



ISSUES RELATING TO FINANCE

PAKISTAN

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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)?**

A mortgage deed or a registered agreement creating a charge can be used in Pakistan to create a lien on real estate in order to secure indebtedness.

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.**

A mortgage deed must be affixed with appropriate stamp duty and it must be registered. Different rates of stamp duty and registration fee are charged for each of the four Provinces and the Capital Territory of Islamabad. If the creator of the mortgage or charge is a company, then the mortgage or charge must be filed with the registrar of companies within twenty-one days of its creation, and the fee for such filing is Pakistani Rupees Five Thousand.

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

In order to foreclose a property, a mortgagee would need to institute a suit for foreclosure before the relevant Civil Court. Financial institutions, which include banking companies, can file a suit for foreclosure or sale before a Banking Court, which may pass an interim or final decree for foreclosure or sale. Alternatively, in case of default in payment by a customer, the financial institution may send a notice on the mortgagor demanding payment of the mortgage money outstanding, and failing payment of the amount within due date, it shall send a second

notice of demand for payment. In case the customer continues to default in payment, the financial institution shall serve a final notice on the mortgager demanding the payment of the mortgage money outstanding. Where a mortgagor fails to pay the amount as demanded and after the due date given in the final notice has expired, the financial institution may, without the intervention of any Court, sell the mortgaged property or any part thereof by public auction and appropriate the proceeds thereof towards total or partial satisfaction of the outstanding mortgage money.

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

The right to foreclosure is not available in all cases of mortgages. Under Pakistan law, the right to foreclosure is available only in case of a mortgage by conditional sale, or in an anomalous mortgage, by the terms of which the mortgagee is entitled to foreclosure, or a usufructuary mortgage as such.

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

The time period is dependent on the direction given by the Court, in a suit for foreclosure as discussed above which would follow a time progression commensurate with litigation matters in general. In the case of a suit for foreclosure instituted by a financial institution before a Banking Court, such suit is required to be disposed of within ninety days from the day on which leave to defend is granted to the defendant of the suit. In practice however, this time period tends to vary.

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.

While borrowing from abroad is prohibited, the State Bank of Pakistan (“SBP”) has granted general permission to private sector entrepreneurs to obtain loans from foreign banks/financial institutions, provided that the loan agreement and the repayment schedule are duly registered with the SBP.

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

In the case of loans obtained from foreign banks or financial institutions, the interest charged on such loans may not exceed the current LIBOR + 1.5%.

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

None.