



Happy Place by Andrea Edwards

TAKING SECURITY IN PAKISTAN

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN PAKISTAN?

The security interests that are commonly taken in lending transactions include the following:

- **Mortgages:** which can be taken on immoveable property could either be "simple mortgage" in accordance with Transfer of Property Act, 1882, or "equitable mortgage" by depositing of the title deeds with the lenders or the security agent in case of syndication of banks. The form of mortgage which is used depends on the lender's requirements.
- **Charges by way of hypothecation:** involve creation of security interest over movable assets, including future assets, of the borrower without transferring the ownership title or possession. Floating charges can be created but this will require the certification of the State Bank of Pakistan.
- **Assignments:** of rights, receivables, and benefits which are typically taken over a borrower's contractual rights and receivables.
- **Pledges:** which can be taken over securities or goods is effective upon delivery of the title instruments (whether actual or constructive) or physical deposit of goods to the secured creditor. In case of book entry securities or government securities, the pledge is effected by a transfer to the lenders' pledgee account held with the Central Depository Company of Pakistan Limited or lender's account with the State Bank of Pakistan, respectively.

- **Liens:** which are usually taken over non-checking accounts. For the lien to be valid the lender must exercise "control" on the accounts secured. Where lenders seek to create a charge non-checking accounts over checking accounts, they typically do so by requiring that any withdrawal(s) from such checking accounts shall be subject to the prior approval of the lender.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Generally, all types of assets of a company can be secured in financing transactions under Pakistani law. However, under Pakistani law, there are assets which cannot be attached or sold by the courts. These assets include certain tools of trade, household goods, right of personal service, stipends and gratuities allowed to pensioners of the Government, compulsory deposits in provident funds and wages of labourers. Security interests created on such exempted assets are void under the law of Pakistan.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

The following security interests must be registered:

- security interests created by way of "mortgage or charge" (as defined in the Companies Act, 2017) by a company must be registered with the Securities and Exchange Commission of Pakistan (SECP) within thirty (30) days of the date of their creation.
- security interests created over movable assets of an entity (other than a company) are required to be registered in accordance with the Financial Institutions (Secured Transactions) Act, 2016. The registration of this security interest is made by the bank itself and typically carried out immediately on creation of the security.
- simple mortgages must be registered with the competent land registrar within 4 months of execution (the Registration Act, 1908 provides that if registration is not made within this time period the relevant instrument will not be accepted for registration).

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

No, there is no requirement under Pakistan law to have security documents concerning assets located in Pakistan to be notarised. However, entities incorporated outside Pakistan 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, it does not take long to register or perfect security for typical security instruments. The security registration process is fairly straightforward and is usually processed within a period of 15 to 30 days by the competent registration authority (such as SECP or land registrars).

IS STAMP DUTY PAYABLE?

Stamp duty is payable before or at the time of execution on all finance and security documents that are executed in Pakistan. The actual stamp duty payable varies for each province depending on the applicable provincial stamp act that is in force. Any finance and security document that is executed outside Pakistan is required to be duly stamped within 3 months from the date when the concerned instrument is brought into Pakistan.

ARE "PARALLEL DEBT" PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

No, parallel debt provisions are not required in syndicated financing and are generally not included in the financing documents pertaining to syndicated financings taking place in Pakistan.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN PAKISTAN?

Yes, a foreign lender can take and enforce security in Pakistan. However, note that approval of the State Bank of Pakistan is required for the creation of a pledge of shares in favour of a foreign lender in the case of cross-border loans to private sector entities.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

The State Immunity Ordinance, 1981 ("SIO") provides that a foreign state shall enjoy general immunity from the jurisdiction of the courts of Pakistan but this immunity shall not apply to (a) proceedings in which the foreign state has submitted to the jurisdiction of the courts or (b) commercial transactions or obligations of the foreign state which, by virtue of a contract, are to be performed wholly or partly in Pakistan. While there is no precedent or case providing a conclusive answer as to a waiver of sovereign immunity would be valid, the immunity of foreign states in Pakistan is not absolute and is subject to the exceptions provided for in the SIO.



