



Happy Place by Andrea Edwards

TAKING SECURITY IN REPUBLIC OF KOREA

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN KOREA?

The security interests mostly commonly seen on lending transactions are:

- **Mortgages:** mortgages are traditionally taken over land, building and plant (immovable assets) and can also be taken over other movable assets of which the ownership is registered including cars, construction machinery, ships and aircrafts.
- **Lien:** Lien (right of retention) are usually taken over land, building and plant (immovable assets) and can also be taken over the movable assets. A lien is extinguished by the loss of possession.
- **Pledges:** pledges are usually taken over movable assets (including bank accounts, shares, investment securities and excluding the object of mortgage) and rights or claims excluding the right to use and take the profit from the immovable assets.
- **Provisional registration for security:** a provisional registration security is taken over immovable assets. Provisional registration creates a form of collateral specific to Korea and is regulated by the Provisional Registration Security Act. Under this form of security, if the security grantor fails to repay the debt which is secured, the creditor may register the immovable asset in the creditor's name (principal registration). If the asset value at the time of registration exceeds the amount of the debt which is secured, the excess amount shall be paid by the creditor to the security grantor.

- **Transfer for security:** transfer for security are taken over immovable or movable assets. The ownership of such assets will be transferred to the lender at the time of establishment of the security interest. This type of security was created by case law and is commonly used.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

Mortgages, provisional registrations for security and transfers for security (excluding those for movable assets which cannot be registered) must be registered. Mortgages on movable assets must be recorded on the certificates for such assets.

In practice, any foreign entity which is not already registered in the registration office of South Korea shall apply for its own identity number only for the purpose of registering security interests.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

No. Security documents do not need to be notarised. However, documents to which an entity incorporated outside of Korea is a party to must be notarised and legalised in the country in which such entity is incorporated.

Entities incorporated outside of Korea 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, no. Registration and perfection is straightforward and generally takes a few days to a few weeks once all documents are ready (including the documents from foreign entity which requires notarisation and certification).

IS STAMP DUTY PAYABLE?

Stamp duty is generally not payable on the creation of security although it will be payable upon registration of such security. The amount of duty payable generally ranges from KRW 50 to KRW 350,000.

ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

No. Security interests can be held on trust for the beneficiaries.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN SOUTH KOREA?

There are no restrictions on the taking and enforcement of security by foreign persons in South Korea.

[However, note that lending by a foreign person to a Korean resident is a regulated activity in Korea and reporting requirements will apply in certain circumstances.]

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

The Supreme Court of South Korea recently ruled that a foreign sovereign entity benefits from sovereign immunity unless a relevant international treaty stipulates otherwise or such foreign sovereign entity waives its sovereign immunity. However, there is no statute or case law which specifies whether such a waiver of such immunity would be effective in relation to the taking or enforcement of a security interest.



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