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**DECREE
NO.99/2022/ND-CP
DATED NOVEMBER
30, 2022 ISSUED BY
THE GOVERNMENT
REGARDING THE
REGISTRATION OF
SECURITY
INTERESTS,
SUPERSEDES DECREE
NO. 102/2017/ND-CP
DATED SEPTEMBER
01, 2017.**



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Security interests always play a crucial role in stabilizing civil, business, and commercial relations, preventing conflicts arising, and increasing respect for the law among the parties involved in the transaction. Simultaneously, security interests are also the

method for the protection of legitimate rights and interests of such involved transaction's parties in the event that the obligator fails to perform or improperly performs its obligations when due.

The registration of a secured transaction "comes out into society" due to the need for disclosure of the secured transactions, and protection of legitimate rights and interests of the subjects involved in the transaction and related parties. In recent years, facing the demands of actual practices, the provisions of registration of secured transactions have been increasingly improved, creating a solid basis for organizations and individuals to have favorable conditions in accessing credit sources, ensuring legal safety in civil transactions, commercial business.

As of November 30, 2022, the Government promulgated Decree 99/2022/ND-CP regarding the registration of security interests to supersede Decree No. 102/2017/ND-CP dated September 01, 2017 in order to significantly contribute to the completion and unification of the law in the field of registration of security interests.

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Decree 99/2022/ND-CP on registration of security interests officially takes effect on January 15, 2023 and contains the following noteworthy points:

1. Scope of regulation

Comparing Decree 99/2022/ND-CP to Decree 102/2017/ND-CP, there is an expansion in the regulation's scope regarding (i) the registration of security interests, (ii) the provision of information on security interests centrally registered at the Vietnam Securities Depository and Clearing Corporation ("VSDCC").

Accordingly, in relation to the unprovided matters in the law of securities, the registration shall comply with the provisions relating to the registration of security interests in immovable property, other than aircraft and seagoing ships as prescribed in Decree 99/2022/ND-CP.

2. Security interests subject to the registration procedure

Decree 99/2022/ND-CP stipulates that four circumstances required the registration of security interests in assets, including (i) registration of mortgages, pledges of assets, retention of ownership rights in accordance

with the Civil Code and other relevant laws; (ii) registration according to the agreement between the securing party and the secured party or at the request of the secured party, except for property liens; (iii) registration of notification of collateral disposal in case an asset is utilized to secure the execution of several obligations where multiple parties jointly receive the security or in case the securing party and the secured party have agreements; (iv) registration of changes in registered contents; deregistration of registered contents for the cases specified at the aforementioned points.

Compared to the contents of Decree 102/2017/ND-CP, the newly updated regulations have demonstrated the discrepancy in the expansion of institutions and security interests, in which the entities involved in the transaction can decide to register the security interests. Correspondingly, Decree 102/2017/ND-CP previously stipulated a quite rigid classification of security interests into two groups, including (i) groups of security interests required to be registered (mortgage of land use rights, mortgage of land-attached assets, mortgage of aircraft, seagoing ships) and (ii) groups of registered security interests upon request (mortgage of movable assets, mortgage of land-attached assets formed in the future, reservation of ownership rights in case of

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purchase and sale of land-attached assets, land-attached assets formed in the future; purchase and sale of aircraft, seagoing ships; purchase and sale of other movable assets with reservation of ownership rights).

3. Principles of registration and provision of information

For the purpose of ensuring uniformity and consistency in the registration, provision and exchange of information on security interests, creating a legal framework conducive to the registration and provision of information by competent State authorities in order to register and secure legitimate rights and interests for entities requesting registration of security interests, Decree 99/2022/ND-CP stipulates the principle that information on security interests must be made available to the public, provided upon request, information exchanged in accordance with law; to comply with procedures, competence, duration, tasks, powers and responsibilities, not to give rise to procedures other than those prescribed by the Decree. And notably, in case of violation of any above-mentioned principles, the Registry must be responsible before the law.

