

Vietnam

Truong Nhat Quang, Duong Thu Ha and Vu Dzung, YKVN Lawyers



www.practicallaw.com/6-384-6852

REAL ESTATE

1. Please briefly state what is considered real estate in your jurisdiction. What are the most common forms of security granted over it? How are they created and perfected (that is, made valid and enforceable)?

Types of immovable property

In Vietnam, real estate refers to immovable property (that is, property that cannot be moved), including the following:

- Land.
- Houses, buildings and structures affixed to land, and property attached to such houses, buildings and structures.
- Other property affixed to land.
- Any other type of property declared by law to be immovable property.

There is no private ownership of land in Vietnam. Land is owned by the people and administered exclusively by the state. Land is allocated or leased by the state to individuals or organisations called land users. Sale or purchase of land or creation of a security interest over land is not permissible. Instead of owning land, land users have rights over land called land use rights, which represent the maximum ownership interest that users have in land. Sale, purchase or creation of a security interest over land use rights is generally permissible.

Common forms of security over immovable property

A mortgage (*thêchấp*) is the most common form of security interest granted over immovable property in Vietnam. A mortgage is a transaction where one party (mortgagor) uses its own property to secure the performance of an obligation to another party (mortgagee), without giving up possession of the property to the mortgagee. In a mortgage, the secured obligation can be that of the mortgagor or a third party. The mortgaged property remains under ownership of the mortgagor during the term of the mortgage.

A core feature of a mortgage is that the mortgagor retains the use and possession of the mortgaged property, provided the mortgagor maintains the property's value and is prohibited from disposing of the property while the mortgage is in effect (except for fungible assets, see *Question 6*). This feature distinguishes a mortgage from a pledge (*cầm cố*) (see *Question 2*). As a result, a mortgage is typically taken in relation to not only immovable property, but also intangible property which is physically undeliverable.

Although, in principle, a mortgage does not require delivery of the mortgaged property to the mortgagee, if there is an agreement between the parties, a third party can be appointed to take possession and exercise management over the mortgaged property.

Creation and perfection

Mortgages, created over immovable or movable property, must be made in writing. The mortgage agreement can be separate from or incorporated into the principal agreement (that is, the agreement recording the secured obligation).

Certain legal formalities must be carried out to perfect mortgages over immovable property. Depending on the type of immovable property being mortgaged, the main formalities include:

- Notarisation or certification-as-true (*chứng thực*).
- Registration.

Notarisation or certification-as-true. Notarisation is a substantive legal process. Public notaries certify the authenticity and legality of notarised documents. Notarisation must be conducted in Vietnamese, since public notaries will not certify original documents in a language other than Vietnamese. Notarisation is required for mortgages over immovable property involving a mortgagor that is an organisation or a Vietnamese citizen residing overseas.

Certification-as-true is a legal process with the same purpose as notarisation. Certification-as-true is conducted by a local People's Committee (that is, a local government authority). Certification-as-true applies to mortgages over immovable property involving mortgagors who are Vietnamese citizens residing in Vietnam, and it is required for these mortgages of immovable property if notarisation is not carried out or is not available.

Registration. Registration of a mortgage over immovable property is needed to give effect to and ensure priority and enforceability of the mortgage against any third party. A mortgage is registered with the local Office for Registration of Land Use Rights (Local Land Registration Office) of the local Department of Natural Resources and Environment under the People's Committee of the locality where the immovable property is located.

For registration purposes, a pro forma application executed by both the mortgagor and the mortgagee must be filed with the Local Land Registration Office. Documents attached to the application include, among others, the mortgage agreement which must have been duly notarised or certified. By law, registration must be completed by the Local Land Registration Office within five

business days from the date of proper receipt of the application and supporting documents. Registration is effective for the term of the mortgage.

TANGIBLE MOVABLE PROPERTY

2. Please briefly state what is considered tangible movable property in your jurisdiction, for example, machinery, trading stock (inventory), aircraft and ships? What are the most common forms of security granted over it? How are they created and perfected?

