



Happy Place by Andrea Edwards

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# TAKING SECURITY IN LAO PDR

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## WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN LAO PDR?

There are three types of security interest that can be created by a contract: pledge, mortgage, and guarantee.

Pledges and mortgages are the security interests most commonly seen in financing transactions. The main difference between a pledge and mortgage is that under the pledge, secured assets are handed over to the pledgee or other person as agreed by the parties, while under the mortgage, there is only registration of the secured assets without handing over to the mortgagee.

Security interests can be taken over the following types of assets and rights:

- **Security over immovable assets** (such as land use rights, lease agreements, buildings and fixtures) can be taken by a pledge or mortgage.
- **Security over movable assets** (such as inventory, equipment, machinery, accounts, receivables, vehicles and other movable assets as agreed by the parties) can be taken by a pledge or mortgage.
- **Security over contractual or legal rights** (such as receivables, transferrable financial documents such as bonds, letter of guarantee, intellectual property, and shares) can be taken by a pledge).

## ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured. If security is taken on rights arising under contracts or permits, the beneficiary of the security will want to review the underlying instrument to confirm that such rights can be assigned.

## DO SECURITY INTERESTS NEED TO BE REGISTERED?

Yes. Security interests over immovable assets (pledges and mortgages) must be registered with the Ministry of Natural Resources and Environment (MONRE) or the relevant provincial Department of Natural Resources and Environment (DONRE) where the property is located. Security interests over movable assets (pledges and mortgages) must be registered with the State Assets Management Department (SAMD). A one to two-page Lao language summary of the security document is required for SAMD registration. Security interests (pledges) on contractual rights (such as deposits on a bank account, receivables, and shares) must be registered with the SAMD.

Guarantees must be registered with the SAMD.

## DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

Security interests over immovable assets (pledges and mortgages) must be notarised with the Notary Office or Notary Department under the Ministry of Justice. Note that notarisation requires a full Lao language translation of the relevant documents. Other types of security documents or finance documents unrelated to immovable assets do not need to be notarised, and therefore, full Lao language translations are not required. However, to register a foreign language document with the SAMD, a one to two-page Lao language summary will be required.

All guarantees must be notarised with the Notary Office or Notary Department. Entities incorporated outside of Lao PDR 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?

Generally, no. Before security over private land can be registered, a land accuracy certificate must be obtained from the DONRE, which generally takes 3 to 5 business days. The actual registration process generally takes a few business days up to 10 business days for the

MONRE or DONRE. The total registration timeframe may take up to 15 business days.

## IS STAMP DUTY PAYABLE?

Yes. Security documents are generally subject to a stamp duty of LAK 20,000 (approximately USD 2). Note that separate registration fees will apply depending on the registration authority.

## ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

Lao PDR laws do recognize security trusts. The security granted to all secured parties in a syndicated financing will be agreed upon by the parties in the security agreement. Parallel debt provisions are therefore not required.

## CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN THE LAO PDR?

A foreign lender can enforce security in the Lao PDR. However, upon enforcement of certain immovable assets (land use rights), a foreign security holder will need to find a qualified Lao national or 100% Lao-owned entity to purchase the land use rights given the restrictions on foreign ownership in the Land Law. Foreign lenders often use a Lao commercial bank as a security agent to mitigate the restrictions on foreign ownership of land. The benefit of using a Lao commercial bank is that it can hold the land use right for the benefit of the foreign lender as under the Land Law, only a 100% Lao-owned entity can own land in the Lao PDR. This means that the secured land can be transferred to a Lao commercial bank directly upon the enforcement of security, and thereafter the Lao commercial bank can sell the land to Lao nationals.

Lending by foreign lenders is regulated in the Lao PDR. There are no specific exemptions for multilateral development banks or other development finance institutions in the relevant regulations.

## CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

A waiver of the Government of the Lao PDR's immunity is commonly included in agreements with the Government of the Lao PDR (such as concession agreements); however, it is unclear how a Lao PDR court will interpret a waiver of sovereign immunity by the Government of the Lao PDR as there is no specific legislation or publicly available case law on this point.



