



Happy Place by Andrea Edwards

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# TAKING SECURITY IN VIETNAM

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## WHAT TYPES OF SECURITY INTERESTS CAN BE TAKEN IN VIETNAM?

The security interests most commonly encountered in lending transactions are:

- **Mortgages:** mortgages can be taken over immovable assets (i.e. land use right and assets attached to land) and movable assets, including but not limited to shares and contractual rights such as receivables and debt collection right. The mortgagor keeps ownership and possession of the assets mortgaged.
- **Pledges:** pledges can be taken over movable assets such as equipment, machinery, aircrafts and valuable papers such as bonds and share certificates. A pledge requires the physical delivery by the pledgor of the assets to the pledgee.

Note that unlike other jurisdictions, Vietnamese law does not recognize the concept of floating charge and there are no similar concepts under Vietnamese law.

## ARE THERE ANY ASSETS THAT CANNOT BE SECURED?

Most assets can be secured.

## DO SECURITY INTERESTS NEED TO BE REGISTERED?

Security interests over certain assets must be registered at a competent registrar in order to be legally binding and effective, including mortgages over land use rights, mortgages over assets attached to land, pledges/mortgages over aircraft and those over vessels.

Additional requirements apply in relation to a pledge of securities which are registered and deposited at the Vietnamese Securities Depository (VSD). Pledges of these securities must be registered with the VSD and will only be effective after the book entry transfer of the relevant secured securities from the securities trading account of the pledgor to the pledged securities account of the pledgee. Following the transfer the securities will be “frozen” to prevent further trading.

Security interests over other movable assets, assets attached to land to be formed in the future, retention of ownership in certain cases such as purchase of assets attached to land, purchase of aircrafts or vessels may be registered with a competent registrar (such as the National Registry of Secured Transactions (“NRAST”) or district land registry office) upon request of the parties to become enforceable against to third parties and create a priority ranking. Although such registration is not compulsory, it is strongly recommended.

## DO SECURITY DOCUMENTS NEED TO BE NOTARISED?

A mortgage of land use rights or other immovable assets must be notarized by the public notary in the province or city where the asset is located. Notarisation is not required for other types of security documents. However, entities incorporated outside of Vietnam 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, registration only takes a few business days.

## IS STAMP DUTY PAYABLE?

No stamp duty is payable.

## ARE “PARALLEL DEBT” PROVISIONS REQUIRED IN SYNDICATED FINANCINGS?

Vietnamese law recognises the concept of “security agent”. However, this notion is not developed in the relevant legislation, and Vietnamese law does not expressly recognise the concept of trust. Parallel debt provisions are not recognised and not used.

## CAN A FOREIGN LENDER TAKE AND ENFORCE SECURITY IN VIETNAM?

A foreign lender can take and enforce security over most of assets, except land use rights and immovable assets. Vietnamese law does not allow a foreign entity to hold a land use right, other than through a foreign owned enterprise in Vietnam and solely for the purpose of implementation of a registered project. In practice, one of the ways for foreign lenders to take security over immovable assets is to divide the financing structure into two parts: (i) offshore lender financing and (ii) onshore lender financing. The onshore lender then will take security over immovable assets in favour of the onshore loan. Subsequently, the proceeds from the security over the immovable assets as the result of enforcement will be mortgaged to the offshore lender as a receivable. This does create an additional risk for the foreign lenders in that they exposed to credit risk in respect of local banks. Other structures may be available on a case-by-case basis.

Note that lending by foreign lenders is regulated in Vietnam.

## CAN A FOREIGN SECURITY GRANTOR WAIVE ITS SOVEREIGN IMMUNITY?

Yes. The Civil Code recognizes sovereign immunity waivers which are provided under a treaty or agreed between parties.



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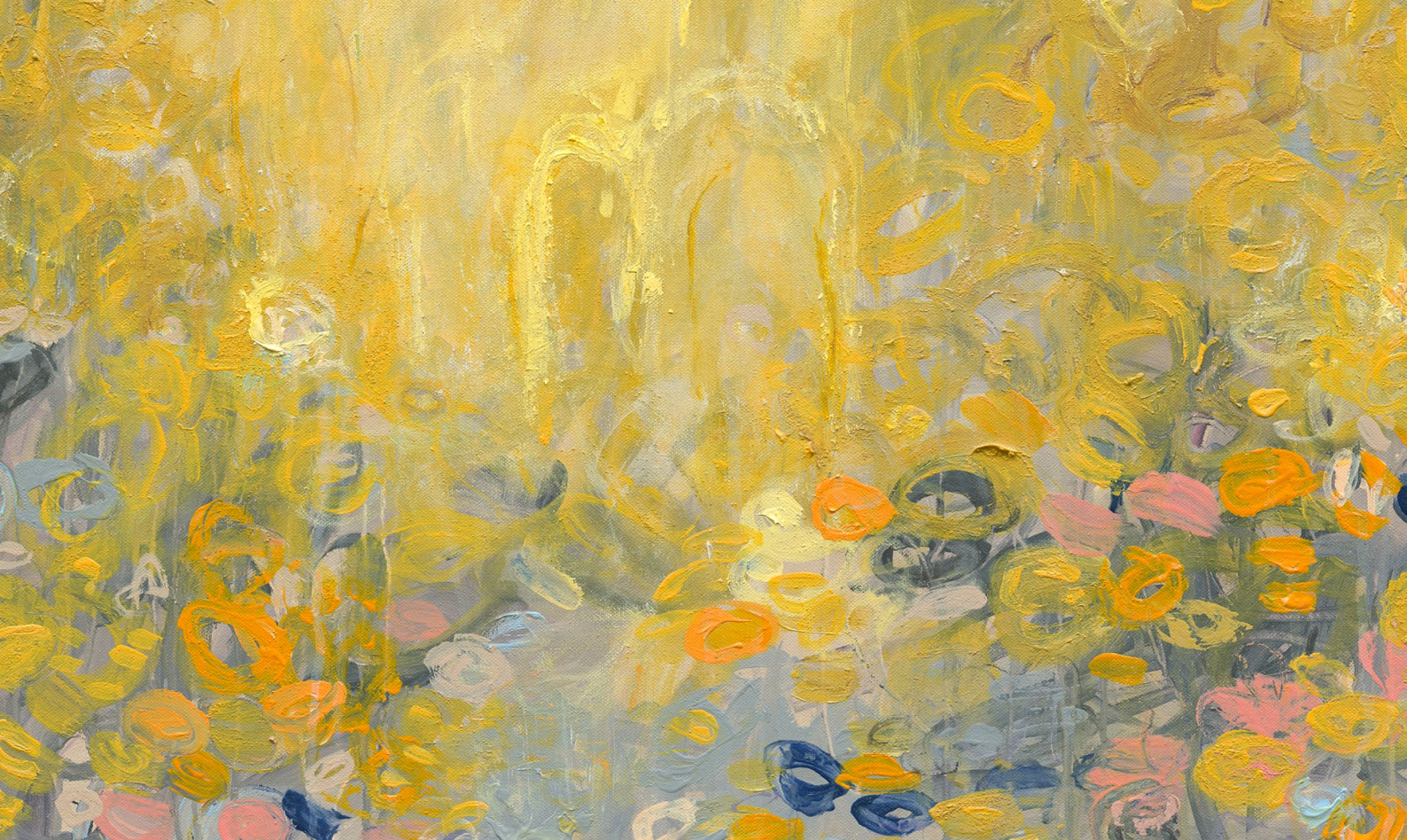
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