

## LEGAL UPDATES (December 29<sup>th</sup>, 2020)

In these legal updates, we would like to send clients the legal updates on some following issues:

- On December 18<sup>th</sup>, 2020, the Supreme People's Court issued Official Dispatch No. 199/TANDTC-PC announces the results of online answers to queries in bankruptcy settlement.
- The Ministry of Justice issued Circular No. 06/2020/TT-BTP dated December 17<sup>th</sup>, 2020, amending and supplementing a number of articles of Circular No. 08/2018/TT-BTP dated June 20, 2018 guiding a number of issues on registration, providing information on security, contracts and information exchange on registered security.

### 1. **On December 18<sup>th</sup>, 2020, The Supreme People's Court issued Official Dispatch No. 199/TANDTC-PC announces the results of online answers to some problems in bankruptcy settlement**

According to the Official Dispatch, the Supreme People's Court has answered the issues that the courts need to pay attention when settling the bankruptcy procedure as follows:

Firstly, the status of an insolvency enterprise or cooperative must fully satisfy the following conditions:

- Have a specific, clear debt recognized, agreed upon by the parties or determined through a legally effective judgment or decision of a court, ruling of commercial arbitration, or determined in a decision of the competent authority, and the parties don't have any dispute over this debt.
- The debt is due for payment. Maturity debt means a debt with a clearly defined payment term, by which time the enterprise or cooperative must be obliged to repay the debt. This payment time limit is acknowledged, agreed upon by the parties or determined by a legally effective judgment or decision of a court, a judgment of a commercial arbitration or decision of a competent authority.
- The enterprise or cooperative fails to fulfill the debt payment obligation within 3 months from the due date, because it has no assets to pay the debt or has assets but does not pay the debts.

Secondly, if the Court issues the decision to open the bankruptcy proceedings, the deposit of bankruptcy expenses paid by the applicant is not enough. The court can request the applicant to continue to submit the deposit. Suppose the applicant does not pay the supplement deposit of bankruptcy expense as requested, the Judge, at his discretion or according to the request of asset administrators, can decide on the sale of assets of the

enterprise or cooperative after opening the bankruptcy procedure to ensure the payment of bankruptcy expense; the selling of assets is assigned to the asset administrators or the asset administration enterprises to ensure the bankruptcy expenses is paid in full.

Thirdly, in case the “Decision to open bankruptcy proceedings” is canceled by a superior court, the deposit of bankruptcy expense shall be refunded to the applicant, except for the case the applicant submits the dishonest bankruptcy claims.

**2. The Ministry of Justice issued Circular No. 06/2020/TT-BTP dated December 17<sup>th</sup>, 2020, amending and supplementing a number of articles of Circular No. 08/2018/TT-BTP dated June 20<sup>th</sup>, 2018 guiding a number of issues on registration, providing information on security, contracts and information exchange on registered security, which comes into effects on January 01<sup>st</sup>, 2021**

According to the Circular, collateral registered at the Asset Trading Registration Center as required from February 1<sup>st</sup>, 2021, has the following changes:

Firstly, separating the registration of security and the registration of contract at the registration center. Accordingly, the registration of contract is intended to publicize information and it does not give effect to the contract.

Secondly, supplementing provisions on online registration in case of not requiring a code to use the database of security measures.

Thirdly, amending, supplementing, and abolishing provisions on property which must be registered the security transaction, including:

- Supplementing objects of property rights with respect to objects of copyright, industrial property rights, rights to plant varieties; Property rights arising from results of scientific research, technological development, technology transfer or other property rights of monetary value in the fields of science, technology, and information technology; the right to exploit natural resources.
- Cancellation of “Property rights arising from shipbuilding leases; the right to compensate for damage arising from the contract of purchase and sale of aircraft or seagoing ships; the right to enjoy insurance under the insurance contract for aircraft and ships”.
- Supplementing property rights arising from a contract include the right to collect debt, the right to demand payment, the right to enjoy the benefits formed from the contract, the right to exploit, manage the project, the right to compensate for damage under the contract. or other property rights of monetary value arising from the contract (except for land use rights, ownership of property on land, ownership or other rights which must be registered with respect to aircraft or seagoing ships according to regulations. regulations of the law on aviation and maritime).

The Circular No. 06/2020 / TT-BTP takes effect from February 01<sup>st</sup>, 2021.

We hope this short Letter of legal updates would bring you useful information.

Best regards.

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**ABOUT US,**

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