In addition, the Registry is not responsible for the name of the security contract

and the contents of the agreement of the parties in the security contract; the parties must be honesty in declaring, providing and exchanging information; being responsible before the law for the accuracy of the information declared, provided and exchanged.

4. Validity of the registration

For the purpose of ensuring transparency about the effectiveness and validity of the registration, simultaneously with separating the registration of security interests and other registration related to assets used to secure the performance of obligations (*hereinafter referred to as "other registration"*), Decree 99/2022/ND-CP has set out new regulations on the validity of registration as follows:

- Specifying in detail and clarifying the time of arising and termination of the validity of registration of security interests and other registrations;

- The validity of the registration of security interest is the ground for determining the period of countervailing effect of security interest to third parties in accordance with the law on security for the performance of obligations;

- The validity of other registration is only for notifying, publicizing agreements and commitments in civil transactions rather than the basis for determining the validity of civil transactions, the validity of countervailing effect against third parties;

- Separating the effect of deregistration in case the security interest is terminated as required or prescribed by law from the cancellation of registration due to the security contract being declared invalid according to the effective judgment or decision of the court, arbitration or the security interest is registered at an incompetent Registry.

5. Competence of the Registry

In order to ensure conformity with the relevant provisions of law, maintain transparency and convenience of a state registration and management authority for the registration of security interests, Decree 99/2022/ND-CP has provided the registration authority of the VSDCC for the registration of securities that have been registered centrally in accordance with the law on securities. Concurrently, in addition to stipulating the general competence, tasks and powers of the Registry, Decree 99/2022/ND-CP also provides the cases of registration falling under the

exclusive competence of each Registry, showing the legal mechanism for information exchange between the Registry and other competent agencies and persons in accordance with the law.

6. Dossiers, procedures for registration and provision of information

Regarding the registration dossier, information provision

In order to ensure transparency and consistency of registration dossiers and prevent inappropriate requirements in registration practices, Decree 99/2022/ND-CP specifies in detail the following contents:

- The information must be on the Registration Request Form; Forms are documents and papers belonging to the dossier component; signatures and seals in the registration; languages used in the registration; the description of the information about security assets in some specific cases, for example, movable assets other than aircraft, seagoing ships, securities which have been centrally registered;

- The composition of registration dossiers for registration of security interests in

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housing construction investment projects; investment projects on construction of works other than houses; future-formed assets; assets being annual trees or temporary works; assets being agricultural investment projects, forest development projects, projects on planting perennial trees or annual trees, other projects using land, transferring the mortgage registration of property rights arising from contracts for purchase and sale of land-attached assets to the mortgage registration of land-attached assets; other registration dossiers;

- Particularizing the composition of registration dossiers for changes in cases of purchase and sale of debt collection rights, receivables, other payment claims; dossiers for deregistration in cases where economic organizations other than credit institutions mortgage land use rights or land-attached assets of individuals or households using land become foreign-invested enterprises; persons requesting deregistration are not security recipients, such as securing parties, civil judgment enforcement agencies, buyers of security assets to be handled, recipients of transfer of ownership of security assets.

Regarding the registration procedure

Decree 99/2022/ND-CP controls the registration procedure by defining general and

particular procedures for each kind of collateral, in particular:

- For the purpose of ensuring full coverage of registration cases, and the convenience for application and determination of the authority of the Registry, instead of defining the circumstances of registration as previously, the Decree outlines the cases of registration of security interests in accordance with each kind of asset. In addition, the Decree also specifies other cases of registration as well as the competence to carry out such registrations.

- In order to ensure transparency, limit arbitrariness in refusing registration and prevent risks and occurred additional costs for the requester for registration, the Decree stipulates that the Registry may only be allowed to refuse registration when there are clear-cut grounds specified in the Decree. Furthermore, the Decree has particularized several cases where the Land Registration Office and the Branch are required to carry out the registration procedure when the information agreed upon by the parties describing the collateral is inconsistent with the information on the Certificate or archived at the competent authority.

