



Finance & Loan Security Rights in Real Estate in the COVID-19 Era

10 Key Questions & Answers – Focus on Lao PDR

NO.	QUESTIONS	GOVERNMENT RESPONSES
1.	<p>In light of COVID-19, are there any new government schemes covering forbearance of bank debt in the Lao PDR?</p>	<p>Yes, in March the Bank of Lao PDR issued a Decision instructing commercial banks to postpone the repayment of principal and interest, reduce interest rates and fees charged to customers.</p> <p>The Commercial Bank Supervision Department of the Bank of Lao PDR issued a further Instruction in May elaborating on the suggested credit policies to be implemented including: (i) debt restructuring by postponement of repayments of principal, interest; reduction of interest rates or fees and charges; exemption from penalty measures for debtors; and (ii) provision of new loans to support liquidity or to restore production and business operations.</p>
2.	<p>Can security over real property (i.e. mortgage, charge, etc.) be granted to a foreign lender in the Lao PDR?</p>	<p>A foreign lender can take a security (pledge or mortgage) over immovable assets/real property.</p>
3.	<p>Can second ranking security be taken against real property?</p>	<p>A debtor can grant a second ranking security over real property. The debtor must first register the first creditor's security interest in accordance with the Civil Code before granting lower priority security to subsequent creditor(s).</p>
4.	<p>Can security granted to a foreign lender (of any rank) be perfected by registration in the Lao PDR?</p>	<p>Yes, a security granted to a foreign lender requires registration in the Lao PDR to be perfected.</p> <p>A security interest over moveable collateral is perfected when it is registered with the State Assets Management Department ("SAMD") or, in the case of a security over immovable assets, at the Ministry of Natural Resources and Environment ("MoNRE") or the relevant provincial Department of Natural Resources and Environment ("DoNRE") where the property is located.</p> <p>Under the new Land Law, registration should be performed at DONRE (not MoNRE) where the land is located in the presence of the parties and land officers, however, in practice this process has not yet been implemented. Further regulations are anticipated to clarify the process.</p>



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5.	<p>Which is the competent authority/department in Lao PDR which registers security interests over real property? What is the security registration process in the Lao PDR?</p>	<p>The relevant authority for registration of security interests over real property is DoNRE (or MoNRE) where the property is located (see comments in Question 4 above).</p> <p>The following conditions are required for registration:</p> <ul style="list-style-type: none"> ▪ The debtor and creditor have entered into a security agreement, whereby an obligation to repay a debt or to perform an obligation is outlined and the security agreement is signed in the presence of three witnesses; ▪ The security agreement is notarized at the Lao PDR Notary Office (which requires a Lao translation if not executed in Lao language). The Notary Office will keep one original of the security agreement; ▪ Registration of the security agreement with DoNRE (or MoNRE) requires the original land title certificate/ land title deed and a land title accuracy certificate to be presented during registration, which will occur in the presence of the parties and land officers. DoNRE (or MoNRE) will keep one original of the security agreement. <p>The Land Law provides that the DONRE must proceed with registration of the security over the land or real property within three working days of receipt of a complete application and will issue a certificate of acknowledgement of registration of the relevant security.</p>
6.	<p>Are there any challenges or practical difficulties to secure registration over security interests granted to foreigners?</p>	<p>No, we have not experienced any difficulties in registering security interests granted to foreigners/foreign lenders.</p> <p>Registration of security interests over immovable assets may incur significant costs given that the registration fee for an immovable assets security agreement to secure a loan represents 0.2% of the borrowed amount.</p> <p>Translation costs may also be a practical consideration, as notarization requires a full translation of the relevant security agreement into Lao language.</p>



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7.	<p>Can a foreign lender transfer its security rights over real property to a third party? If so, can the transfer be effected without the borrower’s consent?</p>	<p>Creditors have the right to transfer their security rights to new creditors, except where the law or the contract does not authorize the transfer of rights. Pledges or mortgages have the right to transfer their security to other unsecured creditors of the same debtor, provided that the value of such a transfer does not exceed the value of the secured debt.</p>
8.	<p>Can a foreign lender take ownership of real property in the event of foreclosure?</p>	<p>Under the Land Law, a foreign lender cannot be granted “land use right” (akin to ownership) and therefore, in the event of a foreclosure, a foreign lender cannot take ownership of the real property. The mechanics and practicality of enforcement should be carefully considered when drafting any such security agreement.</p>
9.	<p>Can a foreign lender take a security over rental income of a borrower or convert debt into equity?</p>	<p>Yes, security over the rental income of a borrower is possible and will be perfected when registered with the SAMD.</p> <p>It must meet the following conditions:</p> <ul style="list-style-type: none"> ▪ The debtor and creditor have entered into a security agreement, where an obligation to repay a debt or to perform an obligation is outlined; and ▪ The pledged rights are owned by the debtor. <p>A foreign lender could undertake a debt/equity swap which will be effected by way of an increase in the registered capital of the borrower and changes to the shareholding. This will require corporate documents and licenses to be amended and approved by the relevant authorities.</p>
10.	<p>In light of COVID-19, are online registrations being accepted or are there any other interim or modified arrangements made by the registry?</p>	<p>The SAMD has implemented an online registration system for movable asset security agreements. There is currently no online registration system for immovable asset security agreements.</p>



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