

NEW POINTS ABOUT REGISTRATION OF SECURITY INTERESTS

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On November 30, 2022, the Government issued Decree 99/2022/ND-CP on registration of security interests (**Decree 99**), replacing Decree 102/2017/ND-CP (**Decree 102**). Decree 99 took effect from January 15, 2023 with notable contents related to registration of security interests as follows:

Firstly, providing regulations on 4 cases of registering security interests over property, specifically:

- (i) Registration of mortgage over property, pledge over property, title retention as prescribed in the Civil Code, and relevant laws;
- (ii) Registration by agreement between the grantor and the secured party or at the request of the secured party, except for property lien;
- (iii) Registration of notice on collateral disposal in the case where an asset is used to secure the performance of several obligations with joint secured parties or in the event that the grantor and the secured party have an agreement;
- (iv) Registration of changes to registered information (change registration); deregistration of registered information (deregistration) for the case specified at points i, ii and iii above.

Compared with Decree 102, regulations on registration of security interests are more flexible and extensive. Decree 102 previously divided cases of security interest registration into 2 groups, including: (i) security interests subject to registration (mortgage of land use rights; mortgage of assets on land; pledge or mortgage of aircrafts; mortgage of seagoing ships) and (ii) security interests subject to registration upon requests (mortgage of other movable property; mortgage of off-the-plan property on land; title retention in case of purchasing property on land, off-the-plan property on land; purchase of aircrafts, seagoing ships; or purchase of other movable property with title retention).

Secondly, amending regulations on validity of

security interest registration. In order to ensure transparency in terms of the validity of security interest registration, and also to separate the registration of security interests from other registrations relative to assets used to secure the performance of obligations, Decree 99 has set out a number of new regulations on the validity of security interest registration, such as:

- Specifying the time that the validity of security interests registration arises and terminates. For example: Registration of land use rights and property on land is valid from the time when the registry records and updates the registered information in the cadastral register. The validity period of the registration accounts from the validity time of the registration to the time of deregistration.
- Determining validity of the registration as the basis for determining the period in which a security interest takes effect against a third party in accordance with the law on security for performance of obligations; and supplementing the cases of validity against a third party of a security interest already registered at the initial competent registration authority without termination, etc.

Thirdly, supplementing circumstances of cancellation of security interest registration, including cases in which:

- The security interest has been registered but the registry receives a legally effective judgment or decision by the Court that the registration must be cancelled in whole or in part;



- The registered security interest is found by the registry to fall into one of the following cases of registration rejection: (a) the security interest is not subject to the competence of such registrar or (b) the registry itself detects that the documents, signatures or seals in the application dossier forge theirs or receives information with certification from the competent authority that the documents, signatures and seals in the application dossier are forged. For case (b), the registry shall cancel all registered information;
- Handling of duplicate registration in accordance with Article 49, Decree 99.

COMMENTS AND RECOMMENDATIONS

It is found that the promulgation of new regulations on security registration has removed the obstacles and inadequacies not yet covered by Decree 102, such as not addressing all registration cases; registration cancellation; validity against a third party, etc. Having just come into effect at the beginning of 2023, Decree 99 may inevitably encounter some problems in registering security interests in the transitional period. Therefore, to ensure smoother registration process, enterprises should pay attention to comply with Article 57, Decree 99 and may directly contact the competent registry as provided in Article 10, Decree 99 for specific instructions.