



Happy Place by Andrea Edwards

TAKING SECURITY IN THE PHILIPPINES

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN THE PHILIPPINES?

The security interests most commonly seen in lending transactions are:

- **Mortgages:** which can be created over immovable property and alienable real rights such as land, plant and machinery. Mortgages can also be created on aircrafts and ships.
- **Security Agreements:** which can be likewise created over movables or personal property, tangible or intangible, such as inventory, deposit accounts, intellectual property, livestock, commingled goods, negotiable

instruments, bills of lading, shares of stock, bonds, warehouse receipts, other similar documents, and future or after-acquired properties, over which the grantor should have a legal right.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Future immovable property cannot be secured. While parties may agree that a mortgage will extend to future personal properties of the mortgagor, this will only constitute an agreement to mortgage the future properties and will not create a mortgage on such future properties. Most other assets can be secured.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

To be enforceable against third parties, mortgages of immovable property must be registered with the competent registry or deeds, and security interests over movable assets must generally be registered with the Philippines Personal Property Security Registry (except where transfer of possession or control of the assets will apply). Registration of security interests on other assets is also required in order to be binding on third parties, except where transfer of possession or control of the assets will apply.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

Security documents over immovable assets must be notarised prior to registration. Other security documents do not need to be notarised. However, entities incorporated outside of the Philippines may still need to have security documents notarised and apostilled if required by the law of their place of their incorporation. Notarisation offers the presumption of authenticity, thus, most Philippine parties require this as a matter of practice.

DOES IT TAKE LONG TO REGISTER OR PERFECT SECURITY?

No. However, note that it may take two weeks to register security interests over immovable assets.

IS STAMP DUTY PAYABLE?

Yes. Documentary Stamp Tax (DST) is payable when the security document is a mortgage of lands, estate, or property, or when it is a deed of trust. The basis for the fee is the amount secured, where for the first PHP 5,000 (roughly, US\$105) of the amount secured, the DST is PHP 40 (roughly, US\$0.85). For each succeeding PHP 5,000 or part thereof, an additional PHP 20 is added to the DST. The DST is due on or before the 5th day of the month following the date of execution.

ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

Trusts are recognised in the Philippines and therefore parallel debt provisions are not required.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN THE PHILIPPINES?

Yes, a foreign lender can take mortgages, security agreement or guaranty. Following an event of default under a security document, a foreign lender can foreclose on mortgages over Philippine assets (either judicially or extra-judicially) and initiate proceedings to sell the property at public auction.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Yes. The Philippines applies restrictive sovereign immunity, i.e. foreign sovereign immunity is restricted to sovereign or governmental activities and does not extend to commercial, private and proprietary acts. In principle, a waiver of sovereign immunity by a foreign-owned company will be valid under Philippine law. Note that different rules apply in relation to the immunity of the Government of the Philippines.



