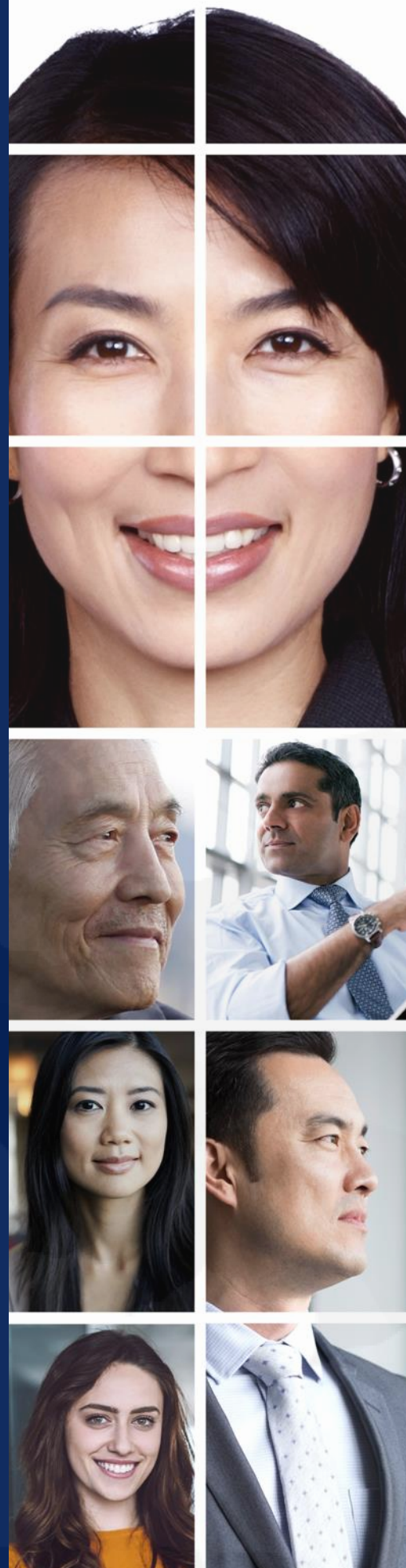


LEGAL COMPARATIVE
GUIDE:

TAKING AND
ENFORCING
COLLATERAL SECURITY
AND GUARANTEES IN
SOUTHEAST ASIA



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OVERVIEW

This guide is a collaborative effort by leading law firms across the region under Drew Network Asia (DNA), drawing on the extensive experience of practitioners advising on secured lending and enforcement matters in their respective markets. It offers a practical overview of the legal frameworks governing the taking and enforcement of collateral security and guarantees across seven key Southeast Asian jurisdictions: Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. It is designed to assist financial institutions, corporate borrowers and cross-border investors in understanding the mechanisms available to secure lending transactions in the region.

Presented in question-and-answer style, each jurisdictional chapter addresses the same set of questions. These include the types of assets that may be secured, the formalities for creating and registering security interests, and enforcement rights.

While this publication provides a comparative bird's-eye view of collateral and guarantee regimes across Southeast Asia, it is not exhaustive by any means. The legal landscape in each jurisdiction may be subject to further developments and practical nuances depending on deal-specific factors. If in-depth advice is required, please do not hesitate to consult the respective lawyers whose contact details are set out at the end of each chapter for tailored advice on specific transactions.

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CAMBODIA

1. CAMBODIA

1) Collateral Security

1.1 How are assets classified in Cambodia?

Assets are generally classified as movable and immovable properties.

1.2 Can collateral security be taken over all classes of assets?

All classes of collateral may potentially be available to secure lending obligations, provided the grant thereof is not against public policy or any provision of the laws. There are two fundamental types of security: real security and personal security.

Common classes of collateral that can be granted under the Cambodian Civil Code (**Civil Code**) include security over movable property, immovable property, perpetual leases, usufructs of immovable property, contractual rights and other claims.

Collateral that can be granted under the Law on Secured Transaction include security over goods, fixtures, movable property and intangible property. Intangible properties include any movable thing or right other than goods, accounts, secured sales contracts, documents, instruments and money.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

A security agreement must be in writing, clearly stating the collateral being secured, and meet all conditions of validity. Please see below a brief description of the different security agreements applicable to different classes of collateral assets:

- a) **Real property (land and building):** Security interests over land, buildings, and fixtures are typically created through a hypothec. These interests must be registered with the relevant land registry office.
- b) **Plant, machinery and equipment:** A pledge is typically granted over plant, machinery, and equipment. The pledge must be in writing and registered with the Secured Transactions Filing Office (**STFO**) under the Ministry of Commerce.
- c) **Inventories:** Inventories can be secured through a floating pledge. This allows the borrower to continue using the inventory in the ordinary course of business. The floating pledge must be in writing and registered with the STFO.

- d) **Receivables:** Receivables and other contractual rights can be secured through a pledge. The pledge must be in writing and registered with the STFO.
- e) **Cash deposited in bank accounts:** Security over cash deposited in bank accounts is typically created through a charge. The charge must be in writing and registered with the STFO.
- f) **Shares:** Shares in a company can be secured through a pledge. The pledge must be in writing and registered with STFO.

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

Security documents for immovable assets, including all necessary supporting documents such as shareholders' resolutions and representatives' identity documents, must be notarised by a notary public before they can be registered with the land office. While notarisation is not strictly required for security documents over movable assets, it is advisable to have all security documents and their supporting documents, such as notices of assignment and powers of attorney, signed in the presence of a Cambodian attorney or a notary public.

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

There are no prior governmental or regulatory approval required for the granting of security, except for the filing and registration requirements highlighted under question 1.7.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

Notarisation fees are dependent on the rates set by individual notaries. The fee for filing a notice of a secured interest under the STFO is KHR40,000 per filing. Stamp duty is not applicable if there is no transfer of ownership.

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

In Cambodia, the filing and registration requirements for security vary across different classes of assets:

For immovable assets such as land and buildings, security interests must be registered with the relevant land registry office under the Ministry of Land Management, Urban Planning, and Construction. The security agreement must be signed in blue ink and written in Khmer for the purpose of registration. Registration typically takes one to two weeks.

For movable assets such as shares, security interests must be registered with the STFO. This is an online filing process where a Portable Document Format copy of the security document must be uploaded. Registration and filing are typically completed instantly after the online submission.

Filing and registration requirements apply to both individual and corporate security providers, with individuals being required to provide identity documents and companies being required to provide their corporate documents.

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

There are no statutory restrictions on the transfer of a collateral or a security agreement.

2) Guarantees

2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

No governmental consent or filings are generally required for the granting of a guarantee.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

No, unless otherwise restricted by the constitutive documents of the company, contracts or other prohibitions or restrictions binding on the company.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

A contract of guarantee must be in writing and signed by the person sought to be rendered liable under the guarantee. The amount guaranteed must be handwritten, otherwise the guarantor can revoke the guarantee at any time. This requirement is applicable to both individual and corporate guarantors. There are otherwise generally no other formalities in relation to the execution of guarantee.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

No stamp duty is chargeable in relation to the granting of guarantee.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

There are generally no filing or registration requirements in relation to the granting of a guarantee. The main requirement is that the guarantee must be in writing and signed by the parties involved. This applies to both individual and corporate guarantors. Since there are no formal filing or registration processes, the execution of a guarantee can be completed quickly depending on the internal procedures of the involved parties.

3) Judicial enforcement

3.1 Will the courts in Cambodia recognise a foreign governing law, and enforce a contract governed by such foreign governing law?

As set out in section 3 of the Civil Code, parties are free to select the law of any country as the governing law of a contract. However, the Cambodian authorities and court will not recognise and enforce such foreign governing law to the extent that it would contravene the “public order and good customs” of Cambodia. In addition, agreements relating to certain subject matter (e.g. real estate issues, zoning issues, etc.) can only be governed by Cambodian law.

When the parties to a contract specify a foreign governing law, and the contractual dispute is brought before Cambodian courts, it is necessary to prove such foreign law during the court proceedings (normally using an expert witness).

3.2 Will the courts in Cambodia recognise and enforce a judgment obtained in the courts of a foreign country against a party?

Foreign judgements will not be enforced by a Cambodian court unless Cambodia has a reciprocal arrangement with the foreign

country where the court is based. Presently, Cambodia has not entered into any reciprocal agreements with foreign jurisdictions on the recognition of foreign judgments, except for Vietnam.

3.3 Will the courts in Cambodia recognise and enforce an arbitration award given against a party?

Cambodia is a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and is obligated to recognise and enforce foreign arbitral awards. The Law on Commercial Arbitration of Cambodia also provides for the recognition and enforcement of foreign arbitration awards by the Appeals Court of Cambodia. However, the courts may refuse to enforce such awards on grounds recognised by the New York Convention, which include, amongst others, the incapacity of a party, the failure to give proper notice to a party or the inability of a party to present his/her case, if the selection of the arbitrators or the arbitral procedure was inconsistent with the agreement of the parties or the law of the seat, the invalidity of the arbitration agreement and/or the enforcement of the award being contrary to the public policy of Cambodia.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in your jurisdiction; or (ii) enforcement proceeding against collateral security in Cambodia?

There are no specific restrictions on a foreign lender to commence (i) any court proceeding against a party in Cambodia; or (ii) enforcement proceeding against collateral security in Cambodia, provided the Cambodia courts have jurisdiction over the matter.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

No. There are no specific restrictions against the grant of collateral security or guarantee in favour of a foreign lender.

4.2 Is there any exchange control in Cambodia that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

No. There are no exchange controls in Cambodia that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds. However, in the event of a foreign exchange crisis, the National Bank of Cambodia is authorised to impose certain temporary restrictions on the activities of authorised intermediaries (being licensed banks in Cambodia). This may affect a party's ability to make or settle payments in foreign currency.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in Cambodia?

The principal Cambodian law considerations for lenders when participating in financings in Cambodia have generally been covered by the above questions and answers.

