

Introduction

Short-term credit facilities are for the most part not available to fund otherwise mostly mid to long-term industry financing requirements. With poor basic infrastructure and a weak but developing credit bureau regime, many lending institutions are only willingly to lend to Borrowers who have strong tangible collateral assets which secures credit.

The most tangible Collateral is usually one in the form of a registered title to land. Others are the earnings projections of the Borrower, and the Personal Guarantees of the owners of the Borrower entity. The most common Lending Security Documents are:

1. Mortgages
2. Debentures
3. Personal Guarantees

The most common taxes applicable to the above Lending Security Documents are:-

- A. Stamp Duties
- B. Capital Gains Tax
- C. Property Tax or Land Use Charge in some States
- D. Value Added Tax ("VAT")

Mortgages

A Mortgage is a legally binding agreement between a Lender/Mortgagee and a Borrower/Mortgagor, where the Borrower temporarily leaves in the custody of the Lender, the title or ownership documents to the Borrower's landed property, as Collateral or security for the Borrower repaying the loaned amount, in accordance with the terms and conditions stated in the Mortgage Agreement.

Where the Borrower is a registered limited liability company or corporation, the Mortgage Agreement must be registered at the Corporate Affairs Commission within ninety (90) days of the Mortgage Agreement coming into effect.

Debentures

For registered limited liability companies, a Debenture is another mode of securing a loan or credit facility. Unlike a Mortgage however, a Debenture is procured based on the business reputation and the future earnings projections of the company or corporation concerned.

And like a Mortgage, a Debenture will be null and void if it is not registered at the Corporate Affairs Commission within ninety (90) days of the Debenture Agreement coming into effect.

Personal Guarantees

A Personal Guarantee is usually an ancillary, continuing written assurance, to a Mortgage and or a Debenture Agreement wherein the Guarantor undertakes to repay a loan should the Principal Borrower fail to do so.

A Personal Guarantee will only be extinguished where the Borrower repays the loan or credit, or the Guarantor repays the loan personally.

Other Lending Security Documents

- i. Shares of Quoted Companies
- ii. Insurance Policies

Enforcement of Lending Instruments

The most common enforcement procedure for Mortgages and Debentures is an application to a Court of Law for the sale of the collateral with which the credit facility was obtained. Prior notice must however be given before any power of sale in the event of a default can be exercised.

The second common enforcement option open to a Lender is the appointment of a Receiver/Manager to take over the secured assets until the debt is repaid or the assets sold to repay the debt. In the case of a Personal Guarantee, the primary debtor's default in repaying the loan automatically triggers the Guarantor becoming personally liable to repay the debt.

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