

# NEWSLETTER

## 06/2021



***NEW REGULATIONS ON SECURITY  
TRANSACTIONS PURSUANT TO DECREE  
NO. 21/2021/ND-CP ON ELABORATING  
TO THE CIVIL CODE REGARDING  
SECURITY FOR FULFILLMENT OF  
OBLIGATIONS***



**LAC DUY & ASSOCIATES**


***CODE OF CONDUCT FOR SOCIAL MEDIA***

PUBLISHED BY LAC DUY & ASSOCIATES

CONTACT WITH US

 <http://lacduy-associates.com>

 [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

 +84917275572/+842836221603





LAC DUY & ASSOCIATES



Dear Clients,

**Lac Duy & Associates would like to send you the newsletter of June 2021 with some outstanding new point and article as:**

- Code of conduct for social media
- New regulations on security transactions pursuant to Decree No. 21/2021/ND-CP on elaborating to the civil code regarding security for fulfillment of obligations

## NEWSLETTER 06/2021

PUBLISHED BY LAC DUY &  
ASSOCIATES

CONTACT WITH US

🌐: <http://lacduy-associates.com>

✉: [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

☎: +84917275572/+842836221603





## CODE OF CONDUCT FOR SOCIAL MEDIA

On 17th June, 2021, the Ministry of Information and Communications issued Decision No. 874/QĐ-BTTTT (“Decision 874”) effective on the same day on promulgating the Code of Conduct for social media to “develop moral standards regarding behaviors and responses on social media, educate awareness, create positive habits in behaviors of social media users” and “guarantee personal freedom, business freedom, indiscriminate of domestic and foreign suppliers, and conformity to standards, regulations and international agreements to which Vietnam is a signatory” (Article 1 of the Code of Conduct for social media).

Accordingly, the subjects of application of this Code are divided into 03 groups of subjects with separate regulations, including: (i) Regulatory authorities, officials, public employees, workers in regulatory authorities who use social media; (ii) Other organizations and individuals that use social media; (iii) Providers of social media services in Vietnam.



In addition to complying with 04 general codes of conduct, including: Respect for the law (Comply with Vietnamese regulations and law, respect legal rights and benefits of organizations, individuals); Healthy (Behaviors and responses on social media must conform to moral values, culture, and traditions of Vietnamese people); Information safety and security (Comply with regulations and guidelines on information safety and security); Accountability (Assume responsibilities for behaviors and responses on social media and cooperate with authorities in dealing with behaviors and contents violating regulations and law); each group of subjects participating in and using social networks need to comply a number of other rules, specifically as follows:



### **1. For organizations and individuals <sup>1</sup>**

In addition to acknowledging and complying with terms on use guidelines social media service providers before registering and joining social media, the Code also recommends that organizations and individuals use real name or individuals and organizations, agencies, and register with service provider to verify name, website address and contact point when joining, using social media.

Along with that, organizations and individuals must and immediately inform authorities and service providers when accounts of organizations, individuals are beyond their control, impersonated, exploited and used for unhealthy purposes; share information from reliable and trustworthy sources; do not incite aggression, hatred, origin discrimination, sexism, or religious discrimination; do not upload contents violating regulations and law, or information defaming, affecting legal rights and benefits of other organizations, individuals; do not use sensitive language, violating fine traditions; do not distribute false information; do not advertise, operate illegal businesses, etc. causing aggression among social discussion, affecting social order and safety.

### **2. For officials, public employees and workers in government agencies <sup>2</sup>**

In addition to implementing the contents of the code of conduct for organizations and individuals, officials, public employees and workers in government agencies must also Conform with regulations of their agencies, organizations regarding provision of information on social media.

Officials, public employees and workers in government agencies are also responsible for informing supervisory authorities for timely solutions, responses, and resolutions in case of controversies, information violating regulations and law relating to their tasks, functions, powers, and governing sectors.

### **3. For regulatory authorities <sup>3</sup>**

In addition to implementing the contents of the code of conduct for organizations and individuals, regulatory authorities are responsible for managing, securing password of social media and immediately informing service providers when accounts of agencies, organizations are beyond their control or impersonated; provide information on social media consistently with information provided on other mainstream media. Simultaneously, regulatory authorities should provide information on social media consistently with information provided on other mainstream media to avoid unnecessary confusion in receiving user information.



#### 4. For social media service providers <sup>4</sup>

The Code of Conduct stipulates that media service providers must publicize terms of services, including all rights and obligations of service providers and users; and publicize measures for detecting, informing and cooperating with authorities to intercept, prevent and eliminate information violating copyright, regulations, and law.

In addition, media service providers must respect the right to receive information protection of users, do not collect personal data, do not provide information of social media users to a third party without the owners' consent.

