



REGISTRATION OF SECURED TRANSACTIONS

March 2024

The below Legal Summary prepared by BLG contains a brief discussion with tailored practical information for investment and business activities in Vietnam.

The article concentrates on an overview of registration of secured transactions.

Secured transactions play a crucial role in protecting legitimate interests and reduce risks between the parties in civil and commercial transactions. Therefore, registration of secured transactions has become more common.

In this article, we would like to provide an overview of registration of secured transactions. This activity is mainly governed by Civil Code No. 91/2015/QH13 (“*Civil Code*”), Decree No. 21/2021/ND-CP (“*Decree 21*”) and Decree No. 99/2022/ND-CP (“*Decree 99*”).

1. Definition and Role of Registration

1.1 Definition of Registration

Article 292 of Civil Code provides 09 types of security for the performance of civil obligations: (i) pledge of assets; (ii) mortgage of assets; (iii) performance bond; (iv) security deposit; (v) escrow deposit; (vi) reserve of ownership rights (retention of title); (vii) guarantee; (viii) fidelity guarantee; (ix) retention of assets (lien). The secured assets (also known as collateral) include all kinds of assets specified in Article 105 of the Civil Code that may be tangible property or intangible property, immovable property or movable property, existing property, or after-acquired property provided that they meet the general conditions specified in Article 295 of Civil Code.

As defined in Article 3.1 of Decree 99, registration of security transaction refers to the process in which the competent authorities record, update that the securing party use their asset to secure the obligation performance of their own or another person with the secured party (*hereinafter referred to as “Registration”*).

1.2 Role of Registration

First, Registration the condition for validity of secured transactions in some cases regarding real estate, aircrafts and vessels.

Second, the Registration makes a valid secured transaction legally bind to third parties. It is to provide transparency by publicizing the secured assets. Therefore, a third party could know about the existence of valid secured assets. They then may take into consideration before making any relevant decision.

For example, in mortgage transactions, the mortgagor in most case will retain the use and possession of the mortgaged assets. Without Registration, the mortgaged property can be easily used for other transactions as no one other than the contractual parties know the mortgage transaction. This issue may lead to further dispute especially in enforcement events. However, the Registration is not always the only way to create legal effect against third parties. In possessory security interests such as pledge, performance bond, security deposit, lien, the security transactions take effect

against third parties once the secured parties hold the collateral^[1]. In escrow deposit, effect against third parties shall start from the date on which escrow deposit is sent to escrow accounts in credit institutions^[2]. In other words, unless required by laws, the Registration is optional and negotiable.

Once the security transactions takes effect against third party, the secured party may reclaim the collateral if it is transferred, exchanged, appropriated, used by others in contrary to applicable regulations or without the secured party's consent^[3].

Third, Registration contributes to the determination of payment obligation. As allowed by current regulations and upon the agreement of relevant parties, an asset can be used to secure the performance of several obligations to different obliges. In the event of enforcement, unless otherwise agreed, the payment by collateral shall be made in accordance with the general rule of "first come, first served" as follows^[4]:

- If all security interests regarding the collateral take effect against a third party, the order of priority for payment shall be determined according to the order of effect against the third party.
- If there are some taking effect against a third party while some do not, the payment of obligations with security interest taking effect against the third party shall be given priority.
- If all take effect against a third party, the order of priority for payment shall be determined according to the order of establishment of security interests.

2. Application of Registration

2.1 Required Registration

The establishment of following securities requires Registration as Registration is one of the conditions for validity:

(a) Mortgage of land use rights, assets attached to land and real estate projects^[5]

A mortgage of the below assets must be registered with the district or provincial land use right registration office under the provincial department of the Ministry of Natural Resources and Environment of the district, province or city where the asset is located and only takes that effect from the time of Registration in the cadastral book.

^[1] Article 23.3 of Decree 21.

^[2] Article 23.5 of Decree 21.

^[3] Article 7.1 of Decree 21.

^[4] Article 308 Civil Code.

^[5] Article 188.3 of Law on Land 2013, Article 25.1 of Decree 99.

- Land use rights;
- Houses, assets attached to land which has been duly recorded in the ownership certificate;
- Project on housing construction, construction of non-residential buildings, agricultural investment project, forest development project, or other investment project that uses land and land use rights assigned by the State with land use levy or leased by the State with lump-sum rental payment for the entire lease period.

Upon successful application submission, the authority shall chronologically record and update the registration information in the cadastral register, the asset's certificate and then certify on the registration form^[6].

