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MODEL OF ASSET REGISTRATION WORLDWIDE AND LESSONS FOR VIETNAM IN IMPROVING ASSET REGISTRATION LAWS

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Abstract:

Studying the model of asset registration is an integral part of the process of developing and refining regulations pertaining to asset registration. In Vietnam, the legal provisions, the framework for asset registration, and the operational mechanisms have evolved alongside the state's land and property management, shaped by specific ideological and economic perspectives during different historical periods. Enhancing the laws on asset registration in Vietnam necessitates a comparative analysis and drawing lessons from global models of asset registration. This endeavor aims to establish a conducive legal environment that effectively caters to the socio-economic development needs of the nation.

Keywords: *asset registration, lessons learned, enhancement, legislation, model.*

1. Models of asset registration worldwide

1.1 Model of real estate registration

Generally, two different perspectives on real estate registration worldwide have formed two typical registration models: (i) the adversarial registration model; and (ii) the registration model for establishing rights.

(i) Adversarial registration model

The adversarial registration system, or the transactional registration system, was devised to ensure transparency and protect parties involved in real estate transactions from third-party claims. This system is founded on three fundamental principles: (i) Registered transactions are universally acknowledged; (ii) Unregistered transactions are deemed unfamiliar; and (iii) These assumptions are irrevocable.

The primary objective of the adversarial registration system is to safeguard genuine ownership rights. It operates on the premise that rights are established through recognized legal means, such as contracts, inheritance, and time-based rights establishment. Registration does not grant rights but serves the purpose of informing third parties about the pre-existing established rights. The adversarial nature of registration becomes apparent when someone's right is not registered, as a third party can refuse to acknowledge that person's rights. The French land registration system is a typical example of this model.

The registration approach holds legal significance in terms of creating adversarial effects against third parties. Apart from France, this approach is also evident in Japan and South Korea. In these countries, property rights are transferred once the contract is concluded, and registration of rights only generates adversarial effects against third parties. Consequently, the Japanese Real Estate Registration Law stipulates that "the order of registered rights over the same real estate shall be determined by the order of registration of those rights" (Article 6). Similarly, the Korean Real Estate Registration Law states that "the priority order of rights concerning the same real estate that has been registered shall be determined by the order of

registration unless otherwise provided by law" (Article 5, Paragraph 1). Thus, the recipient of property rights acquires rights as soon as the contract becomes effective. However, requests must be registered for third parties to be considered aware and are not obligated to recognize the rights related to the real estate agreed upon by the contracting parties.

Nevertheless, registering transactions in the adversarial registration system does not serve as conclusive evidence of ownership rights for the registered party. Consequently, the system cannot directly prove the existence of ownership rights for the registered party. In this registration model, the transfer of real estate represents the transfer of an already registered right. The previous transfer must also have been registered to transfer it to the next person. The subsequent recipient is only recognized as having rights if the transferring party has been recognized as having rights in the previous transaction. This results in a "chain" of transferred and registered transactions for the same real estate. Disputes can still arise even if someone registers ownership of a property acquired from another party. Registration may not provide any advantages to the registered party in disputes before court judgments. In case of conflicts regarding property rights, one must prove by "tracing back through the registration to the first registration and evaluating the legal value of the transaction or the authenticity of the event that formed the basis for the initial registration." Consequently, proving a party's rights over a property becomes exceedingly difficult and sometimes impractical due to the starting point being in a chain of transactions that occurred hundreds or even thousands of years ago. Such an assessment process entails substantial costs for the parties involved, increases transaction costs, and may yield insignificant results.

Given the aforementioned challenges and limitations, the adversarial registration system concerning third parties has prompted the need for improvements or the exploration of alternative solutions that are more efficient and convenient. That may be why this system is rarely adopted by countries when initially establishing their real estate registration systems.

(ii) Title Registration Model

The second approach in real estate registration is the model that establishes rights. In this approach, registration not only creates binding effects against third parties but also becomes a mandatory requirement for creating, modifying, and terminating rights over real estate. This model is exemplified in countries like Russia and Germany. For instance, the Real Estate Registration Law of the Russian Federation defines state registration of rights as a legally recognized and certified event by the state, governing the emergence, restriction, transfer, or termination of rights to real estate in accordance with the provisions of the Civil Code. State registration is considered the sole evidence of registered rights, and disputes regarding registered rights can only be resolved through court proceedings.

