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SOUTH KOREA'S EXPERIENCES ON PROPERTY REGISTRATION LAW - LESSONS FOR VIETNAM

Vu Anh Sao, Pham Huynh Bao Oanh

University of Economics and Law, Vietnam National University Ho Chi Minh City

Ho Chi Minh City University of Economics and Finance

saova20710@sdh.uel.edu.vn, saova@uef.edu.vn

Abstract:

South Korea is one of the developed countries in Asia and in the world, whose development is not only in term of economy but also in term of the legislative technique. Although Vietnam has certain differences on political regime and socio-economic conditions compared with South Korea, Vietnamese government has learned from other countries on practical laws, especially South Korea's property registration regulation. In this research, the authors clarify theoretical issues on the property registration under law of South Korea and give some suggestions for Vietnamese legislator in completion the Vietnamese legal framework on registration of property to align with current practice.

Keywords: *South Korea, Vietnam, property registration, law, completion.*

1. Introduction:

The research of the law on property registration is always necessary associated with the process of research the formation and completion of legal provisions on property registration, according to the historical economic - society context of each country through periods. In Vietnam, not only the provisions of law, but also the model of property registration, the operating mechanism are also formed and exist together with the process of state management of land and assets attached to land according to critical thinking, political and economic viewpoints in each specific historical period. Through each period, the law on property registration has been strengthened and contributed to perfecting the general law and the law on property registration which meet the needs of socio-economic development. At the time when the process of integrating more and more deeply in many fields with the world, Vietnamese law has also fully worked-out by learning experiences of the legislative process of other countries. In the scope of the institution of property registration law is no exception, therefore, it will make the perfect lessons if the government research, compares and finds out the good points of the laws of other countries around the world.

Within the scope of this article, the authors examine and analyze the legal provisions on property registration of South Korea. Compared to Vietnam, the law on property registration in South Korea has been formed for a long time. Specifically, South Korea promulgated the Law on Real Estate Registration in 1960 (Law No. 536 of January 1, 1960), through many amendments and supplements; therefore, the law on real estate registration of South Korea has been completed. This is an important basis for the author to research to find out valuable lessons to perfectly apply Vietnamese law on property registration, in order to build a favorable business environment, to meet the requirements of economic development.

2. Some provisions regarding South Korea's property registration regime.

(i) Regarding the scope of regulation, Registration of Real Estate Act of South Korea has the following provisions on the scope of regulation: "The purpose of this Act is to prescribe matters concerning

the registration of real estate”¹. This is contents of property registration law, which can be examined by Vietnamese legislator in the future; However, Vietnamese legislator should define the scope of regulation for consistency among legal documents in the Vietnamese legal system.

(ii) Regarding registrants, in South Korea’s real estate registration system, the registrants are rights to real estate. The registration of Real Estate Act of South Korea stipulates the subjects of registration as follows: “It is necessary to register the current status of the division of the construction work, and at the same time, it is also necessary to register in the case of establishment, reservation, transfer, change, limit the right to dispose or terminate the rights related to: ownership, right to use property, right to translate, lease with deposit, mortgage, pledge rights, lease real estate”². In addition, Registration of Real Estate Act of South Korea also restricts the scope of registered real estate, specifically only regulating the registration of rights related to two types of property: land and construction³. These are important, relatively stable types of real estate that are the main objects in transactions on the real estate market. The South Korea’s real estate registration system does not register the physical status of real estate, moreover, registration system is separate from the cadastral system specializing in technical activities such as: land surveying, subdivision of land, mapping making. It is said that real estate registry of South Korea just implements to register on the rights related to real estate to publicize these rights as their land management and their construction management system. In South Korea, the real estate registry has a close relationship with the system of real estate management authorities through a two-way information exchange mechanism with cadastral agencies, construction management agencies to update information about the physical condition of real estate. On the contrary, the real estate registry must also notify the cadastral agency, the construction management agency of information about the physical condition of the real estate, if there is a change in the current physical condition of the property management of real estate, as well as information related to real estate ownership, these agencies always have accurate information about the owner and ownership status of the property⁴.