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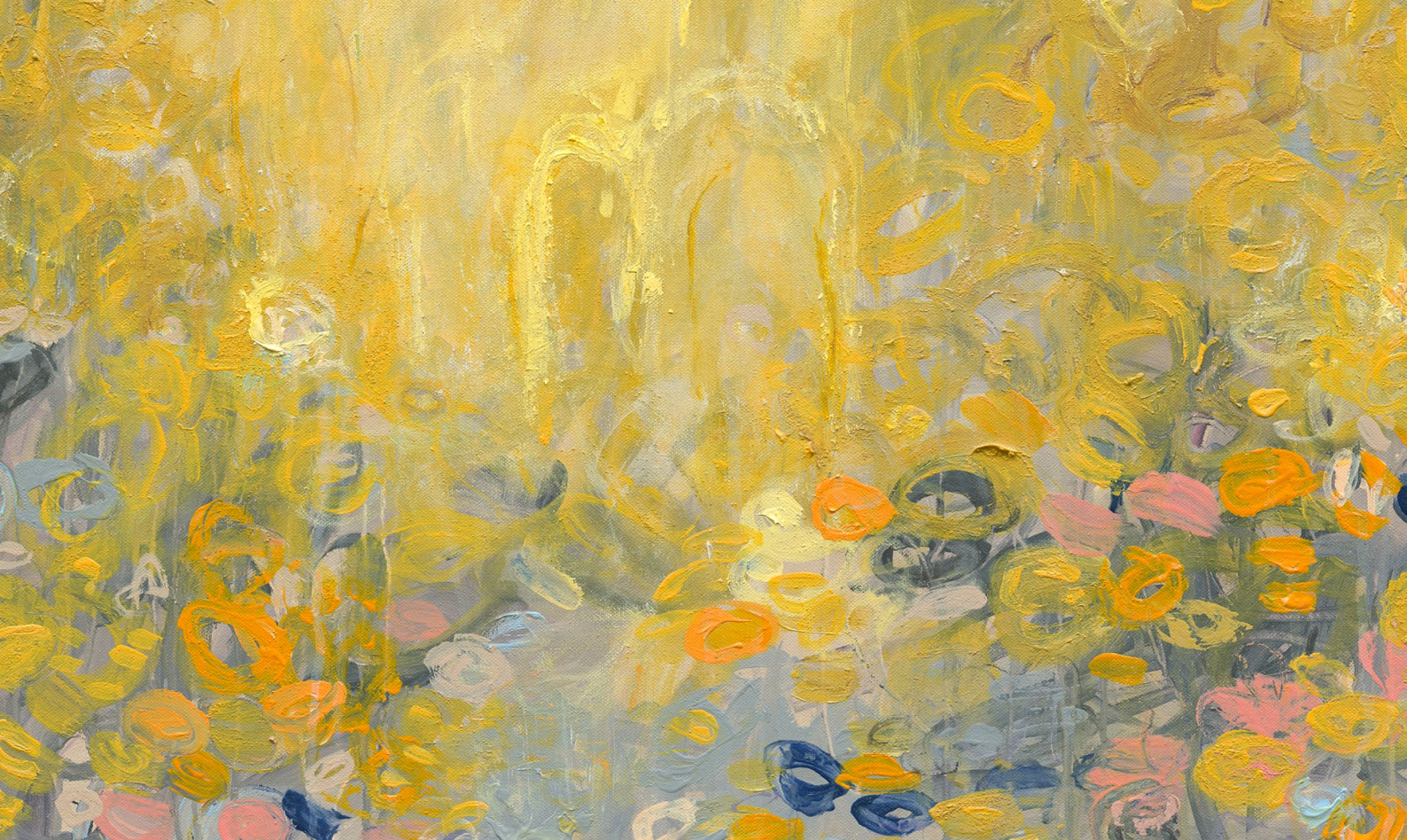
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