

Revisiting the Process of Mortgage by Deposit of Title Deed in Bangladesh

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Mortgage by deposit of title- deeds is a common and distinctive form of mortgage in Bangladesh. The legal framework related to this type of mortgage is not exhaustive, leading to challenges faced by both mortgagee and mortgagor. Although the documents of title deeds must be deposit in the town mentioned in section 58(f) of the Transfer of Property Act, 1882 it is not mandatory that property related with this mortgage should be situated in the mentioned town. A notable gap in existing laws is the absence of a mandatory registration process for all mortgagees involved in this type of mortgage. Notwithstanding its popularity, there is a lack of research on the mortgage by deposit of title-deeds in Bangladesh. This thesis paper attempts to revisit the process of mortgage by deposit of title-deeds in Bangladesh, focusing on identifying the legal requirements necessary for creating such a mortgage. This paper also identifies the lacuna in existing laws. This paper finally gives some recommendations for mortgage by deposit of title deeds in Bangladesh. The methodology of this research is qualitative in nature with theoretical approach. Through a comprehensive review of relevant literature relating to this type of mortgage, this paper provides insight into revisiting the process of mortgage by deposit of title deeds in Bangladesh. Consequently, the paper suggests that the government should take the initiative to address this deficiency and implement a registration process for mortgage by deposit of title deeds, thus ensuring a more cogent legal framework for this form of mortgage in Bangladesh.

Key Words: Equitable Mortgage, Transfer of Property Act, 1882, Mortgage Registration Requirements, Stamp Duty and Fraud Prevention in Mortgages, Debt, Intention to create security, Deposit of Title-deeds, Immovable Property, Territorial restriction.

Introduction

A mortgage by deposit of title-deeds is a legal mechanism for securing a loan by depositing the documents of title-deeds of immovable property. Mortgage by deposit of title deeds is a unique

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concept compared to other types of mortgages. In this mortgage, the mortgagor merely delivers the title-deeds of immovable property to the mortgagee with the intention of obtaining a debt and established a security interest against the debt.³ Because of ambiguity in the legal provision relating to registration and territorial restriction and the absence of clear guidelines creates uncertainty for mortgagor and mortgagee. There are challenges include property over valuation, deposit of forged documents, registration and sell procedure of mortgage property by the mortgagee to obtain their remedy.⁴ The local extend to create this mortgage is all over Bangladesh but the title-deeds is to be deposited to only three cities.⁵ However the gazette of 1980 extending the area to all municipalities of Bangladesh has not been considered by the higher judiciary.⁶ For territorial restriction, people who are outside those towns face the challenge to deposit the title-deeds because they have to go to deposit documents outside their own area. Section 59 of the TP Act makes three types of different provisions for registration of such mortgage unlike unique rule of simple mortgage.⁷ In many cases, mortgage by deposit of title deed is executed through forged title-deeds. Political influencers are usually accused of occupying the khas land at a nominal price. These properties are kept as a security against loan and showing over valuation and the bank faces problem to get back the money by selling the property to other.⁸ At the time of the mortgage property valuation an overvaluation of the property, the land price is shown to be several times higher and huge amount of money are borrowed from the mortgagee. In the aftermath of the game, the mortgagee will not be able to sell the mortgage property. Many times, despite court orders, mortgage property cannot be seized. The country's banking sector's loan defaulter has been caused by the overvaluation of mortgage property.⁹ In many cases, the mortgagor is selling the property again without repayment of the debt. Author has reviewed several literature related to this topic. Anika Mardiah Chowdhury in her blog Mortgage of Property, a brief discussion describe that in case of mortgage, all documents relating to mortgage property submit to mortgagee or bank or financial institution.¹⁰ Neha Mallik in his blog Essential Elements of a Mortgage Deed describe that essential requisites for equitable mortgage are debt, intention for security, territorial

³ Khushi Sharma, "Judicial Approach to Mortgage by Depositing of Title Deeds", iPleaders, 4 December 2021, <https://blog.ipleaders.in/judicial-approach-to-mortgage-by-depositing-of-title-deeds/> accessed on 10 August 2023.

