

Completing the legal framework for asset registration in Vietnam to meet the demands of economic development

Pham Huynh Bao Oanh¹, Vu Anh Sao^{1,2,*}

¹Ho Chi Minh City University of Economics and Finance, Vietnam

²University of Economics and Law, Viet Nam National University Ho Chi Minh City, Vietnam

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ABSTRACT

The design of asset registration has significant importance in publicly disclosing and transparently informing about the legal status of assets, closely linked to the civil rights of individuals and organizations when establishing and exercising ownership rights and other rights related to assets. A truly market-oriented economy cannot function without the existence and operation of a transparent and modern asset registration system. Therefore, in recent years, Vietnam has made efforts to establish legislation on property registration, which serves as a crucial legal foundation for recognizing and protecting ownership rights and other rights related to the assets of organizations and individuals. This helps enhance the government's ability to manage information on the current status and legal condition of assets. The article analyzes the economic impacts of improving the legislation on property registration in Vietnam to meet the requirements of economic development in the context of integration.

1. Definition of property registration

The concept of “registration” is expressed in the dictionaries that explain the word, specifically as: “*Registration: Record in the ledger of the governing body*” (Vietnam Encyclopedia); “*Registration: Format Recording in state books such as: marriage registration, business registration, securities registration... The events recorded in the book cannot be denied argue*” (Vietnamese Great Dictionary). Other ways to understand registration is to record in the system of books and records of the “registering entity” information about the “registering subject”

and “registered object” to ensure the fulfillment of obligations, responsibilities, or ensure the rights and interests of the registrant and entities related to the registrant. There is a view that property registration is the official recording in a document by a competent state agency of the necessary information of the incident, which is the basis for creating, changing, or terminating legal obligations of property relations between subject. Therefore, registration is a form of recognition of one person's rights or giving rise to obligations towards another person. Registration is a form to protect the subject performing the act of registration and force the obligor to perform his

* Corresponding author. Email: saova@uef.edu.vn

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or her obligations. The information recorded in the registry's book by the competent authority is objective evidence that cannot be disputed.

Currently, there are no specific legal regulations on the definition of property registration but there are only regulations on registration of specific types of assets. In the Vietnamese Law on Land, it is stated "*Registration of land, houses and other land-attached assets means the declaration and acknowledgement of the legal status of land use rights, ownership of houses and land-attached assets, and the right to manage a certain land parcel, in the cadastral records*" according to Clause 15, Article 13, Vietnamese Law on Land 2013. In the Circular of the Ministry of Natural Resources and Environment, it is determined that "*Land registration, property attached to land for the first time (the latter known as the first registry) was the first implementation of the procedure for the recognition of the legal status of land use, housing ownership, other property attached to the land and soil management rights to a parcel of land into the main site*" according to Clause 2, 3 Article 3, Circular 24/2014/TT-BTNMT. Through the above concept of land registration, land registration is intended to record the legal status of the property (a plot of land) in the cadastral records and be recognized as having land use rights recorded on the certificate or recorded in the registered book in case of registering housing ownership. However, certificates of land use rights, ownership of houses and other assets attached to land are only legal documents for the State to confirm the rights of land users and owners of assets on land. It is not clear whether the purpose of the above registration is to establish the rights of land users, property owners, or is the registration valid against third parties. The registration of assets such as land use rights and house ownership rights are understood as registration giving rise to the validity of the transaction and the consequences of arising validity are carried out according to Article 401 of the Civil Code 2015.

The definitions demonstrate that when an object is registered, the legal rights and interests of the subject are safeguarded if the subject adheres to the legal requirements. Conversely, if an object is legally mandated to be registered but the legal subject fails to comply, the rights and obligations of the subject in relation to the established relationship will not be acknowledged or protected by law. In numerous interactions, the individual breaches the duty to

officially record items that are legally mandated to be recorded, therefore non-compliance with registration is deemed an unlawful action.

In terms of form, property registration is a process and method designed to safeguard the lawful rights and interests of property owners in the ownership, use, transfer and utilize assets to engage in civil relations, commerce, technology transfer, as well as import and export activities.

