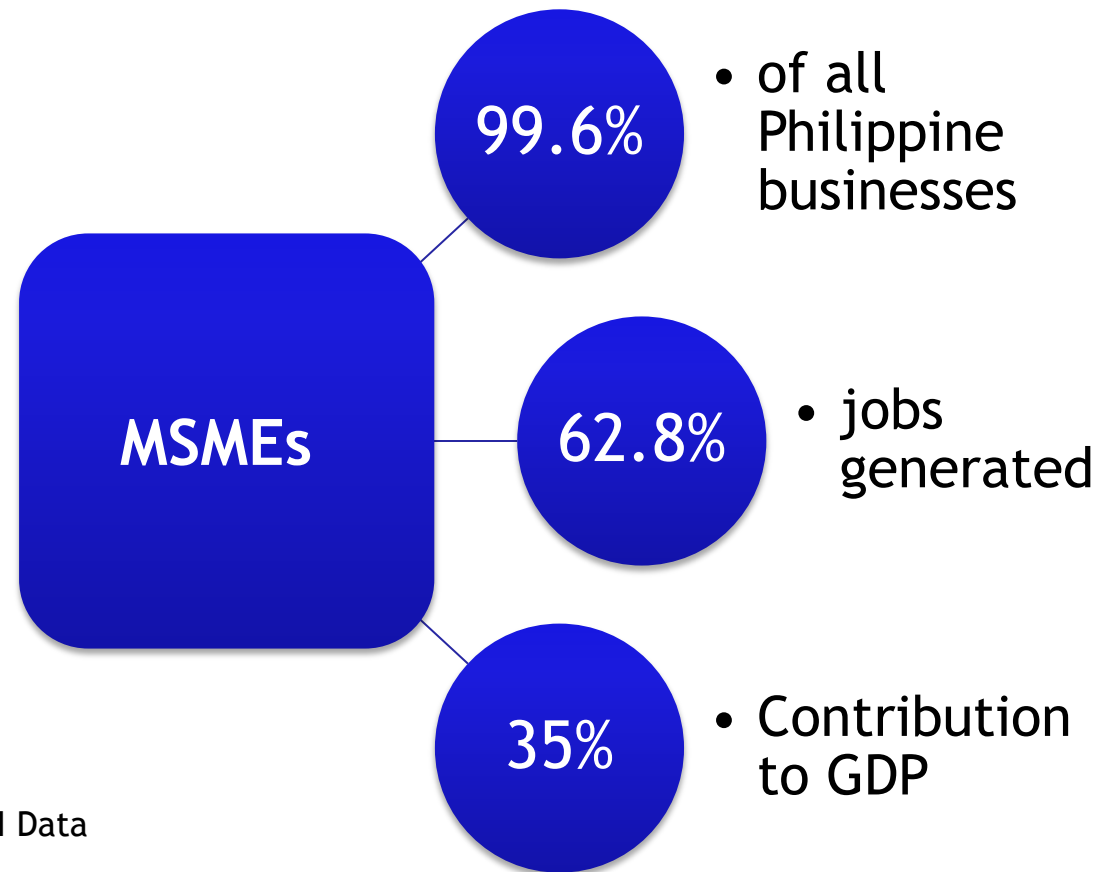
Secured Transactions and Collateral Registry Reform Project

Chester Abellera (Finance and Markets)
Secured Transactions and Collateral Registries