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INDONESIA

2. INDONESIA

1) Collateral Security

1.1 How are assets classified in Indonesia?

Assets in Indonesia can be classified as movable assets or immovable assets. Movable assets consist of tangible (e.g. machinery and equipment) and intangible (e.g. receivables and shares) assets, while immovable assets consist of, among others, land, buildings and vessels.

1.2 Can collateral security be taken over all classes of assets?

In general, collateral security can be taken over all classes of assets, except for state assets which may not be encumbered, seized or confiscated by any party. While the recent decision from the Constitutional Court in 2013 could imply that State-Owned Enterprises' (**SOE**) assets must be treated as state assets, it remains to be seen whether the SOE's assets are allowed to be encumbered as collateral security.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

Please see below a brief description of the different security agreements applicable to different classes of collateral assets:

- a) **Real property (land and building):** A mortgage can be granted over real property by way of a Mortgage Security Deed (*Akta Pemberian Hak Tanggungan*), which is drawn up before a land deed official (*Pejabat Pembuat Akta Tanah – PPAT*) having jurisdiction over the land. Real property includes buildings, plants and produce, whether currently existing or to be developed in the future, provided they are an inseparable part from the land and are clearly stated as part of the mortgage object in the Mortgage Security Deed. These assets can be encumbered even if they are not owned by the land owner (title holder of the land), provided that the owner provides its consent by also signing the Mortgage Security Deed.
- b) **Plant, machinery and equipment:** Security over plant, machinery and equipment can be taken by way of a pledge or a fiduciary security agreement. Given that pledged assets do not remain under the pledgor's full control or possession, it is common for fiduciary security agreements to be created over plant, machinery and equipment. This allows the assets to remain under the fiduciary security grantor's possession for business activities.

- c) **Inventories:** Security over inventories can be taken by way of fiduciary security, which can encumber both existing and future assets. This feature makes fiduciary security particularly well-suited for inventories.
- d) **Receivables:** Security over the receivables can be taken by way of a fiduciary security.
- e) **Cash deposited in bank accounts:** Security over cash deposited in bank accounts can be taken by way of a pledge. The pledge agreement can be executed in private or drawn up in notarial deed form by a public notary. However, it remains uncertain whether a pledge can be validly perfected over a bank account, given that the pledgor will still have control and access over the bank account.
- f) **Shares:** Shares in a limited liability company can be secured by way of a pledge or fiduciary security. In practice, shares are commonly pledged through a pledge of shares agreement. In contrast, fiduciary security must be registered with the Fiduciary Registration Office (**FRO**) where the fiduciary grantor is domiciled. Consequently, fiduciary security over shares owned by a foreign shareholder cannot be registered as no FRO exists outside Indonesia.

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

Approvals and Authorisations: Signatories must present their internal and/or external approvals and/or evidence of authority before executing the relevant security document (e.g. corporate approval and powers of attorney). If the security document is drawn up in a notarial deed form, the notary will require physical copies of the relevant authorisations for each signatory.

Spousal Consent: When one spouse seeks to grant security over any jointly held asset, spousal consent is required unless a prenuptial agreement exists between them to separate their assets. Without obtaining such consent, the non-consenting spouse can potentially challenge the validity of the security on grounds that the encumbrance was made without the necessary approvals to bind the marital assets.

Notarisation Requirement: A Mortgage Security Deed must be drawn up by a PPAT, while a fiduciary security deed must be drawn up by a public notary.

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

Generally, no prior governmental or regulatory approval is required for the granting of security, as long as it does not involve the government, regional government or a state-owned company.

Where security is created over certain assets (e.g. buildings) located on the land owned by another party (including the government, regional government, or a state-owned company), the landowner's approval must be obtained to minimise the risk of its validity being challenged. The related time frame and costs are typically subject to negotiation between the parties.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

Notarisation Fees: The notarisation fees depend on the appointed notary. For a Mortgage Security Deed, fees are calculated based on the value of the secured amount. For a fiduciary security deed, notaries charge between IDR10,000,000 to IDR20,000,000 per deed. If a pledge is made in notarial deed form (optional), notaries charge around IDR10,000,000 to IDR20,000,000 for a pledge deed. Such notary fees often vary and depend on the parties' notary preference.

Registration Fee: The Mortgage Security Deed and fiduciary security deed are subjected to official registration fees as Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak – PNB*).

The PNB for Mortgage Security is as follows:

- a) Secured Value up to IDR250 million= IDR50,000 / certificate;
- b) Secured Value over IDR 50 million and up to IDR 1 billion = IDR200,000 / certificate;
- c) Secured Value over IDR1 billion and up to IDR10 billion = IDR2.5 million / certificate;
- d) Secured Value over IDR10 billion and up to IDR1 trillion = IDR25 million / certificate; and
- e) Secured Value over IDR1 trillion = IDR50 million / certificate.

The PNB for fiduciary security is as follows:

- a) Secured Value up to IDR50 million= IDR50,000 / certificate;
- b) Secured Value over IDR50 million and up to IDR100 million = IDR100,000 / certificate;
- c) Secured Value over IDR100 million and up to IDR250 million = IDR200,000 / certificate;
- d) Secured Value over IDR250 million and up to IDR500 million = IDR450,000 / certificate;
- e) Secured Value over IDR500 million and up to IDR1 billion = IDR850,000 / certificate;

- f) Secured Value over IDR1 billion and up to IDR100 billion = IDR1.8 million / certificate;
- g) Secured Value over IDR100 billion and up to IDR500 billion = IDR3.5 million / certificate;
- h) Secured Value over IDR500 billion and up to IDR1 trillion = IDR6.8 million / certificate; and
- i) Secured Value over IDR1 trillion = IDR13.3 million / certificate.

Stamp Duty: Stamp duty of IDR10,000 per document applies to all security agreements and documents that involve Indonesian parties.

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

A mortgage over real property will only be effective upon registration with the land office that has jurisdiction. Currently, for a creditor to be issued with a mortgage certificate to reflect the registration, the creditor must create an account in the *Hak Tanggungan Elektronik* website managed by the National Land Agency and register the mortgage security to obtain mortgage certificate. This process may take up to 7 working days upon the submission of all application documents.

Security over plant, machinery, and equipment, inventories, receivables, cash deposited in bank accounts, and shares by way of fiduciary security must be registered by the fiduciary grantee (in practice, through a public notary preparing the deed) with the FRO, where the fiduciary grantor is domiciled. Registration of the fiduciary security is conducted online and receipt can be issued on the same day.

Where a fiduciary security is taken over shares, the fiduciary grantor must notify the relevant company of the fiduciary security and request the company to update the company's shareholders register. Where the security is taken over shares of a publicly owned company, the security must be registered with the central custodian to ensure that the relevant share account is blocked to prevent the shares from being redeemed or transferred. Additionally, where the security is taken over shares of a publicly owned company that amount to 5% or more of the voting rights in that company, the company must report the security to the Financial Service Authority (*Otoritas Jasa Keuangan*). The 5% threshold can be satisfied from a single or an accumulation of multiple fiduciary securities over shares of a publicly owned company.

A fiduciary security over receivables must be registered to obtain a fiduciary security certificate. The assignment under fiduciary security must also be notified to and acknowledged by the debtor of the relevant receivables to satisfy the requirements under the Indonesian Civil Code (*ICC*).

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

There are no statutory restrictions against the transfer of security, but such transfers can be restricted by contract and subject to certain procedures.

2) Guarantees**2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?**

No governmental consents or filings are generally required for the granting of a guarantee, so long as a government, regional government or state-owned company is not involved.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

No, unless expressly or impliedly restricted by powers of the corporate entity. If the granting of a guarantee falls outside such powers, it is in principle voidable, and in some instances, null and void. All internal corporate approvals and authorisations must be obtained for the guarantee and the persons signing the guarantee must have the authority to do so. Additionally, Article 35 paragraph (2) of Law No. 40 of 2007 on Limited Liability Companies implies that a corporate guarantee can only be given by a company if there is a corporate benefit for the company in giving the guarantee.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

- a) **Approvals and Authorisations:** Signatories are generally required to present their internal and/or external approvals and/or evidence of authority before entering into the relevant guarantee agreement (e.g. corporate approval and powers of attorney). If the security document is drawn up in notarial deed form, the notary will need to see the physical copy of the evidence of authority of each signatory.
- b) **Spousal Consent:** When a spouse seeks to act as a guarantor, spousal consent is required unless a prenuptial agreement exists between them to separate their assets. Without obtaining such consent, the non-consenting spouse can challenge the validity of the guarantee, arguing that it was made without the necessary approvals to bind the marital assets.

- c) **Notarisation Requirement:** A guarantee agreement can be made in either private or notarial deed form. However, it is common to have guarantee agreements drawn up as notarial deeds as they are a stronger form of documentary evidence.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

No registration fee is chargeable in relation to the granting of guarantee. However, if the guarantee agreement is drawn up in notarial deed form, notaries usually charge between IDR7,500,000 to IDR15,000,000 per deed.

Please refer to our response to question 1.6 for the applicable stamp duty requirements.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

A guarantee for an offshore loan must be reported to Bank Indonesia. Specifically, foreign exchange flow activities (such as the position and change of offshore financial obligations) must be reported by the guarantor to Bank Indonesia. This requirement applies to both individual and corporate guarantors. The guarantor is required to submit the reports to Bank Indonesia monthly, by the 15th of each month.

If a guarantee is granted to a foreign lender, it should be reported to the Ministry of Finance once the demand of payment under the guarantee has been made.

3) Judicial enforcement

3.1 Will the courts in Indonesia recognise a foreign governing law, and enforce a contract governed by such foreign governing law?

A contract governed by a foreign law is recognised as a valid, binding, and enforceable contract under Indonesian law. Indonesia recognises the rights of private contracting parties to nominate the law which will govern a contract by virtue of the freedom of contract principle (except for certain contracts required by law to be governed by Indonesian law such as contracts concerning construction, mortgage, security, etc.) provided under Article 1338 of the ICC. However, the choice of foreign governing law in a contract is subject to the following limitations, including: (i) public policy; (ii) mandatory provision (*Dwingendrecht*); and (iii) the existence of genuine link (*nexus*). Although a foreign law governed contract is recognised and valid under Indonesian law, Indonesian courts have generally adopted an ambivalent attitude towards foreign choice of law clauses. There are instances where Indonesian courts have disregarded a foreign choice of law clause and applied Indonesian law to ensure

that no infringement of Indonesian law occurs as a result of enforcement.