In terms of content, property registration involves publicly announcing the rights of the property owner, serving as evidence for legal action in case of property violation. This includes requesting the stopping of infringing activities, reclaiming the property, claiming compensation for damages, and stopping acts of infringement or unfair competition related to intellectual property rights. These rights pertain to various products such as inventions, industrial designs, designs of semi-conducting closed circuits, trade secrets, marks, trade names, geographical indications and copyrights, other rights related to performances, audio and visual fixation, and broadcasts and satellite signals carrying coded programmes.

From the perspective of human rights in society, property registration is a valuable mechanism for individuals and organizations to exercise and enhance their property rights in society. This demonstrates that in a contemporary society, the establishment of property registration must be seen as both a civil right and a personal right (a right of the citizen) to solidify the recognition and protection of the right to private property as stated in the Constitution. To ensure the effective exercise of civil rights, the legislation regarding registration should establish advantageous circumstances for individuals and enterprises, focusing not only on administrative acts but also on the practical implementation of administrative procedures. This demonstrates that when regarding registration as a fundamental civil entitlement, the legal framework must exhibit a high degree of adaptability. Any regulations that impede the exercise of these rights should be eliminated and replaced with regulations that promote and facilitate individuals and businesses in the exercise of their rights.

From the above analysis, it can be defined as follows: Property registration can be defined as the process in which a competent state agency officially records legal events that establish, change, limit, or

terminate property rights of both organizations and individuals. These records are documented in the property register book, following the specific order and procedures mandated by law.

2. Benefits of property registration

Registration activities aim to effectively allocate and use resources, contributing to macroeconomic stability and sustainable growth.

2.1. Benefits for the state

First, property registration assists the government in seizing the nation's assets. Currently, there are a great deal of assets in society, including assets over which the state has information or administration, particularly land assets. Due to the constant circulation of movable assets in the economy, it is difficult for the state to capture information about this category of asset. Individual property registration will aid state agencies in understanding the quantity of assets in society, thereby facilitating the development of effective asset utilization plans and orientations.

Second, property registration is a state-provided public service. Property registrants are required to pay state fees. Consequently, property registration is also an activity that contributes to the state budget.

2.2. Benefits for the citizen

Property registration provides important benefits to individuals, particularly in civil transactions, namely:

Firstly, individuals have convenient and straightforward means of obtaining legal information pertaining to the property. Property registration, which encompasses both moveable and real estate, ensures that the legal status of the property, including ownership and usage rights, is publicly accessible and clear. By having unrestricted access to the registration registers of state agencies, the public may effortlessly get precise information on the legal standing of assets, such as details about the owner. The document should include details on ownership, including the specific characteristics and present state of the property. Additionally, it should provide information about any limits on the owner's rights to the property, such as mortgages or pledges. There is enough evidence to determine whether one can

engage in civil and commercial transactions involving property. Furthermore, the time of registration serves as the criterion for establishing the hierarchy of rights among parties involved in multiple transactions with assets. Intellectual property rights registration has significant importance in the State's efforts to create and safeguard intellectual property rights for registered objects, in addition to its more commonly recognized qualities.

Secondly, foster the growth of the real estate market, capital market, commodities market, and science and technology market in a manner that is both beneficial and sustainable. The registration of real estate is closely interconnected with the functioning of the real estate market, capital market, commodities market, and science and technology market in our nation. Many economic analysts assert that in developed nations, efficient management and promotion of the property registration system may stimulate the growth of the sectors, so directly impacting the economy. The economy's advancement has made significant and practical contributions to the country's industrialization and modernization. Conversely, research indicates that the primary and prevalent objective of property registration is to serve as an efficient mechanism for ascertaining the economic worth of assets and generating legal documentation for each asset category. This, in turn, facilitates secure and risk-mitigated transactions.