Types of movable property

There is no clear definition of tangible movable property in Vietnam's regulations. However, the 2005 Civil Code defines "movable property" as property other than immovable property (see *Question 1*). By law, this includes machinery, equipment, inventories, and possibly aircraft and ships.

Common forms of security over tangible movable property

Pledges and mortgages are the most common forms of security over tangible movable property. Pledges are used if lenders wish to take possession of the secured property. If the secured property is an aircraft, a seagoing ship, a fungible asset, or if the lenders do not wish to take possession of the secured property, a mortgage is more commonly used.

A pledge is defined as a transaction where a party (pledgor) uses its own property to secure the performance of an obligation to another party (pledgee), with transfer of possession of the property to the pledgee. As with mortgages, the secured obligation can be that of the pledgor or a third party.

In contrast to a mortgage, a pledge requires the pledgor to relinquish the use and possession of the property to the pledgee or a third party appointed by an agreement between the pledgee and the pledgor. Physical possession is generally required. The pledged property, however, is still owned by the pledgor. As with mortgages, the pledgee must maintain the pledged property's value and is prohibited from disposing of the property while the pledge is in effect.

For mortgages over fungible assets, see *Question 6*.

Creation and perfection

Pledge. As with mortgages, a pledge must be evidenced in writing. A pledge agreement can be separate from or incorporated in the principal agreement.

A pledge agreement is effective and enforceable against the pledgor on transfer of possession of the pledged property to the pledgee, without having to carry out any legal formalities, including notarisation or certification-as-true, and registration. However, registration is advisable to ensure the priority and enforceability of the pledge against any third party. Registration is made with the National Office for Registration of Security Transactions under the Ministry of Justice (National Registration Office). The National Registration Office has branches in most if not all cities

and provinces throughout the country. In practice, registration of a pledge is usually sought.

Mortgage. Mortgages over movable property must be made in writing. No notarisation or certification-as-true is required. Mortgages over movable property do not have to be registered except for:

- Mortgages of a single property as security for multiple obligations.
- Mortgages of aircraft and seagoing ships (*see below*).

However, registration with the National Registration Office is advisable in all cases, to establish priority and enforceability of the mortgage against a third party.

A mortgage over an aircraft that bears Vietnamese nationality must be registered with the Civil Aviation Administration of Vietnam to be effective. To do this, a request attaching certain supporting documents, including the mortgage agreement, must be filed with the Civil Aviation Administration. If there are two or more mortgages over the same aircraft, there must be a separate registration request for each mortgage. If there is a mortgage over more than one aircraft, there must be a separate registration request for each aircraft.

A mortgage registration is effective for the life of the mortgage. A mortgage of an aircraft under co-ownership must be agreed by all co-owners, unless otherwise agreed. If an aircraft is mortgaged to more than one mortgagor, priority is determined by the time of the mortgage registration, unless otherwise agreed.

A mortgage over a seagoing ship that bears Vietnamese nationality must be registered with the Vietnam Maritime Administration to be effective. A registration request and the mortgage agreement must be filed with the Vietnam Maritime Administration. By law, registration is completed within three business days from the date of proper receipt of those documents.

SHARES AND FINANCIAL INSTRUMENTS

3. What are the most common forms of security granted over financial instruments, such as shares and other securities (both in certificated and dematerialised form)? How are they created and perfected?

Common forms of security over shares and financial instruments

The most common financial instruments are shares and bonds. If these instruments are listed on a securities exchange, they are not in certificated form. Otherwise, they can be either in certificated or dematerialised form. For these financial instruments, the most common form of security is a pledge, as most instruments are in certificated form. However, a mortgage can be taken over unlisted dematerialised shares and bonds.

Vietnamese law also provides for pledges over other financial instruments such as savings books and other valuable papers (for example, certificates of deposit).