Media service providers must also guide social media users, assist, and protect legal rights, benefits of the “weaker individuals” in society, here understood as poor people, ethnics, children, juveniles, persons with disabilities, etc. in using social media safely and healthily to avoid being exploited, abused, and assaulted mentally on social media; adopt measures to guarantee safety and healthy development of children and juveniles on social media as per Vietnamese laws.

<sup>1</sup> Article 4 Decision 874/QĐ-BTTTT

<sup>2</sup> Article 5 Decision 874/QĐ-BTTTT

<sup>3</sup> Article 6 Decision 874/QĐ-BTTTT

<sup>4</sup> Article 7 Decision 874/QĐ-BTTTT



## NEW REGULATIONS ON SECURITY TRANSACTIONS PURSUANT TO DECREE NO. 21/2021/ND-CP ON ELABORATING TO THE CIVIL CODE REGARDING SECURITY FOR FULFILLMENT OF OBLIGATIONS

On March 19, 2021, the Government issued Decree No. 21/2021/ND-CP on elaborating to the civil code regarding security fulfillment of obligations, effective on May 15, 2021 (“Decree 21”), replacing Decree No. 163/2006/ND-CP regulating secured transactions (“Decree 163”) and Decree No. 11/2012/ND-CP amending some of the articles of the Decree 163 (“Decree 11”). Decree 21 is especially expected by credit institutions because in the current situation, when the judicial practice in court on credit contract disputes, banks still have many loopholes in accepting mortgages collateral, leading to many cases being rejected by the court, invalidating the mortgage contract, leading to the debt including principal and interest of the bank without collateral, becoming an unsecured amount at the stage of civil judgment enforcement. Here, Lac Duy & Associates would like to introduce to the Clients the new points of Decree 21, specifically as follows:

### 1. Expanded definitions

Decree 21 contains provisions explaining definitions that have not been clarified in previous Decrees. Specifically, Clauses 4, 5, 6, and 7 Article 3 of Decree 21 clearly explain the concepts of “Assets attached to land”, “Security contract”, “Certificate” and “Reasonable period”. These are definitions that were not specifically explained in the old Decree, leading to ambiguity or confusion in practical application.





## 2. Entitlement for reclaiming collateral

Entitlement for reclaiming collateral is one of the new provisions in Decree 21. According to the provisions of Clause 1, Article 7 of Decree 21 rights of secured parties for collateral in security measures that have taken effect against a third party are not changed or terminated in case collateral is transferred to other individuals as a result of gift, trade, exchange, transfer, other change in ownership, appropriation, use or benefit gain of collateral that lacks legal ground and is not specified under Clause 2 of this Article. Clause 2, Article 7 of Decree 21 stipulates entitlement for reclaiming of secured parties for collateral does not apply to following properties:

- Collateral that has been sold, transferred or changed in terms of ownership under consent of secured parties and is no longer used as security for fulfillment of obligations;
- Mortgaged properties that have been sold, replaced or exchanged according to Clause 4 Article 321 of the Civil Code;
- Collateral is no longer available or is replaced by other collateral according to Article 21 hereof;
- Other cases according to the Civil Code and other relevant law provisions.

In addition, Clause 3 Article 7 of Decree 21 stipulates in case securing parties are individuals who have deceased or juridical persons who have ceased to exist, entitlement for reclaiming collateral of secured parties shall not be terminated but conform to Article 658 of the Civil Code and other regulations on inheritance in the Civil Code in case securing parties are individuals who have deceased or conform to regulations and law on dissolution of juridical persons and bankruptcy in case securing parties are juridical persons who have dissolved or declared bankrupt.

## 3. Collateral

In the previous Decrees the collateral was specified in only one article, in Decree 21, the collateral is specified in a separate chapter – Chapter II of Decree 21. Thereby, it is possible found that Decree 21 has more specific provisions than previous Decrees.



LAC DUY & ASSOCIATES

Article 8 of Decree 21 stipulates collateral for security for obligation fulfillment includes:

- Current properties or off-plan properties, except for cases where the Civil Code or other relevant laws forbid sale, transfer or other change of ownership at the time of establishing security contracts, security measures;
- Properties sold under property sale agreements with retention of ownership; Properties considered as subjects of obligations under infringed bilateral contracts in case of lien measures;
- Properties under general public's ownership if prescribed by relevant laws.

