



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

## 10 Key Questions & Answers – Focus on Bangladesh

NO.	QUESTIONS	GOVERNMENT RESPONSES
1.	<p><b>In light of COVID-19, are there any new government schemes covering forbearance of bank debt in Bangladesh?</b></p>	<p>No. There are no new government schemes covering forbearance of bank debt. However, the Bangladesh Bank (“BB”) - the Central bank of Bangladesh, through a circular dated 28 September 2020, extended the moratorium on loan payments until 31 December 2020 and also declared that any borrower unable to pay installments until December 2020 will not be classified as being in default.</p>
2.	<p><b>Can security over real property (i.e. mortgage, charge, etc.) be granted to a foreign lender in Bangladesh?</b></p>	<p>Yes. However as a legal requirement, the Bangladeshi borrower is required to obtain prior approval from the Bangladesh Investment Development Authority (“BIDA”) to obtain a loan from a foreign lender before creating any security over real property/tangible assets.</p>
3.	<p><b>Can second ranking security be taken against real property?</b></p>	<p>No. Only a mortgage over real property is allowed under the laws of Bangladesh.</p>
4.	<p><b>Can security granted to a foreign lender (of any rank) be perfected by registration in Bangladesh?</b></p>	<p>As discussed above, only mortgages are allowed under the laws of Bangladesh. Additionally, mortgage deeds must be registered with the relevant land registry office where the landowner must execute the deed and swear an affidavit in front of the land registry officer. The landowner is also required to execute a power of attorney in favour of the foreign lender that will empower the lender to sell the real property in the event of foreclosure and receive the sale proceeds.</p> <p>Note: Please be aware that there is a special law in Bangladesh favouring local banks and financial institutions in the event of foreclosure. The special law is called the ‘Money Loan Court Act 2003’ that allows local banks and financial institutions to enforce the mortgage and sell the mortgaged property without going to the court. This benefit is not applicable to foreign lenders, except for certain international organizations like the IFC, World Bank etc. This is why foreign lenders appoint local banks as their security agent to hold the security and enforce the mortgage in the event of a foreclosure. Otherwise, the foreign lenders will have to go through the rigorous process of a civil suit, which is time consuming, cumbersome and not reliable in terms of securing restitution.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
5.	<p><b>What is the competent authority/department in Bangladesh which registers security interests over real property? What is the security registration process in Bangladesh?</b></p>	<p>Land registry offices under the Ministry of Law and Parliamentary Affairs are the primary government offices that register mortgages over the real property and maintain the relevant records. Additionally, if the landowner is a company registered in Bangladesh, then the registered deed of mortgage will also have to be registered with the company registrar within 21 days of registration at the land registry office.</p> <p>The mortgage registration process is simple and straightforward. The landowner is required to execute a deed of mortgage and a power of attorney in favour of the foreign lender and swear an affidavit before the land registry officer. In terms of process, he or she needs to submit a notice to the land registry officer with the intention of registering the deed. The land registry officer will then verify the land documents, especially the BIDA approval, title documents and land development tax receipts to verify the land parcel and its ownership.</p> <p>Once the land registry officer is satisfied about the land documents and ownership of the landowner over the land parcel to be mortgaged and the deed's content, the officer will call upon the landowner and the representative of the lender for execution. The landowner will then have to pay the relevant stamp duty and registration fees in the form of pay-orders and treasury challan and submit the originals to the land registry officer for him or her to verify that the appropriate registration costs are duly paid.</p> <p>The landowner will then sign the deed and apply his or her thumb print in front of the land registry officer and execute the affidavit to the effect that he or she is the actual owner of that land parcel and that the land parcel is not mortgaged to anyone else. Once these execution formalities are concluded, the land registry officer will mark the deeds with numbers and serials and update the land registry books. The land registry officer will also hand over a deed delivery receipt as proof of registration. The original deeds usually become available within 4 years of registration. The land registry officer will also issue certified copies of the deed of mortgage and power of attorney within 3-7 days of registration.</p> <p>Once the above process is complete, the landowner (if it is a company), will have to submit the certified copy of the deed of mortgage to the Company Registrar by paying certain government fees. Once the certified copy is filed and government fees are paid, the designated officer will review the application and deed and then affix the seal of the Company Registrar to the certified copy as proof of registration with the Company Registrar. It will also issue a certificate that the mortgage is recorded at the Company Registrar.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
6.	<p>Are there any challenges or practical difficulties to secure registration over security interests granted to foreigners?</p>	<p>No. As long as the BIDA approval is in place and there is no issue with the land title and documentation, there is no substantial challenge in terms of securing registration over the real property. In fact, the process is well established and straightforward.</p>
7.	<p>Can a foreign lender transfer its security rights over real property to a third party? If so, can the transfer be effected without the borrower's consent?</p>	<p>No.</p>
8.	<p>Can a foreign lender take ownership of real property in the event of foreclosure?</p>	<p>No. Foreigners cannot directly own real property in Bangladesh. The foreign lenders will have to sell the mortgaged property to local citizens and receive the sale proceeds. Please refer to the note stated in Question 4 in regards to this aspect.</p>
9.	<p>Can a foreign lender take a security over rental income of a borrower or convert debt into equity?</p>	<p>Yes. A foreign lender can take security over any rental income of the borrower by executing a deed of hypothecation. Such rental income will be considered as receivables (not a part of the real property) and the deed of hypothecation will have to be registered with the Company Registrar. The procedure to register the deed of hypothecation is quite similar to registering the certified copy of the deed of mortgage. Please refer to our response to question 5 above.</p>
10.	<p>In light of COVID-19, are online registrations being accepted or are there any other interim or modified arrangements made by the registry?</p>	<p>No. There appear to be no arrangements regarding online registration of mortgages and powers of attorney at the land registry office. As stated above, the landowner and the representative of the foreign lender must be there in person before the land registry officer to register the documents.</p>



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