Creation and perfection

Both pledges and mortgages must be created in writing, which can be separate from or incorporated in the principal agreement.

A pledge of unlisted certificated shares or bonds is effective on transfer of possession of the pledged shares or bonds to the pledgee. However, it is advisable to register the pledge with the National Registration Office to establish priority and enforceability of the pledge against any third party (*see Question 2*). It is also advisable to give notification of the pledge to the issuer of the pledged shares or bonds, and to obtain the issuer's acknowledgement and undertaking to only permit transfer of pledged shares or bonds during the pledge's life with the pledgee's prior consent.

A mortgage of listed dematerialised shares or bonds is subject not only to security transactions law but also securities law. Under securities law, listed securities (including shares and bonds) are kept in the custody of a custodian (that is, a securities company or a bank licensed by the State Securities Commission of Vietnam to provide custody services), which is a member of the Vietnam Securities Depository. The custodian maintains securities accounts at the Vietnam Securities Depository on behalf of securities holders. The custodian assists a securities holder as a customer, when mortgaging its listed securities in favour of a mortgagee. On creation of a mortgage over listed securities, the custodian sends a list of mortgaged securities signed by the custodian and the mortgagee to the Vietnam Securities Depository. The Vietnam Securities Depository then transfers the mortgaged securities from the trading securities accounts to the "blocked" securities mortgage accounts in the name of the custodian.

No transaction relating to securities is allowed while the mortgage is in effect. It is however unclear whether registration at the Vietnam Securities Depository perfects a mortgage of listed securities. Therefore, it is advisable that a mortgage of listed securities is registered at both the Vietnam Securities Depository and the National Registration Office for perfection purposes.

CLAIMS AND RECEIVABLES

4. What are the most common forms of security granted over claims and receivables (such as debts or rights under contracts)? How are they created and perfected?

Common forms of security over claims and receivables

A mortgage is the most common form of security over claims and accounts receivables.

Creation and perfection

Mortgages over claims and receivables must be made in writing. Notification of the mortgage to the obligor of the relevant claim or receivable is needed, but no consent is required. In practice, mortgagees usually require acknowledgement and consent from obligors to the extent that this is possible. Although registration is not required to give effect to a mortgage, it is advisable that registration is done to ensure priority and enforceability of the mortgage against any third party.

INTELLECTUAL PROPERTY

5. What are the most common forms of security granted over registered and unregistered intellectual property (such as patents, trade marks, copyright and designs)? How are they created and perfected?

Common form of security over intellectual properties

Intellectual property includes, among other things:

- Copyright.
- Trade marks.
- Copyright-related rights.
- Patents.
- Designs.
- Geographical indications.
- Trade secrets.

Intellectual property law is silent on granting security over these types of property, but general regulations on granting security apply. All types of intellectual property are intangible and therefore, mortgages are the most common form of security.

Creation and perfection

Mortgages must be evidenced in writing (*see Question 1*).

There is no requirement for registration of a mortgage over intellectual property. That is, a mortgage over intellectual property is effective on signing unless otherwise agreed by the parties. However, as with mortgages created over other property, it is advisable to register the mortgage at the National Registration Office to ensure priority and enforceability of the mortgage against third parties.

PROBLEM ASSETS

6. Are there types of assets over which security cannot be granted or is difficult to grant? Consider the following and give brief details of any additional requirements:

- Future assets.
- Fungible assets (a pool of assets indistinguishable from each other that may change over time).
- Other assets.

Generally, a security interest cannot be granted over assets which are prohibited from transfer (for example, guns and drugs), or not transferable (for example, moral rights of an author to a book).

By law, a security interest can be granted over future assets. However, security interests over assets that will be acquired in the future are not attached until the borrower actually acquires the asset.

With fungible assets, Vietnamese regulations recognise a mortgage over “goods circulated during the course of production and business” which is similar to a floating charge under English law. Those goods can include machinery, equipment, raw materials and fuel. The mortgagor is entitled to sell, exchange or dispose of any of these goods provided consent from the mortgagee has been sought.

