



LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY

National Assembly

No. 43/PO

DECREE
of the
PRESIDENT
of the
LAO PEOPLE'S DEMOCRATIC REPUBLIC

On the Promulgation of the Amended Secured Transactions Law

Pursuant to Chapter 6, Article 67, point 1 of the Constitution of the Lao People's Democratic Republic which provides for the promulgation of the Constitution and of laws which are adopted by the National Assembly;

Pursuant to Resolution No. 29/NA, dated 20 May 2005, of the National Assembly of the Lao People's Democratic Republic regarding the adoption of the Amended Secured Transactions Law; and

Pursuant to Proposal No. 10/NASC, dated 23 May 2005, of the National Assembly Standing Committee.

**The President of the Lao People's Democratic Republic
Decrees That:**

Article 1. The Amended Secured Transaction Law is hereby promulgated.

Article 2. This decree shall enter into force on the date it is signed.

Vientiane, 25 May 2005

The President of Lao People's
Democratic Republic

[Seal and Signature]

Khamtay SIPHANDON



LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY PROSPERITY

National Assembly

No. 06/NA
20 May 2005

LAW ON SECURED TRANSACTIONS

Chapter 1 General Provisions

Article 1. Objectives of the Law on Secured Transactions

The Law on Secured Transactions defines rules [and] regulations to ensure contract performance, to strengthen property relations in the livelihood of the people, [and to] support production and business operations that contribute to socio-economic development, [and] ensure public order and justice.

Article 2. Security

A security is a guarantee to ensure performance of contractual obligations as provided in the laws or pursuant to contract.

Article 3. Types of Security

There are two types of security:

- A security¹ pursuant to the law;
- A security pursuant to contract.

Article 4. Security Pursuant to the Law

A security pursuant to the law is a guarantee that secures the repayment of a debt as provided for under the law, based on reasons of humanity and the overall benefit of the nation such as: payment of wages, salary or other benefits as provided for under the Labour Law, tax and duty payments, and other payments to ensure the interests of the nation, but

¹ The term "security" is often used in this law as a noun to refer to a "security interest". The translators acknowledge the awkwardness of attributing quantity to this noun.

excluding debts or other benefits arising from any agreement between the State and any individual or organisation.

Article 5. Security Pursuant to Contract

A security pursuant to contract is an agreement to guarantee the repayment of a debt between a creditor and a debtor, or an agreement to repay a debt on behalf of the debtor by another individual or legal entity when the debtor is unable to perform the contract.

There are two types of security² pursuant to contract:

- A security pursuant to contract secured by assets;
- A security pursuant to contract with another person or legal entity.

A security pursuant to contract secured by assets [refers to] an agreement between a creditor and a debtor, whereby the debtor gives possession of the asset or document of title to the creditor or an appointed party, or where the asset is adequately described in the security contract and [such security contract provides that] the aforementioned creditor shall have preferential rights for repayment of the debt with that asset.

A security pursuant to contract with another person or legal entity [refers to] an agreement whereby [such] other person or legal entity agrees to repay the debt or perform the debtor's obligations in the event that the debtor is unable to repay its debts or is unable to perform its obligations.

Article 6. Form, Contents and Conditions under a Security Contract

The form, contents and conditions of a security contract shall be based on those of general contracts as provided for under the Contract Law³. A security contract may be made at the same time as the loan [contract]⁴ or later. A security may be created in the same document as the loan contract or as a separate contract.⁵

Article 7. Order of Preferential Rights of a Security

The repayment of a debt by a security shall be performed according to the following order of preferential rights:

² This law categorises security interests by “types” – conceptual categories, and “forms” – which include process and documentation.

³ Readers may wish to refer to Article 10 of the Contract Law for the formalities of contracts. Also note that for readability, the structure of this sentence has been modified.

⁴ The literal translation is “loan”, but the translators understand that the intention is to refer to the contract that creates the obligation which is being secured by the security contract.