Thirdly, increase the capability of maximizing the economic value of assets. Asset registration activities facilitate the exploitation of economic value (including intangible assets). This function is particularly useful since small and medium-sized businesses make up a significant element of the economy in our nation but have few requirements to own and utilize real estate, resulting in difficulties when accessing bank capital. Due to a lack of transparency and inadequate mechanisms, the purchase, sale, and transfer of debt collection rights, commodities circulating in the production and business process, apparatus, and equipment, etc. in our country are not particularly vibrant and effective. Uncertain and ineffectual is the legal status used to ascertain the legal status of movable property. The results of a survey indicate that movable assets and intangible assets are the most valuable sources of an enterprise's business capital (typically accounting for 70 to 80 percent of enterprise value), but it remains challenging to convert these assets into investment capital for production

and business activities. The State lacks the means to publicize the legal rights and interests of proprietors of movable property, so investors and credit institutions lack confidence when contemplating and deciding on joint investments relating to the enterprise's real estate holdings.

3. The economic impact of improving legislation on property registration

There is always a reciprocal impact between economics and law, therefore, economics plays a decisive role in determining the content and form of the law. However, the law also has a reverse impact on economics, either promoting or restraining its development. As a result, the registration of assets is closely related to economic development and business environment. However, the current situation in Vietnam regarding the completion of regulations on property registration still has many shortcomings. The legal environment for protecting business assets in Vietnam is not yet high compared to other countries in Asia and the world. Research also indicates that ensuring property rights in the production and business activities of enterprises aims to secure the ability to use real estate in the business operations, such as expanding or contracting the production/business capacity of the enterprise, or increasing the production area, accessing credit capital, developing agricultural production, and enhancing innovation and creativity in production and business activities. The administrative management quality of land in Vietnam is much worse compared to many countries, even when compared to countries with similar income or higher per capita income.

One reality in property registration, especially for real estate in Vietnam, is the difficulty in administrative procedures. This results in prolonged processing times, instances of misconduct and violations by Officials in carrying out their duties, and instances of corruption in the handling of documents and paperwork related to land.

During the implementation of economic development policies, industrial parks play a crucial role in promoting Vietnam's industrialization, modernization, and ensuring sustainable development. However, the cost of land rental in industrial zones does not provide favorable conditions for businesses, especially small and medium-sized enterprises, due to high rental prices, large rental areas, and the lack

of collateral for land rental contracts, making it difficult for businesses to borrow capital from banks despite their investments in the land. Furthermore, it should be noted that the kind of tourist villas and tourist apartments (condotels) specified in Article 48 of the Law on Tourism 2017 are not considered residential properties as defined in Article 3 of the Law on Housing 2014. At present, there are no existing legislative provisions for the issuance of ownership certificates for individual units of tourist villas or flats. This practice has hindered the development of the luxury villa and tourist apartment market. Similarly, in the case of long-term leasing agreements for apartments and offices, they are not registered with the relevant government agency, which fails to protect the rights of tenants and thus hinders the market for such properties.

Another drawback is that, according to a survey conducted by the World Bank, limited access to finance is the biggest hindrance to business operations. Financial institutions in Vietnam need more collateral for loans compared to certain countries in the region. However, obtaining credit from a bank or financial institution often requires collateral. Assets that are eligible for collateral must be issued with certificates, such as land use rights certificates, home ownership rights certificates, and other assets attached to land, as well as other relevant ownership certificates (such as motor vehicle registration certificates, ship registration certificates, and aircraft registration certificates). The empirical evidence demonstrates that the proportion of private sector enterprises accessing credit from banks in the region is progressively declining compared to other components of the economy.

This decline can be attributed to several factors, such as the increasing number of newly established businesses, businesses lacking assets to meet the lending requirements of financial institutions, cumbersome loan procedures at banks, and businesses having to pay unofficial fees to bank officials to access credit sources.

Furthermore, private enterprises (mostly small and medium-sized businesses) have limited access to capital sources from the capital market (such as stocks and bonds) to support their business operations. Instead, they primarily rely on credit from banks or informal financial systems (such as borrowing from family, friends, associations, clans, neighborhoods, or engaging in black market credit). This practice poses a significant challenge for citizens and businesses

engaged in production and commercial activities.

