

## **SECURED TRANSACTIONS REGISTRY: ACCESS TO INFORMATION, JAPAN'S EXPERIENCE, AND LESSONS FOR VIETNAMESE LAW**

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### **ABSTRACT**

The registration of secured transactions plays a crucial role in ensuring transparency, protecting the rights of third parties, and promoting access to information within a legal framework. Effective secured transaction registries enhance disclosure, allowing stakeholders to verify security interests and mitigate risks. Although Vietnam's current registration system allows electronic registration, it remains largely manual and traditional, leading to inefficiencies and limited public access to essential transactional data. This study examines Japan's secured transactions registration system, highlighting its advanced features that facilitate seamless access to information. By conducting a literature review of regulatory frameworks, institutional practices, and scholarly analyses, this research identifies key strengths of Japan's approach that contribute to legal certainty and commercial efficiency. Findings suggest that Japan's digitised and centralised registration model significantly improves accessibility, reduces administrative burdens, and strengthens enforcement mechanisms. In contrast, Vietnam's reliance on a fragmented and paper-based system hinders effective information dissemination and transaction security. By drawing lessons from Japan's experience, this study provides policy recommendations for modernising Vietnam's registry framework. A more efficient and accessible secured transactions registry would enhance transparency, support economic development, and align Vietnam's legal infrastructure with global best practices.

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## **DAFTAR URUS NIAGA TERJAMIN: AKSES KEPADA MAKLUMAT, PENGALAMAN JEPUN, DAN PENGAJARAN UNTUK UNDANG-UNDANG VIETNAM**

### **ABSTRAK**

Pendaftaran urus niaga terjamin memainkan peranan penting dalam memastikan ketelusan, melindungi hak pihak ketiga, serta menggalakkan akses kepada maklumat dalam kerangka perundangan. Daftar urus niaga terjamin yang berkesan meningkatkan pendedahan maklumat, membolehkan pihak berkepentingan mengesahkan kepentingan jaminan dan mengurangkan risiko. Walau bagaimanapun, sistem pendaftaran Vietnam pada masa ini masih banyak bergantung kepada kaedah manual dan tradisional, menyebabkan ketidakcekapan serta akses awam yang terhad terhadap data urus niaga penting. Kajian ini meneliti sistem pendaftaran urus niaga terjamin di Jepun dengan menekankan ciri-ciri canggihnya yang memudahkan akses maklumat secara lancar. Melalui tinjauan literatur terhadap kerangka peraturan, amalan institusi, dan analisis akademik, penyelidikan ini mengenal pasti kekuatan utama pendekatan Jepun yang menyumbang kepada kepastian undang-undang dan keberkesanan komersial. Dapatan menunjukkan bahawa model pendaftaran Jepun yang berpusat dan didigitalkan secara signifikan meningkatkan kebolehcapaian, mengurangkan beban pentadbiran, serta mengukuhkan mekanisme penguatkuasaan. Sebaliknya, kebergantungan Vietnam terhadap sistem berasaskan kertas yang terpecah-pecah telah menyekat penyebaran maklumat secara berkesan dan melemahkan keselamatan transaksi. Dengan mengambil pengajaran daripada pengalaman Jepun, kajian ini mengemukakan cadangan dasar bagi memodenkan kerangka daftar Vietnam. Satu daftar urus niaga terjamin yang lebih cekap dan mudah diakses akan meningkatkan ketelusan, menyokong pembangunan ekonomi, serta menyelaraskan infrastruktur perundangan Vietnam dengan amalan terbaik global.

**Kata Kunci:** Hak Pihak Ketiga, Amalan Institusi, Urus Niaga Terjamin, Undang-Undang Vietnam, Pendigitalan.

## INTRODUCTION

A robust secured transactions framework is a cornerstone of modern credit systems, enhancing access to finance by allowing movable assets to serve as collateral. At the heart of this framework lies the *Secured Transactions Registry* (STR), a public mechanism that ensures transparency, reduces credit risk, and promotes economic efficiency through access to information.<sup>1</sup> The STR plays a pivotal role in enabling creditors to assess debtor risk and prioritise claims, thus lowering transaction costs and facilitating secured lending.<sup>2</sup> Legal regulations governing secured transactions have long been established both internationally and within Vietnam, playing a fundamental role in financial and commercial security.