In addition to the registration of mortgage transactions, relevant parties is required to register the change of land use rights, assets attached to land within 30 days in accordance with the law on land^[7]. The result of the change registration is the asset's certificate updated with the information of mortgage transactions and mortgagee.

(b) Mortgage, pledge of aircraft^[8]

A mortgage or pledge of aircraft must be registered with the Civil Aviation Authority of Vietnam.

Upon successful application submission, the Civil Aviation Authority of Vietnam shall record and update the registration time, registered information in the Vietnam Aircraft Register and issue a Certificate of Registration^[9], as from which such mortgage or pledge takes effect^[10].

(c) Mortgage of vessel^[11]

A mortgage of a vessel must be registered with the municipal division of the Vietnam Maritime Administration.

Upon successful application submission, the Civil Aviation Authority of Vietnam shall record and update the registration time, registered information in the Vietnam

^[6] Article 35.1 of Decree 99.

^[7] Clause 4, 6 of Article 95 of Law on Land 2013.

^[8] Article 28.1.c; Clause 1 and Clause 2 of Article 29 of Law on Civil Aviation 2006.

^[9] Article 38.1; Article 40 of Decree 99.

^[10] Article 29.3 of Law on Civil Aviation 2006.

^[11] Article 39 of Vietnam Maritime Code 2015; Article 41.1 of Decree 99.

Seagoing Ship Register and issue a Certificate of Registration^[12], as from which such mortgage or pledge takes effect.

2.2 *Recommended Registration*

Except for the abovementioned securities, Registration of the others (i.e., mortgage, pledge, performance bond, security deposit, escrow deposit, and reserve of ownership arrangements) in relation to movable assets, properties on land being annual trees, temporary works is recommended^[13].

In case the security assets are moveable assets, property rights, and shares, the registration is made with the National Registration Agency for Security Transactions under the MOJ (NRAST). If they are securities registered centrally at Vietnam Securities Depository and Clearing Corporation (VSD), the registration is at VSD.

3. **Relationship between security interest and Registration**

Unless otherwise stated by laws, a security interest takes effect regardless of the Registration^[14].

However, the Registration is only made and the effect against third party is only created once the secured transactions take effect. The non-Registration does not affect the validity of secured transaction.

The Registration is not automatically ceased upon the termination of secured transactions but will be deleted upon the request of relevant parties in cases listed out in Article 20.1 of Decree 99. In the event the register authority receives a legally effective court judgment or decision that the registration must be deregistered/deleted

^[12] Article 41.1; Article 43 of Decree 99.

^[13] Article 44.1 of Decree 99

^[14] Article 22 of Decree 21. Effectiveness of security contracts

1. Security contracts certified, verified under the Civil Code or relevant law provisions or at request shall enter into force from the date on which they are certified, verified.

2. Security contracts not specified under Clause 1 of this Article shall enter into force from the date agreed upon by all parties. In case no agreement is made, security contracts shall enter into force from the date on which the contracts are signed.

3. In case collateral is withdrawn under agreement, sections of security contracts that relate to the withdrawn collateral shall no longer be effective; in case collateral is added or replaced, revision of security contracts relating to this collateral shall be implemented according to the Civil Code and other relevant law provisions.

4. Security measures that have not entered into effect against a third individual shall not alter or nullify security contracts.

or when the authority finds out that the security interest did not meet the registration conditions, they shall delete or cancel the Registration in accordance with Article 20.2 and Article 21.1 of Decree 99.

In short, in addition to mandatory cases, it is recommended that the Parties make Registration for security interest to lower the risk and make use of the collateral.

*We hope you find our articles interesting and useful in your everyday business operations. We wish you pleasant reading. Please kindly visit **Insight** at our official website www.bizlegalgroup.com for more.*




Local Expertise & Global Mindset

BLG Law Firm was officially founded in 2011 by the law-specialized members who are young, proactive and intense to contribute the legal service with motto

“TRANSACTIONAL LAW FIRM”

- Officially established **in 2011**, today one of **Leading Law Firm** in Vietnam.
- Reputation built from **professional conduct** and the **highest quality** of legal practice.
- 75% of our Clients are Foreign Entities & Outbound transactions.
- Especially, **high performance** in Energy & Infrastructure & Real Estate, Corporate & M&A (Investment Banking).
- **Strong collaboration** with international Singaporean, HongKong and Korean Law Firm.
- The Firm’s goal is “the foundation of success” with **cost-effective** and **competitive** service fee.

 Head office:
Vinhomes Central Park, 720A Dien Bien Phu, Ward 22, Binh Thanh District, Ho Chi Minh City.

 info@bizlegalgroup.com

 www.bizlegalgroup.com