According to a comprehensive review, Vietnam has around 12 sectors for property registration. Each field has its own system of agencies responsible for registering private assets. Currently, there are a considerable number of agencies responsible for property registration, although there are no official statistics on this quantity. Typically, asset registration only applies to mandatory asset groups. These issues result in the following economic impacts:

- Economic growth.
- Accessibility to credit for individuals and businesses.
- Credit development.
- Development of an innovative economy.
- Ensuring contract enforcement; and
- Budget and social costs for each option.

Despite having similar or higher income levels, Vietnam's administrative management quality of land is far worse than many other countries. According to a survey conducted by the World Bank, administrative land management quality in countries encompasses issues related to administrative procedures and transparency in land management.

These issues may also stem from the current operational activities of registration agencies. Therefore, the current model of asset registration authorities must be researched and improved to align with the requirements of asset registration in economic development.

Based on the findings of the examination of legal requirements pertaining to the registration of rights and property transactions, the lack of transparency in asset information, whether it pertains to real estate or moveable property, will facilitate market growth. Lack of formality in property ownership. Currently, many assets lack registration or are registered only after they have been transferred, resulting in the emergence of an informal market. Data pertaining to real estate is being disseminated across many institutions, including the land database administered by the Ministry of Natural Resources and Environment, the housing database, and the real estate market. The Ministry of Construction is accountable for the construction, storage, and administration of national assets, whereas the Ministry of Agriculture and Rural Development manages the database for forestry land in special-use forests.

Regarding various properties, the registration of sea vessels is managed by the Maritime

Administration of Vietnam under the Ministry of Transport. The registration of aircraft in Vietnam is overseen by the Civil Aviation Authority of Vietnam also under the Ministry of Transport. The registration of road vehicles is carried out by the Traffic Police Department of the Ministry of Public Security, which also handles the issuance of vehicle registration certificates and license plates. The registration of inland waterway vehicles is managed by the Inland Waterways Administration of Vietnam, under the Ministry of Transport. The registration of national artifacts, antiques, and treasures is under the jurisdiction of the Departments of Culture, Sports, and Tourism.

The dispersion of information management will also result in a lack of coherence in information management methods and a lack of information integration. Investors and government agencies have challenges in regulating both formal and informal financial asset markets.

4. Conclusions and recommendations for improving the legislation on property registration in Vietnam

The research and review of asset registration regulations indicate that the legal provisions in Vietnam are rather comprehensive. The effort required to register various types of assets (such as land, intellectual property rights) is rather high. However, Vietnam still lags many other countries in the Asian region as well as countries with similar low average incomes. Based on the analysis of the impacts of improving the law on property registration on the economy and business environment, the following recommendations are proposed:

Firstly, the improvement of legal regulations on the registration of rights and transactions of assets in Vietnam has a significant impact on the economy, society, and law. Based on the analysis of the aforementioned aspects, in the current stage of Vietnam, the option of issuing a unified regulation on the registration of rights and transactions related to real estate, while maintaining regulations on the registration of movable property in specialized laws, is a suitable and feasible solution to promote economic growth, develop an innovative society, transform the economic sector structure, reduce reliance on traditional resource-based growth, and mitigate social instability caused by disputes over land use rights. In the future, there will be plans to

establish unified regulations for registering assets related to both movable and immovable properties. A unified model for the asset registration agency will also be developed, covering both movable and immovable properties. However, this is a story for the future. Currently, implementing this plan in Vietnam is quite challenging due to the broad scope of regulation and numerous impacts involved. Issuing a unified regulation on property registration is a significant challenge, given that this issue is already regulated in specialized legal documents. To limit the revision of related legal documents, a law can be enacted to amend multiple laws in order to revise provisions regarding real estate registration, including establishing a unified legal regulation, a streamlined and efficient administrative procedure, and a well-defined timeline. Additionally, a real estate registration management agency should be formed within an existing system, spanning from central to local levels. Government agencies should take actions to provide favorable conditions for the implementation of new regulations.