According to Vietnam's Civil Code 2015,<sup>3</sup> the registration of security interests, recognised in Articles 297 and 298,<sup>4</sup> serves as a mechanism to ensure third-party effectiveness, allowing security recipients and other stakeholders to access critical information before engaging in transactions involving encumbered assets. This registration process not only mitigates financial risks but also establishes legal grounds for asset reclamation and prioritisation of payment in cases of enforcement.<sup>5</sup> Beyond its role in transaction security, secured transaction registration significantly contributes to the broader legal framework of information transparency. The process

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<sup>1</sup>Charles W. Mooney Jr "Fintech and secured transactions systems of the " *Law & Contemp. Probs.* 81 (2018): 1.

<sup>2</sup>John M. Wilson, Murat Sultanov, Elaine Maceachern, Luz Maria Salamina, and Pratibha Chhabra. "Secured transactions, collateral registries and movable asset-based financing: Knowledge guide," (2019).

<sup>3</sup>The Vietnamese Civil Code 2015 uses the term "security measures" instead of "security transactions."

<sup>4</sup>According to Article 297 of the 2015 Civil Code, one of the methods to generate effectiveness against third parties is registering security measures, and security measures are registered according to agreement or as provided by law as mentioned in Article 298 of the 2015 Civil Code.

<sup>5</sup>Tran Thi Hue (2021), Some legal issues on registration of security measures and recommendations for improvement, *Journal of Law and Practice*, No. 47, p.46.

functions as a vital data source for state authorities,<sup>6</sup> enabling them to provide accessible and reliable information to citizens under Clause 1, Article 9 of the Law on Access to Information 2016. As the right to information is both a fundamental human right and a constitutional entitlement under Article 25 of Vietnam's 2013 Constitution, ensuring efficient and systematic access to secured transaction data is essential for democratic governance.<sup>7</sup>

Japan's experience with secured transaction registration reveals a fragmented but evolving legal infrastructure that reflects both the complexity of its asset types and the historical layering of regulatory frameworks. According to Hara *et al.* asset-based lending in Japan is mainly structured as title transfers for security purposes- *jōto tanpo*. Notably, Japan lacks specifically dedicated statutory guidelines for validating *jōto tanpo* title transfers.<sup>8</sup> Nevertheless, Japan's general contract law demands certainty of the specific property covered and the secured obligations.<sup>9</sup> Also, there exists a challenge of establishing a sufficient description for the inventory and receivables of a business. This is because a business has a continually changing inventory that is received and sold, while receivables are generated and collected continuously.<sup>10</sup> Also, Japan's Civil Code does not allow a non-possessory interest over movables. The security interests recognised in the Civil Code of Japan are right of retention, lien, pledge, and mortgage."<sup>11</sup> However, according to Kozuka and Aoki, some years

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<sup>6</sup>Mendel Toby (2003), *Freedom of information: A Comparative Legal Survey*, UNESCO, P. 6.

<sup>7</sup>Clause 1, Article 9 of the Law on Access to Information 2016 regarding the Scope and responsibility for providing information: "*State agencies are responsible for providing information they create, except in cases stipulated in Article 6 of this Law; for cases stipulated in Article 7 of this Law, information is provided when conditions are met according to regulations.*"

<sup>8</sup> Megumi Hara, Kumiko Koens & Charles W. Mooney, "Secured Transactions Law Reform in Japan: Japan Business Credit Project Assessment of Interviews and Tentative Policy Proposals," *U. Pa. J. Int'l L* 43, No. 3 (2022): 619

<sup>9</sup>Hara, Koens & Mooney, "Secured Transactions Law Reform in Japan," 619.

<sup>10</sup>Hara, Koens, and Mooney, "Secured Transactions Law Reform in Japan," 619.

