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SOLUTIONS FOR IMPROVEMENT OF LEGISLATIONS ON PROPERTY RIGHTS CONSISTENT WITH THE 2015 CIVIL CODE

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This Code was adopted by the XIIIth National Assembly of the Socialist Republic of Vietnam, 10th session on November 24 2015. Civil Code in 2015 took effect from 01 May 2017. Civil Code 2015 is developed based on 02 key principles: (1) general principles (known as abstract principles); (2) specific principles.

General principles reflected in the Civil Code recognize the most common standards and rules for private law systems in regulating property relations. In this respect, the Civil Code is regarded as a general law, a "Constitution in private law system", specialized laws (also known as special laws) cannot be contrary to fundamental principles of the Civil Code.

PART TWO

OWNERSHIP RIGHTS AND OTHER PROPERTY-RELATED RIGHTS

Chapter XI

GENERAL PROVISIONS

Section 1. Rules for establishing and exercising ownership rights and other property-related rights

Article 158. Ownership rights

Ownership rights comprise the rights of an owner to possess, use and dispose of the property of the owner in accordance with law.

Article 159. Other property-related rights

1. Other property-related rights mean rights of entities directly hold or control the property belonging to ownership rights of another entity.

2. Other property-related rights include:

- a) Right to adjacent immovable property;*
- b) Usufruct right;*
- c) Surface rights.*

(Civil Code 2015)

Specific principles are expressed by specific and detailed regulations to regulate specific property relations (e.g. inheritance ...). In this regard, competent authorities will not issue documents detailing and guiding implementation of provisions of the Civil Code, and specialized laws should not be inconsistent with provisions of the Civil Code.

From the above sense, revision of laws regulating property relations for amendment and supplementation to ensure conformity with the Civil Code is essential.

I. Orientations for legal documents on property registration

Current registration of assets is regulated by the following documents:

- Registration of Real Estate: Land Law in 2013; Housing Law 2014; Law on Forest Protection and Development 2004;
- Registration of aircraft: Civil Aviation Law 2006 (amended and supplemented in 2014);
- Registration of sea ships: Maritime Code 2015 (with effect from the date of 01/7/2017);
- Assets under intellectual property: Article 6 Intellectual Property Law 2005 (amended and supplemented in 2009);
- Collaterals: Decree No. 163/2006 / ND-CP dated 29/12/2006 on security transactions; Decree No. 83/2010 / ND-CP dated 23/07/2010 on registration of security transactions;
- Registration of cars and motorcycles: Circular No. 15/2014 / TT-BCA dated 04/4/2014 regulating vehicle registration; Circular No. 37/2010 / TT-BCA dated 12/10/2010 defining process of vehicle registration...

The Civil Code in 2015, besides owner rights, has noted "property-related rights", like: tenure rights, surface rights, and has amended and supplemented several provisions on the right to "easements". Those rights, to generalize, is the right of a subject (not the owner) to the property of the owner. Therefore, public registration of these "property-related rights" to clarify the scope, nature and priorities when handling property is an urgent demand for property-related rights in the Civil Code.

(Civil Code 2015)

Article 257. Usufruct right

Usufruct right means the right to use a property, under ownership of another entity, and enjoy its yield or income in a specific period of time.

Article 258. Bases for establishment of usufruct right

The usufruct right shall be established as prescribed by law, according to agreement or will.

Article 259. Effect of usufruct right

The usufruct right shall be established from the time of transfer of the property, unless otherwise agreed or otherwise prescribed by law.

The established usufruct right shall take effect to every natural and juridical person, unless otherwise prescribed by law.

Article 260. Time limit of usufruct right

1. The time limit of usufruct right shall be agreed by the parties or prescribed by law provided that its maximum length is the full life of the first usufructary being natural person or the period of time for which the first usufructary being juridical person exists as long as it does not exceed 30 years.

Besides, in order to maximize value of assets, creating a capital mobilization channel for participants in civil relations, research is needed to develop regulations on registration of transfer of rights, according to that general rights (e.g. debt claims ...) can be mortgaged or transferred ... through the registration mechanism.