3.2 Will the courts in Indonesia recognise and enforce a judgment obtained in the courts of a foreign country against a party?

No, a foreign court judgment cannot be directly enforced in Indonesia, pursuant to Article 436 Reglement op de Rechtsvordering. However, a party can file a claim before the relevant district court in Indonesia, where a foreign judgment may be given evidentiary weight as an Indonesian court deems appropriate. This procedure effectively amounts to a retrial, and the Indonesian court will not be bound by the findings of the foreign court.

3.3 Will the courts in Indonesia recognise and enforce an arbitration award given against a party?

Indonesian courts recognise local and foreign arbitration awards, in accordance with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolutions (as amended) (Arbitration Law). The Arbitration Law provides that the courts of the Republic of Indonesia may refuse to enforce a foreign arbitral award if: (i) the award is rendered by an arbitrator or a board of arbitrators in a country with which Indonesia is not bound by an agreement, either bilateral or multilateral (e.g. the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards) on the confirmation and implementation of a foreign arbitral award; (ii) the legal relationship on which the award was based cannot be considered as commercial under Indonesian law; or (iii) the recognition or enforcement of the award would be contrary to the public policy/public order.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in Indonesia; or (ii) enforcement proceeding against collateral security in Indonesia?

There are no specific restrictions on a foreign lender to commence (i) any court proceeding against a party in Indonesia; or (ii) enforcement proceedings against collateral security in Indonesia, provided that the claim is brought to the District Court with the appropriate jurisdiction.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

Save for certain restrictions highlighted above, there are no specific restrictions on the grant of collateral security or guarantee in favour of a foreign lender.

4.2 Is there any exchange control in Indonesia that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

Rupiah is prohibited from being transferred outside Indonesian territory by Indonesian banks and other parties determined by Bank Indonesia. While collateral enforcement proceeds are denominated in Rupiah, they must be converted into foreign currency for transfer to a foreign lender.

Additionally, Bank Indonesia Regulation No. 21/15/PBI/2019 of 2019 and its implementing regulation, Board of Governor of Bank Indonesia Regulation No. 21/28/PADG/2019 of 2019 (as amended), require an underlying transaction document to be submitted to the relevant bank for any outgoing transfer in a foreign currency with a value exceeding USD100,000 or its equivalent in other currencies.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in Indonesia?

Generally, ownership of assets used as a collateral in a financing transaction, whether local or international, cannot be transferred to the lender in the event of default. By law, the lender is only entitled to the proceeds derived from the enforcement of the security or sale of the secured assets.

The grant of security or guarantee by Indonesian publicly owned companies may be subject to additional requirements if the granting of security or guarantee by such companies is considered a material transaction, a conflict of interest transaction, or both.

The execution of security agreements in notarial or PPAT deed requires the presence of all parties (including the foreign lender) to appear before the relevant notary or PPAT in Indonesia. This can be achieved through (i) the authorised representative of the foreign lender personally appearing before an Indonesian notary or PPAT; (ii) appointing a local security agent to appear before an Indonesian notary or PPAT; or (iii) signing a power of attorney to authorise certain persons to sign the security documents before an Indonesian notary or PPAT.

Any documents signed outside Indonesia, including a power of attorney issued by a party outside Indonesia, must be accompanied by a notarial chop of the country of its signing as well as of an Indonesian diplomatic official or apostille stamp from the relevant authority at the country of signing (whichever is applicable, subject to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention) of 5 October 1961 which came into force in Indonesia on 4 June 2022).

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A low-angle, upward-looking photograph of the Petronas Towers in Kuala Lumpur, Malaysia. The two towers are the central focus, their spires reaching towards a cloudy sky. The image has a monochromatic blue-grey tint. The word "MALAYSIA" is written in a white, serif, all-caps font across the middle of the image, positioned between the two towers.

MALAYSIA

3. MALAYSIA

1) Collateral Security

1.1 How are assets classified in Malaysia?

Under the laws of Malaysia, assets are generally classified as non-movable property (land and property attached to land) and movable property (property other than land, tangible and intangible property).

1.2 Can collateral security be taken over all classes of assets?

Generally, collateral security may be applied to all classes of assets subject to the restrictions attached to the specific assets.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

Please see below a brief description of the different security agreements applicable to different classes of collateral assets:

- a) **Real property (land and building):** Land charge/mortgage is the most common form of security created over real property in Malaysia. Where a land charge is created, a specific statutory form prescribed under the National Land Code (Revised 2020) (**NLC**) must be executed. This form, together with the charge/mortgage instrument containing the terms agreed between the parties, must be registered at the relevant land office/registry in order to effect the security.
- b) **Plant, machinery and equipment:** Security over movable properties such as plant, machinery, and equipment may be granted under a debenture which creates a fixed and/or floating charge(s) over all present and future assets of the chargor, including real property/land, plant and machinery, motor vehicles, equipment, intellectual property, bank accounts, cash and book debts/receivables.
- c) **Inventories:** Similar to plant, machinery, and equipment, a debenture can be entered into to create a fixed and/or floating charge(s) over inventories.
- d) **Receivables:** The most common form of security over receivables is an assignment where the rights, benefit and interest in and to the receivables are assigned in favour of the assignee.
- e) **Cash deposited in bank accounts:** Security over cash deposit in an onshore bank account may be granted in the form of an assignment and charge over such bank account,

with the assignment covering all rights in respect of that bank account, including the credit balances therein.

- f) **Shares:** Security over unlisted shares is typically created by way of an equitable pledge/mortgage which is constituted by, inter alia, the deposit of the original share certificates and the signed blank transfer instruments with the mortgagee. For listed shares, they are deposited as securities in the central depository system maintained by Bursa Malaysia Depository Sdn Bhd, the approved central depository under the Securities Industry (Central Depositories) Act 1991 (Act 453).

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

Generally, the formalities required for the execution of security documents depend on the type of security documents and the applicable statutes currently in force and updated from time to time in Malaysia. For instance, a legal charge over land or interest over land must be executed in accordance with the requirements as set out in the NLC. For security documents containing power of attorney clauses, such documents must be executed and authenticated according to the Power of Attorney Act 1949 (Act 424).

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

Depending on the class of asset offered as security and the nature of the security transaction, governmental or regulatory approval may be required in certain circumstances. For instance, where the security is to be created over land, consent from the State Authority of which the said land is located may be required if there is a restriction on the land's interest that mandates such consent to be procured.

Further, where there are elements of foreign exchange in granting of security – such as the creation of security in favour of a non-resident entity by a resident entity or vice versa, the creation of security to secure financing in the currency other than the Malaysian Ringgit, or the creation of security to secure a financing in Ringgit granted by a resident to a non-resident or vice versa – the prior written approval from the central bank of Malaysia, Bank Negara Malaysia, may be required pursuant to the Foreign Exchange Policy of Malaysia (**FEP**).

The timeframe and cost for obtaining the governmental or regulatory approval depend on the state where the land is situated (in cases where the security involves land), the complexity of the transaction, the profile of the applicant, and the value of the transaction.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

Briefly, the fees that may be applicable to the security of different classes of assets include but are not limited to the following:

- a) The registration of charge made via the lodgment of the Statement of Particulars with Charge pursuant to CA 2016 is RM300.
- b) The registration of charge made via the lodgment of a statement of the prescribed particulars pursuant to the Labuan Companies Act 1990 (**LCA 1990**) is in the range of USD30 to USD100.
- c) The registration of charge at the land office/registry pursuant to the NLC differs from one state to the another with the range of RM50 to RM200 per charge. In some states such as Penang, the fee is calculated at the rate of 0.1% of the amount secured by the instrument creating security over the land.
- d) Pursuant to the Stamp Act 1949 (Act 378) (**Stamp Act**), stamp duty is payable on financing documents. The ad valorem stamp duty payable on the principal instrument (whether Ringgit denominated loan or non-Ringgit denominated loan) would be RM5 for every RM1,000 equivalent of the loan amount. A subsidiary instrument or a copy of the instrument (whether principal or subsidiary) would be subjected to a nominal stamp duty amount of RM10. Typically, the facility agreement would be designated as the principal instrument to be stamped ad valorem, while the remaining instruments employed in the same transactions, including the security documents, would be designated as subsidiary instruments and be subjected to nominal stamp duty.
- e) The filing of the security document containing power of attorney clause at the High Court of Malaysia is chargeable with fixed RM25 registration fee, additional RM2 per page registration fee, and RM10 deposit fee.

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

A company incorporated under the Companies Act 2016 (Act 777) (**CA 2016**), that creates certain types of charges over its property or any of its undertaking, is required to comply with the registration requirement under the CA 2016 within 30 days after its creation by lodging a Statement of Particulars to be Lodged with Charge with the Registrar of Companies.

A company governed under the LCA 1990 which creates a charge over its property is required under section 84 of the LCA 1990 to lodge a Statement of Particulars in Respect of Charge (Form 21) with the Labuan Financial Services Authority, in respect of the security interest created under the charge within one month after the creation of the charge.

Pursuant to the Stamp Act and as explained in question 1.6, stamp duty is payable on financing documents to the Inland Revenue Board of Malaysia. Until an instrument chargeable with stamp duty has been duly stamped, it may not be admitted as evidence in Malaysia for any purpose by any person having, by law or consent of parties, authority to receive evidence, nor may it be acted upon, registered, or authenticated by any such person or by any public officer.

In the event where the document creating security over the assets contains a power of attorney clause, such a security document is required to be registered with the High Court of Malaya by way of submission to the Federal Court of Malaysia's e-filing system in order for the power of attorney clause to be effected. Prior to registration, the power of attorney is required to be stamped, as above. For security created upon land, a specific statutory form prescribed under the NLC is required to be registered at the relevant land office/registry, as explained in question 1.3.