A mortgage over future assets or fungible assets is effective on signing unless otherwise agreed by the parties. As with mortgages created over movable property, registration with the National Registration Office is advisable to ensure priority and enforceability of the mortgage against any third party.

COMMERCIAL SECURITY

7. What types of commercial or quasi-security (that is, legal structures used instead of taking security) are common in your jurisdiction? Is there a risk of such structures being recharacterised as a security interest? Consider the following and give brief details:

- Sale and leaseback.
- Factoring.
- Hire purchase.
- Retention of title.
- Other structures.

The following structures are used as alternatives to taking security:

Sale and leaseback. A sale and leaseback transaction is categorised as one of the forms of financial lease provided by financial leasing companies. A financial leasing company purchases machinery, equipment, transportation means and other movable property from the lessee and then leases the same property back to the lessee.

Factoring. Factoring is a banking service which is only licensed by the State Bank of Vietnam (SBV) to banks and finance companies. A party who is licensed by the SBV to provide factoring services buys accounts receivables at a discount.

Hire purchase. As with a sale and leaseback, hire purchase is one of the forms of financial lease provided by financial leasing companies. Hire purchase is where a financial leasing company leases machinery, equipment, transportation means or other movable property to a lessee, and grants the lessee a right to purchase the leased property at a pre-determined price on expiry of the lease term (which is usually the same as the economic life of the leased property).

Retention of title. This is a transaction for the sale of property in which title to the property remains vested in the seller until payment is made by the buyer. Retention of title is now becoming common, but primarily relates to retail sales.

In addition, the 2005 Civil Code introduced a sale with option to buy back. This is a transaction for sale of property where the seller is granted an option to buy back the same property within a pre-determined period of time. The buy back period is no longer than one year or five years for movable properties or real estate, respectively. However, this sale mechanism is not yet commonly used in Vietnam.

RISK AREAS

8. Do company law rules affect taking security? In particular:

- **Financial assistance rules.** For example, if a company grants security to secure debt used to purchase its own shares (or the shares of its holding company), does this breach such rules?
- **Corporate benefit rules.** For example, if a subsidiary grants security relating to a loan to its parent, does this breach such rules?
- **Other rules?**

Unlawful financial assistance

There is no financial assistance rule in company law that may affect taking security.

Corporate benefit rules

Under bank finance regulations, a credit institution (that is, a bank, finance company or financial leasing company) cannot, among other things, grant guarantees to secure loans extended to its major shareholders (that is, shareholders holding 10% or more of its voting capital) on a preferential basis (that is, preferential guarantee fee, no security for the guarantee, and so on).

A credit institution is not permitted to make loans to its board members, inspection committee members, general director (that is, chief executive officer), deputy general directors and their parents, spouses and children, and persons responsible for considering and approving the loans.

The total outstanding loans made available by a credit institution to the following cannot exceed 5% of its total capital:

- Major shareholders, auditors, chief accountant and inspectors; and
- Companies in which any of the persons listed in the bullet point above hold more than 10% of the share capital.

9. Can a lender holding or enforcing security over land be liable under environmental laws, even if it did not cause any pollution of the land?

A lender holding or enforcing security over land use rights is not generally held liable for pollution of the land over which the land use rights are held as collateral for the loan.

THE COMMERCIAL DEBT MARKET

10. Is contractual subordination of debt possible and common? If so, how can it be achieved, for example by an inter-creditor agreement between senior, mezzanine and junior creditors? Is structural subordination possible?

Contractual subordination of debt is possible except for specific instruments which, by statute, must or must not be subordinated to others. Those instruments include, among others:

- Loans which are on-lent by the government from foreign borrowings of the government. The government always requires these on-lent loans to be senior to other loans of the borrowers.
- Convertible bonds issued by banks to form part of the banks' equity. The principal of convertible bonds cannot be repaid if there is any outstanding secured or unsecured debt.