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- Moreover, the Registry is not allowed to refuse to register for the following reasons: the name of the security contract, the content of the agreement on the value of the collateral, the secured obligation, the guarantee of the performance of obligations of others, the scope of the secured obligation, the duration of performance of the secured obligation.

- For the purpose of ensuring the appropriateness of the competence to request registration in accordance with the law on guarantee of performance of obligations and related laws, the Decree has provided the regulation regarding the registration procedure by the requester in the way of separating the person who has the right to request the first registration with the person who has the right to request in the registration of change and deletion of registration; specified information about the guarantor, the secured party, the representative in the registration; the rights and obligations of the requester for registration.

- In order to create favorable conditions for individuals and businesses, as well as ensure the feasibility in resolving registration dossiers, providing information, in parallel with continuing to regulate the submission of registration dossiers through the electronic

environment and the submission of registration dossiers in paper form, the Decree specifically stipulates the process of receiving and inspecting the registry's registration dossier components, which includes the following main contents:

- Separation of the time limit for settlement of dossiers when refusing registration with the time limit for settlement of dossiers for making registration;
- Provisions on cases where the registry fails to register due to force majeure events in the receipt of dossiers, settlement of dossiers and time limit for settlement of dossiers in such case;
- Regulations on notifying the requester for the guidance of the completion and supplementation of dossier components; the sending of papers and documents to competent agencies for verification when detecting signs of forged documents and time limit for settlement of dossiers in such case;
- Regulations on the method of returning registration results in accordance with the method of submission of

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registration dossiers and the legal value of registration results;

- Regulations on mechanisms and procedures for registration in the electronic environment.

- In order to ensure the accuracy of the information on registered security interests and to limit unnecessary procedures for registration of changes, the Decree separates cases of mandatory registration of changes from cases of registration of changes upon request; deletes the registration of contents registered for changes in cases of withdrawal of collateral; clarifies the responsibilities of the requester for the failure of registration for the cases where the registration procedure for changing is required.

- For the purpose of ensuring uniformity and consistency with the provisions of the law on ensuring the performance of obligations, fully covering situations arising in practice, and protecting the legitimate rights and interests of property owners and other related subjects, the Decree specifies the following contents:

- Cases of deregistration to conform to reality and in accordance with changes

in the law on security for performance of obligations;

- Recording the deregistration of the withdrawn property in case of the registration changes due to the reduction of the collateral; in case of deregistration of part of the content, the remaining shall not be changed or terminated;
- Regulations on the responsibilities of the requester for registration in case of failure to delete the registration when there are grounds for the registration to be deleted;
- Supplementing the provisions on deregistration for other cases of registration.

In conclusion

During the time of practical application, Decree 102/2017/ND-CP has revealed the limitations expressed in the ineffectiveness and validity of registration; the refusal of registration; information about the securing party and the secured party; information on the registration request form; language, signature and seal in the registration;

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the return of registration results; registration of changes and deregistration; separation between deregistration and deregistration due to invalidity of the security contract; the mechanism to correct information; method of payment of registration fees; submission of registration dossiers on the electronic environment; information exchange between competent state agencies.

With the updated provisions of Decree 99/2022/ND-CP, the processes of registration of security interests have been renovated, perfected and become effective legal instruments, demonstrating the safety and transparency of assets and transactions.

Thereby, individuals and businesses shall have a solid legal basis to access low-cost capital sources for the development of production and business. Additionally, the financing entities are more confident when the market's supply of capital has a protective legal mechanism to implement in a safe and stable manner. Moreover, the new provisions of Decree 99/2022/ND-CP also contribute to the competent agencies and organizations to obtain accurate and convenient legal evidence on security interests in the course of state management or in case of having to settle cases in accordance with the law.

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Chúng tôi giữ quyền sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này hoặc bất kỳ phần nào của bản tin mà không thông báo trước. Chúng tôi không chịu bất kỳ trách nhiệm nào về các sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này.

Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

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