

SECURED TRANSACTIONS: EXERCISING THE RIGHTS OF PARTIES

November 2023 LEGAL UPDATE

“Local expertise with international
experience makes us the advisor of choice”

Secured transaction framework is mainly regulated by the Law on Secured Transactions promulgated in 2017 (“LST”). The Ministry of Commerce (“MoC”) is the competent institution to administer the implementation of the LST. On 23 October 2023, the MoC released Prakas No. 319 (“Prakas”), which outlines a mechanism aimed at enhancing the enforcement of rights held by the parties to a security agreement. This mechanism primarily focuses on procedures for notifying a security interest, conducting searches in public records, requesting record verifications, maintaining a caution list, and delineating the responsibilities of the organization within the MoC.

Submission of a security interest notice

This Prakas provides additional clarification regarding the categories of movable assets eligible for use as collateral. These encompass specific categories like distinct goods, agricultural produce, machinery and equipment, stored inventory, vehicles with serial numbers, fixtures, accounts, secured sales contracts, letters of commitment, documentation, consigned merchandise, and intangible assets.

Any interested party can file a security interest notice via the website www.setfo.gov.kh. All filings must provide appropriate descriptions about the collateral. Adequate information may involve a general description of the collateral, except for serial-numbered vehicles, which necessitate specific disclosures, including color, model, series, manufacturing date, vehicle number, and any other applicable identification numbers. In cases where there is a multitude of collateral, a broader description like “all assets” or “all movable property” of the debtor may suffice when providing individual descriptions for each collateral is impractical. Moreover, parties entering into a security agreement might consider incorporating visual documentation of the collateral as supplementary materials alongside the descriptive information.

Conducting searches in public records

To reduce the potential risks and disputes associated with the formation of security agreements involving movable assets, sale-purchase agreements, pledges, rights transfers, consignments, assignments, and any transactions having these assets as collateral, the Prakas determines the process of searching for relevant public records. Users can conduct these searches on the Secured Transactions Filing Office (“SETFO”) website at www.setfo.gov.kh by entering the filing notice number, debtor's identification, or the serial number or identification of serialized vehicles.

Requesting records verification

An interested party may make a formal request to SETFO for the issuance of a certification letter regarding the records. This letter can serve as evidence in Cambodian courts, be used for public service purpose at the MoC, or other purposes as necessary. The certification letter may be provided in either physical or electronic format, duly stamped with the MoC's seal.

Caution list

This Prakas also provides for the implementation of a caution listing process designed for debtors who default on their repayment obligations or fail to fulfill their duties. The event of default would generally be specified in the security agreement or secured transactions. To initiate this procedure, creditors or their authorized representatives or agents are required to submit a formal request to the SETFO, accompanied by comprehensive documentation. This submission should include a description of facts, debtor and collateral identification, a certification letter, as well as other supporting documents and an undertaking letter from the creditor.

Upon careful examination and verification of the above submission, officials at the SETFO decide update the caution list, which may involve the inclusion of the names of shareholders and/or directors of company. This updated list is then distributed internally among the organization within the MoC.

It is important to note that both the caution list and its accompanying appendices remain confidential and are not disclosed to the public or individuals who are not obligated to provide services to the MoC. However, debtors do have the option to request a certification letter from the SETFO regarding their inclusion or exclusion from the caution list.

A debtor can be removed from the caution list in any of the following cases:

- a. A notice of termination is filed.
- b. The individual mentioned in the notice is no longer considered the debtor.
- c. Request from the creditor or their authorized representatives.
- d. Objection from the debtor with valid reasons and corroborating evidence.
- e. A settlement agreement or an agreement to terminate dispute has been reached.
- f. The debtor is deceased.

Within three (3) working day, the creditor or their authorized representative/agent is obliged to submit a formal request for the removal of the debtor from the caution list once the debtor has fulfilled all obligations or settled the outstanding debt completely. Failure to comply with this requirement grants the debtor the right to initiate the delisting request, providing sufficient reasons and evidence. The creditor or their representative/ agent shall be held liable for any damage incurred by the debtor, should they fail to submit the removal request.

Duties and obligations of the organization within the MOC

Officials at the SETFO are empowered to manage all administrative tasks related to filings, as specified in Chapter 3 of the LST, and as outlined in Prakas No. 0232 dated 26 November 2021, on the organization and functioning of the subordinate offices of the department of the general department of national trade.

In accordance with Article 40 of the LST, officials at the SETFO are vested with the authority to decline a filing within a period of seven (7) working days if they find that:

- a. The initial notice fails to furnish the requisite information mandated by the law.
- b. The amendment either lacks the necessary information prescribed by the law or designates the initial notice, the effectiveness of which has since lapsed;

- c. In the case of a continuation statement, the record does not include the number of the initial notice or was not submitted within six (6) months as permitted by law.
- d. In the case of a termination notice, the record does not include the initial notice number or lacks the requisite permission from the creditor or their representative/ agent.

All rejections shall be communicated to the applicant, accompanied by an explanation of the specific facts and grounds for the decision.

All organizations within the MoC have the authority to access and check public records filed with the SETFO. It is the responsibility of all organizations to meticulously authenticate the information prior to providing any services to the applicant. Additionally, they are obligated to abstain, suspend or refuse to deliver public services to debtors listed in the caution list until the respective debtor has been delisted.

Conclusion

The evolving landscape of secured transaction law continues to shape the way we engage in financial transactions, lending, and the protection of creditors' interests. This legal update has delved into the crucial facets of secured transactions, exploring amendments, rights and obligations, and the pivotal role of government bodies such as the SETFO. It is evident that staying abreast of these legal developments is vital for all parties involved – creditors, debtors, and governmental entities alike.

We hope this legal update has served as a valuable resource, shedding light on the recent developments in secured transaction law and offering a comprehensive guide for practitioners and interested parties. However, this legal update shall not be deemed as legal advice. Please do contact us should you require legal advice.

AUTHOR'S PROFILE



Pouvchannita SOPHORN
Partner/Head of
Intellectual Property Rights