

## LEGAL UPDATES (March 19<sup>th</sup>, 2020)

*In this issue, we would like to bring to your attention a brief overview of the recent legal news concerning the following:*

- *The Draft of the Law on Enterprises (amended) removes the provision that enterprises must notify the seal design to business registration authorities*
- *Application of case law for the validity of a contract of a mortgage of land use rights when a certificate of a land use right is revoked or cancelled*

### **1. The Draft of the Law on Enterprises (amended) removes the provision that enterprises must notify the seal design to business registration authorities**

After receiving first commented by the National Assembly at the 8<sup>th</sup> session, the Draft of the Law on Enterprises (amended) is being absorbed, revised and finalized to be submitted to the National Assembly for consideration and approval at the 9<sup>th</sup> session ( in May 2020). One of the notable changes of the Draft of the Law on Enterprises (amended) this time is to eliminate the procedure of notifying the seal design to business registration authorities to reduce administrative procedures. Accordingly, the Draft of the Law on Enterprises (amended) dated March 10<sup>th</sup>, 2020, provides:

#### **Article 44. Enterprise's seal**

1. The enterprise has the right to decide whether or not to have the seal, the type of the seal, quantity, form and content of the seal of the enterprise, the seal of the branch, representative office and other units of the enterprise. The management, use and storage of seals shall comply with the provisions of the company's charter or regulations of the enterprise and other units of the enterprise.

Thus, if this provision of the Draft of the Law on Enterprises (amended) is adopted, the enterprise will not need to notify the seal design to the business registration authority. Instead, the enterprise can post the seal design on its website to protect its rights or at the request of a third party.

### **2. Application of case law for the validity of a contract of a mortgage of land use rights when a certificate of a land use right is revoked or cancelled**

Case law No. 36/2020/AL passed by the Council of Judges of the Supreme People's Court on February 5<sup>th</sup>, 2020, on the contract of the mortgage of the land use right complying with the law is not invalidated after the certificate of the land use right is revoked or cancelled due to errors inland areas, order and procedures for granting certificates of land use rights.

The content of the case law is summarized as follows:

On March 22<sup>th</sup>, 2010, V Bank signed a Credit Contract No. 10.36.0015 with Mr. Nguyen Van C and Mrs. Vu Thi T. To secure the loan, Mr. C and Mrs. T signed a Mortgage Contract No. 10.36.0015 with V Bank on March 18<sup>th</sup>, 2010. The mortgaged property is the land use right of the land parcel No. 12, map sheet No. 05, Commune H, Town B with the area of 3,989.7m<sup>2</sup> (the certificate of the land use right No. Đ544493 issued by the People's Committee of Town B on July 14<sup>th</sup>, 2004). The secured transaction was registered at the land use right registration office of Town B on March 19<sup>th</sup>, 2010.

When the mortgage contract is in effect, the People's Committee of Town B issued Decision No. 3063/QĐ-UBND dated August 31, 2011, to revoke the certificate of the land use right No. Đ544493. However, V Bank said that the transfer of the land area of 2,400m<sup>2</sup> was completed. Therefore, although the certificate of the land use right No. Đ544493 was revoked, Mr. C and Mrs. T still have the right to use this land area and the land use right is still valid for the loan of Mr. C and Mrs. T.

Mr. C and Mrs. T sued an administrative case against Decision No. 3063/QĐ-UBND dated August 31st, 2011, of the People's Committee of Town B. However, the First-instance Court and the Court of appeal did not accept his and her requests. Then, Mr. C asked the Court to settle the case in under the law because the current collateral is no longer available.

Accordingly, both the first-instance commercial business judgment No. 04/2013/KDTM-ST dated December 10<sup>th</sup>, 2013 of the People's Court of Ba Ria - Vung Tau province and the appellate commercial business judgment No. 48/2014/KDTM-PT dated August 15<sup>th</sup>, 2014 of the Court of Appeals of the Supreme People's Court in Ho Chi Minh City all declared the Mortgage Contract No. 10.36.0015 to be invalid.

After the appellate Court session, V Bank requested to consider the case according to cassation trials procedure. Judgments of the Court at cassation court sessions are as follows:

(i). V Bank and Mr. Nguyen Van C both confirmed the parties signed the Mortgage Contract No. 10.36.0015 on March 18<sup>th</sup>, 2010. The collateral was registered for secured transactions at the land use right registration office of Town B. Therefore, under Article 343 of the Civil Code 2005; Point c Clause 1, Article 10 and Point a Clause 1, Article 12 of the Decree No. 163/2006/ND-CP of December 29<sup>th</sup>, 2006 of the Government on secured transactions, the mortgage of the land use right above complies with the provisions of the law;

(ii). The transfer of land use rights between Mrs. Tran Thi Ngoc H, Mr. Tran Huynh L with Mr. C, Mrs. T was completed, and the parties had no dispute about this transfer contract. Therefore, the revocation and cancellation of the certificate of land use right No. Đ544493 does not lose the lawful land use right of the transferred land area of Mr. C, and Mrs. T. Besides, the contract of the mortgage of the land use right between Mr. C and Mrs. T and V Bank complies with the law, so this contract takes effect. Therefore, the Court of First-instance and the Court of Appeal based on Article 411 of the Civil Code 2005 to declare that the contract of the mortgage of the land use right No. 10.36.0015 dated March 18<sup>th</sup>, 2010 above is invalid because the object of this Mortgage Contract is no longer available is incorrect;

(iii). In Official Letter No. 887/CNVPĐK-DKCG dated March 28<sup>th</sup>, 2017, the Branch of the Land Registration Office of City B determined: After the People's Committee of Town B issued the Decision on revoking and cancelling the certificate of the land use right No. Đ544493 and Appellate Administrative Judgment 01/2013/HC-PT dated January 4<sup>th</sup>, 2013, of the People's Court of Ba Ria - Vung Tau Province took legal effect, the Civil judgment enforcement authority of City B made judgment enforcement decisions under legally effective civil judgments which Mrs. Tran Thi Ngoc H has obligations to execute. Accordingly, the Civil judgment enforcement authority of City B held an auction for the land area of 2,741.1m<sup>2</sup> of the land parcel No. 386, map sheet No. 05, Commune H. Mr. Bui Van C1 was the auction winner and was granted the certificate of the land use right No. CA959055 by the People's Committee of City B for the land area mentioned above of the auction. Therefore, to ensure the rights and obligations of the involved parties, when resolving the case, the first-instance Court needs to base on Clause 4, Article 68 of the Code of Civil Procedure to require the Civil judgment enforcement authority of City B, Ms Tran Thi Ngoc H, Mr Bui Van C1 and the People's Committee of City B to participate in the proceedings as persons with related rights and obligations.

Cassation Decision No. 05/2018/DS-GDT dated May 18<sup>th</sup>, 2018, of the Council of Judges of the Supreme People's Court, decided: to cancel the declaration of Mortgage Contract No. 10.36.0015 dated March 18<sup>th</sup>, 2010, is invalid for the Appellate Commercial Business Judgment and the First Instance Commercial Business judgment; to deliver the case file to the People's Court of Ba Ria - Vung Tau Province for re-trial according to the first-instance procedure, under the provisions of the law.

Case law No. 36/2020/AL was published under Decision No. 50/QD-CA dated February 25<sup>th</sup>, 2020, of the Chief Justice of the Supreme People's Court, effective from the date of signing.

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

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