The time frame for the respective registration of charges – with the Registrar of Companies or the Labuan Financial Services Authority, as the case may be, stamping with the Inland Revenue Board of Malaysia, or filing with the High Court of Malaysia – is not fixed and differs from one case to another.

Save for the registration of charge under CA 2016 and LCA 1990, the stamping, filing, and registration at the relevant land office/registry requirements as stated above apply similarly to individual and corporate security providers.

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

The transfer of security over land may be restricted by the requirements under the NLC, any land related legislations enacted or directives issued by the State Authority, or the prescriptions on the land titles of the land concerned. This includes obtaining consent from the State Authority before such a transfer can be effected.

Aside from statutory restrictions, there may be restrictions embedded in the collateral or security documents which may impede the parties to such documents from transferring such collateral or security.

2) Guarantees

2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

Please refer to question 1.5 on the required approval pursuant the FEP.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

No, unless otherwise restricted by the constitutive documents of the company or contractual or other statutory prohibition or restriction binding on the company under CA 2016 (subject to any applicable exceptions).

For listed companies, there may be restrictions or prohibitions on the granting of guarantee by the company or its subsidiary pursuant to the Main Market Listing Requirements, ACE Market Listing Requirements, or LEAP Market Listing Requirements, as the case may be, depending on which Bursa Malaysia market that the company is listed.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

Generally, there is no statutory requirement in relation to the formalities on execution of guarantees. This applies similarly to individual and corporate guarantor.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

On the basis that the guarantee is designated as a subsidiary instrument in a financing transaction, and the ad valorem duty in respect of the financing transaction has been paid on the principal instrument, the guarantee may be stamped at a nominal amount of RM10.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

Generally, there is no filing or registration requirement in relation to the granting of a guarantee either by an individual or by a corporate guarantor.

3) Judicial enforcement

3.1 Will the courts in Malaysia recognise a foreign governing law, and enforce a contract governed by such foreign governing law?

There is generally no legislative prohibition for contracts to be governed by foreign laws. Parties may agree for the contracts to be governed by foreign law by expressly stating the same in such contracts, and such choice of law would generally be recognised, upheld and applied by the Malaysian Courts unless the choice of law is, *inter alia* not bona fide, made to avoid the operation of any Malaysian law that would otherwise apply, or against public policy and/or Malaysian laws.

3.2 Will the courts in Malaysia recognise and enforce a judgment obtained in the courts of a foreign country against a party?

Any final and conclusive judgment for the payment of money (other than a sum of money payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) rendered by the courts recognised by the Reciprocal Enforcement of Judgments Act 1958 (Act 99) (**REJA**).

Judgments in respect of security which is enforceable in jurisdictions recognised by REJA would generally be recognised and enforceable by the Malaysian courts without review of merits, provided that such judgment is duly registered in the High Court of Malaya. However, judgments would not be enforceable in Malaysia if, *inter alia*, the judgment is not a judgment to which REJA applies or is registered in contravention of REJA, the foreign court had no jurisdiction over the matter, or that the judgment was obtained by fraud, or that there were any major procedural irregularities in arriving at the judgment, or that enforcement would be contrary to the public policy of Malaysia or that principles of reciprocity did not apply and the foreign court did not recognise the courts of Malaysia.

Save for judgments that are enforceable pursuant to common law principle in Malaysia, judgments obtained in the courts other than the ones recognised by REJA may not be enforceable in Malaysia. A fresh claim may need to be filed in the Malaysian courts based on such judgments.

3.3 Will the courts in Malaysia recognise and enforce an arbitration award given against a party?

Where parties agree for any dispute, controversy or claim in relation to security to be settled by international arbitration where the seat of arbitration is situated in a sovereign state which is a party to the 10 June 1958 New York Convention on the Recognition of Enforcement of Foreign Arbitral Awards (**New York Convention**), subject to compliance with New York Convention, an arbitral award obtained against a party in any arbitral proceeding in respect of the security would generally be recognised and enforceable on an application in

writing to the High Court of Malaya, by entry as a judgment in terms of the arbitral award pursuant to the Arbitration Act 2005 (Act 646) (**Arbitration Act**) save for certain circumstances as set out in the Arbitration Act.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in Malaysia; or (ii) enforcement proceeding against collateral security in Malaysia?

No, as there is no distinction between domestic and foreign lender who is considered as creditor under the insolvency laws of Malaysia when it comes to rights, powers and entitlements of any kind in insolvency proceedings. This naturally includes and extends to the right to enforce securities. All lenders and creditors are treated equally before the Malaysian courts regardless of their place of incorporation or domicile.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

Please refer to question 1.5 on the required approval pursuant to the FEP.

4.2 Is there any exchange control in Malaysia that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

Provided that the relevant FEP requirements are complied with, which includes but not limited to question 1.5 on the required approval pursuant to the FEP, there is generally no restriction for a resident to make or receive payment in foreign currency to or from a non-resident for any purposes, with some exclusions on payments made or received in relation to derivatives.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in Malaysia?

The principal Malaysian law considerations for lenders when participating in financings in Malaysia have generally been covered by the above questions and answers.

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PHILIPPINES

4. PHILIPPINES

1) Collateral Security

1.1 How are assets classified in the Philippines?

Assets are classified as (i) immovable or real property; and (ii) movable or personal property.

1.2 Can collateral security be taken over all classes of assets?

Yes, collateral security can be taken over all classes of assets, real/immovable and personal/movable properties.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

A mortgage or real estate mortgage (**REM**) governs the creation of a security interest over immovable or real property, including alienable real rights imposed upon immovables.

Under Republic Act No. 11057 or the “Personal Property Security Act” (**PPSA**), security interest over personal property is created pursuant to a security agreement. The PPSA applies to all transactions that secure an obligation with movable collateral (including, chattel, inventories, receivables, contractual rights, bank deposits, and securities), except interests in aircrafts and ships.

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

The following are the formalities required for the execution of a REM and a personal property security agreement. These requirements apply to both individual and corporate security providers.

Under Philippine law, contracts that create, transmit, modify or extinguish real rights (such as a REM) must be in writing and appear as a public document (i.e., acknowledged before a notary public). These contracts shall be signed in “wet-ink”, as original documents are required to be presented before the notary public and one original copy shall be submitted to form part of notarial records.

In addition, for purposes of registration with the Register of Deeds, Presidential Decree No. 1529 or the Property Registration Decree requires that: (i) the instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon; (ii) where the instrument consists of two or more pages, each page of the copies which is to be registered

in the office of the Register of Deeds or to be kept by the notary public shall be signed on the left margin by the persons executing the instrument and their witnesses; and (iii) where the instrument relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number of such parcels shall likewise be set forth in the notarial acknowledgment.

Under the PPSA, a security agreement over personal properties shall be in the form of a written contract signed by the parties, identifying the collateral and secured obligation, and providing for the language that will be used in the agreement and related notices. Additionally, the model security agreement under the law recommends that the security agreement appear in a public instrument (i.e., notarised).

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

Generally, no governmental, regulatory or third-party consent or approval is required for the grant of security, whether by an individual or corporate security provider. However, contracts to which the security provider or the property is subject may impose certain restrictions on creating security and may require consent of or notice to the relevant counterparty prior to the grant of security.

In the case of corporate security providers, a mortgage, pledge or other disposition of corporate properties and assets requires a majority vote of its board of directors (or, for non-stock corporations, the board of trustees). Where the grant of security involves all or substantially all of the corporate properties, the affirmative vote of the stockholders representing at least two-thirds of the outstanding capital stock (or, for non-stock corporations, at least two-thirds of the members) is also required. The time frame and any costs for obtaining board and stockholders' approval depend on the procedures outlined in the corporate security provider's by-laws.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

There is no standardised schedule of notarial fees, and notarial charges vary among notaries public and the type of document to be notarised.

A documentary stamp tax (**DST**) is imposed on every mortgage or pledge of real or personal property at the following rates: (i) PHP40.00 for the first PHP 5,000 of the amount secured; and (ii) an additional PHP 20.00 on every PHP5,000 thereafter of the amount secured, or approximately 0.40% of total amount of the loan secured. Where only one instrument is executed to cover the loan agreement and the security agreement, the DST imposed on loan agreements shall be paid. DST on loan agreements is computed on the full amount of the loan or credit granted, at the rate of 0.75%. In this

regard, the instrument is treated as covering only one taxable transaction, subject to the higher DST.

Registration of the REM with the relevant Registry of Deeds or the personal property security agreement with the PPSA registry shall be subject to the payment of registration fees based on the schedule of fees prescribed by the Land Registration Authority (for REM registration, approximately 0.45% of total amount of the loan secured; for PPSA registration, fixed fee of PHP 380).

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

REM must be registered with the Registry of Deeds where the real property is located to be binding against third parties. Registration takes 6 to 12 weeks to complete. The foregoing applies to both individual and corporate security providers.

Perfection of the security interest made over personal properties or movable collateral depends on the nature of the personal property taken as collateral.

For tangible assets (e.g., equipment and inventory), the modes of perfection include (i) registration of a notice of security interest with the PPSA registry; or (ii) possession of the collateral by the secured creditor. For intangible assets (e.g., shares of stock, deposit accounts, contractual rights, and receivables), the modes of perfection include (i) registration of a notice of security interest with the PPSA registry; or (ii) execution of a control agreement among the security grantor, the creditor and, in respect of certain types of intangibles, the third party issuer/intermediary. Registration is done online and may be completed within a day. The requirements discussed above apply to both individual and corporate security providers.