Article 9 of Decree 21 stipulates description of collateral and from Article 12 to Article 20 specifying stipulates collateral for security for obligation fulfillment, such as: Property created from surface right, usufruct right; Investment project and affiliated properties, project developers may utilize investment projects that are not prohibited by Law on Investment and other relevant laws from transfer as security for obligation fulfillment; investment in mortgaged properties to increase value of mortgaged properties, etc. These are completely new points compared to the old Decree, creating a clearer legal basis for entities, especially businesses and banks, which can use these assets as collateral for their business capital mobilization and credit extension



PUBLISHED BY LAC DUY & ASSOCIATES

CONTACT WITH US

<http://lacduy-associates.com>

[lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

+84917275572/+842836221603

NEWSLETTER  
06/2021





#### **4. Effectiveness of security contracts**

The effective time of the security contracts in Decree 21 is regulated differently from Decree 163, specifically Article 22 of Decree 21 stipulates:

- Security contracts certified, verified under the Civil Code or relevant law provisions or at request shall enter into force from the date on which they are certified, verified.
- Security contracts not specified under the above case shall enter into force from the date agreed upon by all parties. In case no agreement is made, security contracts shall enter into force from the date on which the contracts are signed.
- In case collateral is withdrawn under agreement, sections of security contracts that relate to the withdrawn collateral shall no longer be effective; in case collateral is added or replaced, revision of security contracts relating to this collateral shall be implemented according to the Civil Code and other relevant law provisions.
- Security measures that have not entered into effect against a third individual shall not alter or nullify security contracts.

#### **5. Effects of security measures against a third individual**

Decree 21 adds a clause to clearly distinguish between the effectiveness of security contracts and the effects of security measures against a third individual in Articles 22 and 23. Accordingly, Article 23 of Decree 21 stipulates the effects of security measures against a third individual as follows:

- a.** Security measures shall only take effect against a third individual when security contracts have legally entered into force
- b.** In case security measures require registration according to the Civil Code or other relevant law provisions or are registered under agreement or at request of secured parties, registration shall be carried out in competent agencies as per relevant law provisions when security measures take effect against a third individual.



LAC DUY & ASSOCIATES

c. For cases not specified under Point b of this Article, effect against a third individual in case of pledge of property, deposit or security collateral measure shall start from the date on which secured parties hold collateral. “holding of collateral” specified under this Clause refers to when secure parties directly manage and control collateral or when other individuals manage collateral according to agreements or regulations and law and secured parties control the collateral.

d. In case collateral under security measures specified under Point c of this Article is given to other individuals for management, effect against a third individual of security measures shall start from the date on which: Pledges, deposits or security collateral receiving parties hold collateral; Individuals managing collateral receive collateral directly from pledgers, depositors or security collateral making parties; Security contracts take effect when other individuals are directly managing properties which are used as pledge, deposit or security collateral

e. Effect against a third individual of escrow deposit measure shall start from the date on which escrow deposit is sent to escrow accounts in credit institutions where escrow deposit is made.



## **6. Establishment and implementation of security contracts, security measures in form of marital property**

Related to establishment and implementation of security contracts, security measures in form of marital property, Article 27 of Decree 21 stipulates in case spouses agree on unilaterally contributing marital properties to contributing capital to an economic organization, by themselves, establish and implement security contracts and/or security measures or although in fact the husband and

**NEWSLETTER**  
**06/2021**

PUBLISHED BY LAC DUY &  
ASSOCIATES

CONTACT WITH US

📧: <http://lacduy-associates.com>

✉: [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

☎: +84917275572/+842836221603



wife do not have an agreement on the use of common property for capital contribution, but there is a fact that one of the spouses uses common property to contribute capital and establish and perform security contracts, a security measure related to common property that the other person knows but does not object to is still considered to have been agreed upon by the husband and wife. And if a divorce event occurs between husband and wife, persons who have established security contracts or security measures shall continue to execute said security contracts and security measures unless otherwise decided by legally valid judgments or decisions of courts.

## 7. Partially nullified security contracts

Partially nullified security contracts is one of the new provisions of Decree 21. Article 30 of Decree 21 stipulates that a security contract may be partially nullified in a number of specific cases as follows:

- Contract sections within rights of individuals who do not participate in security contracts in case collateral is under collective ownership, except for cases establishment and implementation of security contracts, security measures in form of marital property hereof;
- Contract sections related to one or multiple individuals who do not possess legal personality or legal capacity in conformity with security contracts in case securing parties or secured parties consist of multiple individuals;
- Contract sections related to one or multiple properties ineligible for being used as security for obligation fulfillment in case an obligation is secured for fulfillment by multiple properties;
- Contract sections violating prohibitions, contradicting social morals or restricting right execution according to the Civil Code or other relevant law provisions in case other contract sections do not commit any violation;
- Other sections according to the Civil Code and other relevant law provisions.

When a part of the above contents is nullified, it may lead to the security contract being declared nullified for that part. In general, the result is isobligations secured for implementation under nullified sections shall become unsecured obligations.



## 8. Realization of collateral

Previously, Decree 163 used the phrase "Disposal of security assets in pledge and mortgage", but now Decree 21 changes to "Realization of collateral". Thus, the provisions on handling collateral in Decree 21 are not only applicable to pledge and mortgage measures, but also apply to all security measures.