<sup>11</sup>Souichirou Kozuka and Noriyuki Aoki, *Reform of the secured transactions law in Japan: the form and function tested against the global standard*,

after the adoption of the 1896 Civil Code Japan began to pass legislation of special laws that permitted secured transactions not permitted in the Civil Code. Some of the laws are The Law on Railway Mortgages (Law no.53 of 1905); the Law on Factory Mortgages (Law no.54 of 1905), The Law on Credit for Agricultural Properties (Law no.30 of 1933); the Law on Automobile Mortgages (Law no.187 of 1951); the Law on Aircraft Mortgages (Law no.66 of 1953); the Law on Mortgages on Construction Equipment (Law no.97 of 1954), the Law on Enterprise Charges (Law no.106 of 1958).<sup>12</sup> The Japanese system exemplifies how a multi-agency and multi-law approach, while functional, can also prompt ongoing legal reform, particularly in response to challenges around access, transparency, and legal certainty.

For instance, the registration of security interests is not governed by a single unified framework but is instead distributed across a range of specialised systems, depending on the nature of the asset and the type of security interest involved. According to Kozuka and Aoki, Japan has two systems for “non-possessory security interests in the secured transactions of movables or receivables”. The first one is the *jōto tampo* which entails the transfer of an asset for security purposes. *Jōto tampo* secures “a claim held by the transferee (creditor) against the transferor (debtor)”.<sup>13</sup> In this agreement, the parties involved agree that the transferor retains the asset until a default occurs. This arrangement is recognised in Japan’s case law as a valid non-possessory security interest in the asset which may be a moveable. Kozuka and Aoki have posited that Japan’s case law holds such a transaction as valid and in case the debtor defaults, the creditor may exercise the right either to sell or vest total ownership in itself. However, if the value of the asset is higher than the secured claim, then the creditor is obligated by law to give the debtor the excess value amount.<sup>14</sup>

However, the main challenge surrounding this transfer for security purposes is that it has not been addressed in Japan’s Civil Code therefore, there is no legal framework for establishing the requisite

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*Uniform Law Review*, Volume 27, Issue 2, June 2022, Pages 261–281,  
<https://doi.org/10.1093/ulr/unac013>.

<sup>12</sup>Kozuka and Aoki, “Reform of the secured transactions law in Japan.”

<sup>13</sup>Kozuka & Aoki, “Reform of the secured transactions law in Japan,” 263.

<sup>14</sup>Kozuka & Aoki, “Reform of the secured transactions law in Japan,” 263.

public register. To address this lacuna in Japan's Civil Code, the Act on Special Rules to the Civil Code Concerning the Perfection of the Transfer of Movables and Assignment of Receivables (PTMAR) was enacted in 1998 and later amended in 2004. The law was in its original form, passed "*to enable registration of the transfer of receivables and later amended to expand the registry to accept registration of the transfer of movables.*"<sup>15</sup>

While this decentralised approach may appear fragmented, it is underpinned by a robust legal foundation. There have not been significant amendments to the Japanese Civil Code of 1896 regarding secured transaction law. The Civil Code of Japan does not provide for the retention of title clauses, or financial leasing transactions. The Civil Code has provided mortgage and pledge laws allowing the creation of possessory pledges in movable assets only. Further, in Japan there is no unified online secured transactions register. However, Japan's case laws that are independent of the Civil Code have evolved to create non-possessory pledge transactions that have not been covered by the Civil Code. An example of this type of transaction is the Security Transfer of Ownership (*Joto-tanpo*). In this transaction, the debtor retains the physical asset but as an agent of the creditor. This transaction is recognised in Japan's Case Law but not in the Civil Code.<sup>16</sup>

The security transfer of ownership (譲渡担保 – *joto-tanpo*) is governed by the 1998 Law on Special Provisions of the Civil Code Relating to the Registration of Transfer of Movable Property and Claims, amended in 2007, which introduced a dedicated registration mechanism to perfect such interests. This system operates alongside traditional Civil Code provisions, illustrating Japan's preference for incremental legal evolution over wholesale overhaul.<sup>17</sup> As noted in Kozuka and Aoki citing Kozuka and Fujisawa the Act on Special Rules to the Civil Code Concerning the Perfection of the Transfer of Movables and Assignment of Receivables (PTMAR) "only adds another means to claim priority equivalent to, but not excluding, other

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<sup>15</sup>Kozuka & Aoki, "Reform of the secured transactions law in Japan," 263-264.

<sup>16</sup>Secured Transactions Law Reform Project <https://securedtransactionslawreformproject.org/reform-in-otherjurisdictions/japan>, access on 06/5/2025.

