



Happy Place by Andrea Edwards

TAKING SECURITY IN PAPUA NEW GUINEA

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN PNG?

The security interests that are most commonly used in lending transactions are:

- **Mortgages:** a mortgage is a charge on land created merely for securing a debt. In PNG, there are two classes of land: one being state-owned land; and the other being customary land. Mortgages apply only to state-owned land and are registered with the Department of Lands and Physical Planning Department (DLPP).
- **Personal Property:** vehicles, equipment, shares, and fixed and floating assets have long been accepted as security for loans and

secured under various security documents such as bills of sale, chattel mortgages, deed of fixed and floating charges, etc. In addition, the Personal Property Securities Act 2011 (PPS Act) enables borrowers are able to use any of their personal properties (or movable properties) to secure loans.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured. Apart from contractual rights that are not assignable, customary land in PNG cannot be secured as by legal nature it is communally (clan) owned and ownership cannot be transferred outright to private citizens and non-citizens, including corporate entities. There are legal means of registering customary land as state-owned land

used for business purposes or converting them into freeholds so that such land can be subject to a mortgage, but these processes are lengthy and pose a high risk for lending purposes.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

Mortgages over State-owned land must be registered with the Office of the Registrar of Titles (ORT).

All other security interests must be registered and perfected with the Personal Properties Securities Register established under the PPS Act and administered by the Investment Promotion Authority. Registration with the Personal Properties Securities Register also enables creditors to benefit from priority once their interest is registered and perfected.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

No. However, while not legally required, it is customary practice for mortgage instruments to be signed and notarised or commissioned by the lawyer or attorney of each of the mortgagee and mortgagor. Security documents may still need to be notarised or commissioned where corporate entities incorporated outside of PNG are legally required to do so under the law of their jurisdiction of incorporation.

DOES IT TAKE LONG TO REGISTER OR PERFECT SECURITY?

Registration of security interests on personal property is straightforward and generally takes a few days to a few weeks. Registration of a mortgage requires a conveyancing process and tax assessment to take place.

If a mortgage is provided to finance the purchase of the property, registration and security might take longer, as the underlying transaction will be subject to a stamp duty assessment which in practice can take up to two months to complete.

IS STAMP DUTY PAYABLE?

Stamp duty is generally not payable on the creation of security although it may be payable upon enforcement of security (e.g. on the transfer of land, shares, units and interests (marketable securities). Note that in case of enforcement, a mortgagee has a duty to sell the mortgaged property at market value.

ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

No. PNG recognises trusts and therefore the security can be held in trust for the beneficiaries.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN PNG?

A foreign lender may take and enforce security in PNG if the person from whom the security is taken was authorised by the Central Bank to transfer or transmit security in the first instance. A person, who allots, issues, transmits or transfers any securities to a person resident outside of PNG without prior authorisation from the Central Bank or an Authorised Dealer is guilty of an offence under the Central Banking (Foreign Exchange and Gold) Regulation (Chapter 138).

Money lending in PNG requires a licence or the benefit of an exemption under the Banking and Financial Institutions Act 2000. This is also the case for dealing in foreign currency under the Central Banking (Foreign Exchange and Gold) Regulation (Chapter 138).

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

PNG recognises the sovereign immunity of other countries. The law is silent on whether or not a foreign entity security grantor may waive its sovereign immunity, and this is an issue which has never been determined by the PNG Courts.



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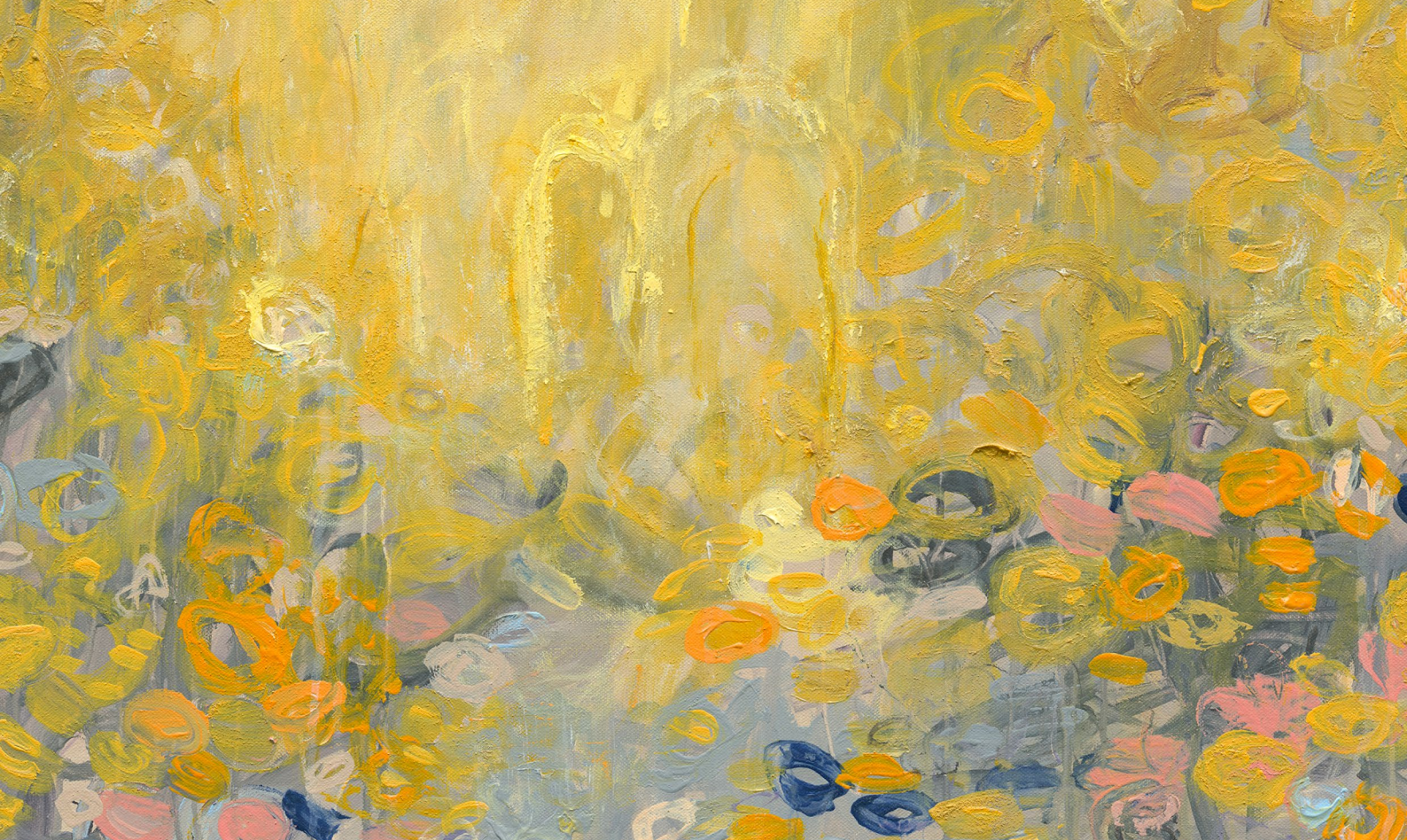
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This publication has been prepared with the assistance of Posman Kua Aisi (local counsel in Papua New Guinea), and Gallien Lefevre, Senior Associate (Hong Kong). It is prepared for information only and does not constitute legal advice.

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