⁴ Niranjon Roy, "Mortgage of Land and Building Does Not Guarantee Recovery of Loan", The Financial Express, 21 October 2017, <https://thefinancialexpress.com.bd/views/reviews/mortgage-of-land-and-building-does-not-guarantee-recovery-of-loan/> accessed on 23 October 2023.

⁵ 'The Transfer of Property Act 1882', Pub. L. No. 4, § 58(f) (n.d.).

⁶ Ayat Steels Limited v Mohammad Ali (2011) 63 DLR 417

⁷ "The Transfer of Property Act 1882," Pub. L. No. 4, § 59(n.d.).

⁸ Rezaul Karim, "The Mortgage Dilemma of Banks," The Business Standard, April 5, 2021, <https://www.tbsnews.net/economy/banking/mortgage-dilemma-banks/> accessed on 22 September 2023.

⁹ Rezaul Karim, "Banks in Overvalued Mortgage Trap", The Business Standard, 28 April 2021, <https://www.tbsnews.net/economy/banking/banks-overvalued-mortgage-trap/> accessed on 25 October 2023.

¹⁰ Anika Mardiah Chowdhury, "Mortgage of Property, a Brief Discussion", Jural Acuity, 7 September 2021, <https://juralacuity.com/mortgage-of-property-a-brief-discussion/> accessed on 22 November 2023.

restriction where mortgage created by deposited title-deeds of property.¹¹ Shivam Goel in his article, 'Equitable Mortgage: Essentials & Fundamentals' expressed about the elements of equitable mortgage. The validity of this mortgage depends on the actual delivery of the original title deeds. Creating a mortgage based on photocopies or certified copies of the original title deeds is a serious defect in understanding on behalf of the parties involved.¹² Tuli Rahman in her paper Security documentation against SME loan and its loan process of BRAC Bank Limited explain that mortgage by deposit of title deeds made by depositing the documents of title-deeds supported by a MODT and all essential land reports.¹³ According Equitable Mortgage by Deposit of Title Deeds published by Columbia Law Review Association, equitable mortgage on immovable property is created by deposit of title deeds as security. Deposit of title deeds affords a presumption that there is intention to security.¹⁴ This study is totally different from the other literature over the area. This type of mortgage is very popular for taking a loan, despite the fact that it has some lacunae that encourage the researcher to undertake the research. So the author is aimed at addressing this gap by exploring the primary and secondary sources of data.

Conceptual Framework of Mortgage by deposit of title- deeds

Meaning of Some Key Terms relating to Mortgage by deposit of title deeds

Mortgage

Mortgage is one kind of mode of transfer of property. The origin of the term "mort" finds its Latin and French roots. Mortgage is defined as a 'transfer of title to property which is given as security for the payment of a debt or the performance of duty and that transfer will be void upon payment of debt or performance of the of the specified duty'.

Section 58 of TP Act provides that 'the transfer of an interest in specific immovable property to secure the payment of money advanced or to be advanced in the form of a loan, or the performance of an engagement that may give rise to a monetary liability known as mortgage'. The conventional interpretation of the term "mortgage" may be traced back to the statement made by **MR Lindley** in the case of *Santley vs. Widle*¹⁵, he provided the following definition:

¹¹ Neha Mallik, "The Essential Elements of Mortgage Deed," iPleaders, February 19, 2020, <https://blog.ipleaders.in/essential-elements-of-mortgage-deed/> accessed on 7 November 2023.

¹² Shivam Goel, "Equitable Mortgage: Essentials & Fundamentals," SSRN Electronic Journal, January 1, 2019, <https://doi.org/10.2139/ssrn.3356930>. / accessed on 30 November 2023.

¹³ Tuli Rahman, "Security Documentation against SME Loan and Its Loan Process of BRAC Bank Limited," September 3, 2018, <http://dspace.bracu.ac.bd:8080/xmlui/handle/> accessed on 26 November 2023.

¹⁴ "Equitable Mortgage by Deposit of Title Deeds," Columbia Law Review 14, no. 8 (December 1, 1914): 672, <https://doi.org/10.2307/1110555> accessed on 25 November 2023.

¹⁵ *Santley vs. Widle* (1899) 2Ch 475

“A mortgage is a conveyance of land or an assignment of chattels as security for the payment of a debt or the discharge of some other obligation for which it is given”.