⁵ The law appears to deliberately distinguish between a “security” and a “security contract” (a standalone contract containing a security).

- Security pursuant to the law;
- Security pursuant to contract.

The aforementioned preferential rights shall be implemented when a debtor is unable to repay the debt, is unable to perform the contract, or is declared bankrupt.

Article 8. Forms of Security Pursuant to Contract

There are three forms of security pursuant to contract as follows:

- Security over movable property;
- Security over immovable property;
- Security by another person or legal entity.

Article 9. Rights of a State Enterprise in Providing Security

A State-owned enterprise or a State mixed enterprise⁶ as duly registered under the law may use their assets as security as provided by laws and regulations.

Use of land as security by a State-owned enterprise or State mixed enterprise shall be subject to the approval of the board of directors, but the [validity period of the] security shall not exceed the [term of usage of the land]⁷ as permitted by the government.

The government shall issue detailed regulations on the use of assets of State-owned enterprises or State mixed enterprises as security.

**Chapter 2
Security over Movable Property**

Article 10. Security over Movable Property

A security over movable property is a pledge, which is a guarantee of repayment of a debt by movable property, including intangible property.

Article 11. Types of Security over Movable Property

Security over movable property includes five main types, as follows:

- A pledge of material⁸ items;

⁶ Readers may wish to refer to Chapter 4 of the Business Law for more information on “State-owned enterprise” and “State mixed enterprise”.

⁷ This is the period which the State-owned enterprise or State mixed enterprise is given by the government.

⁸ The reference here is to tangible items.

- A pledge of documents, for example, documents certifying right of ownership, share certificates, bonds;
- A pledge of goods in a warehouse; a pledge⁹ of intangible assets, including shares in a company, intellectual property, bank saving accounts, contractual rights, receivables, [or benefits under any] approval, permission or right to conduct business operations;
- A pledge over assets or gains from any project or activity that may occur in the future.

Article 12. Pledge of Material Items

A pledge of material items is a security contract where a debtor deposits assets with a creditor or an appointed party to guarantee repayment of a debt, or where a debtor clearly describes such material items in the security contract to make repayment of the debt or secure contractual performance but keeps possession of the assets.¹⁰

Article 13. Conditions of a Pledge of Material Items

A pledge of material items has the following conditions:

1. An agreement to repay the debt, [which agreement is] guaranteed by the material items;
2. The material items must be owned by the debtor or by another person who has authorized the pledge in writing;
3. The material items must be placed in the possession of the creditor or any other third party as agreed by both parties.

Article 14. Effects of Pledge of Material Items

The right of ownership of pledged material items remains with the debtor, but the material items are placed in the possession and care of the creditor or appointed party. Other creditors shall not be entitled to seize such deposited material items. The secured creditor or appointed party preserving the material items shall not be entitled to use them or enjoy their usufruct¹¹, except if they are authorized in writing by the debtor. The creditor or appointed party preserving the material items shall be responsible for damage or loss caused by them. In the event that the deposited material items are lost or stolen, the creditor or appointed party preserving them are entitled to claim and recover such material items.

When the debtor has fully repaid the debt, the pledge contract will terminate. The pledged material items must be returned to the debtor. If the

⁹ The literal translation is “pledge” but there is no meaning of actual deposit.

¹⁰ The translators are aware that this non possessory pledge appears to be inconsistent with the rest of this article, as well as with articles 13-14.

¹¹ Readers may wish to refer to the Property Law for more information on property rights and specifically “usufruct”.

debtor fails to repay the debt within the agreed period, the material items will become the property of the creditor. If the value of the material items is higher than the debt, the creditor may pay the difference, or sell the material items as agreed with the debtor or auction them. After deducting the debt and interest, the balance must be returned to the debtor. If the sum obtained from the sale of the pledged material items is insufficient to repay the debt, the debtor must make up the outstanding amount in full.

