



Happy Place by Andrea Edwards

TAKING SECURITY IN MYANMAR

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN MYANMAR?

The security interests commonly seen on financing transactions are:

- **Mortgage:** which can be taken on immovable assets (including assets such as ships and aircrafts). While there are six forms of mortgages in Myanmar, in practice, only three forms are used - the English mortgage, the simple mortgage or the equitable mortgage.
 - An English mortgage whereby the mortgaged property is absolutely transferred to the mortgagee with retransfer upon repayment of the mortgaged amount as agreed. This type of mortgage can only be created by way of a registered deed.
 - Under a simple mortgage, neither ownership nor possession of the immovable property is transferred to the mortgagee. Under a simple mortgage, the mortgagor keeps possession of the property and is bound to pay the amount secured by the mortgage. This type of mortgage can only be created by way of a registered deed.
 - Equitable mortgage which is also known as a “mortgage by deposit of title deeds” is completed by the deposit of the title deed by the mortgagor with the

mortgagee, with an intention to create a mortgage. No additional formalities are required, save for an entry of such mortgage with the land records as a noting. However, this is not essential.

- **Charge:** which can be taken on:
 - identifiable and defined movable or immovable assets (fixed charge) - the grantor can retain possession, or possession can be transferred to the lender; or
 - assets of a circulating and fluctuating nature such as stock-in-trade and receivables (floating charge).
- **Pledge:** which can be taken over tangible assets. They are however less commonly seen than mortgages or charges as they require transfer of the possession of the relevant assets to the creditor. However, as a practice we have seen pledges being used to create security over intangible assets like shares in a company.
- **Assignment:** which can be taken assets or contractual rights.
- **Hypothecation:** which can be used to create a security interests on movable assets, with possession of the secured asset remaining with the grantor of the hypothecation.

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?

Security interests over immovable assets must be registered with the Office of the Registrar of Deeds (“ORD”) within 4 months of the date of creation of the security, and with the Directorate of Investment and Company Administration (“DICA”) under the Myanmar Companies Online registry (“MyCo”) system within 28 days of the creation of security. The amount of registration fee with ORD is 0.5% of the amount secured by the security document.

Security interests over moveable assets or contractual rights for a company will have to be registered under the MyCo system. However, where the security provider is an individual, no registration would be necessary.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

No. Security documents governed by Myanmar law and covering assets in Myanmar do not need to be notarised. However, entities incorporated outside of Myanmar 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?

It depends on the type of security interest. The registration of security documents with DICA can be completed within 2-3 days. However, the registration of security documents before the ORD could take 30 - 45 days.

IS STAMP DUTY PAYABLE?

Yes. Stamp duty on security documents is levied in accordance with the Myanmar Stamp Act. The applicable stamp duty of the security document would vary based on the kind or security being created, which may range from MMK 150,000 to 2% of the consideration equal to the amount secured by such deed.

ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

No. Myanmar recognises trusts and therefore security can be held on trust for the lenders which participate in the financing.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN MYANMAR?

The Transfer of Immovable Property Restrictions Act (“TIPRA”) prohibits foreign nationals and foreign companies from owning or acquiring property. Mortgages or charges under Myanmar law are considered to be covered by this prohibition. However, the Myanmar Companies Law (“MCL”) provides for a derogatory regime and allows the creation and registration of security interests on the interests in land of projects which have received a permit from the Myanmar Investment Commission. Similarly, for a Myanmar Investment Commission project, security over land should also be registered with ORD. However, as a practice ORD has been reluctant in registering such security interest. In 2019, DFDL was able to register a security over immovable property, which is believed to be the first registration of this type. Note that for foreign-invested projects, interests in land held by the



project company would usually be limited to a long-term lease and the lessor can create a security interest on this lease. In practice, foreign lenders will, in any case, appoint a local bank as their onshore security trustee (as unlike a foreign lender, a local bank can enter into a mortgage and enforce it).

Note that the procurement of an offshore loan by a Myanmar resident is subject to approval of the Central Bank of Myanmar. The relevant regulations do not provide for express exemptions for multilateral development banks or other development finance institutions.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Myanmar recognizes the concept of sovereign immunity. From a Myanmar law perspective, a foreign security grantor should be able to waive its sovereign immunity. However, note that the Myanmar Code of Civil Procedure contains provisions which could be interpreted to mean that the consent of the President is required before a foreign sovereign can be sued in a Myanmar court. The practical effect of such provisions is uncertain and there is no case law on this point.



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This publication has been prepared with the assistance of DFDL (local counsel in Myanmar), and Gallien Lefevre, Senior Associate (Hong Kong). It is prepared for information only and does not constitute legal advice.

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