



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

## 10 Key Questions & Answers – Focus on Vietnam

OCTOBER 2020



NO.	QUESTIONS	GOVERNMENT RESPONSES
1.	<b>In light of the COVID-19 situation, are there any new government schemes covering forbearance of bank debt in Vietnam?</b>	<p>The State Bank of Vietnam (“<b>SBV</b>”) issued Circular No. 01/2020/TT-NHNN on 13 March 2020 regulating restructuring by credit institutions and foreign bank branches of debt repayment terms, exemption and reduction of interest and fees, and retention of debt groups aimed at assisting customers and alleviating the impact of Covid-19. The exemption or reduction of interest and fees is applicable to debt to equity ratios arising from credit facilitation activities (excluding the purchasing of and investment in corporate bonds) for which the obligation to repay the principal and/or interest is due from 23 January 2020 to three months after the date on which the Prime Minister declares the end of the Covid-19 outbreak and customers are unable to repay the principal and/or interest on time in line with the signed contracts or agreements due to declining revenue and income resulting from the impacts of Covid-19.</p>
2.	<b>Can security over real property (i.e. mortgages, charges etc.) be granted to a foreign lender in Vietnam?</b>	<p>Immovable property (i.e. land use rights and assets attached to the land) can only be mortgaged to credit institutions authorized to operate in Vietnam, including Vietnamese commercial banks, branches or subsidiaries of foreign banks established in Vietnam provided that those institutions are permitted to do so.</p> <p>Several foreign lenders have used onshore/offshore lending structures with a Vietnamese bank (or foreign bank branches in Vietnam) as a security agent. There then usually follows entry into an inter-creditor agreement to tie the obligations together.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
3.	<p><b>Can second ranking security be taken against real property?</b></p>	<p>By law, the mortgage of; land use rights and/or assets attached to land, forest land use rights, ownership of planted forest land for production or an aircraft or ship shall become effective from the time that the mortgage is registered. Thus, for a second ranking security over immovable property to be valid (i.e. land use rights and/or assets attached to the land) in Vietnam must be registered with the competent authority.</p> <p>By law, a single item of property (i.e. land use rights and assets attached to the land) may be used as security for the performance of several obligations if, at the time the security transaction is triggered, the value of such property is greater than the total aggregate value of the secured obligations, unless as otherwise agreed or provided by law. Where the property must be realized in order to satisfy one obligation which has become due, the other obligations which have not yet become due shall also be deemed due and all jointly secured parties shall be entitled to take part in the realization of the property. The secured party which provided notice of realization of the property shall be responsible for realizing the property, unless otherwise agreed by the jointly secured parties.</p>
4.	<p><b>Can security granted to a foreign lender (of any rank) be perfected by registration in Vietnam?</b></p>	<p>The mortgage of land use rights and/or assets attached to land, forest land use rights, ownership of planted forest land for production or an aircraft or ship shall become effective from the time that the mortgage is registered.</p> <p>A security over assets which is registered shall be enforceable against a third party from the time of registration. When the security becomes enforceable against a third person, the secured party may have recourse to the secured property and is entitled to payment as stipulated in the Vietnamese Civil Code and other relevant laws.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
5.	<p><b>Which is the authority/department in Vietnam which registers security interests over real property?</b></p> <p><b>What is the security registration process in Vietnam?</b></p>	<p>Security interests over real property must be registered at the local Land Use Rights Registration Office of the local Department of Natural Resources and Environment in the locality where the property is located.</p> <p>The security registration process is generally as follows:</p> <ol style="list-style-type: none"> <li>i. After receiving the registration dossier, the registrar checks the validity of the dossier.</li> <li>ii. In case the application is valid, the registrar shall enter the registration into the Receipt Book and make an appointment with the applicant to deliver the results.</li> <li>iii. In the event that the application is not valid, the registrar shall return the dossier and provide instructions on how to complete the application in accordance with the law.</li> </ol>
6.	<p><b>Are there any challenges or practical difficulties to secure registration over security interests granted to foreigners?</b></p>	<p>As noted in the response to Question 2 above, immovable property (i.e. land use rights and assets attached to land) can only be mortgaged to credit institutions authorized to operate in Vietnam.</p> <p>For other kind of assets for which a security may be granted to foreign entities, the foreign nationals may face practical difficulties in terms of registering security interests caused by the inconsistent implementation of relevant laws and regulations across provinces of Vietnam and the licensing authority would usually require additional documentary evidence which thus far has not been stipulated by laws or relevant decrees.</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>As noted in the response to Question 2 above, immovable property (i.e. land use rights and assets attached to land) can only be mortgaged to credit institutions authorized to operate in Vietnam.</p>
8.	<p>Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<p>As noted in the response to Question 2 above, immovable property (i.e. land use rights and assets attached to land) can only be mortgaged to credit institutions authorized to operate in Vietnam.</p> <p>A secured party can choose to receive the actual security property in lieu of performance of the obligation by the securing party as a method of realization of security property pursuant to the security agreement.</p> <p>In the case where there is no agreement on the method of realization of the security property being a land use right and property attached to the land, then such property shall be sold by auction.</p>
9.	<p>Can a foreign lender take a security over rental income of a borrower or convert debt into equity</p>	<p>Yes for both situations.</p> <p>A foreign lender can take a security over rental income of a borrower as this type of secured asset is not subject to any limitations.</p> <p>For the conversion of debt into equity, foreign lenders need to ensure compliance with Circular No. 51/2018/TT-NHNN dated 31 December 2018 on conditions, necessary documents, order and procedures for approving capital contribution to and the purchase of shares in credit institutions.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
10.	<b>In light of COVID-19, are online registrations being accepted or are there any other interim or modified arrangements made by the registry?</b>	For security over movable assets, online registration for the security registration process has been made available since late 2017. In light of COVID-19, no new arrangements have been made by the registry.  For security over immovable assets, online registration is not yet available.





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