



Happy Place by Andrea Edwards

TAKING SECURITY IN THAILAND

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN THAILAND?

The security interests most commonly seen in the realm of lending transactions are:

- **Mortgages:** are the most used form of security taken over immovable property (e.g. land, buildings constructed on the land) and certain types of movable assets such as machinery or ocean-going vessels. Note that a mortgage may only be taken over such machinery that is duly registered under the Machinery Registration Act 1971.
- **Pledges:** are a common form of security over movable assets. Movable assets are defined under the Thai Civil and Commercial Code 2015 (“CCC”) as things not regarded as immovable assets. Such things include rights attached to movable assets. A pledge can be created by the pledgor physically delivering the pledged movable asset to the pledgee. In Thailand, pledges are frequently taken over shares in a company for the purpose of securing the pledgor’s obligations under a relevant transaction or contract.
- **Business Collateral:** can be taken over business, contractual rights (including receivables), movable assets used as part of the borrower’s commercial activities such as machinery, stock inventory, raw materials for the production of goods, and intellectual property.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured, provided that the security over such assets is granted by an individual or entity that has valid legal ownership or enforceable rights over such assets.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

Mortgages must be registered with the competent authority (e.g. land office, local machinery registration office) and business collateral agreements must be registered with the Department of Business Development. Other security interests do not need to be registered.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

In the event that a power of attorney (“POA”) to register a mortgage is executed outside of Thailand, the POA must be (i) legalized by the Embassy or Consular authority; or (ii) notarized by the Notary Public of the jurisdiction in which the POA is issued. Other security documents do not need to be notarized. However, entities incorporated outside of Thailand 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?

The registration of certain mortgages can take up to 30 days (as the registration of a mortgage on certain types of land may trigger a right for third parties to object). Other registrations can be done in a matter of days.

IS STAMP DUTY PAYABLE?

For mortgages and pledges, stamp duty is payable. However an exemption will apply if stamp duty at the rate of THB 1 for every THB 2,000 (capped at THB 10,000 - approximately USD300) has been paid in relation to the on the loan agreement. If the exemption does not apply, stamp duty at the rate of THB 1 for every THB 2,000 or a fraction of the loan principal (capped at THB 10,000 - approximately USD300) will be applied. No stamp duty is payable in relation to other security interests.

ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

Thailand recognizes parallel debt and parallel debt provisions are commonly used in financing documents for syndicated financings.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN THAILAND?

Foreign lenders can generally take and enforce security in Thailand. However, note that:

a foreign lender is not permitted to take ownership of land. Therefore, upon enforcement of a mortgage on land by a foreign lender, such lender would only be able to enforce the security by way of a sale of the land through a public auction. The prohibition on land does not extend to buildings or constructions, which can be mortgaged separately to a foreign lender. If the foreign lender only has title in a building but not land where the building is constructed on, the foreign lender would not have access to building as an entrance to the building would still be on the land. In practice, to address this issue, the foreign lender would need to secure a right to use land to ensure that a building is marketable for a foreclosure process or the foreign lender would have access to a building if the mortgage is enforced.

in relation to business collateral, security can only be taken by (i) a Thai commercial bank; (ii) a subsidiary or branch of a foreign bank located in Thailand; or (iii) a foreign commercial bank in the event where a Thai bank is participating in the loan (as a member of the loan syndicate for example).

Note that Thai law does not restrict lending by offshore lenders to Thai residents. However, note foreign exchange regulations do apply to loans made by offshore lenders to Thai residents.

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Yes, provided the waiver is granted expressly and in writing.