<sup>17</sup> Secured Transactions Law Reform Project

priority criteria under the Civil Code, such as possession of a movable or notification to the obligor of a receivable.”<sup>18</sup> The use of various statutes has ensured there is no lacuna either in the Civil Code of Japan or the relevant enacted laws.

Moreover, a wide array of asset-specific statutes further regulates registration in Japan. These include the Real Estate Registration Law of 2004, the Ship Registration Law, the Aviation Law, and intellectual property-related statutes such as the Patent and Trademark Laws. This patchwork reflects Japan’s emphasis on tailored regulation but also highlights potential inefficiencies in harmonisation and user access. Importantly, Japan has not been static in its approach. Ongoing reform discussions, particularly those led by expert working groups, have identified key areas for modernisation, such as introducing exceptions to the long-standing “*registration priority rule*.”

These efforts suggest a growing recognition of the need for greater coherence and adaptability within Japan’s secured transaction framework.<sup>19</sup> Ultimately, Japan’s model underscores a critical tension in registry design: how to balance legal specificity with administrative efficiency. For Vietnam, where the secured transactions law is also in a state of transition, Japan’s experience offers valuable insights into the opportunities and trade-offs involved in developing a more accessible and integrated registry system. The objective of this study is to critically examine Japan’s secured transactions registration system, particularly its approach to accessibility and legal coherence, to draw actionable lessons for reforming Vietnam’s registry framework.

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<sup>18</sup>Kozuka & Aoki, “Reform of the secured transactions law in Japan,” 265; Citing Souichirou Kozuka and Naoe Fujisawa, ‘Old ideas die hard? An analysis of the 2004 reformation of secured transactions law in Japan and its impact on banking practices’ (2009) 31 *Thomas Jefferson Law Review* 293, 306–7.

<sup>19</sup>Baker & McKenzie (2023), *Japan: Secured transactions law to be reformed for the first time in 120 years*, [https://insightplus.bakermckenzie.com/bm/restructuring-insolvency\\_2/japan-secured-transactions-law-to-be-reformed-for-the-first-time-in-120-years](https://insightplus.bakermckenzie.com/bm/restructuring-insolvency_2/japan-secured-transactions-law-to-be-reformed-for-the-first-time-in-120-years), access on 08/5/2025.

## METHODOLOGY

This study employs a comparative legal research methodology as its principal approach, aimed at critically evaluating the limitations and ambiguities present in Vietnam's current secured transactions registration framework by drawing on Japan's legal and institutional experience. The comparative method allows for a systematic examination of the similarities and differences between the two legal systems, particularly in how they regulate access to information through secured transaction registries. By identifying structural and procedural elements that contribute to Japan's relative success in ensuring transparency and legal certainty, the research seeks to extract practical insights and reform-oriented lessons applicable to the Vietnamese context. In support of the comparative framework, the study also utilises a doctrinal legal analysis, focusing on the interpretation of written laws and official legal documents. Vietnamese legal instruments, including the 2015 Civil Code and related administrative regulations, are examined alongside Japanese statutes such as the Real Estate Registration Law, the Law on Special Provisions of the Civil Code (1998, amended 2007), and other asset-specific legislation. This method ensures a thorough understanding of the legal texts as the foundation for identifying gaps, inconsistencies, or outdated provisions within Vietnam's regulatory system.

Additionally, logical reasoning and analytical-synthetic methods are applied throughout the research to connect fragmented legal rules, deduce implications, and construct coherent arguments for legal reform. These methods are particularly important in evaluating the normative intent behind existing laws and in assessing the practical outcomes they generate, especially regarding public access, administrative efficiency, and protection of third-party rights. The enumerative method is used selectively to catalogue and present key legal instruments, policy proposals, and scholarly opinions relevant to both the Vietnamese and Japanese contexts. This method supports the organisation of findings and contributes to building a structured comparison across jurisdictions. Finally, the research integrates qualitative content analysis of secondary sources, including legal commentaries, academic articles, and reports by reform bodies. This enriches the understanding of how legal principles operate in practice and how institutional reforms in Japan have been developed in response to global standards and domestic needs.