(iii) *In principle and mechanism of registration*, real estate registration in South Korea does not specify the principle of registration. However, it can be determined that the registration has been done according to a voluntary principle, based on the provisions on the legal validity of the registration. The Registration of Real Estate Act of South Korea regulates: The priority order of same registered immovable property rights shall be determined by the order in which the registration is made, unless otherwise provided by law⁵. Based on these regulations, it can be determined that real estate registration is not mandatory. However, if the holder of the right to the immovable property does not make the registration, he/she is not entitled to the right to oppose a third party. As for the registration mechanism in South Korea, the registration is also done according to the document filling registration mechanism, whereby the registrar checks the registration requirements of the applicant for property registration based on the documents contained in the registration dossier.

(iv) *Regarding the legal validity of registration*, South Korean law on real estate registration provides for the rights to be registered against third parties. However, the real estate registration law of South Korea

¹Article 1, Registration of Real Estate Act of South Korea

²Article 2 of the Registration of Real Estate Act of South Korea

³Clause 1, Article 14 of the Registration of Real Estate Act of South Korea stipulates: “Registers shall be classified into land registers and building registers”.

⁴Report No. 114/BC-BTP dated 11/7/2008 of the Ministry of Justice on summarizing experience of some countries in the world on real estate registration.

⁵Clause 1, Article 5 of the Registration of Real Estate Act of South Korea 1960

does not directly regulate the legal validity of the registration, but the law regulates indirectly through provisions on the priority order of the rights to be registered; According to the provisions of Clause 1, Article 5 of the Registration of Real Estate Act of South Korea, the priority order of rights to the same registered immovable property shall be determined in the order in which the registration is made, unless otherwise provided by law.

(v) *Regarding the real estate registration agency*, in South Korea, the system of real estate registry is organized in a centralized model and belongs to the system of Judicial system, specifically as follows: South Korea's real estate registry belongs to the system of court which shall take charge of registration duties.⁶

(vi) *Regarding the principle of creating a registration book and the legal validity of the register real estate*. In the registry system, the ownership and legal relations regarding each real estate are recorded in the public record using a unique method called “*registry*” to be disclosed to the public. The real estate registry systems in the world, including South Korea which have regulations on the principle of registering only one real estate in once registration form. Therefore, the registry shall keep the legal records for the property. Through the recognition status, it individualizes the specific real estate property which is the subject of the rights registered which is the basis for the registration of rights related to the immovable property. The event of registration which gives right to title and other rights related to real estate helps to create a legal record of real estate that fully shows the legal status of the property as well as the legal status of the property as well as the history of the property throughout the process from the time the first owner establishes title to the property until the property is destroyed.

(vii) *Regarding real estate registration certificates*: according to the South Korean real estate registration system, the registry does not issue real estate registration certificates. However, upon request by the registrant, the real estate registry of South Korea issues the applicant a certificate of registration. Therefore, according to the approach of South Korea, the certificate of real estate registration or the certificate of registration only has the content to confirm that the registrar has completed the registration required by the registration requester, which is not a legal document for organizations and individuals to exercise rights related to real estate. In other words, these types of documents do not have any evidence to prove the rights related to real estate. Information about the registration of rights related to real estate property is kept only in the real estate registry, and the real estate registry has the highest evidentiary value in proving the registration of rights related to real estate.

(viii) *Regarding the person in charge of registration*, there is also a specialized mechanism for the title of property registration.

3. Lessons learned from South Korea to enhance Vietnamese Law on property registration.

3.1 Identify registered property object.

In principle, Vietnam cannot do registration for all types of property. This is a fact that the registration system of South Korea as well as other countries around the world has been also approaching. This means, the Vietnamese government needs to limit the scope of registered property based on satisfying the following conditions: (1) having a stable physical condition; and (2) has high economic value, which is the subject of frequent transactions. The experience of South Korea shows that, in order to define the object of registered real estate property, it must be proved that properties with stability and high economic value such as land, houses, construction works, land for production forests, land for cultivation of perennial trees. This

⁶ Article 7 of the Registration of Real Estate Act of South Korea

approach also aims to ensure the purpose of real estate registration: It makes transactions related to real estate to be public and the registration also avoids loss of tax revenue. At this moment, real estate transactions related to land, house, construction and forest. In real estate transactions, the exercise of rights to land is almost inseparable from the exercise of rights to assets attached to land (*in reality, there are still cases where it takes place, but not frequent*). For legal perspective, land use rights and to assets attached to land are still separate real estate. Therefore, it is necessary to determine the rights and transactions of real estate according to each real estate unit, but the principle of speculation cannot be applied in the registration. According to South Korea's legal experience on real estate registration, the law of South Korea all stipulates that real estate objects must be registered in the above analyses⁷.