A mortgage is not only an agreement but also a transfer of an interest in the immovable property. With respect to ownership, possession continues to reside with the mortgagor except the usufructuary mortgage.¹⁶ If a person lends money to another, he may accept the loan based solely on the borrower's guarantee to pay the amount of debt. In the former case, the mortgagee retains the right to suit for the money if it is not paid.¹⁷ It is evident that a mortgage is merely the transfer of an interest in the mortgaged property unlike a sell or gift.

Mortgagor

The transferor is called a mortgagor. He must be capable of entering into contract and transferring property. Section 59A includes a person deriving title from a mortgagor unless otherwise expressly provided in this regard.¹⁸ Any person can mortgage, unless he is subject to a legal or personal disability. Ineligible to contract cannot transfer immovable property by mortgage. The Privy Council decided in *Sadiq Ali Khan v. Jai Kishori* that a deed written by a minor is void and cannot be used as proof of an estoppel claim.

Mortgagee

As per section 58 of the TP Act, the transferee of mortgage is called a mortgagee and section 59A includes a person deriving title under a mortgagee. A mortgagee may be any individual who is able to hold property. A person's inability to enter into a contract does not preclude him from being a transferee.

Mortgage Money

According to section 58(a), the principal amount and interest both are included as mortgage money.¹⁹

Immovable property

‘Immovable property means such kind of property which includes land, benefits to arise out of land, and things attached to the earth’.²⁰

¹⁶ Abinash Mandilwar, “Mortgage- An Overview,” Banking Digest, January 8, 2022, <https://bankingdigests.com/blog/mortgage-an-overview/> accessed on 24 November 2023.

¹⁷ S. M. Hasan Talukder, *Unlocking Law of Transfer of Property*, 2nd ed. (Dhaka: Law's Empire, 2019).

¹⁸ “The Transfer of Property Act 1882,” Pub. L. No. 4, § 59A

¹⁹ “The Transfer of Property Act 1882,” Pub. L. No. 4, § 58

²⁰ “General Clauses Act 1897,” Pub. L. No. 10, § 3(25)

Agreement of Mortgage and Mortgage Contract

An agreement of mortgage is a contract just like any other contract.²¹ A mortgage agreement gives rise only to a personal obligation. A mortgage agreement is not subject to specific performance because the court will not enforce a loan agreement, whether secured or unsecured.²²

Mortgage-deed

According to section 58, the instrument used to complete the transfer in mortgage is known as a mortgage-deed.

Title deed

Title-deeds” refer to documents that prove the depositor's *prima facie* title to the property.

Deposit of Title-Deed

Deposit of title - deeds refers deposit documents of title deeds to mortgagee either physical delivery or constructive delivery. For mortgage by deposit of title deed to be valid, not all of documents deposited need to show that the title is full. It is enough if the deposited deeds placed are proof of title.²³ In *Roberts v. Croft*²⁴ case, the mortgagor made mortgage by deposits of different title deeds that establish his title.²⁵

Conceptual basic of Mortgage by Deposit of Title-Deeds

In section 58 of TP Act enumerates six classes of mortgage, the mortgage by deposit of title-deeds is one of them. This type of mortgage is considered a straightforward method compared to other mortgage types. It is outlined in Section 58(f) of the Transfer of Property Act 1882 and it is also known as an equitable mortgage. When a person transfers an interest in specific immovable property and creates security for a debt by depositing the documents of title-deeds of immovable property to creditor the document of title deeds in order to create security of debt in the places notified in section 58(f) this method of transfer is mortgage by deposit of title-deeds. The legislature's purpose in offering this type of mortgage is to provide convenience to the commercial community in cases where there is an urgent need for money before there is a chance to prepare a formal mortgage deed, there is simply a deposit of

²¹ Avinandan Dhar, A Brief Explanation of The Transfer of Property Act, 1st ed. (Chittagonj: Sui Juris, 2016).

²² Sir Dinshaw Fardunji Molla, Transfer of Property Act, 12th edn (India: LexisNexis, 2014)

²³ Nishitha Karee, “Mortgage,” Legal Service India, accessed August 24, 2023, <https://legalserviceindia.com/legal/article-6078-mortgage.html>.