## FINDINGS

### **Literature Insights on Access to Information in Secured Transaction Registration**

The relationship between secured transaction registration and access to information has been the subject of growing academic interest in both Vietnam and international legal scholarship. These studies not only underscore the importance of transparency and legal certainty in financial transactions but also reveal significant shortcomings in current registration systems and suggest pathways for reform. This section presents key findings from existing literature, critically evaluating their contributions and limitations, and contextualising them within the scope of this research.

#### ***Vietnamese Legal Scholarship: Incremental Interpretations and Systemic Gaps***

A primary reference in the domestic context is Do Van Dai (ed.),<sup>20</sup> *Scientific Commentary on the New Points of the Civil Code 2015*. This work offers a detailed exegesis of the revised Civil Code, particularly its provisions on the registration of security interests. The thesis of this commentary is that the 2015 Civil Code marked a significant legislative evolution in defining and formalising secured transactions in Vietnam. For example, the Civil Code of Vietnam passed on 24<sup>th</sup> November 2015 and came into force on 1<sup>st</sup> January 2017 introduced a raft of legislative changes regarding secured transactions. Regarding the security enforcement process Article 299 of the 2015 Civil Code the creditor may enforce realization powers if Clause (1) the debtor does not meet their obligation or they perform it improperly, Clause (2) The debtor breaches the terms of the obligation triggering early performance clauses as per the contract or as stipulated in law, Clause (3) as per any circumstances stipulated in law.

Further, Article 303 of the Civil Code outlines the method of realisation of the pledged or mortgaged property. Article 303 Clause 1 has stipulated that both parties have a right to agree on the method of realising a secured property such as point (a) sell by auction, (b) the

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<sup>20</sup>Do Van Dai, ed., *Scientific Commentary on New Points of the 2015 Civil Code* (Hanoi: Hong Duc Publishing House, 2016)

debtor sells the property, (c) the debtor may receive the property upon meeting the obligations owed to the creditor and (d) any other method.<sup>21</sup> Also, the Vietnam Civil Code No. 91/2015/QH13 dated November 24, 2015 incorporated changes in the legal framework applicable to immovable property. Article 107 clause 1 has listed immovable property as point (a) Land; (b) Houses and structures attached to land; (c) Other property attached to land, houses and structures; (d) other property as provided by law.<sup>22</sup> The Vietnam Civil Code (2015) has also introduced Article 292 Clause 1 which pledges a new form of Security over immovable property. It has further elaborated in Article 310 Clause 2 that, "*a pledge of property shall be enforceable against a third person as from the time when the pledgee holds the pledged property*".<sup>23</sup>

However, while this source is valuable for its article-by-article interpretation of the Code, it remains doctrinal and limited in scope. It does not engage with practical implementation issues, nor does it incorporate analysis of supporting legal instruments such as administrative circulars or registry operational guidelines. As such, its utility for understanding registry accessibility in practice is constrained. In contrast, Do Thi Hoa<sup>24</sup>, *Renovating the Approach to Security Measure Registration in the Civil Code and Issues for the Current Administration*, offers a more practice-oriented critique. The article's central thesis is that the 2015 Civil Code introduced a citizen-centric orientation, reframing registration not merely as a legal obligation but as a right tied to transactional clarity. Importantly, Hoa highlights discrepancies in how registration procedures are applied across different localities—an observation that draws attention to the

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<sup>21</sup>Bui Duc Giang, "Security enforcement under new Civil Code at a glance," *Vietnam Law & Legaw Forum*, 09 January 2016. <https://vietnamlawmagazine.vn/security-enforcement-under-the-new-civil-code-at-a-glance-5515.html>.

<sup>22</sup>Bui Duc Giang, "New rules on security over immovable property," *Vietnam Law & Legal Forum*, 05 November 2017. <https://vietnamlawmagazine.vn/new-rules-on-security-over-immovable-property-5848.html> ; Vietnam Civil Code No. 91/2015/QH13 .

<sup>23</sup>Giang, "Security enforcement under new Civil Code at a glance"; Vietnam Civil Code No. 91/2015/QH13.