Property registration can be divided into two groups, in which group one is the types of property that are required to be registered, and group two is the types of property that are registered on demand. Among the types of property, group 1 only applies to land use rights, houses, aircraft, and ships; Because these are properties that the government must strictly manage, not only to promote transactions that are established and performed safely and transparently, but also as a basis for the state to control the market serving the sustainable development of socio-economic life. For other assets, the registration is done in case the property owner or the person with an interest related to the property (*the secured party, the judgment creditor, etc.*) wishes to be recognized by public law. Recognition is protected through the registration system.

3.2 Registered rights and legal validity of property registration

✓Regarding registered rights:

In principle, the registration system should maximize information about the legal status property. This means that the registration book kept at the registration authority is the "resumé" of the property to be registered. Therefore, the property registration law should expand the scope of the legal status of property recorded in the registration book. Accordingly, the types of property rights are specified in the Civil Code 2015 (ownership, usufruct right, right to adjacent immovable property, surface rights), mortgage rights, rights restrictions under Court judgments and Decisions of competent authorities upon request, which may be registered. However, the scope of registered rights also needs to be considered to classify by each property type, the provision needs to be consistent with the principle of presumption in the Civil Code 2015 (A person, who is in possession of the object, is the lawful owner of the object). To be specific, Civil Code regulates the registration of ownership rights to the property being an object may not be made, but registration of other rights related to this type of property may still be made (For example: mortgage rights; rights restrictions) if the obligee and the possessor are two different subjects.

✓Regarding the legal validity of property registration:

In the current context of Vietnam, while Vietnamese government regulates law on property registration, the government can apply the advantages of both registration systems currently existing in many countries, specifically as follows: For properties required to be registered: the property registration is the ground for arising, changing or terminating the rights related to that property; For property types which are registered upon request: the property registration is only for opposition to a third party.

⁷ Clause 1, Article 14 of the Registration of Real Estate Act of South Korea 1960 stipulates: "*Registers shall be classified into land registers and building registers.*"

Besides, Vietnamese law on property registration must also deal with the relationship between registration and legally established contracts and transactions. For instance: For properties required to be registered: if the contract has been legally entered into force but the parties have not registered property yet, according to the contract a party is entitled to register, without depending on the will of the other party. To be more illustrated, when the contract has been legally entered into force, if the property has not been registered, effective contract is still legally binding between the parties. Information stored in the registration system is not meant to confirm the definite rights of the person in the property registration book. Additionally, the registration procedure for the case of the required registration is also very simple because it is supplemented by other institutions. For example: notarization or self-referencing, finding out information. At the same time, in all cases, if property is registered, there is an antagonistic effect, which means that a third person (anyone who is not one of the two parties who entered the contract) is forced to know that the property has been registered. The transferee or a non-owner establishes his/her rights over the property. When a dispute arises, the rights of the registered person always enjoy the order of priority.

3.3 Property registration system

The South Korean property registration model, the lesson for Vietnam in the direction of continuing to maintain the current system of registration agencies for properties such as intellectual property rights, aircraft, ship. This is completely in line with international practices, and it is shown that the registration system for these types of properties in our country has basically been standardized, modern, and easy to share information.

Building a system of registration agencies on the principle of vertical industry, independent of administrative level to register land use rights, assets attached to land and other movable assets. The registry system is responsible for providing public services, directly carrying out the registration (*including initial registration and change registration*).

The organization of the registration agency according to the mentioned above centralized model has outstanding advantages such as:

- (1) Ensuring a unified nationwide organization of the registration agency, making more convenient for individuals and businesses when they have need to register for providing property information;
- (2) Separation of the administrative function from the function of public disclosure of property-related rights;
- (3) Ensuring the unified centralization of asset-related information, therefore, the system makes its management and disclosure of information more convenient and low-cost due to the lack of dispersion and inconsistency between the different authorities;

In addition, information about properties which are stored in the South Korea's real estate disclosure system will be integrated and shared by registry system and registration system. The application of science and technology in the operation of the property registration system is an important and necessary step being implemented by countries around the world.