²⁴ *Roberts v. Croft* (2012) WL 306

²⁵ Sharma, “Judicial Approach to Mortgage by Depositing of Title Deeds.”

document of title deeds. It is a well-established rule of equity that the mere deposit of a title document without writing or verbal confirmation creates an obligation on the property referenced.

Element of mortgage by deposit of title-deeds

Parties

There must be at least two parties to cause the mortgage happen. In section 4 of the TP Act 1882 it has been said that the transaction which is like a contract the provisions of the contract act may be applied there.²⁶ Moreover, Parties should enter into such contract with free consent as per the Contract Act, 1872. Mortgagor also includes other person who deliver title deeds from original mortgagor to mortgage. Where registration of memorandum of mortgage occurs, parties to the mortgage of immovable property are the registrar as assurance and all property owners or their agents. Agents require a registered power of attorney if a power of attorney is authorised to create a mortgage.²⁷

Specific immovable property

To create mortgage, the property must be specific. There must specify specific immovable property. Mortgaged property must be identifiable by its size, location, and boundaries, among other characteristics.²⁸ The property should not be specified broadly.²⁹ A mortgage by deposit of title deeds is only valid if the subject of the mortgage is specified in detail as per sections 21 and 22 of the Registration Act of 1908, the property's description must be at least adequate for identifying the property. The description is adequate if it enables the property to be identified.³⁰ The court ruled that where the mortgagor indicated "all of my property" in the mortgage deed, it was not a valid mortgage. It would be invalid mortgage owing to ambiguity unless the immovable property must be expressed explicitly and specifically in the mortgage document. If mortgagor is unable to repay the loan after due date, the court will be able to seize the specified property and the mortgagee will be able to sell the mortgage property for recovering debt.³¹ In case *Dakkata v. Sasanapuri* stated that even though the land's boundaries were not specified, the mortgage was deemed validly established because the property was sufficiently described.³²

²⁶ "The Transfer of Property Act 1882," Pub. L. No. 4, § 4

²⁷ Surendra Naik, "Types of Mortgage of Immovable Properties in India," Banking School, July 23, 2014, <https://bankingschool.co.in/loans-and-advances/mortgage-of-immovable-properties-in-india/> accessed on 24 November 2023.

²⁸ Karee, "Mortgage."

²⁹ Jitin Kumar Gambhir, "An Analysis of the Term Mortgage under the Transfer of Property Act, 1882," February 1, 2019, <https://www.jetir.org/view?paper=JETIREO06088/> accessed on 25 November 2023.

³⁰ S. M. Hasan Talukder, *Unlocking Law of Transfer of Property*, 2nd ed. (Dhaka: Law's Empire 2019) p 140

³¹ Pramit Bhattacharya, "Analysis Of The Concept Of Simple Mortgage," May 26, 2016, <https://blog.ipleaders.in/analysis-concept-simple-mortgage/> accessed on 26 October 2023.

³² *Dakkata v. Sasanapuri* (1914) Mad WN 270

Transfer of an interest

According to the definition given in section 58, the first requisite of a mortgage is that there should be a transfer of an interest in immovable property. The interest transferred depends upon the character of the mortgage. In mortgage by deposit of title deeds, a person deposits the documents of title deeds for the interest transferred.

Security

Another component of this type of mortgage is security for debt or the fulfillment of an obligation that may cause to accomplish the monetary liability. Security could be for the purpose of obtaining a loan or as security for the repayment of an existing loan. Thus, the mortgagor and mortgagee have established debtor-creditor relationship.³³

Consideration of mortgage by deposit of title deeds

The consideration for this mortgage referred the concept of value given or promised by one party in exchange for something of value from another party. It may be the money advanced or to be advanced in the form of a loan, a current or future debt, or the execution of an obligation that gives rise to the monetary obligation.

The Legal Framework to the Mortgage by Deposit of Title -Deeds in Bangladesh

There are some laws which governs the total mortgage and its procedure in Bangladesh namely Transfer of Property Act of 1882, The Registration Act 1908, The Code of Civil Procedure 1908, *Artha Rin Adalat Ain* 2003, The Stamp Act, 1899, The Contract Act 1872, The Evidence Act, 1872, Limitation Act 1908, Power of Attorney Act 2012.