<sup>24</sup>Do Thi Hoa, "Renovating the Approach to Registration of Security Measures in the Civil Code and Issues for the Current Administration," *Journal of State Management*, no. 255 (2017)

lack of standardisation and the fragmentation of registry authorities in Vietnam. The author's analysis is notable for introducing the administrative burden and inconvenience experienced by users, which directly affects access to timely and reliable information. However, the article would benefit from deeper empirical grounding, such as user case studies or registry performance data.

Similarly, Tran Thi Hue<sup>25</sup> identifies fundamental issues in the current Vietnamese registration regime. The author's thesis is that the effectiveness of security interest registration is undermined by an incoherent regulatory framework and overly complex procedures. Hue draws attention to the dispersed nature of regulatory documents and the absence of a centralised legal foundation governing registration. This observation aligns with real-world challenges faced by registry users, particularly businesses seeking fast and secure lending processes. Campa, Downes and Hennig note that publicly accessible registries containing information on interests in movable assets are important because they "*provide public notice of interests in movable assets and to establish priority in the assets described in the notice for secured creditors*".<sup>26</sup> One of the ways of determining the effectiveness of a secured transaction registry is ease of access. The information contained in the registry is vital for potential guarantors, secured and secured creditors and possible competing claims by creditors. Therefore, it is internationally held that a seamlessly functioning secured transaction registry should be backed by a legal framework facilitating easy registration of notices and search for information.<sup>27</sup>

Recommendation 54 (f) *To enhance certainty and transparency by providing for registration of a notice in a general security rights registry* of the UNCITRAL Legislative Guide on Secured Transactions states that: In order for a secured transactions regime to function

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<sup>25</sup>Tran Thi Hue, "Some Legal Issues on Registration of Security Measures and Recommendations for Improvement," *Journal of Law and Practice*, no. 47 (2021): page number.

<sup>26</sup>Alejandro Alvarez DE La Campa, Antiago Croci Downes and Betina Tirelli Hennig, "Making Security Interests Public: Registration Mechanisms in 35 Jurisdictions," *The World Bank*, 2012: 4. <https://documents1.worldbank.org/curated/en/821191468340824013/pdf/713450WP00Box30ity0Interests0Public.pdf>.

<sup>27</sup>Campa, Croci Downes, and Hennig, *Making Security Interests Public*, 5.

efficiently, it is important that all parties be able to determine with a reasonable degree of certainty the extent of the rights of a grantor and third parties in assets to be encumbered. The cornerstone for achieving this certainty, while at the same time respecting and addressing confidentiality concerns, is to establish a general security rights registry for recording notices about the possible existence of a security right. Such a registration system requires neither the submission of full documents for verification, nor their actual registration. Registry records would be made available for inspection by all interested parties.<sup>28</sup>

In this regard, Campa et al. have further noted that under a best practices regime, a Secured Transactions Register should be readily available for online searches by frequent users and one-off users also. They further aver that this can be achieved by creating user accounts with unique login credentials for frequent users. The frequent users could be billed depending on their use instead of making payments up front. Also, one-off users could still be granted online access to the secured transaction registers with the credit or debit card information being used for identification purposes.<sup>29</sup> The use of an electronic registry is touted as the better option compared to a paper-based one because the use of a paper-based registry runs the risk of non-disclosure. This is prone to occur in case its legal framework demands that registration becomes effective on receipt of the hard copy documents. On the other hand, an electronic database would be more effective because entries could be made into the database remotely.<sup>30</sup>

The recommendation to unify and simplify the legal framework anticipates the broader reform direction suggested in this study. However, the work could have been strengthened with comparative examples or a structured legal gap analysis.

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<sup>28</sup> UNCITRAL, "UNCITRAL Legislative Guide on Secured Transactions," *United Nations Commission on International Trade Law*, 2010: 21. [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/09-82670\\_ebook-guide\\_09-04-10english.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/09-82670_ebook-guide_09-04-10english.pdf).

<sup>29</sup> Campa, Croci Downes, and Hennig, *Making Security Interests Public*, 5.

<sup>30</sup> Campa, Croci Downes, and Hennig, *Making Security Interests Public*, 8.