From that basic reason, a property registration law should be studied and drafted. We think that the development of property registration law must ensure the following requirements:

First, contribute to transparency of property status, publication of some important assets to strengthen state management of assets, especially land - the type of property under public ownership.

Second, to contribute to prevention of corruption on the basis of transparent public registration (Resolution 111/2015 / NQ-QH dated 11.27.2015 of the National Assembly has recognized this problem).

Third, create a safe legal mechanism for civil transactions. With publicity and transparency on legal status of property, individuals and organizations will actively participate in deciding/entering into civil transactions, thereby promoting economic growth.

Fourth, create better mechanisms for ensuring and protecting rights and interests of individuals and organizations. A well and exactly registered transaction has an important significance in proceedings in the court when disputes arise.

Fifth, because registration of rights partly affects personal privacy, a registration system and information system should be set up in a secure and accurate way there should be certain limits in access to information and information processing.

Sixth, transparent accountability of individuals and organizations in registration, especially responsibility to pay damages. Therefore, the principle of "public trust" in registration should be studied..

From the above directions, the issuance of a property registration law should define the following specific objectives:

(1) Consistent regulations on orders and procedures for registration in legal documents (laws);

(2) Studies model of organization of the registration authority: Should it be unconcentrated as presently or should it be concentrated in one single agency?.

(3) Reduce administrative procedures and costs for administrative procedures in registration.

(4) Transparency in legal status of property through mechanisms of providing public information.

(5) The law will act as a basis for tax authorities to apply when there are transactions involving assets, especially real estate.

(6) Uniform rules on validity of contract, validity of transfer of rights (especially house and land).

II. Orientations for amendment of some existing legal documents on property to conform with the Civil Code 2015.

Scope of laws relating to property is very large, as shown by results of the review conducted by the Ministry of Justice. We believe that in the coming period, the amendment and supplementation to some laws/legal documents to suit the Civil Code 2015 should focus on the following issues:

1. To study amendments and supplements to the Housing Law in the following directions:

a) Clarify the concept of “house formed in the future” as the subject of the contract of sale or mortgage to fit existing regulations on assets and assets formed in the future in Article 108 of the Civil Code.

b) To amend provisions on housing transactions to fit the Civil Code

Example: Clause 2, Article 126, Housing Law provides: "Where a joint owner sells his ownership share, the other joint owners have preemptive rights to buy; within 30 days from the date of receipt of notice of the sale and conditions of sale but no co-owner wants to buy, the rights can be sold a third party; violations of pre-emptive rights shall be handled in accordance with provisions of the civil laws".

This pre-emptive right timeline duration is inconsistent with provisions of Article 218 of the Civil Code, 2015.

Article 218. Disposal of multiple ownership property

1. Each owner in common has the right to dispose of its share of the ownership rights.
2. Disposal of joint property shall be implemented as agreed by the owners of the property or as provided by law.
3. Where an owner of multiple ownership property sells its share of the ownership rights, the other owners of the property have the right of first refusal to purchase such share.

Such owner may sell such share to other persons if no other owner purchases within three months in the case of immovable property, or within one month in the case of moveable property, from the date on which the other owners received notice of the sale and the conditions of the sale. The notice must be made writing and conditions for sale applying to other owners in common shall be similar to those applying to non-owners in common.

In the case where there is a sale of a share of the multiple ownership rights in breach of this regulation on priority purchase right, within the time-limit of three months from the date of discovery of the breach, any one of the multiple owners has the right to request a court to transfer to it the rights and obligations of the purchaser; and the party at fault which caused damage shall be liable to compensate for damage.

4. Where one of the owners of immovable property renounces its share of the ownership rights or where such person dies without leaving an heir, its share of the ownership rights shall belong to the State, except in the case of multiple ownership between communities where the share of ownership rights shall belong to the remaining members.
5. Where one of the owners of movable property renounces its share of the ownership rights or where such person dies without leaving an heir, its share of the ownership rights shall belong to the remaining members.
6. Where all owners renounce their ownership rights with respect to multiple ownership property, the ownership rights shall be established as prescribed in Article 228 of this Code.