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

There are no restrictions against the transfer of mortgaged immovable properties by the debtor. Under the Civil Code of the Philippines, any stipulation forbidding the debtor from transferring or disposing such mortgaged immovable property shall be considered as void, but the security interest created over such immovable properties shall continue to exist and bind the transferee notwithstanding the sale, lease, license, exchange, or other disposition of the same to the transferee, except as agreed upon by the parties and so long as the security interest is properly registered. The Supreme Court has consistently upheld this principle, expressly invalidating any contractual provisions—whether direct or indirect—that restrict the debtor's right to sell, encumber, or otherwise dispose of mortgaged property, including conditions requiring the mortgagee's prior consent before any transfer. Any such stipulation requiring prior

creditor consent gives the creditor the sole prerogative to prevent any sale of the mortgaged immovable and is tantamount to a circumvention of the law.

Similarly, there are no restrictions provided under the PPSA with regard to the transfer of personal properties secured by a security agreement as collateral. The PPSA provides that the security interest created over such personal properties shall continue to exist and bind the transferee notwithstanding the sale, lease, license, exchange, or other disposition of the same to the transferee, except as agreed upon by the parties and so long as the security interest is properly registered.

With respect to the transfer of a security agreement, as under Philippines law the security is an accessory obligation to the main credit obligation, the assignment of the credit will include all the accessory rights, such as a guarantee or mortgage. In addition, a transfer of credit will include the collateral securing such credit (e.g., a guarantee or a mortgage). Such transfer of credit would require the consent of the original debtor, original creditor and the new creditor.

2) Guarantees

2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

No governmental or regulatory approvals are generally required for the granting of guarantees. However, contracts to which the guarantor is subject may provide for restrictions on guaranteeing debts of third parties and may require consent of or notice to the relevant counterparty prior to the grant of guarantee. In addition, for corporate guarantors, approval of its board of directors (or, in respect of non-stock corporations, its board of trustees) shall be required.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

No specific restrictions or prohibitions if the corporation is: (i) empowered under its articles of incorporation to enter into guarantee agreements; and (ii) the grant of guarantee is done in furtherance of a legitimate business purpose, or is obtained with some benefit to the corporation.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

There are no formalities required for the execution of a guarantee other than the requirement that the guarantee must be expressly stipulated in a written contract. However, while not required, notarisation is advisable to transform the guarantee into a public

document. Under Philippine law, public documents enjoy the presumption of due execution and authenticity, and thus have greater evidentiary value in court proceedings. This applies to both individual and corporate guarantors.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

Generally, no notarisation, registration, stamp taxes, or fees of similar nature are required to execute a guarantee.

However, registration with the Bangko Sentral ng Pilipinas (**BSP**), the Philippines' central monetary authority, may be required if the payments under the guarantee made by Philippine residents to non-residents are to be serviced using foreign exchange purchased from BSP-authorized agent banks and authorised foreign exchange corporations in the Philippines (collectively, **AABs**).

Should a guarantee be acknowledged before a notary public (see question 2.5), a minimal documentary stamp tax on certificates shall apply.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

Guarantees that may give rise to actual foreign obligations of residents to non-residents shall be registered with the BSP to allow servicing of payments related to the guarantee (e.g., guarantee fees or charges, payments for call on the guarantees and for obligations resulting from such call on the guarantee) using foreign exchange resources from BSP-authorized agent banks and authorised foreign exchange corporations. The filing of applications for registration must be made within 6 months from the date of signing the covering agreement, but not later than 15 banking days from the target date of purchase of foreign exchange.

BSP registration takes approximately 6 to 8 weeks to complete. The foregoing applies to both individual and corporate guarantors.

3) Judicial enforcement

3.1 Will the courts in the Philippines recognise a foreign governing law, and enforce a contract governed by such foreign governing law?

The choice of governing law by parties to an agreement will be recognised and enforced in the Philippines insofar as the choice of law provisions are valid under the laws so chosen and has a relationship to the parties or their agreement (points of contact). Philippine courts will generally uphold the principle of autonomy of contracts to protect the expectation of parties by giving effect to the

parties' own choice of applicable law, particularly if the choice of law has some relationship to the parties to the transaction.

However, while a credit agreement (the principal contract) may be governed by foreign law, the security agreement relating to properties located in the Philippines (as an accessory contract) must be governed by Philippine laws as the Philippine Civil Code provides that real property as well as personal property is subject to the law of the place where the property is located.

3.2 Will the courts in the Philippines recognise and enforce a judgment obtained in the courts of a foreign country against a party?

The courts in the Philippines may recognise and enforce foreign judgments insofar it is convincingly shown that (i) there has been an opportunity for a full and fair hearing before a court of competent jurisdiction; (ii) trial upon regular proceedings has been conducted, following due citation or voluntary appearance of the defendant and under a system or jurisprudence likely to secure an impartial administration of justice; and (iii) there is nothing to indicate either a prejudice in court and in the system of laws under which it is sitting or fraud in procuring the judgment.

In the recognition and enforcement of foreign judgments, Philippine courts will only determine (i) whether any alleging party is able to prove an extrinsic ground to repel the foreign judgment, i.e. want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact; and (ii) whether the recognition and enforcement of foreign judgment will be contrary to Philippine laws which have for their object public order, public policy and good customs. If there is neither inconsistency with public policy nor adequate proof to repel the judgment, Philippine courts shall recognise the foreign judgment as part of the comity of nations.

3.3 Will the courts in the Philippines recognise and enforce an arbitration award given against a party?

For a domestic arbitral award, any party to the dispute may apply to the court with jurisdiction for an order confirming the arbitral award. The court must grant such an order unless the award is vacated, modified or corrected on grounds such as, inter alia, arbitral award was procured through corruption, fraud, undue means, misconduct, prejudicial misbehaviour or disqualification of the arbitral tribunal, the arbitral tribunal exceeded its powers or imperfectly executed them, arbitration agreement did not exist or is invalid, or a party to the arbitration is a minor or judicially declared as incompetent.

For international commercial or foreign arbitral awards, the Philippines has adopted the grounds to refuse the recognition and enforcement of an arbitral award set out under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*New York Convention*). The prevailing party may file a Petition with the Regional Trial Court to recognise and enforce such

award without re-evaluation or re-litigation of the matters adjudicated upon, insofar as the parties and the underlying causes of action are concerned. However, the courts may refuse to enforce such awards on grounds recognised by the New York Convention, which include amongst others, the incapacity of a party, the failure to give proper notice to a party or the inability of a party to present his/her case, if the selection of the arbitrators or the arbitral procedure was inconsistent with the agreement of the parties or the law of the seat, the invalidity of the arbitration agreement, the award having been set aside, and/or the enforcement of the award being contrary to the public policy of Philippines.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in the Philippines; or (ii) enforcement proceeding against collateral security in the Philippines?

There are generally no restrictions on foreign lenders commencing court or enforcement proceedings against a party in the Philippines. Foreign lenders may, however, be barred from commencing suit in the Philippines if found to be doing business in the country without being registered or licensed to do so under the Foreign Investment Act, under Philippine law or jurisprudence or under opinions issued by the Securities and Exchange Commission.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

There are generally no restrictions to foreign lenders taking security over assets in the Philippines nor to the grant of guarantees in favour of foreign lenders. However, there may be limitations on foreign lenders acquiring ownership of the underlying property upon an enforcement of the security.

For instance, in a foreclosure of a real estate mortgage involving land, a foreign lender may not bid or purchase the land at the foreclosure sale, in view of foreign ownership restrictions under applicable law. By way of exception, a foreign bank authorised to do business in the Philippines is allowed to take possession of the same in the event of default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings, within a period of five years from actual possession.

Similarly, upon an enforcement of a security interest over shares in Philippine corporations, a foreign lender may acquire such shares only to the extent of the allowable foreign equity participation in such Philippine corporation.

4.2 Is there any exchange control in the Philippines that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

The BSP regulates the sale and purchase of foreign currency where the foreign currency needed to service payments under trade or non-trade transactions shall be sourced from AABs.

Under the BSP's Manual of Regulations on Foreign Exchange Transactions, AABs may sell foreign exchange to non-bank residents for their foreign exchange transactions with other residents or with non-residents, subject to the submission of an Application to Purchase and the required supporting documents (including, where required, a Bangko Sentral Registration Document evidencing BSP registration of the relevant transaction). These foreign exchange transactions may either be "trade transactions" or "non-trade transactions" requiring settlement in foreign currency. "Trade transactions" refer to merchandise export and/or import transactions. On the other hand, "non-trade transactions" generally refer to all other foreign exchange transactions not included in the definition of "trade transactions", and generally treated as either (i) foreign/foreign currency loans, foreign investments or other investments; or (ii) "non-trade current account transactions" which refer to other non-trade transactions excluding those covered under (i).

In respect of guarantees, as discussed under question 2.3, registration with the BSP is required, if the payments under the guarantee made by Philippine residents to non-residents will be serviced using foreign exchange purchased from AABs. Stated otherwise, no such registration is necessary where the guarantor has its own foreign exchange resources or receipt sufficient to cover its guarantee-related payments.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in the Philippines?

The principal Philippine law considerations for lenders when participating in financings in Philippines have generally been covered by the above questions and answers.

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SINGAPORE

5. SINGAPORE

1) Collateral Security

1.1 How are assets classified in Singapore?

Assets are generally classified as real property (land and building) or personal property (items, equipment or choses-in-action).

1.2 Can collateral security be taken over all classes of assets?

Under Singapore law, all classes of collateral may potentially be available to secure lending obligations, provided the grant thereof is not against public policy.

Common classes of collateral that can be used include real property (land and buildings), personal chattels, debts and other receivables, stocks and shares and other choses in action.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

Please see below a brief description of the different security agreements applicable to different classes of collateral assets:

- a) **Real property (land and building):** A legal or equitable mortgage/charge or assignment of sale and purchase/lease/building agreement with mortgage-in-escrow is commonly granted over real property (land and to the extent immovable, plant and buildings thereon). The type of security will depend on, amongst other factors, whether title over the land has been issued, the land type and the type of holding.
- b) **Plant, machinery and equipment:** A fixed charge granted by way of a debenture or charge is commonly taken over plant, machinery, equipment and other moveable property.
- c) **Inventories:** A floating charge is most commonly created over inventory. The chargor in this instance will generally be permitted to deal with the inventory in the ordinary course of its business until the occurrence of a default event under the facility or notice from the lender.
- d) **Receivables:** Security over receivables (being choses in action) can be taken by way of an assignment or charge (fixed or floating) through a deed of assignment/charge or a debenture, depending on the entire security package to be taken. Generally, lenders may also, for control purposes,

obtain a charge (fixed or floating) over the accounts into which the receivables are paid.

