



RHTLaw Vietnam
International Capabilities Delivered Locally

An aerial photograph of a city skyline at dusk. The sky is a mix of blue and grey, with some clouds. The city is illuminated with warm lights, and several tall skyscrapers are visible. A semi-transparent white box is overlaid on the center of the image, containing the text "LEGAL UPDATES" and "January 2023" in red.

LEGAL UPDATES
January 2023

Legal Updates – January 2023

New Decree on registration of security measures

Security is required for some types of finance and various lenders usually require borrowers to provide security, which may consist of business assets, personal assets, guarantees or third-party guarantees or other types of security. Registration of security is mandatory in some cases but may also be optional in other cases. However, registration is generally recommended since, to a certain extent, it may be considered a way to protect and give parties extra rights in the property subject to security.

Basically, Vietnam has for years established a legal framework which is quite sufficient to govern the registration of security transactions. The registration of security transactions is regulated by Decree No. 102/2017/ND-CP ("**Decree 102**"), and as from 15 January 2023, Decree No. 99/2022/ND-CP (which replaces Decree 102 from the same date) ("**Decree 99**"). The issuance of Decree 99 is to enhance and strengthen the State's management over the administrative registration of security as well as to have relevant regulations updated for consistency with some other laws and regulations which have recently been amended.

Using securities as collateral

Security transactions involving securities which are registered at Vietnam Securities Depository and Clearing Corporation ("**VSDC**") will be registered at VSDC pursuant to Laws on Securities. However, security transactions involving securities which are not registered at VSDC or other issues not governed by Laws on Securities will be governed by Decree 99.

Security transactions to be registered

Under Decree 99, the below security transactions will be registered:

- a) mortgage of property, pledge of property, retention of ownership in accordance with provisions of the Civil Code and other relevant laws;
- b) subject to agreements between the securing party and the secured party OR at the request of the secured party, except for property lien;
- c) notices of disposal of collateral in case where one asset is used to secure the performance of many obligations with many parties jointly receiving the security OR in case where the securing party and the secured party have reached an agreement on this matter;
- d) changes to registered contents; deregistration of registered contents.

Security Registrar Agency

Generally, while the National Registration Agency for Secured Transactions under the Ministry of Justice still plays a major role in the registration of most of security transactions, authority and powers in relation to security transactions involving specific types of assets are delegated to relevant competent authorities. E.g., the Land Registrar Office under the local Department of Natural Resources and Environment will continuously be in charge of security transactions involving land use rights and assets attached to land. Security transactions involving airplanes or ships will be respectively registered at the Civil Aviation Authority of Vietnam under the Ministry of Transport and the Vietnam Maritime Administration under the Ministry of Transport.

Security effective against third persons

Generally, security shall be enforceable against a third person as from the time when the security is registered. The valid duration of the registration shall in general be the basis for determining the valid duration during which a security is effective against third parties.

In case where the nature of assets involved in the security transactions changes, which causes the security to be registered at another security registrar agency, the effectivity against third parties may not be impacted.

Transition period

Security transactions, which were registered before the effective date of Decree 99, are not required to be re-registered. However, events subsequent thereto such as registration of changes, deregistration, registration of settlement, etc. shall comply with Decree 99.



Picture from: https://www.freepik.com/free-photo/house-investments-elements-arrangement_11620740.htm#query=mortgage&position=8&from_view=search&track=sph

New regulations on import of used technological lines for production

“Import First - Inspect Later” rule

The import of used plant machinery is generally subject to restrictions imposed by the importing countries in order to avoid machinery being hazardous for the environment or to safeguard the competitiveness of domestic manufacturing.

The Vietnamese Government since 2019 issued Decision No. 18/2019/QĐ-TTg (“**Decision 18**”) specifically governing the import of such used plant machinery and has recently amended certain regulations under this Decision 18 mainly about the import of used technological lines for production (i) by high-tech enterprises or (ii) for hi-tech projects or projects subject to special investment incentives (herein after collectively referred to as “**Eligible Enterprises**”). Such amendments are consolidated in Decision No. 28/2022/QĐ-TTg (“**Decision 28**”) which will come into effect on 1 March 2023.



Picture from: https://www.freepik.com/free-photo/photo-automobile-production-line-welding-car-body-modern-car-assembly-plant-auto-industry_26150191.htm#query=production%20line&position=13&from_view=search&track=sph

In the context of economic globalization, high technology is an inevitable trend and always plays a key factor in promoting growth and competitiveness of Vietnamese enterprises. Decision 28 has therefore simplified certain procedures particularly applied to the import of used technological lines by the Eligible Enterprises which can be summed up as “*Import First - Inspect Later*” rule.

In principle, a used technological line must be inspected to verify whether its status quo satisfies statutory criteria, and such inspection must be conducted at the exporting country and before the import into Vietnam.

However, while the inspection of used technological lines is still mandatory, the Eligible Enterprises may have the used technological lines inspected after they are already imported into Vietnam. The inspection can be performed at the production site of the Eligible Enterprises after the technological lines have been installed.

For the purpose of custom clearance, the Eligible Enterprises must submit evidence of eligibility such as certificates of hi-tech enterprises, investment certificates, investment approvals or equivalents. Within 12 months from the custom clearance, the Eligible Enterprises must have the used technological lines inspected and submit to the competent authority the proper inspection certificates. During this time, the Eligible Enterprises shall not put the used technological lines into official operation.

In case the inspection result post custom clearance suggests that the used technological lines are not qualified, the Eligible Enterprises may be subject to administrative sanctions and must have the used technological lines exported.

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