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

THAILAND INTERNATIONAL CLOUDOFFICE CONTACTS



WILL MCCOSKER

PARTNER
Singapore

E will.mccosker@sg.kwm.com



HU QIAN

PARTNER
New York

E qian.hu@us.kwm.com

LOCAL COUNSEL CONTACT



VINAY AHUJA

PARTNER, Head of Regional
Banking, Finance & Technology
Practice
Bangkok

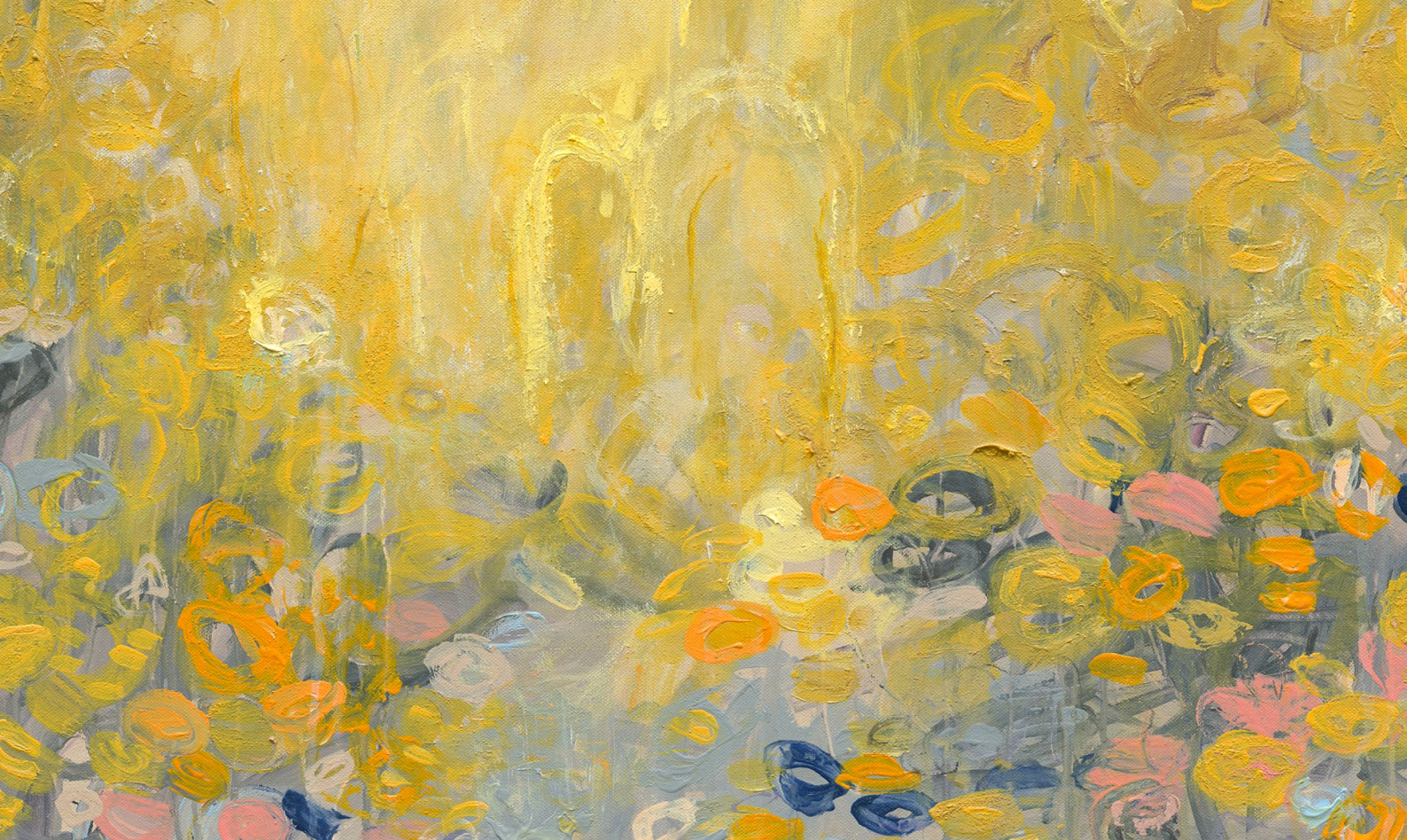
E vinay.ahuja@dfdl.com

DFDL was established in 1994 and founded on a unique vision: create an integrated legal and tax advisory firm, with in-depth knowledge of the developing Southeast Asia region. Our dedicated team of experts exhibits the acumen and insight necessary to assist you in navigating the legal and tax complexities and challenges of today's world. Drawing on a wide-ranging industry experience and finely tuned local knowledge, we strive to provide concise, commercially focused and innovative legal, tax and investment advisory services.

This publication has been prepared with the assistance of DFDL (local counsel in Thailand), 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