- e) **Cash deposited in bank accounts:** Security over cash deposited in bank accounts (being choses in action) can be taken in the same way as receivables.
- f) **Shares:** Shares in Singapore may be in certificated/scrip or scripless form.

Where shares are certificated, a legal or equitable mortgage may be taken over the shares. A legal mortgage may be granted by way of a share mortgage, accompanied by a transfer and registration of the shares and delivery of share certificates in the mortgagee's name. An equitable mortgage/charge may be granted by way of a share mortgage/charge and deposit of share certificates together with a blank transfer executed by the mortgagor/chargor on the agreement that the mortgagee/chargee may complete the transfer forms upon occurrence of a default event under the facility or by notice.

Where shares are in scripless form (i.e. book-entry securities, being essentially listed shares of companies on the Singapore stock exchange – Singapore Exchange Securities Trading Limited), by statute, a different regime will apply. Security may be taken over such shares by way of a statutory assignment or statutory charge in prescribed form registered with The Central Depository (Pte) Limited in Singapore or by common law subject to certain prescribed requirements.

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

There are generally no specific formalities required in relation to the execution of security document in Singapore.

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

Prior governmental or regulatory approval may be required in certain circumstances; for example, where the subject land is state land leased from the Singapore government or government statutory boards, such as the Singapore Land Authority, Building and Construction Authority, JTC Corporation, Singapore Tourism Board and Urban Redevelopment Authority.

The timeframe for obtaining the governmental or regulatory approval differs, depending on the authority involved and the nature of the land in question. For example, it may take several weeks or even several months to obtain the approval of the aforesaid government authorities for the mortgage of the relevant land in question. The costs and

expenses involved in the process of obtaining such governmental and regulatory approval should not be significant, unless there are negotiations on the terms and conditions imposed for the grant of such approval.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

The fee for the registration of a charge/security instrument with the companies' registry in Singapore, the Accounting and Corporate Regulatory Authority (**ACRA**), in accordance with section 131 of the Singapore Companies Act 1967 (**CA**) is currently S\$60 per charge.

In addition, security interests over certain assets (e.g. aircrafts, ships, intellectual property rights and land) will need to be registered at specialist registries and additional fees will be payable. For example, the fee payable for the registration of a mortgage over land with the SLA is currently S\$68.30 per mortgage.

Stamp duty is payable on a mortgage, equitable mortgage or debenture of any immovable property and stocks or shares. A legal mortgage is subject to ad valorem duty at the rate of 0.4% of the amount of facilities granted on the mortgage of immovable property or stocks and shares, subject to a maximum duty of S\$500. An equitable mortgage is subject to ad valorem duty at the rate of 0.2% of the amount of facilities granted on the mortgage of immovable property or stocks and shares, subject to a maximum duty of S\$500.

Notarisation is not required for security documents that are executed and to be used in Singapore.

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

Certain classes of security instruments executed by a corporate security provider incorporated in Singapore or registered as a foreign company in Singapore must be registered with ACRA, if the underlying charge / security thereunder falls under one of the prescribed categories of section 131 of the CA.

The charge/security instrument to be lodged with ACRA under section 131 of the CA must be lodged within 30 calendar days after the creation of the charge where the document creating the charge is executed in Singapore (or within 37 calendar days if executed outside Singapore). The filing (once filing forms are completed and submitted via ACRA's website) is instantaneous and confirmation of registration from ACRA will normally take up to three business days.

However, the timeframe for registration of security in respect of certain classes of assets at specialist registries differs according to each registry. For example, the registration of a mortgage with the

Singapore Land Authority (**SLA**) may take several weeks or even several months if complex and involving multiple units. In the interim, a lender may protect its interest by the lodgment of a caveat with the SLA.

There are no filing and registration requirements in relation to security granted by an individual security provider other than the registration of mortgage over real property with SLA, and unless security is granted over personal chattels registrable under the Bills of Sale Act 1886.

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

There may be restrictions against the transfer of a collateral or a security agreement in certain circumstance, for instance where the granting of a collateral or security is subject to prior governmental or regulatory approval – please refer to question 1.5. Otherwise, there are generally no specific restrictions against the transfer of a collateral or a security agreement unless there are contractual restrictions provided in the terms governing the collateral or in the security or financing documents.

2) Guarantees

2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

No governmental consents or filings are generally required for the granting of a guarantee.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

There are generally no restrictions on companies issuing a guarantee subject to there being sufficient corporate benefit and no contravention of specific rules under the CA (for example, relating to prohibitions against guarantee of loans to companies related to directors and provision of financial assistance), and provided there are no other restrictions or prohibitions imposed in the companies' constitutive documents or contracts and other arrangements binding on the companies.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

In terms of formalities, a contract of guarantee must be in writing and signed by the person sought to be rendered liable under the guarantee. This requirement applies for both individual and corporate

guarantors. There are otherwise generally no other formalities required in relation to the execution of guarantee.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

No stamp duty is chargeable in relation to the granting of guarantee. Where the guarantee is required to be lodged with ACRA for registration as described under question 2.5, the registration fee payable to ACRA for such registration is currently S\$60 per charge.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

There are generally no filing or registration requirements in relation to the granting of a guarantee by either an individual or by a corporate guarantor. A guarantee executed by a corporate guarantor incorporated in Singapore or registered as a foreign company in Singapore will, however, be required to be registered with ACRA, only if by its terms it also seeks to create a charge or agreement to charge within the meaning of section 131 of the CA.

Please refer to question 1.7 for the time frame for the registration of charge with ACRA.

3) Judicial enforcement

3.1 Will the courts in Singapore recognise a foreign governing law, and enforce a contract governed by such foreign governing law?

Provided that it is bona fide and legal and there is no reason for avoiding the choice on grounds including illegality or public policy, the express choice of the laws made by the parties to a contract will be upheld as valid and binding in any action in the courts of Singapore and the courts will enforce a contract that has a foreign governing law.

3.2 Will the courts in Singapore recognise and enforce a judgment obtained in the courts of a foreign country against a party?

At present, certain judgments from the courts of specific jurisdictions (including, but not limited to Australia, India, Malaysia and the United Kingdom) may be recognised and enforced in Singapore without a re-examination of the merits of the case under the Reciprocal Enforcement of Commonwealth Judgments Act 1921 (for judgments obtained before 1 March 2023), the Reciprocal Enforcement of Foreign Judgments Act 1959 (for judgments obtained on or after 1 March 2023), and/or the Choice of Court Agreements Act 2016.

Judgments from the courts of jurisdictions which do not have a reciprocal agreement or convention concerning enforcement may be

enforced in accordance with the common law. Broadly speaking, under the common law, a judgment for a fixed or ascertainable sum of money may be enforced, provided it is final and conclusive, and the foreign court had jurisdiction over the defendant in accordance with the private international law principles recognised by the Singapore courts. It will then be for the party resisting enforcement to prove that the foreign courts had no jurisdiction over the matter, or that the judgment was obtained by fraud, or that there were any major procedural irregularities in arriving at the judgment, or that enforcement would be a direct or indirect enforcement of foreign penal, revenue or other public law, or that enforcement would be contrary to the public policy of Singapore. The Singapore court will not re-examine the merits of the case.

3.3 Will the courts in Singapore recognise and enforce an arbitration award given against a party?

Foreign arbitral awards (i.e. arising out of arbitrations seated outside of Singapore) may be recognised and enforced in Singapore in accordance with the New York Convention in conjunction with the International Arbitration Act 1994 (which puts into force the UNCITRAL Model Law on International Commercial Arbitration, with modifications) without having its merits re-examined. However, the Singapore courts may refuse to enforce such awards on grounds recognised by the New York Convention, which include (amongst others): the incapacity of a party; the failure to give proper notice to a party or the inability of a party to present his/her case; if the selection of the arbitrators or the arbitral procedure was inconsistent with the agreement of the parties or the law of the seat; the invalidity of the arbitration agreement; the award having been set aside; and/or the enforcement of the award being contrary to the public policy of Singapore.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in Singapore; or (ii) enforcement proceeding against collateral security in Singapore?

There are no specific restrictions on a foreign lender to commence (i) any court proceeding against a party in Singapore; or (ii) enforcement proceeding against collateral security in Singapore, provided the Singapore courts have jurisdiction over the matter.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

There are no specific restrictions on the grant of collateral security or guarantee in favour of a foreign lender.

4.2 Is there any exchange control in Singapore that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

There are no exchange controls in Singapore that would act as an obstacle to the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in Singapore?

The principal Singapore law considerations for lenders when participating in financings in Singapore have generally been covered by the above questions and answers.

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THAILAND

6. THAILAND

1) Collateral Security

1.1 How are assets classified in Thailand?

In Thailand, assets are classified as immovable property (e.g., land and building) and movable property (e.g., machinery and inventories).

1.2 Can collateral security be taken over all classes of assets?

Collateral security can be taken over all classes of assets.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

Please see below a brief description of the different security agreements applicable to different classes of collateral assets:

- a) **Real property (land and building):** A mortgage can be granted over real property (land, and to the extent they are immovable, plant and buildings thereon). To create a real property mortgage, it is necessary to execute an official form of mortgage agreement in Thai language and register the same with competent authority, e.g. land office. If the parties wish to add their own terms and conditions, this can be done by way of a supplement. The agreement and supplement must be executed before a competent official when they are presented for registration. Where the mortgagee operates directly in the real estate business, a business security can also be granted over real property under the Business Security Act B.E 2558 (2015) (BSA). To create a business security, parties must register a written business security agreement through an online registration platform administered by the Ministry of Commerce. The business security agreement must contain certain prescribed terms.
- b) **Plant, machinery and equipment:** For a machinery to be mortgaged, it must be registered under the Machinery Registration Act B.E 2514 (1971) and with the Central Office for Machinery Registration. Alternatively, security can also be granted over machinery and equipment if it is used by the security provider for business operations under the BSA. The security will be granted over all the assets of a business, including the changing pool of assets used by the business on a non-possessory basis. To create a business security, please refer to item (a).