Article 15. Pledge of Documents

A pledge of documents [refers to] a contract where the debtor assigns documents of title over movable property to the creditor to guarantee the repayment of a debt, but the debtor retains the right of ownership and the right to use such property.

In a pledge of documents, the debtor retains the right of ownership and the right to use such property, but he shall not have the right to sell, transfer, or to put the material items under another pledge. In addition, the debtor shall protect the material items in the same condition.

Article 16. Rights of the Creditor under a Pledge of Documents

In a pledge of documents, the creditor has the right to:

- Claim, [or] recover the pledged movable property, in the event that such pledged property [has been] placed with other persons;
- Receive repayment of the debt from the value of such pledged movable property in priority to other creditors;
- Propose an auction of such movable property.

Article 17. Pledge of Goods in Warehouse

A pledge of goods in warehouse is where the debtor deposits an inventory in a warehouse¹² with the creditor to guarantee the repayment of a debt. An inventory in a warehouse is transferable¹³. The detailed regulations on the inventory in a warehouse will be issued by the government.

Article 18. Defining the Characteristics and Assessing the Value of Movable Property

Movable property pledged must be adequately described in the contract and both parties must agree on [and specify] its characteristics and the assessment of its value in the contract.

¹² The pledge/deposit is of the document known as an “inventory in a warehouse”, not of the goods themselves.

¹³ The literal translation is “can change hands”. The reference to “transferability” or “negotiability” suggests that the “inventory in a warehouse” is intended to refer to negotiable warehouse receipts. However, there is insufficient textual evidence to know the meaning. The translators have therefore chosen a literal translation.

Article 19. Pledge of Intangible Assets

Intangible assets and gains from any project or activity that may occur in the future may be pledged. Rights to such assets or gains may also be sold or exchanged or deposited with another party.

**Chapter 3
Security over Immovable Property**

Article 20. Security over Immovable Property

A security over immovable property [refers to] a guarantee to repay a debt or perform other obligations to a creditor that is secured by the immovable property of the debtor or by the right to use the immovable property of the debtor, for example, a piece of land, a house, [or] a factory, [or] by placing documents that certify the right of ownership or the right to use the aforementioned [property] in the possession of the creditor or an appointed party. To give a security over the right to use immovable property, prior consent must first be obtained from the owner.

Article 21. Form of Security Contract over Immovable Property

A security contract over immovable property must be made in writing in the following forms:

- In the presence of a government notary or a village chief with three witnesses; [or]
- In the presence of three witnesses.

A security contract over immovable property located in the Lao People's Democratic Republic may be signed in a foreign country in conformity with this law.

Except as otherwise provided by the laws, a security contract over immovable property located in a foreign country will not be binding in the Lao People's Democratic Republic.

Article 22. Defining the Characteristics and Assessing the Value of Immovable Property

A security contract over immovable property must include an assessment of the value and a clear description of the characteristics of the immovable property, such as the category, type, size, quality, quantity, and location of the immovable property used as security.

Article 23. Repair, Improvement or Addition to Secured Immovable Property

The value of any repair, improvement or addition to an immovable property subject to a security shall be included in the value of such property.

Article 24. Use of Immovable Property [Subject to a Security]

Immovable property subject to a security shall be properly used and protected by the debtor according to the terms of the contract and kept in its original condition. The debtor may not cause devaluation of such immovable property without approval from the creditor.

Article 25. Rights of the Creditor [under a Security over Immovable Property]

The secured creditor has preferential rights to repayment of debts over unsecured creditors or other secured creditors who establish a contract of security with the same asset at a later time, except as otherwise provided in Article 7 of this law.

The debtor shall not be entitled to sell or transfer the [immovable] property subject to a security. In the event that the debtor breaches [the contract]¹⁴, the creditor is entitled to claim and recover the [immovable] property. The debtor shall be responsible for expenses incurred in the recovery of the assets and other additional damage that occurs as a result of the breach [of the contract].

The creditor shall have the right to propose an auction to sell the secured [immovable] property to repay the debt including interest, in the event that the debtor fails to repay such debt within the stipulated period.

