

Recent Developments of the Secured Transaction in Lao PDR

The new Decree on the Implementation of the Secured Transaction Law No.178/PM dated 20 June 2011 (the “**Implementing Decree**”) was recently promulgated to clarify certain provisions under the Law on Secured Transactions No.06/NA dated 20 May 2005 (the “**Law on Secured Transactions**”). We would like to bring your attention to the requirements in relation to the registration of security which have been introduced pursuant to the Implementing Decree.

Prior to the enactment of the Implementing Decree, agreements concerning security over immovable assets (the “**Immovable Assets Security Agreements**”) and agreements concerning security over movable assets (the “**Pledge Agreements**”) required (a) notarization with the Notary Office under the Ministry of Justice so as to verify the legality of the agreements; and (b) registration with the Department of State Assets Management under the Ministry of Finance in the case of Pledge Agreements or the Office of the Land Management Authority where the relevant immovable assets are situated in the case of Immovable Assets Security Agreements (as the case may be) so as to make the agreements admissible in the court of Lao PDR (the “**Court**”).

The Implementing Decree further imposes additional conditions for the registration of both Immovable Assets Security Agreements and Pledge Agreements. We have highlighted certain important issues for your attention.

Immovable Assets Security Agreements



Pledge Agreements

- *Confirming the Correctness of Title Deeds*

Under the Implementing Decree, confirmation of correctness of the relevant title deed with the Office of the Land Management Authority where such immovable asset is situated is prerequisite for registration of security over such immovable asset. The competent land authority will consider and issue a confirmation within three (3) working days from its receipt of the complete set of required documents.

Thus, the Implementing Decree increases the steps for registration of Immovable Assets Security Agreements from two to three steps: (i) confirmation of correctness of the relevant title deed with the competent land authority; (ii) notarization with the Notary Office; and (iii) registration with the competent land authority.

- *Newly Established Registration Office*

The Ministry of Finance will soon establish a new registration office having specific responsibility for the registration of the Pledge Agreements (the “**Registration Office**”). Details of the registration process will be further prescribed.



Please note that the requirement for registration of Pledge Agreements with the Registration Office will become effective within 360 days after the enactment date of the Implementing Decree (which is 20 June 2012). Prior to the effective date, the existing competent authority, which is the Department of State Assets Management, continues to be responsible for such registration.

- ***Validity Period for Registration - Renewal Requirement***

Unlike registration of Immovable Assets Security Agreements, the registration of the Pledge Agreement is valid for a period of five (5) years. A creditor is required to renew such Pledge Agreement registration prior to the end of the mentioned five year period.

Cancellation of the Registration

Pursuant to the Implementing Decree, once an Immovable Assets Security Agreement is terminated, the creditor must inform the competent land authority (i.e. the land authority at which the registration took place) of its intention to cancel the registration due to such termination within five (5) working days from the date of termination.

With respect to the cancellation of a Pledge Agreement, either the creditor or debtor (as the case may be and subject to certain conditions) is entitled to request the cancellation of the registration of a Pledge Agreement with the Registration Office under one of the following conditions: (i) all parties have already performed their obligations under the Pledge Agreement; (ii) the Pledge Agreement is incorrect or has no binding effect; or (iii) the Court has rendered a decision or judgment to cancel the registration.

Way Forward

Immovable Assets Security Agreements and Pledge Agreements which have already been registered prior to the relevant effective dates under the Implementing Decree (i.e. 20 June 2011 for Immovable Assets Security Agreements and 20 June 2012 for Pledge Agreements) continue to be enforceable, provided that such security agreements be re-registered in accordance with the Implementing Decree. Please note that the Implementing Decree, however, exempts the requirement of verifying the security which is being re-registered. This is interpreted by the competent authorities as an exemption from the notarization procedure.

As you may see, these new requirements may affect the validity of existing security agreements. We therefore recommend the re-registration process in order to save creditors from potential hassles arising from validity disputes. However, as the re-registration process currently lacks implementing guidelines, we would need to ascertain appropriate procedures to streamline the existing security to the new regime.

Because implementing legislation will plug in these loopholes, we will keep you informed of the appropriate course of action as soon as the re-registration process becomes operational.

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