



Happy Place by Andrea Edwards

TAKING SECURITY IN SINGAPORE

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN SINGAPORE?

The security interests most commonly seen on lending transactions are:

- **Mortgages** which can be taken on:
 - **Immovable assets** including land (whether registered or not), buildings and fixtures and fittings affixed onto land.
 - **Financial instruments** such as shares.
- **Charges** which can be taken over chattels such as plant and machinery, stock and inventory and ships and aircraft. Charges may also be taken over shares. Fixed charges are commonly used for identified assets in relation to which the beneficiary of the charge requires to maintain a relatively high level of control (e.g. machinery and equipment). Floating charges are commonly used for assets in relation to which the grantor of the charge requires a high level of control (e.g. inventory forming part of the chargor's ongoing business).
- **Pledges** which can be taken over chattels. A pledge requires that its subject matter be capable of actual or constructive delivery to the beneficiary of the pledge and are therefore less commonly seen as compared to mortgages or charges.

- **Assignments** which can be taken over contractual rights such as receivables. Where assignments over receivables are taken, assignees may also require the assignor to grant them a fixed or floating charge over the bank accounts into which the receivables are paid.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured under Singapore law. However, where assets involve assigning the rights of a party to a contract, the terms of such contract may contain an express prohibition against assignment. In such cases, the relevant contracting party(ies)'s consent will be required before the assignment is considered effective.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

Singapore companies (incorporated pursuant to the Singapore Companies Act (Cap. 50) (the "Act")) and foreign companies registered in Singapore are required to register certain types of security interests including most of the security interests described above. If the document creating the security is executed in Singapore, the registration must be made within 30 days of creation of the security, otherwise it must be made within 37 days of creation of the security. In addition, security interests over certain assets (e.g. aircraft, ships, intellectual property rights and land) will need to be registered at specialist registries and additional fees may be payable.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

Notarisation is not required for security documents which are executed and/or enforced in Singapore.

DOES IT TAKE LONG TO REGISTER OR PERFECT SECURITY?

Filing of the relevant security instrument(s) with the Accounting and Corporate Regulatory Authority ("ACRA") is instantaneous (once filing forms are completed) and confirmation of registration from ACRA is normally instantaneous. The timeframe for registration at specialist registries differs according to each registry.

IS STAMP DUTY PAYABLE?

Ad valorem stamp duty of up to SGD500 is payable on a mortgage or charge over immovable property, stock or shares.

ARE "PARALLEL DEBT" PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

No. Singapore recognises trusts and therefore the security can be held on trust for the beneficiaries.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN SINGAPORE?

There are no general restrictions on foreign lenders taking or enforcing security in Singapore, so long as the Singapore courts have jurisdiction over the matter.

However, any lender carrying on a business of moneylending in Singapore is required under the Singapore Moneylenders Act (Cap. 188) to either (i) obtain a licence to do so, (ii) qualify for an exemption from the licensing requirement or (iii) come within one of the categories of "excluded moneylender" under the Singapore Moneylenders Act (Cap. 188).

If a foreign lender is an "excluded moneylender", it need not be licensed, qualified or otherwise entitled to carry on business in Singapore to enforce its rights under a typical financing document, or to execute or perform its obligations under a financing document.

In addition, industry specific legislation in Singapore imposes restrictions, approval requirements and notice requirements on the enforcement of security and acquisition of ownership interests in certain industries, e.g. telecommunications, broadcasting, news, banking, finance and insurance.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

A foreign security grantor' waiver of sovereign immunity will be legally binding and enforceable if it satisfies the conditions as set out in the Singapore State Immunity Act (Cap. 313).