### ***International Perspectives: Harmonisation, Functionality, and Reform Imperatives***

International literature provides broader insights into systemic reform and cross-border best practices in secured transaction registration. According to Louise Gullifer and Dora Neo,<sup>31</sup> *Secured Transactions Law in Asia* presents a comprehensive comparative analysis of secured transaction frameworks across various Asian jurisdictions. Additionally, these authors argue that a transparent and accessible registration system is foundational for promoting secured lending and legal predictability. The article centres on the harmonisation of secured transaction laws in the region, with Japan cited as an example of a hybrid model balancing traditional legal constructs and modern registry needs. Notably, the book illustrates how reform efforts are often tied to international trade competitiveness and financial inclusion, areas where Vietnam continues to face structural challenges. The text serves as a conceptual anchor for this study by articulating the legal logic behind public notice and priority rules that shape registry architecture.

A particularly focused contribution comes from Souichirou Kozuka and Noriyuki Aoki,<sup>32</sup> The thesis of this article is that Japan's ongoing legal reforms are increasingly influenced by global norms, such as those embodied in the UNCITRAL Legislative Guide and the Cape Town Convention. The authors document the reform proposals of three expert groups under different Japanese government agencies, illustrating both diversity in stakeholder perspectives and convergence around the need for legal modernisation. Their analysis of the "*registration priority rule*", a key mechanism for ensuring transactional certainty, demonstrates how national reform efforts are shaped by international legal harmonisation. The article's comparative lens and institutional detail offer valuable insights for Vietnam as it contemplates a shift toward a centralised and digitised registry system.

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<sup>31</sup> Louise Gullifer and Dora Neo, *Secured Transactions Law in Asia: Principles, Perspectives and Reform* (Oxford: Hart Publishing, 2021)

<sup>32</sup> Souichirou Kozuka and Noriyuki Aoki, "Reform of the Secured Transactions Law in Japan: The Form and Function Tested Against the Global Standard," *Uniform Law Review* 27, no. 1 (2022)

### ***Comparative Legal Analysis: Japan's Transparent Registry Model and Its Relevance to Vietnam***

The study by Hai, Lien Dang Phuoc<sup>33</sup> provides a comparative legal analysis of Japan's secured transactions framework and its potential lessons for Vietnam. The author examines how Japan's system addresses the perfection of security interests, particularly over future receivables, and contrasts this with Vietnam's current legal provisions. In Japan, the perfection of security interests against third parties is achieved through registration, and the priority of claims is determined by the order of registration. The concept of the 'First-to-Register Rule' as discussed in Hara and Mooney holds that "*earlier-in-time assignments of movables or claims made effective under the Minpō will have priority over any later assignment.*" In this system the assignment awarded priority is the one that is registered first even if it is not the first one to occur.

For example, assume Creditor A registers an assignment at Time 1 (T-1), but the assignor(debtor) does not make an assignment at that time (perhaps because no loan had yet been made). 100 At T-2 Creditor B registers an assignment and the assignor assigns to Creditor B the same movables that were covered by Creditor A's registration. At T-2 Creditor B has priority—it is the only assignee of the collateral and there is no priority conflict. At T-3, however, the assignor actually assigns the movables to Creditor A.101 Now Creditor A has priority under the first-to-register priority rule.<sup>34</sup>

This approach ensures clarity and predictability in secured transactions. In international best practices the UNCITRAL Legislative Guide on Secured Transactions have also addressed the matter priority in recommendation 55 (g).

A prospective creditor must not only be able to ascertain the rights of the grantor and third parties in the assets to be encumbered, it must also be able to determine with certainty, at the time it agrees to extent credit, the priority that its security right in encumbered assets

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<sup>33</sup>Lien Dang Phuoc Hai, "The legal aspect of security over future receivables in Japan and suggestions for Vietnam." *Science & Technology Development Journal: Economics-Law & Management* 4, no. 3 (2020): 872-880.

<sup>34</sup>Hara, Koens, and Mooney, "Secured Transactions Law Reform in Japan," 648-649.

would enjoy relative to the rights of other creditors (including an insolvency representative in the grantor's insolvency). Thus, a modern secured transaction regime must provide clear rules that allow prospective creditors to determine the priority of their security rights at the outset of the transaction in a reliable, timely and cost-efficient manner.<sup>35</sup>

Regarding this aspect, Campa et al. note that collateral registries play a significant role in providing public notice of interests and establishing priority in the assets.<sup>36</sup>

The Japanese system emphasises the importance of a centralised and accessible registry, which facilitates the assessment of debtor risk and the prioritisation of claims. In contrast, Vietnam's legal framework, as outlined in the 2015 Civil Code, also requires registration for the perfection of security interests. However, the system faces challenges in terms of accessibility and efficiency. The article highlights that the current Vietnamese registry system lacks the centralised and transparent features of its Japanese counterpart, leading to potential disputes and inefficiencies in the enforcement of security interests.