Legal requirement for creating mortgage by deposit of title deeds in Bangladesh

Securing the Repayment of Debt

Debt is essential requisite to create a mortgage. Both future and existing debt can be covered by this type of mortgage. The security for the debt is provided by depositing the title deeds of immovable property. If title deeds are deposited based on an oral agreement, aiming to secure both immediate and future advances, it results in the creation of an equitable mortgage.³⁴ Title-deeds may also be deposited to settle any unpaid balances on working accounts.³⁵

³³ Vaibhav Goyal, "Mortgage of Immovable Property in India," LawBhoomi, February 18, 2020, <https://lawbhoomi.com/mortgage-under-transfer-of-property-act/> accessed on 27 November 2023.

³⁴ *Jaitha Bhima vs Haji Abdul* (1886) ILR 10 Bom 634

³⁵ S. N. Shukla, *Transfer of Property Act*, 24th ed. (Hariyana: Allahabad Law Agency 2002 re printed 2010) p218

Intention to security

To create a mortgage by deposit of title deeds, there must be a bona fide intention to secure a debt. The borrower deposits the property's title deeds as security for the loan, and the agreement must specify that the property cannot be sold until the debt is paid. If the title deeds are split between different parties, the security can still be valid if the property is sufficient. The intention to create security is a factual matter. No mortgage is created if there's no debt or agreement for future advance. Writing is not required for an equitable mortgage.³⁶

Mode of Deposit

The mode of deposit may be either physical or constructive delivery to the creditor or his agent.

Physical delivery of title-deeds

Physical delivery means actual deposition of document of title deeds by mortgagor to creditor or his agent. When the mortgagee already possesses the title deeds, it would be overly formal to require the formal process of the mortgagee handing the title deeds to the mortgagor, and then the mortgagor re-delivering them to the mortgagee.³⁷

Constructive delivery of title deeds

Constructive delivery refers symbolic delivery. It is inferred from the parties' actions. Deposit of title deeds to the mortgagee can be either actual or constructive.³⁸ In order to constitute a mortgage by deposit of title-deeds, physical delivery of such deeds is not an essential pre-condition. The assertion could not be held that documents of title deeds which are constructively delivered.

Depositing the original title - deeds of document

If the document deposited does not indicate any type of title of the depositor, no mortgage is created. It is satisfactory if the documents deposited authentically pertain to the mortgaged property.³⁹

Depositing certified copies of original deeds

Though there was some difference of opinion expressed by various court decision relating to

³⁶ Primit Bhattacharya, 'Analysis Of The Concept Of Simple Mortgage', iPleaders , 26 May 2016, <https://blog.iplayers.in/analysis-concept-simple-mortgage/> Accessed on 26 November 2023.

³⁷ K. J. Natham v SV Maruthi AIR (1965) SC 430

³⁸ Neha Sinha, 'Memorandum of Entry for Equitable Mortgages: A Mortgage by Conduct?', Vinod Kothari Consultants , 3 October 2022, <https://vinodkothari.com/2022/10/memorandum-of-entry-for-equitable-mortgages-a-mortgage-by-conduct/> accessed on 29 November 2023.

³⁹ Nishitha Karee, 'Mortgage', Legal Service India (blog), accessed 24 August 2023, <https://legalserviceindia.com/legal/article-6078-mortgage.html>.

validity of creation of equitable mortgage by deposit of certified copies of the original title deeds, it can be now taken to be well settled in the case *Indian Bank v Punjab National Bank*⁴⁰ that there is no legal embargo for creation of the mortgage by deposit of certified copies of original title deeds.

