



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

10 Key Questions & Answers – Focus on Cambodia

DECEMBER 2020



NO.	QUESTIONS	GOVERNMENT RESPONSES
1.	<p>In light of COVID-19, are there any new government schemes covering forbearance of bank debt in Cambodia?</p>	<p>There has been no announcement as to any moratorium on debt repayments by borrowers in response to COVID-19 as of this date. However, the National Bank of Cambodia has issued Circular No. Th7.020.001 S.R.NorN dated 27 March 2020 (“Circular”) requiring banking and financial institutions in Cambodia to work constructively with affected borrowers and assist in the restructuring of loans granted to borrowers in these four priority sectors: (i) tourism (including hotels, guest houses, restaurants, food and beverage suppliers, service activities and other support services); (ii) textile and garment manufacturing (including employees); (iii) construction (exclusively for first-time house/shop owner loans and mortgages); and (iv) transport (specifically taxi drivers and tuk-tuk drivers) and logistics. This Circular is valid from 27 March 2020 until 31 December 2020.</p>
2.	<p>Can security over real property (i.e. mortgage, charge, etc.) be granted to a foreign lender in Cambodia?</p>	<p>Yes.</p>
3.	<p>Can second ranking security be taken against real property?</p>	<p>Yes, Article 850 of the Civil Code of Cambodia allows multiple hypothecs to be created on real property in order to secure multiple debts. The rank of their priority follows the order of their registration.</p>
4.	<p>Can security granted to a foreign lender (of any rank) be perfected by registration in Cambodia?</p>	<p>Yes.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
5.	Which is the competent authority/department in Cambodia which registers security interests over real property? What is the security registration process in Cambodia?	<p>The Provincial or Municipal Department of Land Management Urban Planning Construction and Cadastre (“DLMUPCC”) where the real property in question is situated is the competent authority for the registration of security interests over such real property.</p> <p>The Ministry of Justice and the Ministry of Land Management Urban Planning and Construction (“MLMUPC”) issued an Inter-Ministerial Prakas concerning the Real Rights Registration Procedures Pertaining to the Civil Code dated 29 January 2013 (“Joint Prakas 30”), introducing procedures to register real property rights in conformity with the provisions of the Civil Code of Cambodia. As a result, the application documents (which include the application form and security documents to be executed by both the security provider and secured party) shall comply with the requirements of Joint Prakas 30. These application documents together with other supporting documents are required to be filed with the relevant DLMUPCC.</p>
6.	Are there any challenges or practical difficulties to secure registration over security interests granted to foreigners?	<p>Execution and notarization of security documents/application forms by foreign lenders/security providers are increasingly challenging for the purpose of hypothec registration; for example, foreign lenders have to execute security documents in the presence of a Cambodian notary and most of the relevant supporting documents are required to be translated from English to Khmer and also notarized by a Cambodian notary. The COVID-19 pandemic has escalated these challenges considerably due to the travel restrictions and COVID-19 preventative measures that have been implemented by many countries.</p>
7.	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>Yes, subject to the provisions of the relevant facility agreement and security agreement.</p>



NO.	QUESTIONS	GOVERNMENT RESPONSES
8.	Can a foreign lender take ownership of real property in the event of foreclosure?	No, there is a general restriction on foreigners from owning land in Cambodia. Pursuant to the Constitution of Cambodia, the Land Law promulgated on 13 August 2001 (as amended) and the Law on Commercial Enterprises dated 30 May 2005, only Cambodian citizens or so-called Cambodian legal entities (i.e. companies whose registered address and operations are in Cambodia and in which 51% of its voting shares are Cambodian-owned, whether by a Cambodian citizen or entity) can own land in the country.
9.	Can a foreign lender take a security over rental income of a borrower or convert debt into equity?	Yes.
10.	In light of COVID-19, are online registrations being accepted or are there any other interim or modified arrangements made by the registry?	Online registrations are currently not being accepted and there is no other interim or modified arrangement that has been put in place by the relevant DLMUPCC for hypothec registration.



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