Chapter 4
Personal Guarantee¹⁵ or Guarantee by Legal Entity

Article 26. Personal Guarantee or Guarantee by Legal Entity

A security by a person or legal entity [refers to] a contract whereby a person or legal entity agrees in writing to repay the debt or perform the contractual obligations on behalf of the debtor, in the event that the debtor is unable to repay the debt or defaults in the performance of its obligations.

The guarantor may use any immovable property or movable property that it owns as additional security.

¹⁴ The reference here is to both the loan contract and the security contract.

¹⁵ The Lao word for “security”, “guarantee”, “assurance”, and “insurance” is the same. In this chapter, the translators have chosen to translate that word as “guarantee” where they believed that the use of such English term is more readily associated with the giving of a personal assurance than the term “security”.

Article 27. Scope of Responsibility of a Guarantor

The guarantor may guarantee to pay the debt in full or in part. The guarantor must pay the debt as agreed in the security contract. The guarantor has the obligation to repay the principal amount of the debt only, except if otherwise agreed.

In the event that the debtor is able to repay only part of its debt, the guarantor is obligated to repay the remaining debt in full as agreed in the contract¹⁶, but the repayment shall not exceed the amount [that the guarantor agreed to repay] under the contract.

After expiry of the repayment date as provided in the contract, the creditor must first claim repayment from the debtor. If the debtor is unable to repay the debt, only then shall the creditor have the right to claim repayment from the guarantor.

The guarantor has the right to protect its guaranteed debtor. The guarantor and the debtor are obligated to notify each other of any repayment of debts made. The guarantor who has repaid a debt in full or any part thereof on behalf of the debtor becomes the creditor of the debtor and has the right to claim repayment of the principal amount paid including interest and also expenses if agreed in the contract.¹⁷

Article 28. Joint Guarantors

Debts may be guaranteed by two or more persons, who shall be called the joint guarantors, under a single contract or several contracts.

Joint guarantors may each guarantee a debt [up] to one hundred percent or less, as agreed. In the event of a one hundred percent guarantee, the creditor shall have the right to claim total repayment of the debt from any of the joint guarantors.

In the event of a partial guarantee, the creditor shall have the right to claim repayment from the joint guarantors only in the proportion for which the relevant party is responsible.

In the event that the debtor has partially paid a debt, the creditor shall have the right to claim the balance of the debt from either one of the joint guarantors if the guarantee is for one hundred percent of the debt. In the event that the debt is partially guaranteed, the creditor shall have the right to claim repayment in the proportion for which each guarantor is responsible.

¹⁶ The word “contract” is used in this article without qualification to refer, in different places, to two contracts – the underlying debt contract and the security contract. The context in which the word “contract” is used ought to supply the necessary meaning.

¹⁷ The reference appears to be to the contract between the guarantor and the creditor although it is not specified.

Article 29. Death or Mental Disorder of a Guarantor

If a guarantor dies or suffers from a mental disorder, [obligations under] the security shall pass to the heir or guardian as provided in the Law on Inheritance and the Contract Law.

Article 30. Release from a Security

A guarantor shall be released from a security in any of the following cases:

- The debtor has fully paid the debt;
- The guarantor has performed his obligations under the security contract;
- There is an alteration or addition to the contents of the contract made between the debtor and the creditor without the consent of the guarantor.

Chapter 5 General Rules of Security

Article 31. Registration of a Security

A security contract must be registered at the registration office of the governmental sector¹⁸ responsible for finance. A security contract over immovable property shall be registered at the land management office where the property is located.

The security contract shall have legal effect from the date of its registration.

An unregistered security contract shall be applicable between the parties, but shall not have preferential rights in priority to any registered security.

The register of security [contracts] with the office of the government sector responsible for finance or the land management office shall be open to the public, and [such office shall] ensure that the public has access to the information without any request.¹⁹

¹⁸ The word “sector” is used here to refer to the cluster of government ministries or agencies responsible for a particular area.