In the second approach, the information recorded in the real estate register holds legal effectiveness, and, in principle, a third party cannot challenge it when establishing a transaction. Furthermore, legal provisions in countries following this approach clearly distinguish the legal effect of registering property rights from the validity of contracts related to real estate. This means that ownership rights and other property rights pertaining to real estate only become legally valid when registered with the competent state authority, while the validity of contractual agreements remains intact from the moment the contract is concluded. Additionally, mechanisms are established to ensure that rights associated with real estate are registered in accordance with regulations. For example, in Germany and France, after notarizing a real estate contract, the notary is responsible for fulfilling tax payment obligations and completing the registration procedures for rights related to the property before delivering the contract to the relevant organization or individual.

This system provides favorable conditions for property transfers. The registration book, serving as a conclusive statement of recognition by authorities regarding a person's rights, cannot be altered except in specific circumstances as specified by the law. It acts as a reflection of the true status of rights to the entire society, serving as a barrier between the past and the present. Investigating the history preceding the registration of rights in the book is unnecessary. The Torrens system, first implemented in South Australia in 1857 and widely adopted in English-speaking countries, is the most renowned model in the group of registration systems for establishing rights.

In the title registration system, the registered owner does not necessarily represent the actual owner. This person undergoes a rigorous selection and screening process, meeting predetermined criteria to be granted the status of owner protected by the law. Mistakes can occur, resulting in ownership rights being mistakenly granted to one person while the actual owner is another. To compensate for potential damages suffered by the actual owner due to erroneous registration of rights, a compensation fund is established, funded by the state and the initially registered rights holders.

Similar to continental European countries, the early days of Common Law jurisdictions also witnessed the application of the deed registration system, relying on documents, known as "title deeds" or the "chain of title," to confirm ownership rights to real estate. In disputes, these documents are traced back to the initial grant of land rights by the Crown, which often occurred centuries ago. Preserving such deeds may be challenging, and ownership rights may have changed over time, rendering the reliability of a person's ownership rights to a piece of land uncertain. Consequently, significant legal costs arise for landowners, impeding development. Under this antiquated and complex registration system, individuals engaging in real estate transactions often seek legal assistance.

To overcome the limitations of the traditional deeds registration system and address the aforementioned challenges, the title registration system emerged in the mid-19th century in Common Law countries. This system, characterized by its diversity and flexibility, encompasses two types of registration that developed simultaneously. The first is the English-style registration system, originating from England and later expanding to countries influenced by the United Kingdom. The second is the Torrens registration system, introduced by Robert Torrens in Australia in 1858, and subsequently adopted by numerous countries, including Canada, Hong Kong, and certain states in the United States. According to the title registration system, the act of registration or the registration certificate itself serves as conclusive evidence of ownership rights, which cannot be invalidated under any circumstances. Once registration for a particular property is completed, the value of that registration cannot be questioned, eliminating the need for investigation beyond the presented information. This system establishes a high level of trustworthiness in the information provided regarding real estate. However, if the registration authority commits negligence or errors, an individual's rights may be infringed upon. In such cases, the affected party has the right to seek compensation from the registration authority for their losses. This requirement encourages caution in the duties of the registration authority, resulting in a complex and sometimes time-consuming registration process. The registration authority can also reject a request to register someone's property if the owner fails to meet the legal requirements.

1.2 Asset Registration Models: Movable Property

Essentially, there are two primary registration models for movable property: the Notice Registration Principle and the Verification Registration Principle.

Under the Notice Registration Principle, registration is conducted based on a single registration request without the requirement of supporting documentation to prove the secured rights and the contents

stated in the request. The role of the registration authority is to accurately and completely record the provided information. This principle is exemplified by the notice registration model implemented in the United States and Canada, specifically under Article 9 of the Uniform Commercial Code (UCC). The Notice Registration Principle is commonly applied in registering secured transactions involving movable property.

On the other hand, the Verification Registration Principle involves registration based on submitting a registration request, which may necessitate additional documents such as ownership certificates, technical files, pledge agreements, or mortgages, depending on the specific circumstances. The registration process under this principle entails thoroughly examining the registration dossier by registration officials. The Verification Registration Principle is typically applied in registering secured transactions involving real estate and, in certain cases, movable property such as aircraft or ships. For instance, in Germany, the registration of secured transactions concerning aircraft or ships is carried out by local courts, adhering to the principles of real estate registration. In these instances, registration establishes rights and follows the Verification Registration Principle.

Overall, the two registration models cater to different types of property transactions. The Notice Registration Principle prioritizes a streamlined process, allowing for registration based solely on the provided request without extensive documentation. Conversely, the Verification Registration Principle requires thorough examination and documentation to ensure the validity and accuracy of registered rights.