Contents

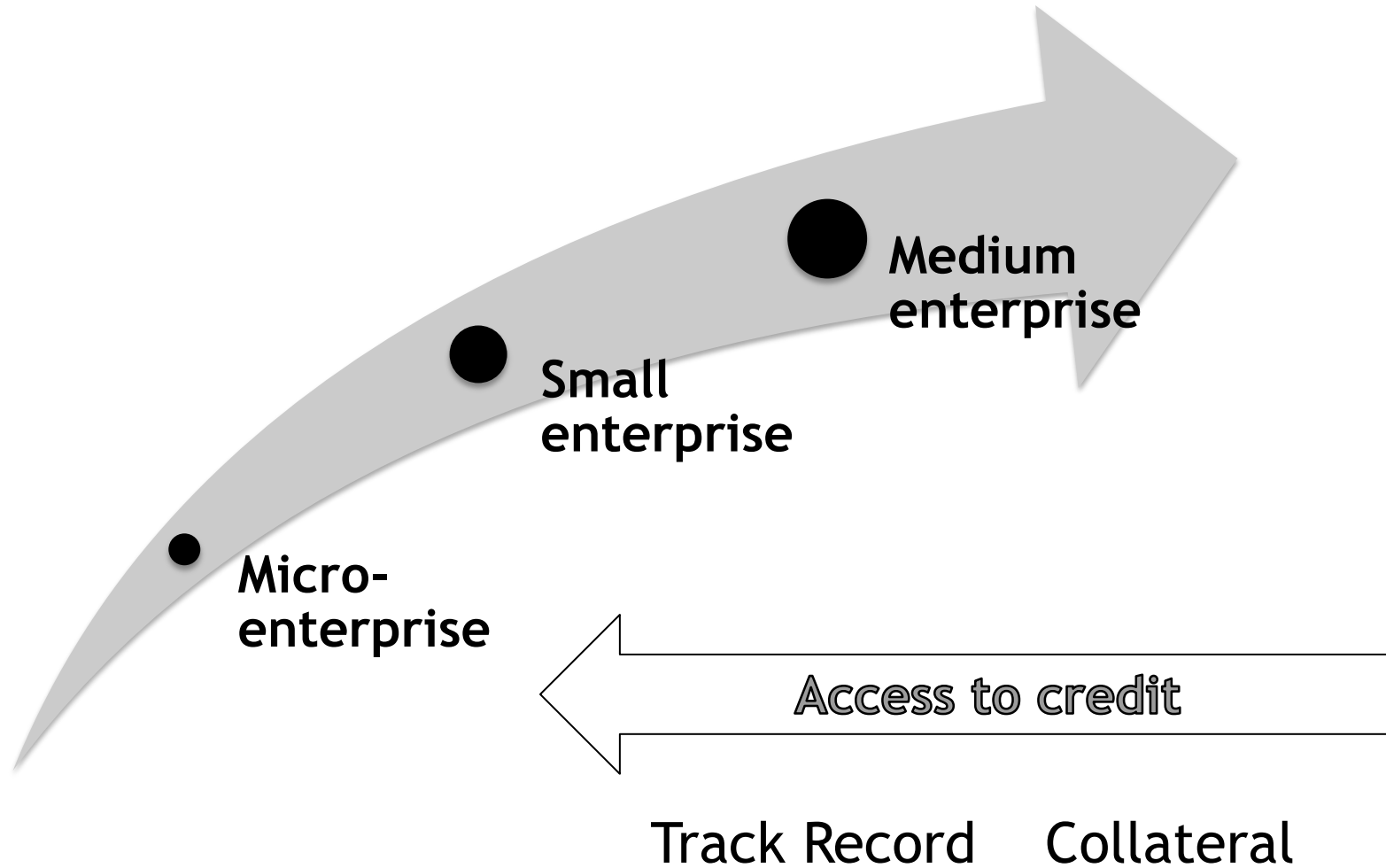
- Economic Rationale for STCR Reform
- Comprehensive STCR Reform
- Technical Working Group for STCR Reform
- Chattel Mortgage Regime and Practice
- Raising the Level of Conversation
- Benefits of STCR Reform
- Draft Reform Bill
- Features of Reform Bill

Economic Rationale



*2014 DTI Data

Economic Rationale (continued)



