



Happy Place by Andrea Edwards

TAKING SECURITY IN TIMOR-LESTE

WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN TL?

The security interests mostly commonly seen on lending transactions are:

- **Mortgages:** Mortgages are taken over land. Under the Constitution of TL (article 54) and as per the Land Law, only Timorese citizens and companies 100% owned by Timorese are entitled to own immovable property, i.e. land and buildings. Mortgage shall be necessarily reported in a public deed and to be effective between the parties, the mortgage must be registered. However, up until the moment, there is no Land Registry established in Timor-Leste and there is no registry law.

- **Pledge:** Pledge over shares and equity interests ("quotas") are commonly seen. Pledges can also be taken over machinery, tools, equipment as well as contractual rights.

ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Land and building may be secured through a registered mortgage and shares and quotas through registered pledge. The remaining assets cannot be secured.

DO SECURITY INTERESTS NEED TO BE REGISTERED?

By law, mortgages on land must be registered in order to be effective between the parties. However, at this date no Land Registry has been established in Timor-Leste and there is no Registry Law; this means that in practical terms a mortgage is not effective against third parties.

Pledge over quotas must be registered with the Commercial Registry Office (SERVE). Pledge over assets and rights do not need to be registered. However, note that pledges over machinery, tool and equipment require the delivery of the pledged asset or disposal rights to be granted by the pledgor in order to be effective and that pledges of contractual rights generally notification and acceptance by the counterparty to the relevant contract.

DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

Mortgages need to be notarised before a Public Notary. Other types of security documents do not need to be notarised. However, entities incorporated outside of Timor-Leste 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?

As mentioned above, there is currently no authority to register mortgages. Generally, registration and perfection of a pledge over shares or quotas is straightforward and generally takes a week.

IS STAMP DUTY PAYABLE?

No taxes are due.

ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

Yes. As Timorese law does not recognize the concepts of trusteeship or security agent, intercreditor agreements usually establish that only the security agent may enforce the security documents in its capacity as joint and several creditor. Security may be registered in favor of each and all of the secured parties or just in favor of the security agent (under tailored parallel debt clauses that include the Security Agent as joint and several creditor) but the Security Agent may be required to prove to be duly and expressly empowered for such purpose.

CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN TL?

There are no restrictions on the taking and enforcement of security by foreign persons in TL. Foreign lenders, as other lenders, can enforce a mortgage on land through a court driven sale process (it is not possible for a mortgagee to acquire ownership of the property in case of default of secured obligations). Such sale will be subject to the restrictions on real estate ownership indicated above.

Foreign lenders should note that the activity of “money lending” requires a license to be issued by the national regulatory authority (Central Bank of Timor-Leste), except where an international financing agreement is entered into between the GoTL and the financial institution (e.g. Export Credit Agencies (ECAs) or Multilateral Development Banks (MDBs), such as IFC and AIIB).

CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Yes. East Timor is a signatory to the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (New York, 2 December 2004). Although this convention is not yet in force, local Courts are familiar with acts *iure gestionis* as encapsulated in article 10 of the Convention.



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