3.4 Building registration book and providing information related to properties.

✓For the Registration Book:

The law on property registration must solve two situations and important problems of the information system on registered assets, which are: (1) The legal validity of information which are stored at the property registration authority; (2) The order of priority when there is a discrepancy between the information stored in the registration book and the information contained in the certificate issued by a competent authority.

Referring to the experience of South Korea and other countries, the registration book will keep legal records to help personalize each type of property. Events of the registration giving rise to title and property rights helps to create a “legal record” of the property, which fully shows the legal status of the property, as well as the “history” of the property throughout the process from when the first owner establishes ownership until the property is destroyed.

✓For providing information related to property:

In case when Vietnam continues to regulate the issuance of certificates, the law on property registration only shows the principle that the certificate of property is the confirmation in which the registration authority has completely registered by the requirement of individual or an organization, however, this certificate is not a legal deed for the organization or individual to exercise their rights. In other words, information about property-related rights kept in a register has the highest probative value in proving property-related rights. Accordingly, the law on property registration must stipulate authority competent to provide information, methods, and procedures for providing information and the legal validity of documents providing information. In particular, the competent authority to register and provide information on properties to all organizations and individuals that make a request follows a simple procedure and is only allowed to refuse in cases prescribed by law. The provision of information is carried out in the following forms: Providing information in writing; a copy of the property register; look up information in the registration book by themselves according to the instructions of the person providing the information or look up information online. Regulations on the right to provide personal information; The organization and responsibility to provide information of the registry is the guiding principle of the property registration system in all countries. Such clear and specific regulations have some basic advantages such as:

(i) Facilitating the registry authority, the management of the register is simpler than that of the registration certificates.

(ii) Minimizing cases of fraud by forging or modifying registration certificates.

(iii) Encourage organizations and individuals to actively seek information at the registry authority when participating in transactions.

In addition, one of the important issues in the process of completing the law on property registration in general which is the development of a property registration system to create a mechanism that allows public information about properties for all individuals and organizations researching before conducting a transaction related to properties. The organization has a need to find out before conducting a transaction related to the property. This mechanism also allows people with property-related interests to publicly declare their interests, thereby protecting themselves. their legitimate rights and interests related to the property, and at the same time guard People rank father attend determined greed family enter deliver pandemic contact mandarin arrive real estate, because there is a mechanism for other individuals and organizations to know about the existence of permission, other interests related to the real estate they intend to transact. In Vietnam, because there is no proper awareness about the role and meaning of publicizing information related to properties many people believe that the main goal of property registration, as well as of the system The property registration system is the issuance of Certificates of rights to property. The disclosure of information about the property has been done through the Certificate because the Certificate has fully recorded information related to the property. There is even an opinion that property information has the same meaning as personal information, so it cannot be made public. Meanwhile, the fact that the issuance of a Certificate for property only means that the State recognizes and protects the land use rights, ownership of real estate and other movable assets of an individual or organization. This is not the main goal

of property registration, as this right is recognized and protected by the state, but there is a lack of a mechanism to make it publicly available to anyone who wants to know.

Conclusion

To improve the law on property registration in Vietnam is important for the purpose to improve the legal system in general, therefore, it creates a premise for satisfying the country's socio-economic development requirements; It is extremely important to acquire, learn and select the experiences of developed countries in the world on legislative techniques. South Korea, with the promulgation and completion of the law on real estate registration, is a typical example that Vietnam can inquire and put into practice in Vietnam legal system, in which towards completing the law on property registration on: the scope of regulation, registered property objects, Information and data systems on properties; property registry; Legal validity of register, registration book and provide information related data to the property. However, learning from South Korea about the experience of property registration law, it is also necessary to research carefully and to be compatible with the law and the economy and politics of Vietnam in the current context can maximize efficiency, promote the economic development of the country.

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HO CHI MINH CITY UNIVERSITY OF ECONOMICS AND FINANCE

141 - 145 Dien Bien Phu, Ward 15, Binh Thanh District, HCM City

Website: uef.edu.vn - Hotline: (028) 5422 6666 * (028) 5422 5555