Contractual subordination can be achieved by agreement between the junior and the senior creditors. The junior creditor's claim will rank after the senior debt. Contractual subordination is becoming increasingly common.

Structural subordination is not common, but is permitted by law.

11. Is secured debt traded in your jurisdiction? If so, what transfer mechanisms are used? How do buyers ensure that they obtain the benefit of the security associated with the transferred debt?

Secured debts are transferable in Vietnam. Although Vietnam does not currently have debt trading markets except for the listed bond market, transfer of debts, particularly transfer of credit institutions' debts, is becoming more common. Without a central market for debt transfer, the most common mechanism for transfer of debts is direct negotiation. Debts can be transferred to individuals, banks or other organisations.

If secured debt is transferred, the benefit of any associated security is automatically transferred. Notification to the obligor and the third party granting security (if applicable) of the transfer is needed, but no consent is required unless otherwise agreed by the transferor, the obligor and/or the third party granting security. Transfer of debts can be refused in any of the following situations:

- There is no notification given to the obligor and the third party granting security (if applicable).
- The transferee cannot prove the authenticity of the transfer.
- When the obligor has already paid the debt in full, before being notified of the transfer.

The transfer of a secured debt must be in writing. In addition, if the associated security needs to comply with creation and perfection requirements (see Questions 1 to 5), the transfer of secured debt must be made in that way.

12. Is the trust concept recognised in your jurisdiction? If not:

- **Is a trust created under the law of another country recognised in your jurisdiction?**
 - **Can a security trustee enforce its rights in the courts in your jurisdiction?**
-

In principle, the trust concept has not been adopted, because Vietnam is a civil law country. However, in certain circumstances, a security trustee may be able to enforce its rights before a court by assimilating trust principles to a Vietnamese equivalent, such as the mechanism of agency.

13. Do the different types of security in your jurisdiction need to be documented separately or does your jurisdiction allow a single security document?

There is no clear requirement for different types of security to be documented separately. Therefore, a single security document is theoretically allowed.

However, if a single security document is used, it must be created and perfected in line with the requirements that apply to each type of security recorded in it. For example, if a mortgage over land use rights and a mortgage over equipment are documented in the same agreement, then this agreement must be notarised or certified-as-true and then registered with the Local Land Registration Office to give effect to, and perfect, the mortgage over land use rights. In addition, the mortgage over equipment must be perfected by registration with the National Registration Office. As a result, in practice, different types of security are usually documented separately.

ENFORCEMENT AND INSOLVENCY

14. Please briefly state the circumstances in which a secured creditor can enforce its security, for example, when an event of default occurs? What requirements must the creditor comply with?

A secured creditor can enforce its security in the following situations:

- Failure to perform the secured obligation when it becomes due, whether at stated maturity, by acceleration or otherwise.
- Circumstances in which enforcement is required by law to enable the obligor to perform other obligations (for example, bankruptcy).
- Circumstances agreed by the parties involved.
- Other circumstances provided by law.

The following are requirements that the creditor must comply with to enforce security:

- **Principles.** Enforcement must be conducted on an objective and transparent basis and ensure that lawful rights and benefits of the parties are protected.
- **Notification and enforcement period.** If the secured property is used to secure different obligations to different entities, the creditor must give notification of enforcement to the other entities, or register such notification with the agency with whom the security has been registered. In normal cases, no enforcement is allowed before expiry of a seven-day period for movable property, or a 15-day period for immovable property, from the notification date, unless otherwise agreed by the parties. However, if the secured property is a claim, valuable paper, or savings book or in certain other cases, enforcement can be conducted at the same time as giving notification.

15. How are the main types of security interest usually enforced? What requirements must a creditor comply with (for example, a mandatory public sale of the secured asset through the courts)?