In addition, Clause 2, Article 49 of Decree 21 stipulates that in case secured parties realize collateral on the basis of agreements under security contracts, letter of attorney or written consent of securing parties is not required. This helps credit institutions to speed up the processing of realization of collateral and better recover bad debts.



## 9. Notice on realization of collateral

Article 51 of Decree 21 stipulates that the obligation to notify is extended to all cases of realization of collateral but is no longer limited to cases where there are multiple secured parties as in Article 61 of Decree 163.

Deadline for informing about realization of collateral, according to the provisions of Clause 4, Article 51 of Decree 21 has been increased from 07 days to 10 days. However, for the exception that is If the collateral at risk of being damaged resulting in diminished value or lose the entire value, a secured party may realize it immediately and notify the securing party and other secured parties of the realization of such asset.

**NEWSLETTER**  
**06/2021**

PUBLISHED BY LAC DUY &  
ASSOCIATES

CONTACT WITH US

📧: <http://lacduy-associates.com>

📧: [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

📞: +84917275572/+842836221603



LAC DUY & ASSOCIATES

In addition, according to Clause 2, Article 51 of Decree 21, in case no agreement is reached, secured parties shall send written notice in person to securing parties or via authorized personnel, post service, data message or other methods to address provided by securing parties.

Through the above analysis, it can be seen that Decree 21 has significantly changed compared to Decree 163, Decree 11. However, perhaps because there are many problems related to secured transactions, there are many points Decree 21 has not been covered. For example, banks are waiting for a decree to specifically guide the pledged or mortgage method that will be applied to the security of the deposit or handling the mortgage of property rights arising from the future housing purchase and sale contract.

Within the scope of this article, Lac Duy & Associates can only offer some of the most general and noteworthy issues for readers to have an overview of changes in the law on security transactions. Inviting the interested readers to visit the website <http://lacduy-associates.com> and follow the next legal newsletter to be provided with more information on each specific issue mentioned or not mentioned in this article. In addition, in case you still have questions or need support related to the labor law, readers can contact us at +84 (28) 3622 1603 or email [info@lacduy-associates.com](mailto:info@lacduy-associates.com) or [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com) for timely support.

## NEWSLETTER 06/2021

PUBLISHED BY LAC DUY &  
ASSOCIATES

CONTACT WITH US

🌐: <http://lacduy-associates.com>

📧: [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

☎: +84917275572/+842836221603



LAC DUY & ASSOCIATES

## LEGAL DOCUMENTS 06/2021

NO.	EFFECTIVE DATE	NAME
<b>BUSINESS - GOVERNMENT FINANCE</b>		
1.	22/06/2021	Decision 1127/QD-BGTVT 2021 on the Regulation on implementation of legal responses of the Ministry of Transport in legal support for small and medium enterprises
2.	21/06/2021	Decision 2135/QD-UBND in 2021 approving the operation plan of Thanh Hoa Investment and Development Fund for the period of 2021-2025
<b>INFORMATION TECHNOLOGY</b>		
3.	22/06/2021	Official Dispatch No. 2059/UBND-VX dated June 22, 2021 on electronic health declaration in Ho Chi Minh City
<b>TRANSPORT</b>		
4.	22/06/2021	Decision 1130/QD-BGTVT 2021 on the Regulation on implementation of the "Legal Inquiry" column on the website of the Ministry of Transport
<b>TRADE</b>		
5.	22/06/2021	Official Dispatch 3753/BCT-TTTN in 2021 on petroleum business management issued by the Ministry of Industry and Trade
<b>CRIMINAL LIABILITY, CULTURE - SOCIETY</b>		
6.	23/06/2021	Official Dispatch 4184/VPCP-KGVX in 2021 on reports and recommendations on the recent emerging drug situation issued by the Office of the Government
<b>NATURAL RESOURCES - ENVIRONMENT</b>		
7.	18/06/2021	Plan 103/KH-UBND in 2021 on ensuring safe water supply in rural areas in Tuyen Quang province in the period of 2021-2025
<b>SPORT - HEALTH</b>		
8.	28/06/2021	Official Dispatch 5169/BYT-DP in 2021 on vaccination against COVID-19 issued by the Ministry of Health
9.	28/06/2021	Official Dispatch 6131/BGTVT-CYT in 2021 on strengthening control of passengers coming from Ho Chi Minh City issued by the Ministry of Transport
<b>LEGAL SERVICES</b>		
10.	09/06/2021	Directive 09/CT-UBND 2021 on strengthening civil judgment enforcement in Hai Duong province

NEWSLETTER  
06/2021

PUBLISHED BY LAC DUY &  
ASSOCIATES

CONTACT WITH US

🌐: <http://lacduy-associates.com>

✉: [lacduy@lacduy-associates.com](mailto:lacduy@lacduy-associates.com)

☎: +84917275572/+842836221603