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

PHILIPPINES INTERNATIONAL CLOUDOFFICE CONTACTS



ZHENG HUI

INTERNATIONAL PARTNER
SU ZHOU/SHANGHAI/HONG KONG

E hui.zheng@cn.kwm.com



RICHARD MAZZOCHI

PARTNER
Hong Kong SAR

E richard.mazzochi@hk.kwm.com

LOCAL COUNSEL CONTACTS



RODERICK R.C. SALAZAR III

SENIOR PARTNER
Makati City

E rrcsalazar@fnslaw.com.ph



MA. CARMEN D.B. LAZARO

PARTNER
Makati City

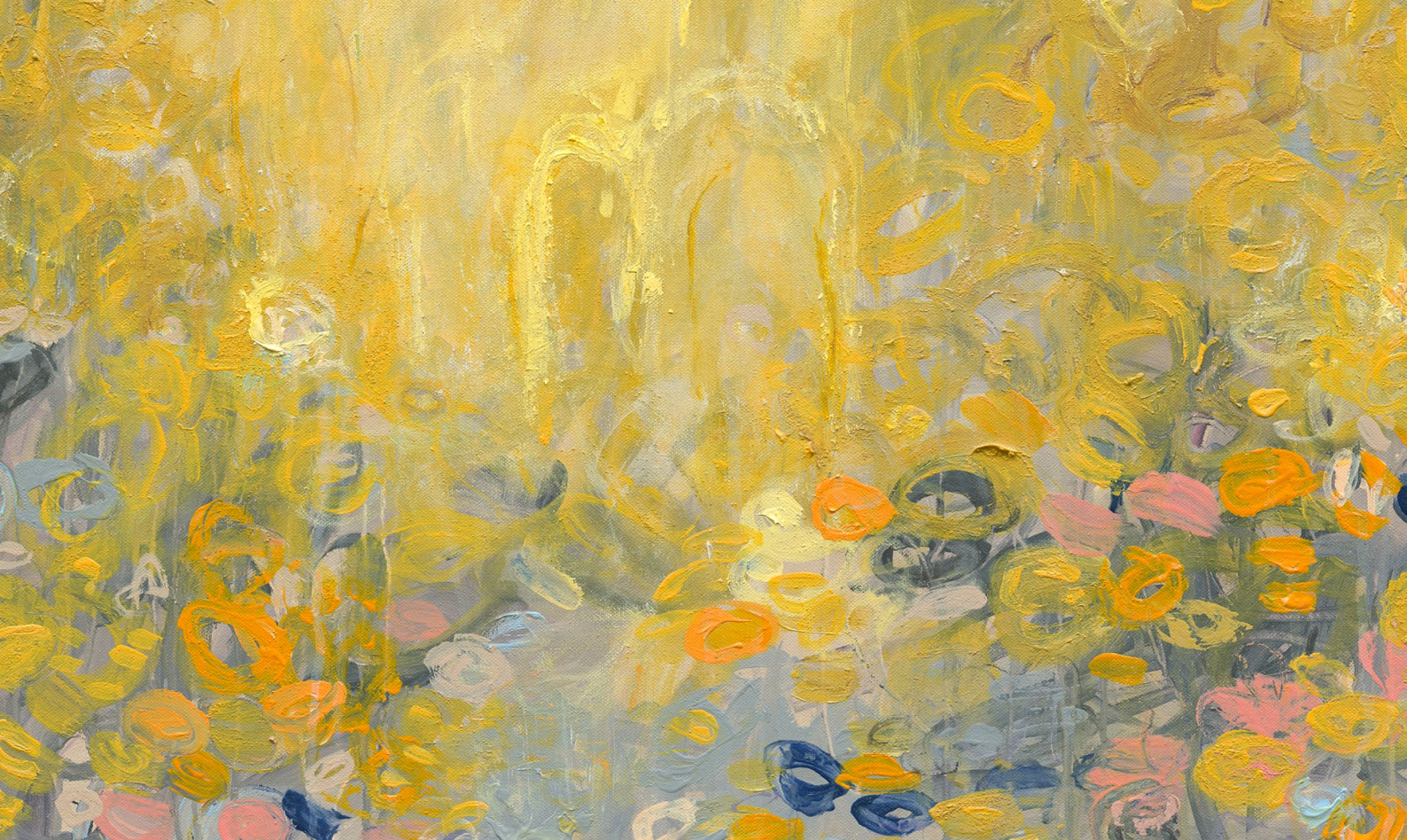
E mcdblazaro@fnslaw.com.ph

Fortun Narvasa & Salazar is a Philippine full-service Firm, providing advice in the areas of Corporate and Commercial Transactions; Criminal and Civil Litigation; Mining, Energy, Project Finance and Natural Resources; Employment and Industrial Relations; Arbitration and Alternative Dispute Resolution; Mergers and Acquisitions; Electronic Commerce and Information Technology; Estate Planning; Immigration; Intellectual Property; Real Estate; Franchising; Rehabilitation and Insolvency Proceedings; Taxation, and Telecommunications and Public Utilities.

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

This publication supports our International CloudOffices (ICO) initiative, which further support our clients' global objectives in jurisdictions where we do not have a physical office. The KWM ICOs give us flexibility to bring multinational and multidisciplinary teams together, and to scale up or down our services in response to client demands, as and when required.





ABOUT KING & WOOD MALLESONS

A firm born in Asia, underpinned by world class capability. With over 3000 lawyers in 31 global locations, we draw from our Western and Eastern perspectives to deliver incisive counsel.

With 31 offices across Asia, Europe, North America and the Middle East we are strategically positioned on the ground in the world's growth markets and financial centres.

We help our clients manage their risk and enable their growth. Our full-service offering combines un-matched top tier local capability complemented with an international platform. We work with our clients to cut through the cultural, regulatory and technical barriers and get deals done in new markets.

Disclaimer

King & Wood Malleasons refers to the network of firms which are members of the King & Wood Malleasons network. Legal services are provided independently by each of the separate member firms. No member firm nor any of its partners or members acts as agent for any other member firm or any of its partners or members. No individual partner or member in any member firm has authority to bind any other member firm.

See kwm.com for more information.

This publication is provided for general informational purposes only and should not be construed as legal advice. KWM CloudOffices do not provide legal advice in relation to, or practise, local law in the jurisdictions where we do not have a physical presence. Any legal services undertaken by KWM will be provided by one or more of the separate King & Wood Malleasons member firms as described in the Terms of use & legal notices and only in relation to the laws of jurisdictions in which the relevant member firm is licensed to practise.



JOIN THE CONVERSATION



SUBSCRIBE TO OUR WECHAT COMMUNITY.
SEARCH: KWM_CHINA

Asia Pacific | Europe | North America | Middle East

King & Wood Malleasons refers to the network of firms which are members of the King & Wood Malleasons network. See kwm.com for more information.

www.kwm.com

© 2023 King & Wood Malleasons