Vietnamese law allows the parties to agree measures to enforce security and the timing for enforcement procedures. Methods of enforcement of security include:

- Sale of the secured property.
- Taking secured property in lieu of performance of the obligation.
- Receiving an amount of money or other property from a third party for mortgages over claims or account receivables.
- Other methods as agreed by parties.

If there is no agreement between the parties, the secured property must be sold by auction. With movable property, the price of which can be specifically and clearly determined on the market, the secured party can sell the property at market price on a private sale basis without going through an auction sale. However, the securing party and any jointly secured parties must be notified of the private sale.

16. Are company rescue or reorganisation procedures (outside of insolvency proceedings) available in your jurisdiction? If yes, please give brief details, including voting requirements to approve such procedures. How do they affect a secured creditor's rights to enforce its security?

There are no company rescue or reorganisation procedures outside of bankruptcy proceedings, other than for contractual restructuring of debts (for which the voting requirement as set out in documents for these debts applies).

17. How does the start of insolvency procedures affect a secured creditor's rights to enforce its security?

A secured creditor's rights to enforce its security following commencement of bankruptcy procedures are affected as follows:

- Any enforcement of security must be suspended, unless otherwise permitted by the relevant court.
- The security may become void if created in certain circumstances (*see Question 18*).
- If liquidation of the borrower company occurs, the secured property is realised to cover the obligation to the secured creditor. If this is deficient, the creditor can only claim as an unsecured creditor for the deficiency.

18. What transactions granting security can be made void if the entity that granted the security becomes insolvent? Please briefly state the time limits that apply and the conditions that must be met for the security to be made void.

The following transactions granting security can be made void if the entity that granted the security becomes insolvent:

- A mortgage, pledge or other transaction granting security considered as a fraudulent conveyance, and which occurs within three months before commencement of bankruptcy proceedings.
- A mortgage or pledge created during insolvency proceedings without consent of the bankruptcy court.

19. Please list the order in which creditors are paid on the borrower's insolvency, assuming the security interests have been validly perfected. Consider:

- **The secured creditors considered in Questions 1 to 5 (please set out any order of priority applying between the security interests).**
- **Statutory claims (such as tax or other government claims, expenses of the insolvency proceedings and employee claims).**

- **Unsecured creditors.**
- **Subordinated creditors.**

Payment of a secured obligation to a secured creditor is made using proceeds from realisation of the secured property (see *Question 17*). However, if there is deficiency, the secured creditor is considered as an unsecured creditor in relation to the deficient amount. This is paid subject to the following payment order in the context of liquidation of the bankrupt borrower assets:

- Bankruptcy fees.
- Unpaid wages, severance allowances and other payables to employees.
- Unsecured debts, if the value of the assets is insufficient to pay all debts, each creditor is only paid a portion of its debt in the corresponding proportion.
- Members of the company, owner of the private enterprise or the shareholders in a shareholding company (as the case may be).

20. If more than one creditor holds the same security interest over the same asset, how is priority between them determined? Please briefly set out any specific ranking rules that apply.

In general, when two or more creditors hold security over the same asset, priority of payment for realisation of the asset is determined based on time of registration of the security interest. The creditor whose security interest is first registered with a competent registrar has priority in payment. However, an agreement on a different payment order regardless of time of registration among all or some creditors is legally permissible.

21. If a security interest has not been validly perfected, where does the security holder rank on the borrower's insolvency?

Perfection of security usually involves registering the security with a competent registrar. Registration is sought for two purposes:

- To give effect to and ensure priority and enforceability of a security interest against any third party, where registration of the security interest is required by law (for example, for a mortgage of immovable property). If registration for this purpose is not sought, the security interest is not effective and, therefore, the security holder is treated as an unsecured creditor on the borrower's insolvency.
- To ensure priority and enforceability of a security interest against a third party where registration is not mandatory (for example, for a mortgage of movable property). Where registration for this purpose is not sought, the security interest is still effective between the creditor and the borrower but priority and enforceability against third parties are not established. Therefore, if there is no other security interest created over the secured property, the security holder

remains the only secured creditor who is entitled to full payment from the realisation proceeds. In contrast, if there is a registered security interest created over the secured property, the holder of the registered security interest has a higher priority than the holder of an unregistered security interest.