2. Lessons from Global Asset Registration Models for the Development of Asset Registration Laws in Vietnam

From the various global asset registration models discussed in section 1, we can draw the following key issues that Vietnam can learn from and refer to in the process of developing and improving its asset registration legal framework:

The asset registration laws should be built based on fundamental and systematic principles. For example, the real estate registration laws in Japan and other related regulations such as laws on timber, construction projects, etc. However, the provisions of these laws should still ensure consistency with the real estate registration law regarding registration principles, competent authorities, and the legal value of registration.

The registration authority system should gradually reduce the number of registration offices. The trend in many countries shows that as information about assets becomes more centralized, it becomes easier to invest and modernize the registration system, thereby enhancing accuracy, information update capability, and accessibility to asset information. A dispersed and disconnected registration authority system would lead to higher investment costs, while low-cost information access would be compromised.

The choice between the verification registration principle and the notice registration principle needs to be made decisively to ensure consistency with the provisions on responsibilities and registration procedures. Under the verification registration principle, registration procedures tend to be more time-consuming, requiring multiple types of documents and imposing higher social costs and responsibilities on the registration authority. On the other hand, under the notice registration principle, registration procedures are simplified, requiring fewer supporting documents, resulting in reduced social costs and responsibilities for the registration authority.

The choice between adversarial registration and title registration is also a matter that requires thorough research based on the current status of the registration system and related mechanisms. A registration system based on the principle that registration establishes, changes, or terminates rights to assets

requires high accuracy to limit the risk of wrongly recognizing rights to assets for entities, thereby preventing infringements on the rights of true owners.

The subject of registration in the laws of various countries is the rights related to assets. Whether it is real estate or movable property, the object recognized in the asset registration system is ownership rights, transfer rights, and other rights that are not ownership rights (e.g., mortgage rights, lease rights, restrictions imposed by court judgments, decisions of competent state authorities, etc.). This shows that the assets themselves are not the object of registration, but rather the collection of rights related to assets is the object of registration as stipulated by asset registration laws.

Regardless of the chosen principle for developing the registration system, information about registered assets must be publicly available and transparent to all individuals and organizations in need of access. This does not contradict the right to personal data privacy because determining the ownership status of assets is the responsibility of the owner towards the state and society. Moreover, the registered information about assets is not subject to confidentiality provisions.

3. Conclusion

Through examining various global asset registration models discussed in Section 1, Vietnam can gain valuable insights and guidance in developing and enhancing its asset registration legal framework. The following key issues emerge from the analysis:

Firstly, it is essential for asset registration laws in Vietnam to be built on fundamental and systematic principles, drawing inspiration from established real estate registration laws in countries such as Japan. Harmonization with related regulations, such as laws pertaining to timber or construction projects, is crucial while ensuring consistency with the core principles of registration, competent authorities, and the legal value of registration.

Secondly, Vietnam should consider gradually consolidating its registration authority system by reducing the number of registration offices. Global trends indicate that centralizing asset information facilitates investment and modernization of the registration system, leading to improved accuracy, information updates, and accessibility. A fragmented and disjointed registration authority system would result in higher investment costs and compromised access to low-cost information.

Thirdly, a decisive choice must be made between the verification and notice registration principles, considering their alignment with responsibilities and registration procedures. Under the verification registration principle, registration procedures tend to be more time-consuming, necessitating multiple documents and imposing higher social costs and responsibilities on the registration authority. Conversely, the notice registration principle simplifies procedures, requiring fewer supporting documents, thereby reducing social costs and responsibilities.

Furthermore, careful research is required to determine the most suitable approach between adversarial registration and title registration, considering Vietnam's existing registration system and related mechanisms. A registration system based on the premise that registration establishes, modifies, or terminates rights to assets must ensure high accuracy to prevent incorrect recognition of rights and safeguard the rights of genuine owners.

The subject of registration in various countries' laws revolves around the rights associated with assets. Whether pertaining to real estate or movable property, the focus of the asset registration system is on ownership rights, transfer rights, and other non-ownership rights (e.g., mortgage rights, lease rights, court-imposed restrictions, decisions of competent state authorities, etc.). This highlights that the assets

themselves are not the direct subject of registration; instead, it is the collection of rights linked to assets as stipulated by asset registration laws.

Regardless of the chosen principle for the registration system's development, it is crucial for information regarding registered assets to be publicly accessible and transparent to individuals and organizations in need. This requirement does not conflict with personal data privacy rights since determining asset ownership status is an owner's responsibility towards the state and society. Moreover, registered information about assets is not subject to confidentiality provisions.

In conclusion, Vietnam can gain valuable insights from global asset registration models when refining its asset registration legal framework. By addressing these key issues, Vietnam can establish an efficient and transparent registration system that aligns with international best practices and promotes economic development.

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