Mismatch between assets owned and collateral required



Assets owned by Businesses



Collateral Required by FIs

Credit to Private Sector (% of GDP) and Getting Credit Scores

	PH	CAM	MYR	LAO	VIE*	IND	THA*	CHI*	MAL*
Legal Rights (12)	3	11	2	7	7	4	3	4	7
Credit Info (8)	5	5	0	0	6	6	7	6	7
2010	29.6	27.6	-	-	114.7	27.3	115.8	127.6	107.1
2011	31.9	28.3	-	-	101.8	30.1	130.7	124.1	108.4
2012	33.4	38.8	10.0	-	94.8	33.4	136.3	130.0	114.1
2013	35.8	44.7	13.6	-	96.8	36.1	142.5	135.4	119.9
2014	39.2	54.1	-	-	100.3	36.4	147.0	141.9	120.6
2015	41.9	63.1	-	-	111.9	39.1	151.3	155.3	125.2

Doing Business: Legal Rights Index

Strength of legal rights index (0-12)

Does an integrated or unified legal framework for secured transactions that extends to the creation, publicity and enforcement of functional equivalents to security interests in movable assets exist in the economy?	No
Does the law allow businesses to grant a non possessory security right in a single category of movable assets, without requiring a specific description of collateral?	No
Does the law allow businesses to grant a non possessory security right in substantially all of its assets, without requiring a specific description of collateral?	No
May a security right extend to future or after-acquired assets, and may it extend automatically to the products, proceeds or replacements of the original assets?	No
Is a general description of debts and obligations permitted in collateral agreements; can all types of debts and obligations be secured between parties; and can the collateral agreement include a maximum amount for which the assets are encumbered?	No
Is a collateral registry in operation for both incorporated and non-incorporated entities, that is unified geographically and by asset type, with an electronic database indexed by debtor's name?	No
Does a notice-based collateral registry exist in which all functional equivalents can be registered?	No
Does a modern collateral registry exist in which registrations, amendments, cancellations and searches can be performed online by any interested third party?	No
Are secured creditors paid first (i.e. before tax claims and employee claims) when a debtor defaults outside an insolvency procedure?	Yes
Are secured creditors paid first (i.e. before tax claims and employee claims) when a business is liquidated?	No
Are secured creditors subject to an automatic stay on enforcement when a debtor enters a court-supervised reorganization procedure? Does the law protect secured creditors' rights by providing clear grounds for relief from the stay and/or sets a time limit for it?	Yes
Does the law allow parties to agree on out of court enforcement at the time a security interest is created? Does the law allow the secured creditor to sell the collateral through public auction and private tender, as well as, for the secured creditor to keep the asset in satisfaction of the debt?	Yes
Score (number of "yes" responses)	3

