

NEW REGULATIONS ON SECURITY FOR OBLIGATION FULFILLMENT

KIM ANH

On March 19, 2021, the Government issued Decree 21/2021/ND-CP providing guidelines for implementation of the Civil Code on security for performance of obligations (**Decree 21**), which takes effect on May 15, 2021. This Decree has some remarkable contents as follows:

Firstly, the supplemented regulation on the description of collaterals in contracts between secured parties and securing parties. Compared to Decree 163/2006/ND-CP on secured transactions, which was amended and supplemented by Decree 11/2012/ND-CP (**Decree 163**) issued under Civil Code 2005, Decree 21 supplements some new regulations on description of some specific collaterals, for instance: (i) In the case where a collateral is immovable property or movable property that must be registered under law, the described information as agreed upon must conform to the information on relevant certificates; (ii) In the case where investment projects used as the security for obligation fulfillment are construction projects for houses, construction projects for works other than houses or other projects that must obtain certificates, decisions by competent authorities under laws or other legal bases, the description in security contracts must present such legal bases (i.e. specifying the information written on the certificates, decisions issued for the projects); (iii) Goods circulated during manufacturing, business and warehouse processes used as the security for obligation fulfillment can be described by value or type. Description of collaterals being warehouses must include the address and code of the warehouses (if any) or other signs of warehouse location.

Secondly, the introduction of the new regulation on the right to reclaim collaterals. Decree 21 stipulates that the rights of secured parties with regard to the collaterals in security measures that have taken effect against a third party shall not change or



terminate in the case where the collaterals are transferred to other individuals as a result of trading, gift, exchange, transfer, other changes in ownership, appropriation, use or benefit gain of collaterals that lacks legal ground. However, such rights shall not arise on the following assets: (i) Collateral that has been sold, transferred or has its ownership otherwise disposed of under consent of secured parties and is no longer used as security for fulfillment of agreed obligations; (ii) Collateral that has been sold, replaced or exchanged in accordance with clause 4, Article 321 of Civil Code 2015; (iii) Collateral that is no longer available or replaced by other collaterals under Article 21 of Decree 21 on fluctuation of collaterals; and (iv) Other cases under the Civil Code and other relevant legal provisions.

Thirdly, the introduction of the new regulation on handling collaterals. Accordingly, the secured parties can handle collaterals based on agreements in security contracts without any power of attorney or written consent by the securing parties.

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 21 has contributed to overcoming the inadequacies and obstacles in civil transaction practice that Decree 163 has not yet resolved, such as the lack of regulations on the priority order to apply specialized regulations over the Decree, the right to reclaim or handle collaterals without the power of attorney or written consent of securing parties, etc. Thus, Decree 21 has contributed to facilitating individuals and organizations to maximize the economic value of properties and minimize legal risks and costs, especially for credit institutions in securing the performance of obligations. When establishing or implementing security measures, enterprises should pay attention to the new provisions of Decree 21 to draft security contracts, register security measures, reclaim or handle collaterals in compliance with the laws.