Deposit of stamped or sufficiently stamped document

To execute this type of mortgage, the mortgagor must deposit the duly stamped and registered documents of title deeds of immovable property.⁴¹ Duly Stamped document indicates that the instrument contains an impressed stamp in the proper amount that has been affixed or utilised to comply with the law in Bangladesh.⁴²

Place Restriction

Delivery of documents of title to immovable property held in Dhaka, Chittagong, Narayanganj and any other town which the Government may specify by notification in official gazette. On 3rd March, 1980 the Government published official gazette in this regard that in exercise of the powers conferred by clause f of section 58 of TP Act 1882, the Government is pleased to specify all municipal towns in Bangladesh to be the towns to which the provision of section 58(f) shall apply.⁴³ The word 'town' in section 58(f) goes with 'delivers' rather than 'person'. The mere deposit of title deeds outside the town mentioned in section 58(f) creates neither a mortgage nor an obligation. This clause does not require the person depositing the title-deeds to be in one of the towns specified but sufficient if he deposits title deeds with the intent to create security to the creditor or his agent in that place.⁴⁴ The court's decision in *K. J. Nathan v S. V. Maruthi* provides that if physical delivery took place outside the places mentioned in section 58(f), but the intention to create a mortgage was formed following the MODT were in one of the specified towns.⁴⁵ This clause does not require the person depositing the title-deeds to be in one of the towns specified but sufficient if he deposits title deeds with the intent to create security to the creditor or his agent in that place.⁴⁶ When documents are delivered in a town other than a notified town and forwarded to a notified town for deposit, the validity of an equitable mortgage is not affected.⁴⁷

⁴⁰ *Indian Bank v Punjab National Bank* (2010)AIR Mad 84.

⁴¹ *Bharat Tubes and Tins Printers v AP State Financial Corporation Ltd.* (2009) AIR (NOC) 2688 (AP)

⁴² 'The Stamp Act 1899', Pub. L. No. 2, § 2 (n.d.), <http://bdlaws.minlaw.gov.bd/act-77.html>.

⁴³ Bangladesh Gazette 1980 S.R.O. 66-L/80.

⁴⁴ *Indian Cotton Co. v Hari poonjoo* (1937) AIR Bom 39 (41).

⁴⁵ *K. J. Nathan v SV Maruthi* (1965) AIR SC 430.

⁴⁶ *Indian Cotton Co. v Hari poonjoo* AIR 1937 Bom 39 (41).

⁴⁷ *Sulochana v Pandyan Bank* AIR 1975 Mad 70

Title Investigation

Any existing encumbrances or legal issues with the property are identified and addressed by title investigation.⁴⁸ This involves examining land records, deeds, and other relevant documents. Documents of title-deeds prove the depositor's prima facie title to the property.⁴⁹ All required documentation must be presented to the mortgagee. When bank is the mortgagee, they obtain clearance certification from the Bangladesh bank for any outstanding debt.⁵⁰ Furthermore, it determines that whether the property has a previous mortgage that is still pending. After that the property is valued in order to maintain the mortgage. The mortgage process is then carried out by any bank or mortgagee after a review is made to see if the property is registered or not in the register office.⁵¹ Usually, the previous 25 years of ownership are considered for any property. In 2022, Government of Bangladesh has introduced mortgage data bank for storing information of mortgaged properties for preventing deceitful efforts to take out multiple on the same mortgage property.⁵²

Property Valuation

The mortgagee assesses the value of the property that will be mortgaged. This often involves a professional property valuation.⁵³ At the time of the mortgage property valuation an overvaluation of the property, the land price is shown to be several times higher and huge amount of money are borrowed from the bank. In the aftermath of the game, the banks will not be able to sell the mortgage property. It is not possible to sell land of influencers in the country. Many times, despite court orders, mortgage property cannot be seized. The country's banking sector's loan defaulter has been caused by the overvaluation of mortgage property.⁵⁴

Memorandum of Deposit of Title deeds (MODT)

MODT refers a document through which a mortgagor gives a written undertaking. The mortgage is created by mere deposit of title deeds and if parties want, they can execute a memorandum of deposit of title deeds as additionally.⁵⁵

⁴⁸ Tahmidur Rahman, 'Mortgage Loan in Bangladesh | The Most Effective Way of Getting Loan in 2023', TRW, 25 July 2022, <https://tahmidurrahman.com/mortgage-loan-in-bangladesh/> accessed on 24 November 2023.

⁴⁹ Khushi Sharma, 'Judicial Approach to Mortgage by Depositing of Title Deeds'.

⁵⁰ FMA Associates, 'Mortgage Loans Procedures in Bangladesh', accessed on 11 August 2023, <https://www.fmassociatesbd.com/mortgage-loans-procedures-in-bangladesh>.