Comprehensive STCR Reform



Technical Working Group

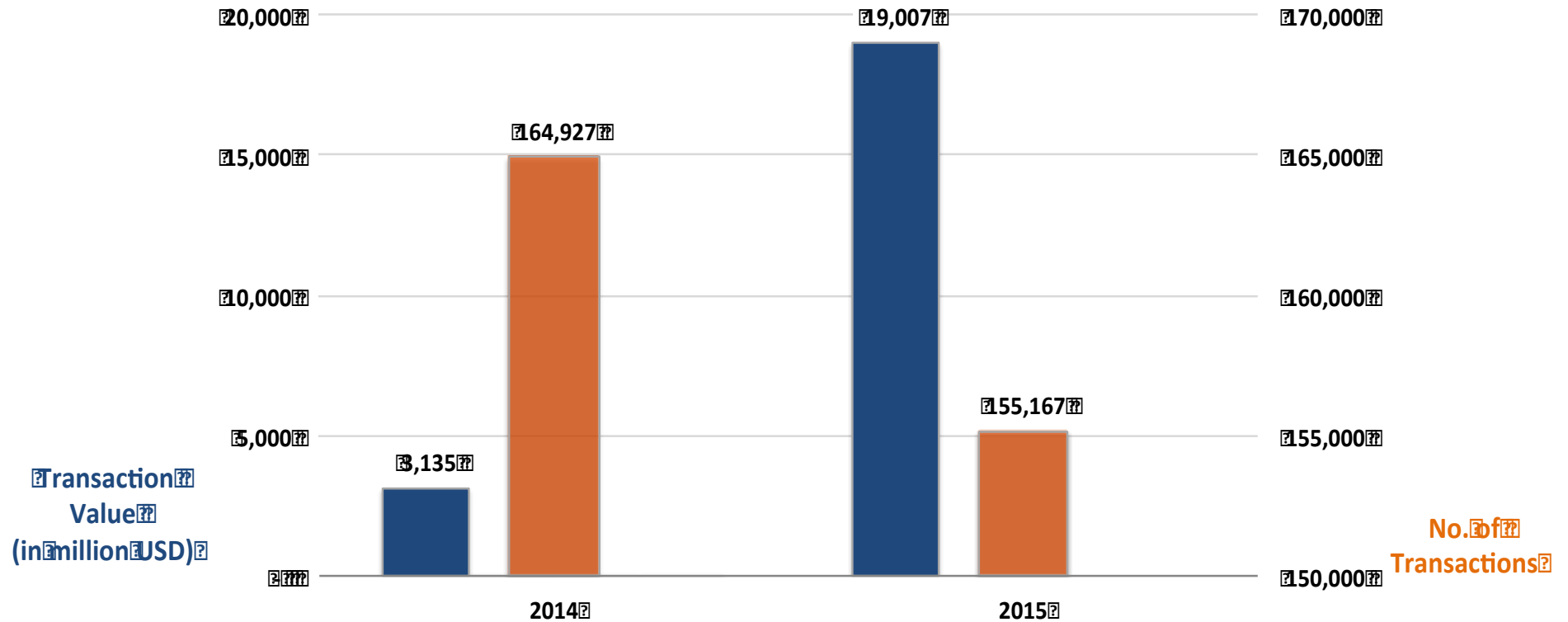


Philippine Legal Regime on Secured Transactions

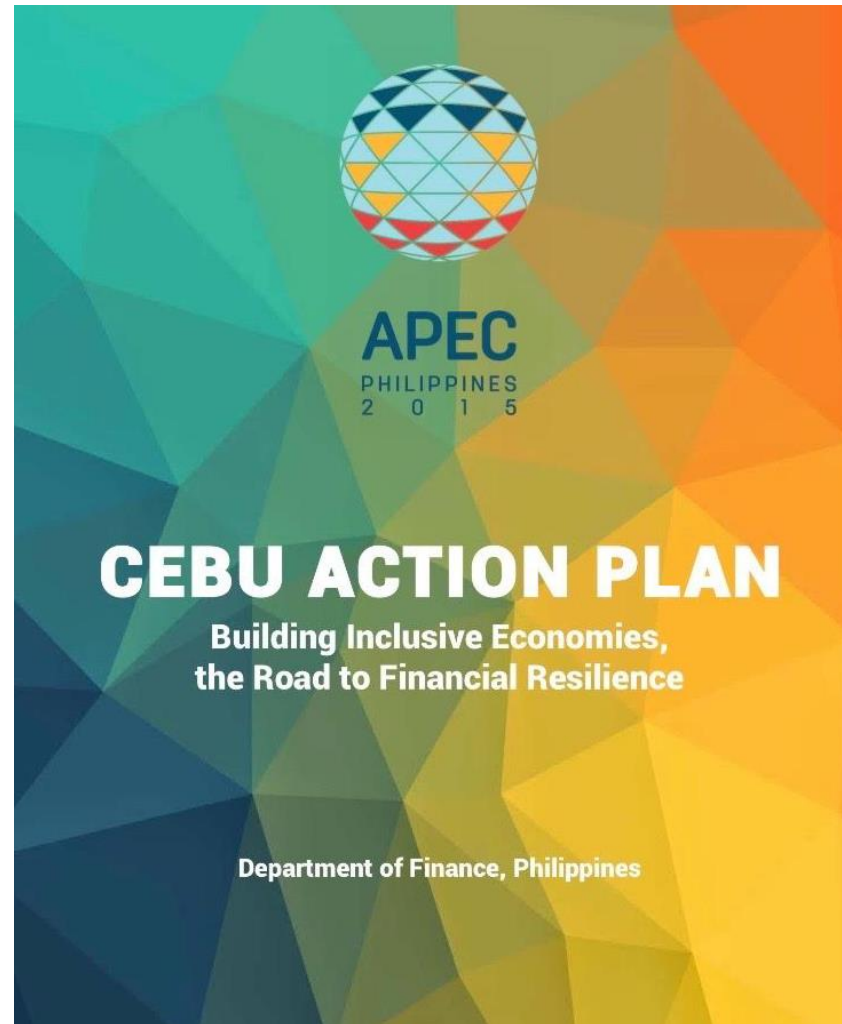
- Act 1508 (July 2, 1906) - **The Chattel Mortgage Law**
- Act No. 2137 (February 5, 1912) - **The Warehouse Receipts Law**
- Act 2243 (February 11, 1913) - Record of Mortgages issued by public service corporations to secure bonds, and other purposes
- Republic Act 386 (June 18, 1949) - **Civil Code of the Philippines**
- Presidential Decree No. 1529 (June 11, 1978) - **Property Registration Decree**
- Republic Act 7393 (April 13, 1992) - **Quedan and Rural Guarantee Corporation Act**
- Republic Act No. 10142 (August 16, 2010) - **Financial Rehabilitation and Insolvency Act (FRIA)**
- **Supreme Court Decisions**
- **Rules of Court**