CROSS-BORDER ISSUES

22. Are there restrictions on granting security (over all forms of property) to foreign lenders? If yes, please give brief details, for example registration requirements.

There are the following restrictions on granting security to foreign lenders:

Security over real property

Vietnamese land law only allows a mortgage over land use rights and property affixed to land to Vietnamese credit organisations, joint venture banks and local branches of foreign banks operating in Vietnam. Therefore, unless special government approval is obtained, a mortgage over land use rights and property affixed to land to foreign creditors is not possible, where it is made in favour of foreign lenders which do not have a local branch in Vietnam.

Security over shares

Foreign lenders can take a mortgage over shares, including both listed and unlisted shares. However, enforcement of the mortgage is subject to foreign ownership caps under Vietnamese laws. The foreign ownership caps for an equity investment in an existing Vietnamese company depend on, among other things, the sector in which the investment is made and whether the target company is listed or not. Foreign investment in certain sensitive sectors such as banking, insurance, telecommunication, advertising or other protected sectors under the Vietnam's World Trade Organisation (WTO) Services Schedule are subject to specific sectoral restrictions. For example, a foreign bank cannot hold more than 10% of the shares in a Vietnamese bank (unless it is qualified as a strategic investor, when it can hold up to 15% subject to the State Bank of Vietnam's approval, or 20% subject to the Prime Minister's approval), and all foreign investors cannot hold more than 30% of the shares in a Vietnamese bank.

For non-sensitive sectors, foreign investors can acquire 100% of the shares in an unlisted company and 49% of the shares of a listed company. For unlisted public companies (that is, those having more than 100 shareholders excluding professional securities investors and a paid-up charter capital of at least VND10 billion (about US\$60,000) or, having made its IPO), the current cap is 40%.

23. Are there exchange controls that restrict payments to a foreign lender under a security document or loan agreement?

Under foreign exchange regulations of Vietnam, a medium or long-term foreign loan (that is, a loan with a term of more than one year) must be registered with the State Bank of Vietnam for

it to be effective. The local borrower must open and maintain a bank account specifically for receiving loan proceeds and making payments of interest, fees and the principal loan with a local bank, which is authorised to provide foreign exchange services.

24. Is a foreign choice of law clause in a security document recognised and applied by the courts in your jurisdiction? Does local law always apply in certain circumstances?

The choice of law rules regulating a civil contract involving a foreign element are set out in the 2005 Civil Code. A civil contractual relationship involving a foreign element is defined as one of the following:

- A civil contractual relationship where at least one of the parties is a foreign organisation or individual, or a Vietnamese residing overseas.
- A civil contractual relationship between the parties who are Vietnamese individuals or organisations, but the basis for the establishment, alteration or termination of the relationship is the law of a foreign country, or the basis arises in a foreign country.
- The assets involved in the contractual relationship are located in a foreign country.

The parties to a civil contract involving a foreign element can agree on a foreign governing law except in the following circumstances:

- A contract which is entered into in Vietnam and performed entirely in Vietnam must comply with the laws of Vietnam.
- A contract relating to immovable property located in Vietnam must comply with the laws of Vietnam.

The 2005 Civil Code further provides that where foreign law governs a contract, the application of foreign law or the consequences of its application must not be contrary to the fundamental principles of Vietnamese law.

