

LEGAL UPDATE - EXPANSION OF TYPES OF SECURITY INTERESTS

April 2021

On 19 March 2021, the Government issued Decree No. 21/2021/ND-CP on the implementation of the Civil Code relating to security for performance of obligations, which will come into effect on 15 May 2021 (***the New Decree***), replacing Decree No. 163/2006/ND-CP dated 29 December 2006 on secured transactions as amended by Decree No. 11/2012/ND-CP dated 22 February 2012 (***the Old Decree***). This Legal Update discusses a number of noteworthy points of the New Decree.

1. **Extended scope of security assets**

The New Decree has extended the categories of assets that may be used as security for the performance of obligations:

- a. Assets that have been sold under a property sale agreement subject to title retention;
- b. Assets that are subject a lien according to an agreement;
- c. Property attached to land for which the registration is not mandatory and that has not been registered [with the local land registration office]; and
- d. Investment projects (not being subject to any restrictions on transfer under the Law on Investment or other relevant legislation), property rights to develop and operate such projects or other property rights or assets under such projects. With respect to investment projects for residential housing or non-residential constructions and other projects which are subject to the requirements for obtaining certificates or decisions of relevant authorities or other authorisations, the description of the secured assets must refer to such authorisations.

2. Transitional provisions

According to the New Decree, the security agreements which were entered into and performed prior to 15 May 2021 shall be governed by the Old Decree.

With respect to other security agreements which were entered into prior to 15 May 2021, but have not been performed or are in the process of being performed, and for which their provisions are inconsistent with the New Decree, the parties may (but are not obliged to) amend such security agreements to be consistent with the New Decree.

Please contact us if you have any questions relating to this Legal Update.

Ho Chi Minh City

Unit 19.01, 19th Floor, Deutsches Haus
33 Le Duan Boulevard, District 1
Ho Chi Minh City, Vietnam
Tel: +84 28 3824 2733

Email: legalenquiries@frasersvn.com

Hanoi

Unit 1205, 12th Floor, Pacific Place
83B Ly Thuong Kiet Street, Hoan Kiem District
Hanoi, Vietnam
Tel: +84 24 3946 1203

Website: www.frasersvn.com