



Happy Place by Andrea Edwards

TAKING SECURITY IN CAMBODIA

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN CAMBODIA?

The security interests commonly seen on financing transactions are:

- **Mortgage or hypothec:** over land, buildings and fixtures
- **Pledge:** over shares or assets (including floating assets such as inventory)
- **Charge:** over bank account and deposits
- **Assignment:** of receivables and other contractual rights

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured. If security is taken on rights arising under contracts, the beneficiary of the security will want to review the underlying instrument to confirm that such rights can be assigned. Additional regulatory approvals may be required to create security over certain assets such as share in a company which has a concession agreement with the Government.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

Yes. Security interests over immoveable assets must be registered with the relevant land registry office (where the secured immoveable

assets are located) of the Ministry of Land Management, Urban Planning and Construction. Only the original wet-ink (signed in blue ink) model/standard security agreement (written in both local Khmer language and English) is required to be registered for purpose of the perfection requirement. This standard form agreement is entered into for registration purposes in addition to the complete security agreement which is entered into between the lender and the security grantor. However, for greater protection of the lenders, it is recommended to register the complete security agreement. This can sometimes be an issue as certain land offices are reluctant to register the complete agreement.

Security interests over moveable assets must be registered with the Secured Transactions Filing Office of the Ministry of Commerce (STFO). It is an online filing process and a pdf copy of the security document should be attached together with the filing notice.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

Security documents over immovable (including all the ancillary documents required therein, such as shareholders' resolutions, representative's ID) need to be notarised by a notary public before the documents can be registered with the land office.

Strictly speaking, no notarisation is required for security documents over moveable assets. However, it is recommended that all the security documents (and its ancillary documents, for example, notice of assignment, power of attorney or authorisation record) should be signed in the presence of a Cambodian attorney or a notary public.

Entities incorporated outside of Cambodia may still need to have security documents notarised if required by the law of their place of their incorporation.

DOES IT TAKE LONG TO REGISTER OR PERFECT SECURITY?

Registration of security interests over moveable assets generally takes one to two business days. Registration of security interests over immovable assets generally takes one to two weeks to complete.

IS STAMP DUTY PAYABLE?

No stamp duty is payable on the creation of security.

ARE "PARALLEL DEBT" PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

The parallel debt clause concept is not expressly recognised under Cambodian law and consequently, such clause is not commonly used in practice.

The use of security agents/trustees is common in Cambodia, as the rights assigned to the security agent/trustee are valid. Under Cambodian law, the party shown as holding the security will be the party that is recognised as holding rights under Cambodian law. This means that the rights granted to the security trustee/agent will be recognised.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN CAMBODIA?

Yes, a foreign lender can take and enforce security in Cambodia.

However, although a foreign lender can enforce security on immovable assets or the shares of a company owning immovable assets it cannot take ownership of such immovable assets or of more than 49% such shares. This is because land ownership is only permitted to Cambodian nationals or entities with a 51% ownership by Cambodian nationals or Cambodian entities. In practice, the immovable assets or shares will be auctioned to Cambodian nationals or Cambodian entities as part of the enforcement of the security interests.

Note that lending by foreign lenders remains unregulated in Cambodia. As such, there are no exemptions for multilateral development banks or other development finance institutions.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Yes. There is no legal restriction on foreign security grantor waiving its sovereign immunity.



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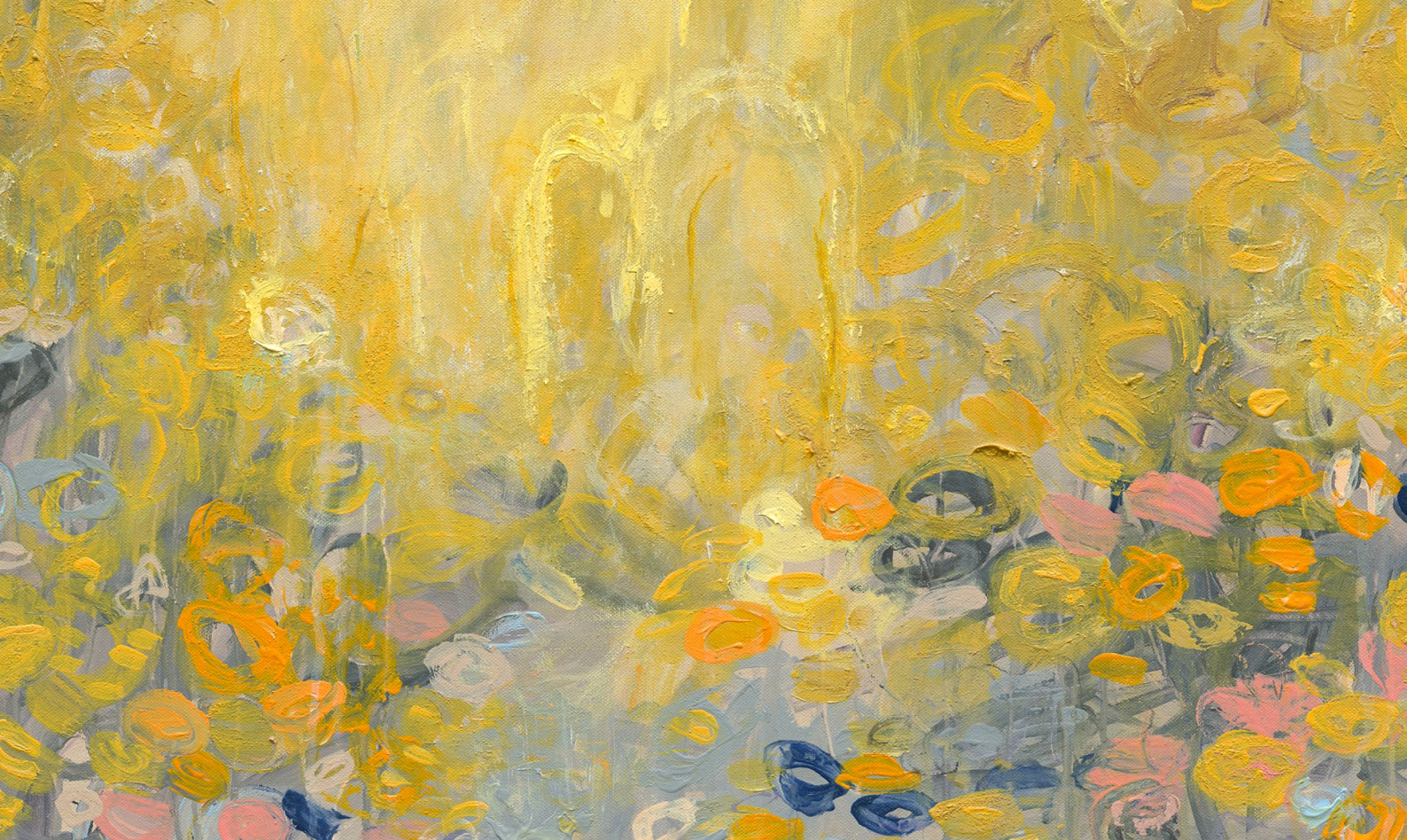
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