2. Study to amend and supplement the Law on Trade in the following directions:

a) Do not repeat issues already dictated in general law - - the Civil Code in 2015, such as general rules, law application, ...

b) Amend and supplement provisions on contracting: contract amendment in case the situation changes essentially, compensation for damages and violations ...

3. Study to revise the following laws: Law on construction; Real estate business; Land; Technology transfer; Investment; Marriage and family; Aviation; Maritime Code ...

Based on results of the review conducted by the Ministry of Justice ministries and ministerial agencies make studies and propose to amend, supplement or promulgate legal documents under jurisdiction of state management of their respective agencies with the overall direction of: ensuring conformity of specific laws (specialized laws) with the Civil Code 2015 (general law); creating legal mechanisms to release assets, maximize the use of assets and create additional capital mobilization channels, and better protect rights and interests of individuals and organizations.

4. To amend and supplement Decree 83/2010 / ND-CP on security transactions registration and Decree 163/2006 / ND-CP on security transactions towards:

a) Revising names and forms of the Decrees to fit regulations on obligation security in the Civil Code, namely Section 3, Chapter XV, Part 3 of the Civil Code, 2015.

b) Detailing orders and procedures for registration of security measures to implement provisions of the Civil Code, 2015.

c) Detailing measures of property handling and to orders of priority of payment as stipulated in the Civil Code, 2015.

d) Establishing procedures for information disclosure and transparency of security assets, contributing to protecting rights and interests of parties to the security transaction.

e) Studies to codify/unify those provisions in one single decree.

5. Decree on cooperatives and households.

The Civil Code 2015 does not stipulate households, cooperative groups as independent subjects of civil relations. For households and cooperative groups in the 2015 Civil Code to be applicable in practice, it is necessary to study development of a guideline on participation of members in households, cooperative groups under the following directions: to clearly define principles to determine household members,

cooperative members (the accession, the cessation of membership ...); assets contributed by members; rights and obligations of members ... Currently the Government has assigned the Ministry of Planning and Investment to draft a decree guiding cooperation contracts. Even so, we believe that the scope of this decree is difficult to cover all issues mentioned above.

6. Decree on loan clubs

Guiding the implementation of the Civil Code 2005, the Government issued Decree No. 144/2006 / ND-CP dated 27/11/2006 on loan clubs. The nature of loan clubs are loan contracts (raising capital). With the amendment of interest rates under the 2015 Civil Code and provisions on validity of the Law on Promulgation of legal normative documents in 2015, this Decree should be amended and supplemented to match the 2015 Civil Code .

III. Implementation

1. To develop the Law on Property Registration

- a) Lead Agency: Ministry of Justice
- b) Submission to the Government: 2018
- c) Submission to the NA: in 2018
- d) Perform impact assessment, prepare proposal for Law development: 2016-2017.

Where necessary, study to draft guidelines to implement the Civil Code on the registration of property-related rights, right-transfer to ensure feasibility of the 2015 Civil Code in practice. 2. To develop the laws on amendments and supplementations of some laws to suit the Civil Code 2015

Option 1: Ministries and ministerial-level agencies propose amendments and supplements laws relating to the Civil Code within scope of State management of their respective ministries and ministerial-level agencies.

Option 2: draft a law amending relevant laws (a law to fix many laws) as described in Part II. We recommend choosing this option. Whereby:

- a) Lead Agency: Ministry of Justice
- b) Submission to the Government: 2018
- c) Submission to the NA in 2018
- d) Perform impact assessment, prepare proposal for Law development: 2016-2017.

3. To develop guideline documents to implement the Civil Code

a) Responsible agencies: Ministry of Planning and Investment (Decree on cooperation agreement), Ministry of Justice (Decree on Security Transactions; Decree on Loan Clubs; Decree on registration of property-related rights and right-transfer (if any)).

b) Submission to the Government: 2016-2017

Above are some basic orientations in completion of legal documents on property in order to ensure conformity with the Civil Code, 2015.

Respectfully!

Hà Nội, 30 November 2016