Chattel Mortgage Practice

Chattel Mortgage Transactions for 2014-2015



Raising the Level of Conversation



Raising the Level of Conversation



Raising the Level of Conversation



Benefits of STCR Reform

- Increase credit access for women and small businesses*
- Reduce risk of non-payment, and allow for better satisfaction of debt
- Reduce the rate of non-performing loans for lenders
- Lower the cost of borrowing (lower interest rates)*
- Get better loan conditions (longer term)*
- High productivity and more growth

Examples of Reform (I)

- **Vietnam:**

- ✓ **Started in 2005-06**
- ✓ A series of Decrees and Circulars issued to improve the secured transactions legal environment and registry
- ✓ Being consolidated into a revised Civil Code
- ✓ **An on-line Registry put into operations in 2012**
- ✓ **Lenders have started to use movable assets**
- ✓ About **a dozen collateral management companies (CMCs) have emerged**
- ✓ **In the year of 2014, 186,290 registrations (*meaning 186,290 loans*) and 398,622 searches in the NRAST Registry**

Examples of Reform (II)

- **China:**

- ✓ **Started in 2003**
- ✓ A ground-breaking **Property Law approved in 2007**
- ✓ An **online Registry created in 2007**
- ✓ Lenders have been rather innovative in rolling out movables finance products
- ✓ The industry has grown by double digits ever since; **annual disbursements about USD 3.0 trillion**
- ✓ **About 1100 CMCs; and the collateral management industry is being formalized**
- ✓ Various electronic finance platforms have emerged
- ✓ **In 2014, 417,170 registrations and 1,134,901 searches in the CRC Registry** (*receivables and leasing finance only*)

Examples of Reform (III)

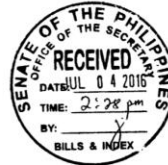
- **Mexico:**

- ✓ **Started legal reforms in earlier years (2000-03)**
- ✓ **The Movable Property Collateral Registry started operations in October 2010**
- ✓ **Total number of registrations reached about 120,000 by mid-2012; about 40% of assets used are agri collaterals**
- ✓ **NAFIN set up an electronic accounts receivable financing platform -- a multi-lender platform**
 - **By mid-2013, 53 lending institutions participated, about 10,000 transactions for USD 80 million per day; cumulatively, 1.7 million transactions for USD 86 billion**
 - **Mexican MOF has played an admirable role -- by mandating all government agencies and state-owned enterprises to participate in the platform**