TAX AND FEES

25. Are taxes or fees paid on the granting and enforcement of security? Consider the following and state the tax rates and fee amounts, if they are more than a nominal amount:

- **Documentary taxes (for example, stamp duty).**
 - **Registration fees.**
 - **Notaries' fees.**
-

Documentary taxes are not applicable in Vietnam. The following are the fees incurred in relation to granting and enforcement of security:

- **Registration fees.** These include the fee for registering the security (including correction of incorrect information and changes in security details), and the fee for registering enforcement notification. The registration fees imposed by the National Registration Office are nominal. In relation to security over aircraft, the maximum registration fee is VND18 million (about US\$1,050).
 - **Notaries' fees.** Notaries' fees for a security agreement are calculated on the value of the secured property, or the amount of the loan proceeds if such amount is indicated in the security agreement. In any case, the notaries' fee for an agreement cannot exceed VND10 million (about US\$596).
-

26. If such taxes and fees make granting security too expensive, are there strategies to minimise costs?

Registration fees are applied to all kinds of security transactions and are inexpensive. Therefore, strategies to minimise costs are unnecessary.

REFORM

27. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

A bill for a Unified Law on Registration of Security Transactions is now being prepared. One of its main objectives is to replace the somewhat fragmented patchwork of regulations on registration of security transactions with a comprehensive and sustainable legal framework. The law aims to eliminate overlap and conflict that exists among the current regulations. It is expected that the law will facilitate registration of security transactions and access to the national database on security transactions. The draft law is scheduled to be brought before the National Assembly of Vietnam for adoption next year.

CONTRIBUTOR DETAILS

Truong Nhat Quang, Duong Thu Ha and Vu Dzung
YKVN Lawyers

T +84 8 3821 0888

+84 4 3934 5410

+84 8 3822 3155

F +84 8 3823 6908

+84 4 3934 5412

+84 4 3823 6908

E quang.truong@ykvnlaw.com

ha.duong@ykvnlaw.com

dzung.vu@ykvnlaw.com

W www.ykvnlaw.com



LEADERSHIP AND INNOVATION IN LEGAL SOLUTIONS

Firm profile

Established in 1999, YKVN is a top Vietnamese law firm with a national and international practice. YKVN offices are located in the financial centers of Hanoi and Ho Chi Minh City with the total number of more than forty five lawyers experienced in transactional law and in commercial litigation work throughout Vietnam, as well as in international litigation. YKVN is internationally recognized as a leading law firm in Vietnam and has received the following international awards:

- “*National Law Firm of the Year*” 2004 by the International Financial Law Review (IFLR) -- **the first time this distinction was awarded to a Vietnamese law firm;**
- “*National Law Firm of the Year*” 2005 by the International Financial Law Review (IFLR) **for the second year in a row;**
- “*Asset & Corporate Finance Deal of the Year*” 2005 by Asian Legal Business (ALB) -- **the first time this distinction was awarded to a Vietnamese law firm;**
- “*National Deal Firm of the Year*” 2005 by Asian Legal Business (ALB) -- **the first time this distinction was awarded to a Vietnamese law firm;**
- “*Deals of the Year*” 2006 by Asian Counsel -- **was the only law firm in Vietnam to be named in the top 30 deals of the 2006 year in Asia;** and
- “*Employer of Choice*” 2008 by Asian Legal Business (ALB) -- **the first time this distinction was awarded to a Vietnamese law firm.**

Main Practice Areas

- Asset finance
- Project finance and banking
- Foreign investment
- M&A
- Litigation
- International trade and tax
- Bank advisory
- Intellectual property
- Telecommunications
- Real estate
- Construction
- Labor

Key Contacts

Truong Nhat Quang, Managing Partner
quang.truong@ykvn-law.com
Diep Hoai Nam, Partner
nam.diep@ykvn-law.com

Ho Chi Minh City Office

The Metropolitan, Suite 1602
235 Dong Khoi Street, Ho Chi Minh City
Telephone: (84-8) 3822 3155
Facsimile: (84-8) 3823 6906

Hanoi Office

The International Center, Suite 301
17 Ngo Quyen Street, Hanoi
Telephone: (84-8) 3934 5410
Facsimile: (84-8) 3934 5412