



ISSUES RELATING TO FINANCE

MALAYSIA Skrine

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1. **What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

West Malaysia Usual Instruments include:- 1. Registered Memorandum of Charge of the real estate in Form 16A pursuant to the National Land Code 1965 (where there is an individual title issued to the real estate). 2. Debenture creating a fixed charge over the real estate. 3. Loan Agreement cum Assignment (where there is no individual title issued yet to the real estate). 4. Registered lien holders caveat in Form 19D pursuant to the National Land Code 1965.

2. **Describe [national] [state] [territorial] [provincial] or local mortgage recording or other similar taxes payable on making a loan secured by real estate or perfecting a lien on real property.**

Stamp duty is payable on the loan instruments secured by real estate in accordance with the Stamp Act 1949 and where the instruments are required to be registered, certain registration fees are payable. Generally, for conventional financing in Ringgit Malaysia, stamp duty is calculated at 0.5% of the loan amount secured (for the principal instrument) and RM10 for every subsidiary instrument securing the same principal loan. Where the loan is in foreign currency, the stamp duty shall be RM5.00 for every RM1,000 or part thereof but the total duty payable shall not exceed RM500.

3. Describe manner in which a lien secured by real property is foreclosed.

West Malaysia Where the security involves a land charge under the National Land Code 1965, foreclosure is typically carried out through a judicial sale in accordance with the provisions of the National Land Code. Distinction is to be made between Land Registry titles and Land Office titles as different procedures are used depending on the type of land titles involved. In certain circumstances, it is permissible to foreclose the real property through private treaty sale (without a court order) by a receiver and manager, as agent/attorney of the charger, in accordance with the powers and provisions under a debenture where a fixed charge is created on the real property. Where the security is a lien holder's caveat, sale of the real property is by way of execution proceedings after obtaining a court judgment.

4. Describe any significant costs of or impediments to foreclosing a lien on real property.

West Malaysia Legal fees would be incurred for the foreclosure proceedings. Other costs include valuation fees for purposes of determining the reserve price and other filing fees relating to the judicial sale. In the event the sale is carried out by a receiver and manager through a private treaty sale, the fees of the receiver and manager are likely to be higher than the cost for a typical judicial foreclosure.

5. What is the customary time period for foreclosing a lien on real property?

West Malaysia A judicial sale arising from enforcement of Form 16A Charge can take between 6 to 12 months from the commencement of the process until obtaining the court order and the date of the first auction, longer if contested by the chargor. The time period may be prolonged by many factors, including the following: late filing of applications and affidavits leading to adjournments, court vacations, reshuffling of the judiciary, absentees due to medical and other reasons, priority cases (or in the case of the Land Office cases, the timetable of each particular Land Office) etc. In the instance of a lien holder's caveat, judgment may take between 3 to 9 months on average.

6. Are there [national] [state] [territorial] [provincial] or other local governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property? If so, please describe.

Yes. Offshore borrowing by Malaysian resident (whether company, individual or partnership) from foreign banks/lenders are governed by the Exchange Control Act 1953 including the Foreign Exchange Administration Rules issued by the Central Bank of Malaysia. The factors to consider in determining whether approval is required from the Central Bank for the loan include the identity of the foreign lender, whether the loan is in foreign or Ringgit currency, purpose and amount of the loan. The foreign exchange administrations rules vary from time to time in line with government's objective to progressively liberalize its foreign exchange policies to facilitate a conducive and competitive business environment.

7. What legal limits are imposed on the amount of interest which may be charged on a loan secured by real property?

None.

8. Describe any laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.

None.