Senate and House Bills on Secured Transactions

SEVENTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

SENATE
S.B. No. 354



Introduced by: Senator Paolo Benigno "Bam" A. Aquino IV

AN ACT
STRENGTHENING THE SECURED TRANSACTIONS LEGAL FRAMEWORK IN THE PHILIPPINES, WHICH SHALL PROVIDE FOR THE CREATION, PERFECTION, DETERMINATION OF PRIORITY, ESTABLISHMENT OF A NOTICE REGISTRY, AND ENFORCEMENT OF SECURITY INTERESTS IN PERSONAL PROPERTY, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Micro, small, and medium enterprises (MSMEs) are critical in the country's drive to maintain strong economic growth and uplift millions who live in poverty considering that in 2014 they comprised 99.6% of all Philippine businesses, generated 62.8% of all jobs in the Philippines,¹ and contributed to around 35% to Philippine GDP.²

The challenge is to ensure that microenterprises grow into small business; and small businesses develop into medium-sized enterprises. We must provide these businesses with an enabling environment so they survive, grow, and expand to create better lives for their families and increase job opportunities for other Filipinos. Crucial to their growth is access to financing at reasonable rates.

While there is notable growth in the microfinance sector, there is still a major gap relative to financing small enterprises, whose loan requirements are beyond the scope of microfinance institutions. Despite being a growth area for banks, SME financing is still considered unattractive given the perceived risks, without traditional collateral such as land and other real property. However, MSMEs' assets are mostly

¹ <http://www.dti.gov.ph/dti/index.php/resources/sme-resources/sme-statistics>

² <http://www.philstar.com/business/2015/11/24/1525141/smes-eyed-hike-gdp-contribution>

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session
House Bill No. 3682



Introduced by REPRESENTATIVE ARTHUR C. YAP

EXPLANATORY NOTE

During the 2015 Asia-Pacific Economic Council (APEC) Meeting, the critical role of micro, small and medium enterprises (MSMEs) in reducing poverty and achieving inclusive development was highlighted. As a source of growth and innovation, the APEC Leaders' declaration underscored the importance of empowering the MSMEs for them to contribute to and benefit from future growth. Specifically, increased participation of MSMEs in the global trade can have significant impact in reducing poverty through employment creation, productivity improvements and economies of scale.

According to PSA, MSMEs or those with less than 200 employees reached 941,174 accounting for 99.6% of the total establishments in the Philippines in 2013. Micro enterprises or those with employment size of 9 and below accounted for 90% of the total establishments.

The Department of Trade and Industry (DTI) estimates that MSMEs contribute about 35.7% of the total value-added in the economy. Small enterprises (with 10-99 employees) accounted for the largest share at 20.5% followed by medium enterprises (with 100-199 employees) at 10.3%. While micro enterprises accounted for the highest share to the total number of establishments at almost 90% in 2013, the sector contributed only 4.9% to the total value-added in the economy. Large enterprises which account for only 0.4% of the total number of establishments contributed more than a third of the total value-added at 64.3%.

For the period 2009 to 2013, MSMEs accounted for an average of 63.0% of the total employment of all establishments. In 2013, a total of 4.8 million jobs were generated by MSMEs, 75% higher than the 2.7 million jobs generated by large enterprises. Micro enterprises accounted for the highest share at 31.1% of the total employment in 2013 or equivalent to 2.3 million jobs. Average employment size of a micro enterprise during the period is 2.55.

Features of Current Regime vs. Reform Bill

Current Regime	Pending Bill
Scope	
Covered Transaction (form approach)	Covered Transactions (functional approach, functional equivalent)
Obligations secured (valid/existing loans only)	Obligations secured (future loans included)
Property encumbered (existing property only)	Property encumbered (future property included)
Description required (Specific description, reasonableness)	Description required (reasonableness, generic description allowed)
Creation of Security Right	
Formal requirements (specific form, affidavit, notarization)	Formal Requirements (no specific form, no notarization)
Registry	
Document/paper-based, geographically decentralized registration	Notice-based, centralized, unified, online registration
Enforcement	
Foreclosure	Foreclosure (Expedited extrajudicial foreclosure, private sale, immediate sale of rapidly depreciating assets)

Thank You !

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