- c) **Inventories:** Security over inventories can be taken as a business security under the BSA. To create a business security, please refer to item (a).
- d) **Receivables:** Security over receivables can be taken as a business security under the BSA, or by way of an assignment. For the assignment of receivables to constitute a legal and valid assignment, a written agreement between the assignor and the assignee must be made, signed by both parties and a written notification of such assignment must be delivered to the original debtor of the underlying contract. Receivables cannot be assigned if their nature does not permit it, if they are not subject to judicial attachment or if the parties have declared a contrary intention. Such declaration of intention cannot be raised or enforced against a third person acting in good faith.
- e) **Cash deposited in bank accounts:** Security over cash deposited in bank accounts can be provided as a business security under the BSA. To create a business security, please refer to item (a).
- f) **Shares:** Shares in Thailand may be in certificated/scrip or scripless form. Where shares are certificated, shares may be pledged by delivering the share certificates to the pledgee and recording the pledge in the share registry book maintained by the company. However, where shares are in scripless form (for example, listed shares), the share certificates do not need to be physically delivered and a pledge can be created through the book-entry system maintained by the Thailand Securities Depository Company Limited (the registrar for shares listed on the Stock Exchange of Thailand and the Market for Alternative Investment).

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

A mortgage agreement and business security agreement must each be made in writing and registered with the competent official or the official registering business security.

A pledge can be created by physically delivering the pledged property to the pledgee. Please refer to question 1.3(f) concerning the pledging of shares. For bills of exchange, cheques, promissory notes and other negotiable instruments, they may also be pledged by an endorsement and the delivery of the instrument to the pledgee. These requirements apply for both individual and corporate security providers.

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

No governmental or regulatory approval is required for the granting of security.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

No notarisation or stamp duty is required to be paid in relation to a grant of mortgage. However, a mortgage agreement must be in writing and registered with the competent official.

Land mortgages are subject to a registration fee of 1% of the mortgaged value, not exceeding THB200,000. Machinery mortgages are subject to a registration fee of 0.1% of the mortgaged value, not exceeding THB120,000.

No notarisation, registration or other fees are required to be paid in relation to a grant of pledge. However, a pledge is subject to a stamp duty of 0.05% of the amount of debt secured by the pledge. A pledge made in connection with a loan agreement is also subject to a stamp duty of 0.05% of the loan principal, not exceeding the maximum stamp duty amount of THB10,000.

In addition, each executed copy, duplicate or counterpart of an instrument, is subject to a stamp duty of THB1 if the original stamp duty chargeable does not exceed THB5, or THB5 if the original stamp duty exceeds THB 5, except in the case where the party liable to bear stamp duty is a co-operative society.

Generally, stamp duty must be paid within 15 days of the execution of the pledge agreement. However, if the pledge agreement is executed outside Thailand, the stamp duty must be paid within 30 days of the original first being brought into Thailand by the first holder thereof. This ensures that the pledge agreement is admissible as evidence in court. The maximum penalty for the late payment of stamp duty is up to six times the applicable value on top of the original stamp duty payable.

While there is no notarisation fee applicable to the grant of a business security, parties are subject to registration fees at the following rates: (i) if the property to be charged as a business security is land, the fees shall be equal to the land mortgage registration fee; and (ii) in all other cases, the fees shall be 0.1% of the secured amount, but not exceeding THB1,000.

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

- a) **Mortgage:** no filing is required in relation to the grant of mortgage. However, a contract of mortgage is required to be made in writing and registered with the competent official – please refer to question 1.3(a).
- b) **Pledge:** no filing or registration is required.
- c) **Business security:** no filing is required. However, to create a business security, the parties must register a written business security agreement through an online registration platform administered by the Ministry of Commerce.

These requirements apply to both individual and corporate security providers.

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

Unless the parties agree otherwise, there are no restrictions against the transfer of a collateral or a security agreement. Generally, with an assignment of a claim, the right of mortgage, pledge or business security that is created/given in connection with such claim, and the right arising out of guarantee granted for such claim, shall pass to the assignee.

2) Guarantees

2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

No governmental or regulatory approval is required for the granting of guarantee.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

There are no restrictions or prohibitions on the granting of guarantee.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

There are no formalities required in relation to the execution of guarantee. However, a guarantee will be enforceable in court only if it has been made in writing and signed by the guarantor. This requirement applies to both individual and corporate guarantors.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

No notarisation, registration or other fees are chargeable in relation to the granting of guarantee.

However, an original guarantee is subject to a stamp duty of (i) THB10 for an amount exceeding THB10,000 or for which no amount is specified; (ii) THB1 for an amount not exceeding THB1,000; or (iii) THB5 for an amount exceeding THB1,000 but not exceeding THB10,000. An additional stamp duty of THB5 is chargeable for each executed copy, duplicate or counterpart thereof.

Generally, stamp duty must be paid within 15 days of the execution of the guarantee. However, if the guarantee is executed outside Thailand, stamp duty must be paid within 30 days of the original first being brought into Thailand by the first holder thereof. This ensures that the guarantee is admissible as evidence in court. The maximum penalty for the late payment of stamp duty is up to six times the applicable value on top of the original stamp duty payable.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

No filing or registration is required in relation to the granting of a guarantee. This applies to both individual and corporate guarantors.

3) Judicial enforcement**3.1 Will the courts in Thailand recognise a foreign governing law, and enforce a contract governed by such foreign governing law?**

A choice of foreign governing law to govern a contract will be recognised by courts in Thailand, provided that such governing foreign law is established and proven to the satisfaction of the court, and does not contravene the public order or good morals of the citizens. If the foreign law cannot be proven to the court's satisfaction, Thai law shall apply.

Additionally, the contract must be legal, valid, binding, and enforceable under, and be in the forms prescribed by the governing foreign law and/or Thailand law in order to be legally enforced in Thailand.

3.2 Will the courts in Thailand recognise and enforce a judgment obtained in the courts of a foreign country against a party?

There is no provision for the recognition and direct enforcement of foreign court judgments under the laws of Thailand. In addition,

Thailand is not a party to any treaty or international agreement for the recognition and enforcement of foreign court judgments. Therefore, new judicial proceedings based on the merits of the case must be initiated in Thailand. However, foreign court judgments and evidence generated during the foreign litigation process may be admissible as evidence in new court proceedings in Thailand.

3.3 Will the courts in Thailand recognise and enforce an arbitration award given against a party?

Courts in Thailand generally recognise and enforce foreign arbitration awards made in any member states of the Convention on Recognition and Enforcement of Foreign Arbitral Award 1958 (**New York Convention**), and the Convention on the Execution of Foreign Arbitral Awards 1927 (the Geneva Convention) without having their merits re-examined. However, the courts may refuse to enforce such awards on grounds recognised by the New York Convention, which include, amongst others, the incapacity of a party, the failure to give proper notice to a party or the inability of a party to present his/her case, if the selection of the arbitrators or the arbitral procedure was inconsistent with the agreement of the parties or the law of the seat, the invalidity of the arbitration agreement, the award having been set aside, and/or the enforcement of the award being contrary to the public policy of Thailand.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in Thailand; or (ii) enforcement proceeding against collateral security in Thailand?

Generally, there are no restrictions for a foreign lender to commence (i) any court proceeding against a party in Thailand; or (ii) enforcement proceeding against collateral security in Thailand.

However, if the provisions in an agreement regarding service of process are inconsistent with the applicable procedural provisions of Thailand law, the provisions in the agreement may not be enforceable in such proceedings. In addition, certified Thai translations of the whole or any material part of the security agreement and any other relevant agreements, documents and/or instruments, may be required to be submitted and attached to the originals thereof when they are submitted as evidence to a court of Thailand.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

There are no restrictions against the grant of collateral security or guarantee in favour of a foreign lender.

4.2 Is there any exchange control in Thailand that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

Generally, any outward remittance from Thailand is subject to the approval of a commercial bank licensed in Thailand, acting as an authorised agent of the Bank of Thailand (**BOT**). Individuals transferring foreign currency out of Thailand must submit supporting documents detailing the purpose of outward remittance to the commercial bank. Exchange control approval from the BOT or commercial bank must be obtained at the time of transaction. Approval for offshore foreign currency transfer is typically granted, provided there are reasonable grounds for the transaction and supported by documentary evidence.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in Thailand?

The principal Thai law considerations for lenders when participating in financings in Thailand have generally been covered by the above questions and answers.

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An aerial photograph of a city skyline, likely Hanoi, Vietnam, featuring a wide river and numerous high-rise buildings. The word "VIETNAM" is overlaid in large, white, serif capital letters. The entire image has a blue color overlay.

VIETNAM

THE VIEN

7. VIETNAM

1) Collateral Security

1.1 How are assets classified in Vietnam?

Under the laws of Vietnam, assets may generally be classified as: (i) objects, money, securities, and property rights; (ii) movable property and immovable property; or (iii) existing assets and off-plan assets.

1.2 Can collateral security be taken over all classes of assets?

In general, collateral security may be taken over all classes of assets, except in certain cases (for example, off-plan land use rights cannot be mortgaged, and off-plan housing may not be used as collateral unless specific legal conditions are met). However, if at the time of the creation of the security contract or security measure, there is a provision under the law prohibiting the trade, transfer or assignment of the ownership of a certain asset, such an asset cannot be used as collateral.

1.3 Briefly describe the security agreement required in relation to the taking of security over each class of asset, specifically the following: a. real property (land and building); b. plant, machinery and equipment; c. inventories; d. receivables; e. cash deposited in bank accounts; f. shares.