Secondly, the completion of the operational model of the asset registration agency in Vietnam has a significant impact on the economy, society, and legal system. Based on the analysis of the aspects, at the current stage of Vietnam, the proposed solution is to establish a unified model for real estate registration agencies. Establishing a unified agency for real estate registration with administrative procedure reforms in real estate registration will impact the economic efficiency of real estate registration activities in Vietnam, such as economic growth, access to credit for individuals and businesses, credit development, and contract enforcement. However, the unified plan for real estate registration agency will have an impact on the cost of restructuring the real estate registration system and the operations of specialized management departments. These agencies have been operating for many years with a structured system from central to local levels (such as land registration agencies), so when reorganizing the machinery, it is necessary to have a specific assessment of the current situation of each agency's organization and activities in order to have a suitable and cost-effective plan for the reorganization process. It is necessary to revise the regulations of certain legal documents to reorganize the real estate registration agency. In addition, the reorganization of the real estate registration agency will have social impacts that need to be addressed: (i)

The staffing of the new real estate registration agency and the staffing of the existing registration agencies, including land registration offices, transaction security registration agencies, and construction permit agencies; (ii) The ability of citizens and businesses to access the services of the new real estate registration agency; (iii) The ability of the new real estate registration agency to effectively manage information and historical changes in ownership and use rights of each asset in order to facilitate convenient registration and ensure the property rights of citizens and businesses; (iv) The ability to synchronize the database of real estate information and synchronize administrative procedures related to land registration.

Thirdly, organizing a unified property registration agency does not contravene the provisions of The Constitution 2013 on the organization of the state apparatus as well as ensuring the basic rights of citizens. However, building a new agency will change regulations on the organization and operation of current property registration agencies. To do this, it is necessary to evaluate and clarify the functions, tasks, powers, and organizational structure of the new real estate registration agency.

By analyzing the various impacts of establishing a national database on assets, the proposed solution is to create a unified national database for real estate while maintaining the current system for movable assets. Accordingly, the human resources department should be established based on the existing human resources system of an organization's information system. The personnel responsible for managing the database of assets for other ministries continue to operate with the responsibility of collecting and updating information on the common real estate system. The database is developed by integrating data sources from current asset management agencies. The current regulatory agencies responsible for registering real estate information (including the Ministry of Natural Resources and Environment, Ministry of Construction, Ministry of Agriculture and Rural Development, and Ministry of Justice) need to share information with the agency in charge of developing a unified national real estate database.

Fourthly, regarding the completion of the national database and property registration procedures, if there is a change and implementation of constructing a document that regulates the key principles of property registration procedures, including real

estate and personal property, it will have a significant impact on the state machinery, the conditions for enforcement assurance, and the legal system due to substantial changes in the structure of the property registration legal system. However, if the registration procedure for real estate is only unified, it will not create negative changes for the system because, as analyzed, documents regarding housing and forest protection and development are already regulating administrative procedures indirectly rather than directly stipulating administrative procedures in the Law on Land. In addition, considering the compatibility with international conventions, it would be more appropriate to analyze the experience of building laws on property registration in countries around the world, rather than opting for a unified procedure for registering both movable and immovable property. This approach aligns with international norms by separating administrative procedures for registering different types of assets such as aviation, maritime, and intellectual property to accommodate the specificities of each registration process. Based on the good practices recommended by the World Bank for improving asset registration, several countries have implemented administrative procedure reforms in real estate. Therefore, the chosen solution is to establish a unified national real estate database while maintaining the existing database system for movable assets. The registration process for real estate assets will be standardized, while the registration process for movable assets will remain unchanged. The following recommendations are made: (i) Improve administrative procedures by streamlining processes and reducing the time required to complete them; (ii) Reduce fees and taxes related to real estate transactions to incentivize individuals and businesses to register; (iii) Standardize or integrate administrative procedures related to property registration; (iv) Enhance the use of information technology in administrative procedures to reduce implementation costs, increase transparency, and integrate information about assets.

In summary, changing the current property registration regulations would enable Vietnam to achieve better economic growth and transform the economic structure towards a more innovative and development-oriented economy, reducing dependence on traditional resource-based growth. Amending regulations regarding real estate registration will contribute to reducing social instability caused by

disputes over land use rights, creating a favorable legal environment and framework for businesses, instilling confidence in government agencies among enterprises, and promoting a healthy and sustainable economic environment.

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