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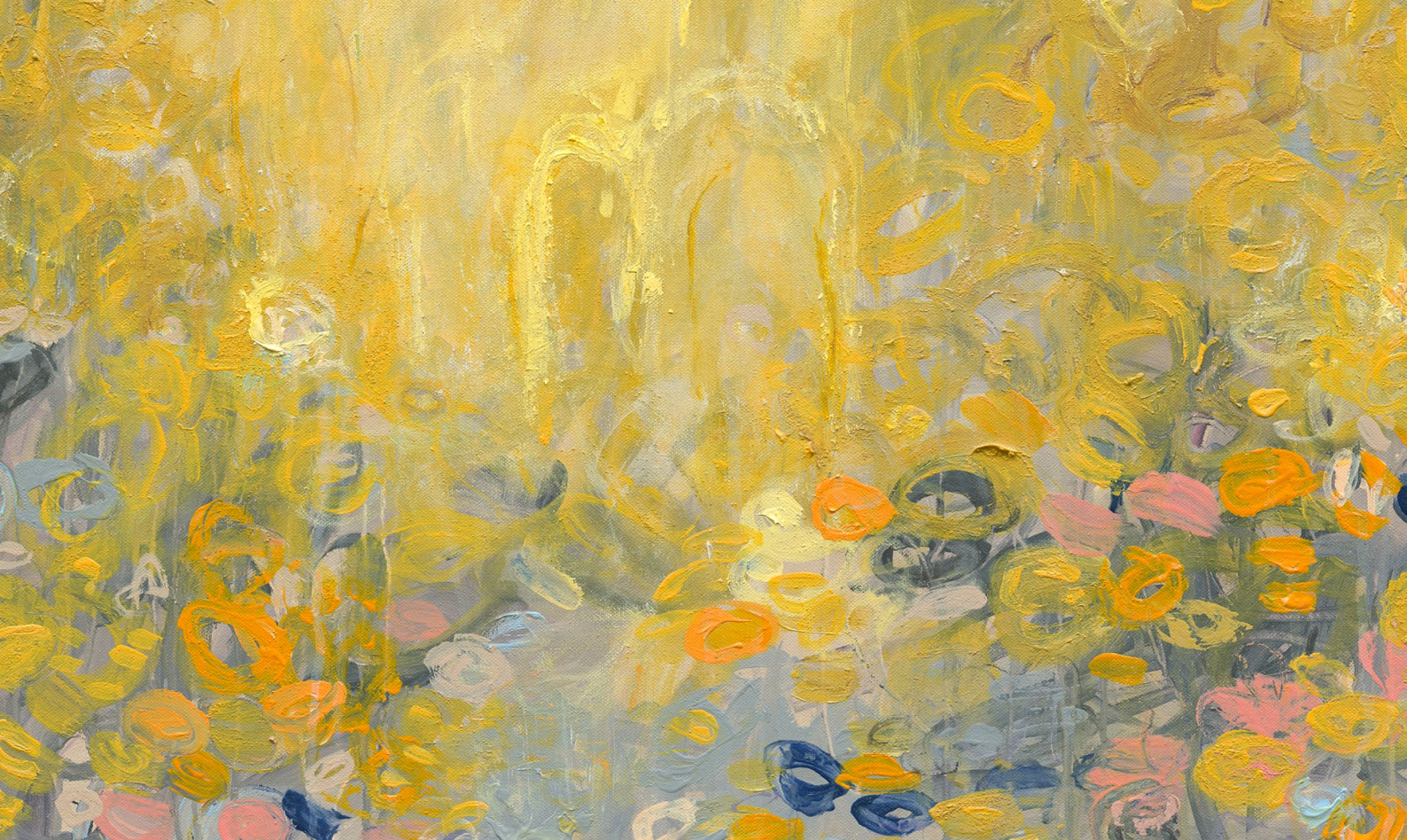
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TSMP Law Corporation acts for financial institutions and corporates in high-value financing transactions, often involving cross-border secured and syndicated lending, acquisition financing as well as debt restructuring, purchase of loans and refinancing. TSMP lawyers are also involved in the PE and VC space and often advise start-ups, SMEs, private and pension funds on their angel investments. The team also advises clients in the debt capital markets sector on the issue of bonds and other debt instruments (including convertible and exchangeable notes and programmes).

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

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