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# RDL

## Corporate & Commercial Law Updates

### ▶ Creation of Lien

Section 281 of the National Land Code provides :

- (1) “Any proprietor ... may deposit with any other person or body, as security for a loan, his issue document of title ... and that person or body (a) may thereupon apply ... for the entry of a lienholder’s caveat; and (b) shall, upon the entry of such a caveat, become entitled to a lien over the land...”
- (2) Where the holder of any lien has obtained a judgment for the amount due to him thereunder, he shall be entitled to apply to the court for, and obtain forthwith, an order for sale of the land ...”

The recent decision of the Federal Court in the case of *Hong Leong Bank Berhad v Staghorn Sdn Bhd & other appeals* resolved conclusively that :

1. section 281(1) applies to the deposit of a document of title to a piece of land as security for a loan, *whether to* the registered proprietor of the land *or to* a third party and that there is no reason for construing the loan to mean only a loan to the registered proprietor;
2. where the loan is to a third party, it must follow that the judgment to be obtained, as referred to in section 281(2), is a judgment against the third-party borrower;
3. section 281(1) ought not to be construed as requiring that the registered proprietor *himself* must do the act of depositing and it would be sufficient if he instructs or authorizes it or consents to it, and the actual act of depositing may be done by someone else.

### ▶ **Creation of Lien (cont'd)**

With this decision of the Federal Court, the apex court of Malaysia, lenders such as banks may now confidently accept the deposit of a document of title as security for a loan, where a charge under the National Land Code may not be possible (eg where the consent of the State Authority had not yet been obtained), even if the borrower were not the registered proprietor, as long as it is clear that the registered proprietor of the land had agreed to the said deposit.

### ▶ **Stamp Duty Exemption For “Approved” Mergers or Acquisitions By Listed Companies**

To encourage merger & acquisition (“M&A”) activity among listed companies, the government had earlier given stamp duty and real property gains tax exemptions in relation to such M&As up to December 31, 2007. The stamp duty exemption was extended to December 31, 2011, as reflected in Stamp Duty Exemption (No.8) 2007 which came into operation on January 1, 2008. By this, it was provided that all instruments executed, not later than December 31, 2011, pursuant to an “approved scheme of merger or acquisition” would be exempted from stamp duty. Attached are copies of the Practice Note and the FAQ issued by the Securities Commission in connection with this.