



Happy Place by Andrea Edwards

TAKING SECURITY IN NEPAL

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN NEPAL?

The security interest most commonly seen on lending transactions are:

- **Mortgage:** Mortgage is common method used for creating security interest over immovable property which includes land and buildings. The most common form of mortgage is a non-possessory mortgage where the mortgaged property remains to be used by the security grantor. The beneficiary of the mortgage is entitled to take possession of and sell the mortgaged assets in the event of default.
- **Hypothecation:** Hypothecation is a common form of security where the security grantor creates a security interest over moveable assets.
- **Pledge:** The pledge is a common form of security to cover assets such as share certificates. Pledges require the beneficiary of the security to take possession of the pledge assets (usually before a loan is advanced).
- **Assignment of right:** Nepalese Law also permits assigning any or all rights in receivables, contracts (leasehold rights) and instruments (share certificate, negotiable instruments and so on).

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Security cannot be created over future immovable assets. All other assets can be secured.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

Yes, security interests need to be registered. Security interests over immovable property must be registered in the competent land revenue office. Security interests over movable property and contractual rights must be registered with the Secured Transaction Registry Office.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

No.

Note that entities incorporated outside of Nepal 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?

Security interest over immovable property can be registered within one business day. In relation to movable property, the registration is online and quasi-immediate. Note the timeline for perfection of security interests requiring transfer of possession will depend on the parties' agreement as to the timing of such transfer.

IS STAMP DUTY PAYABLE?

No. However, the registration fees applicable to security interests on immovable property for foreign lenders can be quite high (1% of the loan amount). The amount is lower for domestic banks or financial institutions.

ARE "PARALLEL DEBT" PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

No. There is no requirement for creation of separate debt between Syndicate lenders and borrower. The security interest will be contractually created in favour of the security agent/trustee and will be defined for the benefit of secured creditors. This arrangement has been consistently applied and is a tested structure in Nepal.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN NEPAL?

The creation of a security interest in favour of a foreign lender is subject to the approval of the bank of Nepal, Nepal Rastra Bank (NRB). If security is created on immovable property, the approval of the Government of Nepal will be required - it may however be possible to proceed without this approval if a Nepalese bank acts as the security agent.

Note that the payment of interest, principal and fees by Nepalese borrowers to foreign lenders is subject to the approval of the NRB. The relevant legislation does not provide for exceptions for multilateral development banks or other development finance institutions.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Yes.



CONTACTS

ASIA PROJECT FINANCE CONTACTS



SU MENG (MOLLY)

PARTNER
Shanghai

E sumeng@cn.kwm.com



LV YINGHAO

PARTNER
Beijing

E lvyinghao@cn.kwm.com



SCOTT GARDINER

PARTNER
Hong Kong

E scott.gardiner@hk.kwm.com



JOHN SHUM

PARTNER
Singapore

E john.shum@sg.kwm.com

LOCAL COUNSEL CONTACTS



ANUP RAJ UPRETI

MANAGING PARTNER
Pioneer Law, Nepal

E anup@pioneerlaw.com



SAMEEP KHANAL

ASSOCIATE
Pioneer Law, Nepal

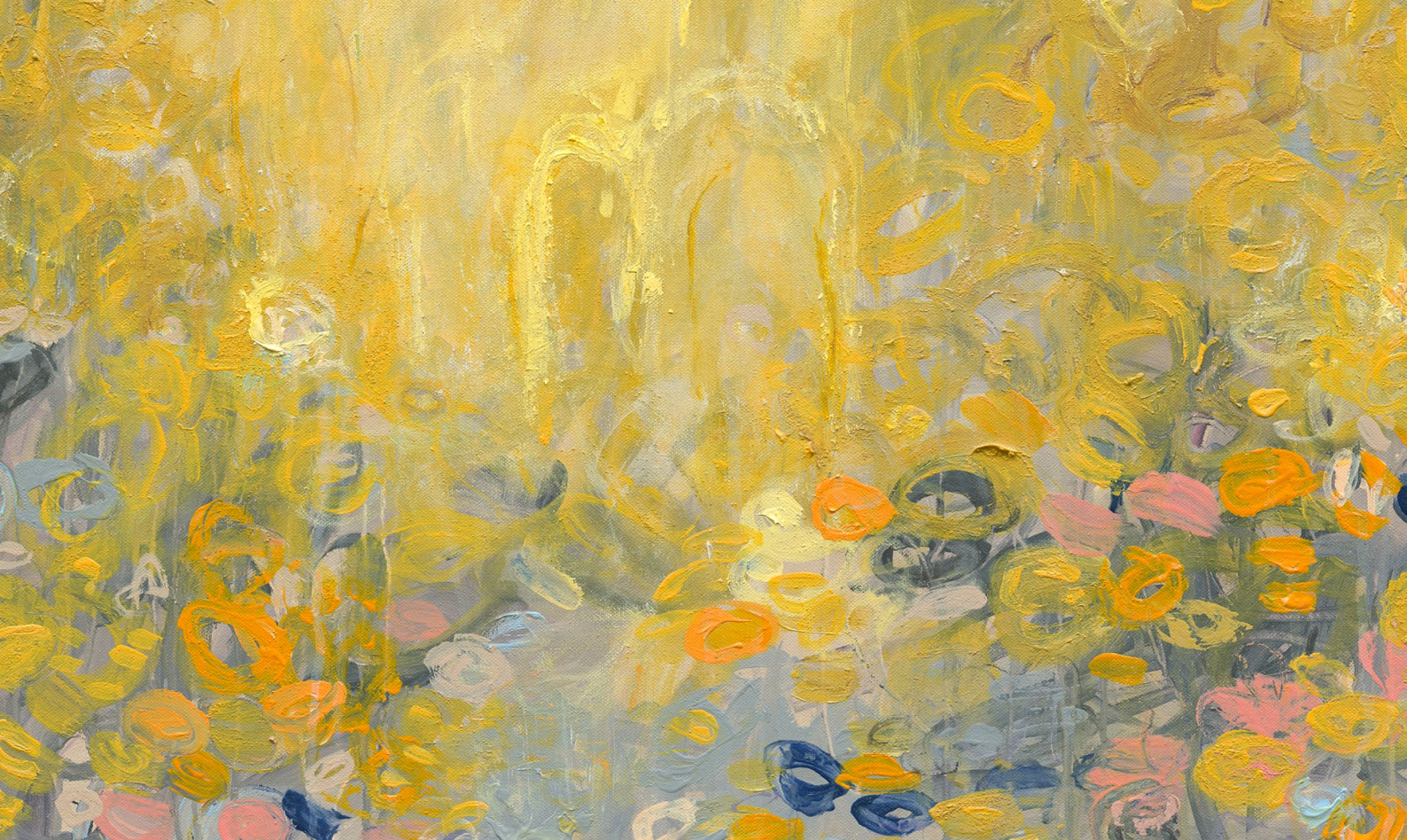
E sameep@pioneerlaw.com

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

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