



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

10 Key Questions & Answers – Focus on the Philippines

OCTOBER 2020



NO.	QUESTIONS	GOVERNMENT RESPONSES
1.	<p>In light of the COVID-19, are there any new government schemes covering forbearance of bank debt in the Philippines?</p>	<p>The Philippine Government, through Republic Act No. 11494, otherwise known as the “Bayanihan to Recover as One Act,” and the Bangko Sentral ng Pilipinas (“BSP”), through its Memorandum No. M-2020-068, directed all banks, quasi-banks, financing companies, lending companies, and other entities providing in-house financing for goods and properties purchased, asset and liabilities management companies and other financial institution to implement a one-time sixty (60)-day grace period to be granted for the payment of all existing, current and outstanding loans falling due, or any part thereof, on or before 31 December 2020, including, but not limited to, salary, personal, housing, commercial, and motor vehicle loans, amortizations, financial lease payments and premium payments, as well as credit card payments, without incurring interest on interests, penalties and other charges thereby extending the maturity of the said loans. Further, all loans may be settled on staggered basis without interest on interests, penalties, and other charges until 31 December 2020, or as may be agreed upon by the parties.</p> <p>Despite the one-time 60-day grace period, the parties are not precluded on agreeing on a grace period longer than 60 days and/or payment of accrued interest on staggered basis beyond 31 December 2020.</p>
2.	<p>Can security over real property (i.e. mortgage, charge, etc.) be granted to a foreign lender in the Philippines?</p>	<p>Yes. Since a real estate mortgage does not contemplate a transfer or an absolute conveyance of a real property and merely serve as an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt, a security over real property may be granted to a foreign lender in the Philippines.</p>
3.	<p>Can second ranking security be taken against real property?</p>	<p>Yes. There is no prohibition on a second ranking security over a real property.</p>



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4.	Can security granted to a foreign lender (of any rank) be perfected by registration in the Philippines?	Yes. Assuming that all the essential requisites of a contract of mortgage are present, it is indispensable, in order that a mortgage over a real property may be validly constituted and bind third parties, that the document in which it appears be recorded in the Register of Deeds. If the instrument is not recorded, the mortgage is nevertheless binding between the parties. <i>[Article 2125, New Civil Code]</i>
5.	<p>Which is the authority/department in the Philippines which registers security interests over real property?</p> <p>What is the security registration process in the Philippines?</p>	<p>The office of the Register of Deeds, under the jurisdiction of the Land Registration Authority, constitutes a public repository of records of instruments affecting registered or unregistered lands in the province or city wherein such office is situated. It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real (i.e. real estate mortgage).</p> <p>Mortgages, leases, and all interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests (i.e. Deed of Mortgage). The Register of Deeds shall make a brief memorandum of the security upon the certificate of title. A similar memorandum shall also be made on the owner's duplicate. <i>[Sections 54 and 60, Presidential Decree No. 1529]</i></p>



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6.	Are there any challenges or practical difficulties to secure registration over security interests granted to foreigners?	There are no challenges or practical difficulties in securing registration over security interests granted to foreigners provided that the foreign mortgagee can present all the mandatory requirements for registration. Under the law, it shall be the ministerial duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real property which complies with all the requisites for registration.
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?	Yes. Article 1624 in relation to Article 1475 of the New Civil Code provides that the assignment of credits and other incorporeal rights (i.e. mortgage) is valid when there is a meeting of the minds between the assignor of the credit and his assignee. The consent of the debtor is not necessary, and it is sufficient that the assignment of the loan with mortgage be brought to his knowledge in order to be binding upon him. <i>[C & C Commercial Corp. v. Philippine National Bank, G.R. No. L-42449, 05 July 5, 1989]</i>
8.	Can a foreign lender take ownership of real property in the event of a foreclosure?	<p>For land, the foreign lender cannot take ownership in the event of foreclosure.</p> <p>For buildings, a foreign lender may take full ownership of the building as there is no foreign ownership restriction for buildings.</p> <p>Only citizens of the Philippines or corporations or associations of which at least sixty percent of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippines and which is organized and constituted under the laws of the Philippines may acquire ownership of the private land in the event of foreclosure.</p>



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8.	<p>Can a foreign lender take ownership of real property in the event of a foreclosure?</p>	<p>Under the law, while private real property may be mortgaged in favor of any individual, corporation or association, the mortgagee shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings. [R.A. No. 133, as amended by R.A. No. 4882]</p> <p>Foreign banks which are authorized to do banking business in the Philippines shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession. In case the foreign bank is the winning bidder, it cannot take title to the property. It shall, during the five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower’s rights under applicable laws. Failure to do so shall subject the bank to penalties.</p> <p>If the real property consists of condominium units, foreigners may acquire ownership of condominium units in the event of foreclosure subject to the restriction that the total ownership of foreigners in a condominium project does not exceed forty percent (40%). The law provides that no condominium unit can be sold without at the same time selling the corresponding amount of rights, shares or other interests in the condominium management body-the Condominium Corporation and no one can buy shares in a Condominium Corporation without at the same time buying a condominium unit. Foreigners are expressly allowed to acquire condominium units and shares in condominium corporations up to not more than 40% of the total and outstanding capital. Under this set up, the ownership of the land is legally separated from the unit itself. The land is owned by a Condominium Corporation and the unit owner is simply a member in this Condominium Corporation. As long as 60% of the members of this Condominium Corporation are Filipino, the remaining members can be foreigners.</p>



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9.	Can a foreign lender take a security over rental income of a borrower or convert debt into equity?	<p>Yes. A foreign lender can create a security over rental income.</p> <p>The assignment of credit/rental income is an agreement by virtue of which the owner of a credit or rental income as the assignor, by any legal means, transfers his credit or rental income and its accessory rights to foreign lender as the assignee as a security in the performance of the assignor’s obligation. However, the assignment of credit shall produce no effect as against third persons unless it appears in a public instrument, or the instrument is recorded in the Register of Deeds in case the assignment involves real property. <i>[Article 1625, New Civil Code]</i></p> <p>In general, the foreign lender can have a debt converted into equity. However, this will be subject to the nationality restrictions applicable on the borrower i.e. the equity of the foreign lender after conversion should not exceed the maximum foreign ownership allowed given the borrower’s business or activity.</p>
10.	In light of COVID-19, are online registrations being accepted or are there any other interim or modified arrangements made by the registry?	<p>No. The Register of Deeds did not implement any other interim or modified arrangements during the implementation of the community quarantine. The applicant will need to personally go to the office of the Register of Deeds to present hard copies of the required documents since the Register of Deeds will need to verify the authenticity of the documents presented prior to registration.</p>



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