

Client Alert

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Ministry of Justice issues new Circular on registration of mortgages over land use rights and assets attached to land

On 25 November 2019, the Ministry of Justice issued Circular No. 07/2019/TT-BTP ("**Circular No. 07**") guiding registration of mortgages over land use rights and assets attached to land. Circular No. 07 will take effect from 10 January 2020, replacing Joint Circular No. 09/2016/TTLT-BTP-BTNMT dated 23 June 2016 of the Ministry of Justice and the Ministry of Natural Resources and Environment ("**Joint Circular No. 09**") on the same matter. Below is a brief of the new provisions of Circular No. 07:

Mortgage of properties formed in the future and property development projects

Under Joint Circular No. 09, developers that have registered mortgage over their residential development projects or residential properties formed in the future must register withdrawal of mortgaged property before selling the residential properties developed.¹ Circular No. 07 reiterates this requirement, but allows the developers, the purchasers and the mortgagees to agree otherwise, such that withdrawal of the mortgaged property is not always a must.² This is consistent with the Housing Law 2014.³

Circular No. 07 also adds that developers that have registered mortgages over non-residential property development projects and properties other than residential properties formed in the future must register withdrawal of mortgaged property before selling the properties (without exception as in case of residential properties).⁴

Further, Circular No. 07 does not restate the requirement under Joint Circular No. 09 that a mortgage over properties formed in the future must be attached to the relevant land parcel.⁵

Signatures on mortgage registration forms

Circular No. 07 also simplifies signature requirements for the mortgage registration forms to facilitate registration in certain cases, particularly:

- the registration form for change of the mortgagees resulting from legal entity reorganization, debt sale and purchase or transfer of claims or obligations, only requires signature of the competent representative and stamp (where applicable) of the new mortgagee;⁶

¹ Joint Circular No. 09, Article 11.1(b)

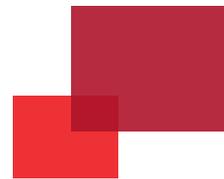
² Circular No. 07, Article 5.3.

³ Housing Law 2014, Article 147.1.

⁴ Circular No. 07, Article 5.3.

⁵ Joint Circular No. 09, Article 11.1(c).

⁶ Circular No. 07, Article 6.3.



- if a branch of any legal entity is legally authorized to register security transactions, the registration forms may be signed by the head of the branch and affixed with the branch's stamp (instead of those of the legal entity);⁷
- the forms for de-registration of mortgage submitted by the civil judgement enforcement agencies or the private bailiff offices (*văn phòng thừa phát lại*) that seized and realized the mortgaged assets or by the purchasers of assets subject to judgement enforcement only require their respective signature and stamp (where applicable).⁸

Other changes

Under Circular No. 07, following partial realization of the mortgaged assets, registration of change for withdrawal of the realized part of the mortgaged assets is compulsory.⁹

Circular No. 07 also requires registration of changes to land and/or assets attached to land under the Land Law must be completed before registration of mortgage in the following cases:

- there are changes to the land parcel number or land area due to consolidation and swap of land parcels or re-measurement of land area/sizes;
- there are changes to information of assets attached to the land as stated in the certificate of land use rights and ownership of residential houses and other assets attached to the land (the "**Certificate**") about type and name of the properties, number of floors, construction area and use area of the properties due to re-measurement of area, new construction or repair.¹⁰

Circular No. 07 also provides for detailed guidance on registration of joint assets in case the Certificate does not include all owners' names.¹¹

If you would like to discuss any issues or concerns in relation to the above in further detail, please do not hesitate to contact us.

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⁷ Circular No. 07, Article 6.7.

⁸ Circular No. 07, Article 6.7.

⁹ Circular No. 07, Article 16.7.

¹⁰ Circular No. 07, Article 13.1.

¹¹ Circular No. 07, Article 12.