¹⁹ The meaning here is that the register is freely accessible, without any need for prior request.

Article 32. Waiver of Preferential Rights and Transfer of a Security

A creditor having preferential rights may waive its preferential rights in favour of another secured creditor, but [such waiver] shall not exceed the total value of its debt.²⁰

A secured creditor has the right to transfer a security to an unsecured creditor of the same debtor, but [such transfer] shall not exceed the value of the debt owed by the debtor.

A secured creditor may transfer its debt²¹, including its benefit, to another party. In the event of such transfer, the security and the preferential rights related to the debt will be transferred simultaneously, but this shall not exceed the value of its debt.

Article 33. The Rights and Responsibilities of a Guardian (Parent)

The guardian(s) of a child under 18 years of age, or the guardian of a mentally disabled person, or the custodian of assets of a missing person is obligated to care for the property of the relevant parties.

The aforementioned guardian or custodian has the right to place the relevant parties' property as security for a debt in order to guarantee the expenses in taking care of and protecting the interests of the relevant parties, subject to the approval of the court.

A guardian or a custodian will be responsible for damage to the property of persons under its guardianship or [to property under its custodianship] if the damage was caused by the guardian or custodian.

Article 34. The Right to Sell Secured Property

When the debtor or guarantor is unable to repay a debt within the stipulated period, the relevant party shall cease to have any right of ownership in the pledged or secured property. The creditor has the right to acquire the right of ownership over the secured property as agreed in the contract.

The creditor may propose the auction of any pledged or secured property for the repayment of debts or may sell or take possession of the pledged or secured property as agreed in the security contract. If the pledged or secured property has a higher value than the debt, the creditor may pay the difference, or sell the pledged or secured property as agreed with the debtor or auction it. After deducting the debt and interest, the balance must be returned to the debtor. If the sum obtained from the sale of the pledged and secured property is insufficient to repay the debt, the debtor must make up the outstanding amount in full.

²⁰ The reference here appears to be to the debt owed to the waiving creditor.

²¹ The literal translation is “debt” but the translators understand the meaning to be “debt owed to it”.

Secured property under a security contract that has been confiscated or seized by a court order may be sold by auction in accordance with the petition of the creditor or may be sold as set out in the security contract.

When the creditor or buyer takes possession of or buys the secured or pledged property, the owner must transfer the right of ownership over such property to the creditor or buyer. The relevant government official must certify the transfer of the rights to the creditor or buyer.

Article 35. Amendment or Termination of a Security Contract

A security contract may be supplemented, altered or terminated if the secured parties agree. Any changes made by addition or alteration to the security contract must be registered.

Article 36. Void Security

A security will be void in any of the following cases:

1. The security was not made in accordance with provisions of the laws;
2. The secured property is not owned by the debtor, or [the debtor] has not been assigned the right to permit such security;
3. The security was created under deception or duress.

Article 37. Expiry of a Security

A security shall expire in any of the following cases:

1. The debt has been paid in full in accordance with the contract;
2. The limitation period for making a claim has expired;
3. The creditor has relinquished its rights to the security.

Article 38. Nullification of a Security Registration

The registration of a security will be declared null and void in any of the following cases:

1. The creditor proposes the nullification of the security registration;
2. The owner of the asset proposes the nullification of the security registration on the basis that such security is improper;
3. The court has decided to nullify the security.

Chapter 6 Final Provisions

Article 39. Implementation

The government of the Lao People's Democratic Republic shall issue a decree on the implementation of this law.

Article 41. Effectiveness

This law shall enter into force thirty days from the date of the promulgating decree issued by the President of the Lao People's Democratic Republic.

This law replaces the Law on Secured Transactions 07/94 dated 14 October 1994.

All regulations and provisions that conflict with this law are null and void.

Vientiane, 20 May 2005
President of National Assembly

[Seal and Signature]

Samane VIGNAKET