

Security in a Chinese Facility Agreement

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Outline

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 - Type of Security
- Some key issues
 - When will Security be established?
 - How long will Security be protected?
 - How to structure Security?
- Conclusion
 - Main sources of laws
 - Trend

Security

- What is Security?

- Right

- Present property and future property

- Charge over future property (manufacturing facilities, raw materials, semi-manufactured goods and finished products)

Security

- Type of Security
 - Charge
 - Pledge
 - Lien
 - Deposit – in a financier rather than
the third party
 - Guarantee

Some Key issues

- When will Security be established?

- Registration or Delivery

Registration – buildings, improvement on land, right of permitted use of land for construction, buildings under construction or others.

- Distinction with Validity of Security Agreement

Validity of Security Agreement \neq Establishment of Security

Some Key issues

- How long will Security be protected?

- By agreement or by law

- Guarantee – only 6 months following the date of expiration of a facility agreement where there is no agreement on a term of Guarantee between Parties.

- Attention

- Term of Charge – must be within limitation of action for its facility agreement.

Some Key issues

- How to structure Security?
 - Priority – from security perspective
Deposit > Lien > Charge/Pledge > Guarantee
 - More than two charges over the same property
Registered Charge > Unregistered Charge

Conclusion

- Main Sources of Laws
 - the Property Law of PRC
 - the Guarantee Law of PRC
 - other legislations and Regulations
 - Judicial Interpretation of the Supreme Peoples' Court
- Trend
 - Penetration



Thank
You!