



LEGAL UPDATE

NEW LEGISLATION ON SECURED TRANSACTIONS

On 21 March 2021, the Government issued Decree No. 21/2021/ND-CP to provide guidance on secured transactions (“*Decree 21*”) replacing the previous legislation that had been in place for the last 15 years (Decree 163/2006/ND-CP).

Decree 21 became valid on 15 May 2021.

We highlight the salient points of *Decree 21* below:

1. Right to take a mortgage of land use rights by individuals and economic organisations

Decree 21 now allows individuals and economic organisations to take mortgages of land use rights.

Such development could potentially be an effective tool to use to secure non-bank loans and obligations.

2. What is considered a “reasonable period”

Decree 21 sets out definitions of certain terms commonly used but not yet codified in law. Most significant is the definition of what is a “reasonable period”, especially for enforcement.

A “reasonable period” means:

- (i) a period of time in accordance with the custom established as between the parties; or
- (ii) period of time during which, in normal conditions, the parties to a secured transaction contract or security measure or other parties with related rights and interests may exercise their rights or perform their obligations. In case of enforcement, the reasonable period is set to be at least 10 days for movable properties and 15 days for real estate, unless the parties agree otherwise.

3. Types of assets that can be provided as security

Decree 21 sets forth types of assets that may be used as security for the performance of obligations and detailed provisions on the taking of security over 10 popular types:

- (i) land use rights and properties attached to land;
- (ii) assets created from surface rights or usufruct rights (“usufruct” is the right to use and benefit from others’ properties within a limited period);
- (iii) objects with auxiliary objects, integrated objects and special objects;
- (iv) valuable papers, securities and the balance of a savings deposit;

- (v) asset rights arising from a contract;
- (vi) assets formed from capital contribution;
- (vii) right to exploit natural resources;
- (viii) rights arising from intellectual property rights, information technology, or science and technology activities;
- (ix) investment projects and assets belonging to an investment project; and
- (x) goods circulated during production and business.

4. Security over assets to be formed in the future

With respect to the taking of security over future assets, *Decree 21* provides that the secured party will have a security over such assets as soon as they are formed.

5. Security over marital property

Decree 21 also clarifies the taking of security over assets contributed by one spouse as equity to legal entity. It provides that even when the spouses did not have a written agreement on such capital contribution, given the capital contribution had complied with relevant law and the other spouse knew or should have known and did not object, then that party is deemed to have agreed. Previously, the secured party had to obtain the written consent of the other spouse.

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