In Vietnam, there are two primary types of security agreements in relation to the taking of security over assets: mortgage agreements and pledge agreements. Under Vietnamese law, a mortgage allows the mortgagor to retain possession of the mortgaged property while granting a security interest to the mortgagee, whereas a pledge involves the pledgor delivering possession of the property to the pledgee as security for the obligation. Their application depends on the nature of the asset being secured.

Please see below a brief description of the different security agreements applicable to different classes of collateral assets:

- a) **Real property (land use rights and building):** For real property (land use rights and building), the security agreement used is typically a mortgage agreement. In Vietnam, land cannot be owned by any individuals/organisations. Thus, the land use rights, and not the land, are considered as assets.
- b) **Plant, machinery and equipment:** For plants, as they are attached to the land, the security agreement used is typically a mortgage agreement. For machinery and equipment, if they are attached to the land, the security agreement used is also typically a mortgage agreement. Otherwise, if they are not attached to the land, both mortgage and pledge agreements can be used.

- c) **Inventories:** For inventories, both mortgage and pledge agreements can be used.
- d) **Receivables:** For receivables, the security agreement used is typically a mortgage agreement.
- e) **Cash deposited in bank accounts:** For cash deposited in bank accounts, the security agreement used is typically a mortgage agreement.
- f) **Shares:** For shares incorporated in Vietnam, the security agreement used is typically a mortgage agreement.

1.4 Are there any formalities required in relation to the execution of security documents, for instance, before a notary? Do the same requirements apply for both individual and corporate security providers?

There may be formality requirements in relation to the execution of security documents in certain cases, such as (i) a mortgage agreement over land use rights or land use rights and assets attached to land; and (ii) a mortgage agreement over housing. In these cases, Vietnamese law requires the security document to be notarised (i.e., executed before a notary) to be effective.

The same requirements apply for both individual and corporate security providers.

1.5 Are there any prior governmental or regulatory approval required for the granting of security? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

No prior governmental or regulatory approval is required for the granting of security.

1.6 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to security over different classes of assets?

The notarisation fee of a security contract or security measure (either mortgage agreement or pledge agreement) will be calculated based on either the collateral value or the loan amount, which may range from VND50,000 to VND70,000,000.

The fees concerning the registration of a security contract or security measure will vary depending on the class of assets being secured.

- a) The fee for registration of a security measure over movable assets, annual trees, temporary constructions or seagoing vessels is VND80,000 per case.

- b) The fee for registration of a security measure over aircrafts ranges from VND1,800,000 to VND18,000,000 per case.
- c) The fee for registration of a security measure over securities is VND80,000 per case.
- d) The fee for registration of a security measure over land use rights, assets attached to land or investment projects associated with land use varies from province to province.

No stamp duty is applicable in respect of a security contract or a security measure.

1.7 What are the filing and registration requirements in relation to security over different classes of assets? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate security providers?

Registration of security measures over certain classes of assets such as mortgages over land use rights, land-attached assets, investment projects associated with land use, seagoing vessels, aircrafts or securities is required. If the law does not specifically require the registration of security measure over a certain class of asset, the registration may nonetheless be carried out if agreed by the grantor and the secured party, or at the request of the secured party.

The registration authorities vary depending on the classes of assets. For example:

- a) the registration of security measures over land use rights or land-attached assets or investment projects associated with land use is to be carried out at a land registration office under the provincial Department of Agriculture and Environment;
- b) the registration of security measures over aircrafts is to be carried out at the Civil Aviation Authority of Vietnam;
- c) the registration of security measures over seagoing vessels is to be carried out at the Vietnam Maritime and Waterway Administration;
- d) the registration of security measures over securities is to be carried out at the Vietnam Securities Depository and Clearing Corporation; and
- e) the registration of security measures over other classes of assets is carried out at the National Registration Agency for Secured Transactions, established under the Ministry of Justice.

By law, the time frame for registration of a security measure is within the working day on which the valid application is received or the next working day if a valid application is received after 3 p.m.. The time frame for registration may be extended for up to three working days.

The above requirements apply for both individual and corporate security providers.

1.8 Are there any restrictions against the transfer of a collateral or a security agreement?

For the transfer of a security agreement, there is no provision specifically governing this matter under Vietnamese law. However, such transfer may be subject to general provisions on the assignment of rights and obligations, as well as relevant regulations on security interests.

For the transfer of collateral, Vietnamese law only regulates such transfer in the case of a mortgage or a pledge, and is silent in the case of other types of securities. In particular, mortgaged or pledged assets may be transferred with the consent of the secured party or if permitted under applicable law. One example of a legally permitted transfer of collateral is when a mortgagor transfers mortgaged assets which constitute goods that rotate during the production and business process. Thus, in theory, the mortgagor can transfer such assets without the consent of the mortgagee. In this case, Vietnamese law provides that the mortgagee will have the right to enforce the collateral against the purchaser of the original mortgaged assets to require such purchaser to pay the sale proceeds, or against the receivables or assets derived or converted from the original mortgaged assets.

2) Guarantees

2.1 Are there any prior governmental or regulatory approval required for the granting of guarantee? What is the estimated time frame for obtaining such approval and does the process involve significant costs and expenses?

In general, there is no prior governmental or regulatory approval required for the granting of guarantee, unless such guarantee is provided by an economic institution established in Vietnam for obligations of a non-resident. In this case, an approval from the Prime Minister is needed. The procedure for such approval, including its time frame and associated cost, varies from case to case.

2.2 Are there any restrictions or prohibitions on the granting of guarantee (regulatory or otherwise)?

No, unless otherwise restricted by the constitutive documents of the company granting the guarantee or contractual prohibitions or restrictions binding on such company. Additionally:

- a) Credit institutions and foreign bank branches are prohibited from issuing guarantees on payment obligations for bonds if the purpose of the bond issuance is restructuring of the bond issuer's debts, contribution of capital to or purchase of shares of another enterprise, or increase of working capital.

- b) A public company may not be allowed to provide guarantees for its shareholders and their related individuals in certain cases.

2.3 Are there any formalities required in relation to the execution of guarantee, for instance, before a notary? Do the same requirements apply for both individual and corporate guarantors?

The law does not provide any formality requirements in relation to the execution of guarantee by either individual or corporate guarantors.

2.4 What are the notarisation fee, registration fee, stamp duty and other fees chargeable in relation to the granting of guarantee?

The law does not require the granting of guarantee to be notarised or registered. However, if the guarantee agreement is notarised upon the request of the parties, the fee payable is VND100,000 per case.

2.5 Are there any filing or registration requirements in relation to the granting of guarantee? What is the estimated time frame for the above? Do the same requirements apply for both individual and corporate guarantors?

There are generally no filing or registration requirements in relation to the granting of guarantee by either an individual or a corporate guarantor.

3) Judicial enforcement

3.1 Will the courts in Vietnam recognise a foreign governing law, and enforce a contract governed by such foreign governing law?

Vietnamese courts may recognise foreign governing law and enforce contracts governed by such law in certain cases, such as where at least one of the contracting parties is a foreign natural person or juridical person.

3.2 Will the courts in Vietnam recognise and enforce a judgment obtained in the courts of a foreign country against a party?

Vietnamese courts may recognise and enforce a judgment obtained in the courts of a foreign country against a party, provided that such judgment undergoes the procedures for recognition and enforcement of foreign court judgments in Vietnam. A foreign court judgment may be recognised and enforced in Vietnam if (i) there is a treaty between Vietnam and the foreign jurisdiction; (ii) the reciprocity principle applies; or (iii) specific provisions of Vietnamese law permit such recognition and enforcement.

However, a foreign court judgment may not be recognised or enforced in Vietnam, if, among others:

- a) the foreign court that issued the judgment does not have jurisdiction to settle civil cases as prescribed under the law — for example, civil cases in relation to rights over immovable properties in the territory of Vietnam; and
- b) the recognition and enforcement in Vietnam of the civil judgment of the foreign court is contrary to the fundamental principles of Vietnamese law.

3.3 Will the courts in Vietnam recognise and enforce an arbitration award given against a party?

Vietnamese courts may recognise and enforce a foreign arbitration award, provided it complies with the procedures for recognition and enforcement of foreign arbitration awards in Vietnam. A foreign arbitration award may be recognised and enforced in Vietnam typically based on (i) a treaty (such as the 1958 New York Convention, of which Vietnam is a member); or (ii) the reciprocity principle.

However, the courts may refuse to enforce such awards on grounds recognised by the 1958 New York Convention and incorporated into Vietnamese law. These include, amongst others, the incapacity of a party, the failure to give proper notice to a party or the inability of a party to present his/her case, if the selection of the arbitrators or the arbitral procedure was inconsistent with the agreement of the parties or the law of the seat, the invalidity of the arbitration agreement, the award having been set aside, and/or the enforcement of the award being contrary to the public policy of Vietnam.

3.4 Are there any restrictions for a foreign lender to commence (i) any court proceeding against a party in Vietnam; or (ii) enforcement proceeding against collateral security in Vietnam?

In general, there is no restriction under Vietnamese law for a foreign lender to commence (i) any court proceedings against a party; or (ii) enforcement proceedings against collateral security in Vietnam.

4) Other matters

4.1 Are there restrictions against the grant of collateral security or guarantee in favour of a foreign lender?

Yes, there are certain restrictions under Vietnamese law regarding the grant of collateral security or guarantees in favor of foreign lenders:

- a) foreign lenders cannot take security over land use rights and assets attached to land in Vietnam; and

- b) approval from the Prime Minister is required when economic institutions established in Vietnam provide guarantees for obligations of non-resident lenders.

4.2 Is there any exchange control in Vietnam that would affect the enforcement of a collateral security or guarantee, and receipt of the enforcement proceeds?

The transfer of enforcement proceeds to a foreign lender must be conducted via a credit institution or a foreign bank branch in Vietnam.

4.3 Are there any other material considerations that a foreign lender should note in relation to the taking of collateral security or guarantee in Vietnam?

The principal Vietnamese law considerations for lenders when participating in financings in Vietnam have generally been covered by the above questions and answers.

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