⁵¹ 'Mortgage Loan In Bangladesh: Here Is What You Need To Know', A Blog about Homes, Trends, Tips & Life | property, 2 April 2021, <https://www.bproperty.com/blog/mortgage-loan-bangladesh/> accessed on 28 November 2025.

⁵² The Financial Express, 'Mortgage Data Bank, Case Management Platform to Cut Land Disputes', The Financial Express, 25 November 2022, <https://today.thefinancialexpress.com.bd/trade-market/mortgage-data-bank-case-management-platform-to-cut-land-disputes-1669310140>.

⁵³ Rahman, 'Mortgage Loan in Bangladesh | The Most Effective Way of Getting Loan in 2023'.

⁵⁴ Karim, "Banks in Overvalued Mortgage Trap."

⁵⁵ R.P. Deshpande, 'Understanding Equitable Mortgage', The Hindu, 15 September 2017, sec. Homes and gardens, <https://www.thehindu.com/life-and-style/homes-and-gardens/understanding-equitable-mortgage/article19692547.ece/> accessed on 24 November 2023.

Executing a memorandum of deposit of title deeds

Many financial institutions require a MODT from mortgagor as an additional proof of the formation of a mortgage. To distinguish it from a simple registered mortgage, such a Memorandum or letter is obtained at a later date after the deposit of title deeds and if taken on the same day, it may be subject to stamp duty and registration in accordance with the provisions of the law governing other types of mortgages.⁵⁶

Registration of MODT

If a contract is documented in writing, the document serves as the sole evidence of its terms and must be registered under Section 17 of the Registration Act, 1908. Section 17(b) mandates the registration of documents that create rights in immovable property valued at 100 Tk or more. Without registration, such documents cannot be used as evidence or to prove transactions affecting immovable property, as per Section 49. While an equitable mortgage (EMTD) can be made orally, if documented in writing as a memorandum of deposit of title deeds (MODT), it must also be registered, overriding Section 59 of the Transfer of Property Act.⁵⁷ The most important factor to consider is whether the parties truly intended for the document to stand alone as proof of the transaction.⁵⁸ In *State of Haryana v. Narvir Singh* case it held that where the written memorandum creates rights, liabilities, or extinguishes those, the same requires registration.⁵⁹

Mortgage by deposit of title- deeds when can be effected by registered instrument

The mortgage by deposit of title deeds does not require registration, but there is some exception.⁶⁰ The Proviso to Section 48 of the Registration Act states that a mortgage by deposit of title deeds (as defined in Section 58 of the Transfer of Property Act) will take precedence over a subsequently executed and registered mortgage deed relating to the same property. While the deposit of title deeds serves as security for the creditor to recover the loaned money, if the parties formalize their agreement in writing, the written document becomes the sole evidence of the terms. In such cases, both the deposit of title deeds and the written agreement are essential to establish the mortgage.⁶¹ Section 17 of the Registration Act, 1908 mandates the registration

⁵⁶ S.R. Agarwal, 'Creation of Equitable Mortgage', Saptakala Real Estate Law Journal, 31 December 2018, <https://realestatelawjournal.in/chapter-xi-creation-of-equitable-mortgage/> accessed on 24 November 2023.

⁵⁷ Rohit Dubey, 'Whether Registration & Stamping of Memorandum of Deposit of Title Deeds Is Essential for Creation of a Valid Mortgage?', IBC Laws, 24 January 2021, <https://ibclaw.in/whether-registration-stamping-of-memorandum-of-deposit-of-title-deeds-is-essential-for-creation-of-a-valid-mortgage-by-adv-rohit-dubey/> accessed on 24 November 2023.

⁵⁸ "Mortgage by Deposit of Title Deeds," Advocatanmoy Law Library, April 12, 2020, <https://advocatanmoy.com/2020/04/12/mortgage-by-deposit-of-title-deeds/> accessed on 24 November 2023.

⁵⁹ State of Haryana vs Navir Shing (2014) 1 SCC 105

⁶⁰ "The Transfer of Property Act 1882," Pub. L. No. 4, § 59

⁶¹ B.B. Mitra & Sengupta, Transfer of Property Act, 21th ed. (Kolkata: Kamal Law House 2017) p 713