# CONTACTS

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## ASIA PROJECT FINANCE CONTACTS



### SU MENG (MOLLY)

PARTNER  
Shanghai

E [sumeng@cn.kwm.com](mailto:sumeng@cn.kwm.com)

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### LV YINGHAO

PARTNER  
Beijing

E [lvyinghao@cn.kwm.com](mailto:lvyinghao@cn.kwm.com)

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### SCOTT GARDINER

PARTNER  
Hong Kong

E [scott.gardiner@hk.kwm.com](mailto:scott.gardiner@hk.kwm.com)

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### JOHN SHUM

PARTNER  
Singapore

E [john.shum@sg.kwm.com](mailto:john.shum@sg.kwm.com)

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## LAO PDR INTERNATIONAL CLOUDOFFICE CONTACTS



### MICHAEL LAWSON

PARTNER IN CHARGE  
Singapore

E [michael.lawson@sg.kwm.com](mailto:michael.lawson@sg.kwm.com)

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### JESSICA ZHOU

PARTNER  
Hong Kong SAR

E [jessica.zhou@hk.kwm.com](mailto:jessica.zhou@hk.kwm.com)

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## LOCAL COUNSEL CONTACT

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### VINAY AHUJA

PARTNER, Head of Regional  
Banking, Finance & Technology  
Practice  
Bangkok

E [vinay.ahuja@dfdl.com](mailto:vinay.ahuja@dfdl.com)

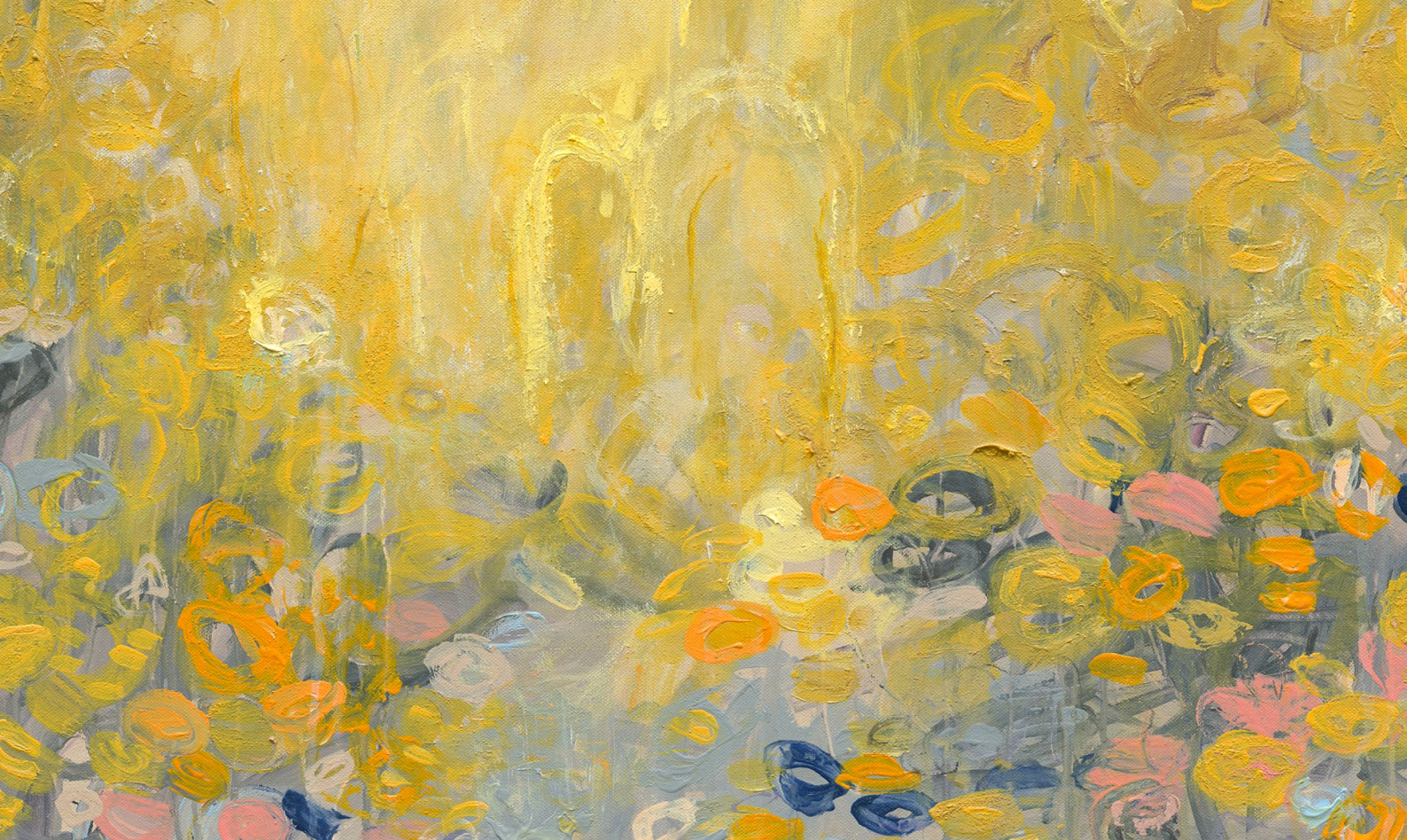
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