The author suggests that Vietnam could benefit from adopting aspects of Japan's registry model, particularly in enhancing the accessibility and transparency of its secured transactions registry. By improving the legal infrastructure and operational mechanisms of the registry, Vietnam can foster greater confidence among creditors and promote the growth of secured lending. This comparative analysis underscores the significance of a well-structured and accessible secured transactions registry in facilitating economic development. Japan's experience offers valuable insights for Vietnam as it seeks to modernise its legal framework and improve access to information in secured transactions. Overall, the above literature review underscores several common themes: the importance of legal clarity in registry design, the challenges of decentralisation, and the need for digital transformation to improve information access. Vietnamese scholarship tends to focus on legal interpretation and administrative fragmentation, while international works offer models for reform and harmonisation based on broader functional goals. These complementary perspectives highlight that improving access to information in secured transaction

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<sup>35</sup>UNCITRAL, "UNCITRAL Legislative Guide on Secured Transactions," 21.

<sup>36</sup>Campa, Croci Downes, and Hennig, *Making Security Interests Public*, 5.

registration is not merely a technical matter, but one of systemic legal design, user trust, and international alignment.

### **Japan's Legal Experience in Ensuring Access to Information Based on Secured Transaction Registration**

Japan's approach to secured transactions is deeply rooted in its Civil Code, first enacted in 1896 and currently undergoing significant reforms. The Code sets out key legal instruments such as mortgage rights, pledges, retention rights, and priority rules, forming the bedrock of Japan's secured transactions framework. Recent reform initiatives, such as those supported by UNIDROIT and reflected in the country's engagement with international conventions like the MAC Protocol, signal Japan's efforts to align its domestic laws with global standards.<sup>37</sup> These reforms are not merely technical updates but reflect a broader shift toward enhancing legal certainty and commercial efficiency in asset-based lending practices.<sup>38</sup>

A critical feature of Japan's system is its clear legal demarcation between the enforceability of secured transactions and their effectiveness against third parties. Article 177 of the Japanese Civil Code states that the acquisition or loss of rights concerning immovable property must be registered per applicable laws to be effective vis-à-vis third parties. This principle illustrates a dual-layered logic: while perfection ensures enforceability between parties, registration ensures transparency in public dealings. For example, "pre-registration" is permitted in the context of ownership transfers, signalling that Japan prioritises public notice and the minimisation of transactional disputes from the outset.<sup>39</sup> Although this pre-registration mechanism does not perfect security rights in the conventional sense, it serves the broader

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<sup>37</sup>Dora Neo "Modern principles and secured transactions law in Asia." *Uniform Law Review* 29, no. 4 (2024): 553-564.

<sup>38</sup>Unidroit, UNIDROIT delivers MAC Protocol consultation workshop for Japanese stakeholders, <https://www.unidroit.org/unidroit-delivers-mac-protocol-consultation-workshop-for-japanese-stakeholders/> & UNIDROIT participates in Japanese Secured Transactions Reform Workshop in Tokyo, <https://www.unidroit.org/28553/>, access on 07/5/2025.

<sup>39</sup>Xaca Vacaxum, Tori Aritdumi: Scientific commentary on the Japanese Civil Code, National Political Publishing House, Hanoi, 1995, p. 335.

purpose of securing obligations and protecting transactional integrity.

The emphasis on legal certainty through public registration also extends to mortgage priority. According to Article 373 of the Civil Code, when multiple mortgages exist on a single immovable property, their priority is determined by the order of registration.<sup>40</sup> This rule underscores the function of registries not only as repositories of rights but also as critical tools for conflict resolution and creditor risk assessment. In practice, this means that parties are incentivised to register interests promptly, ensuring predictability and fairness in enforcement scenarios.<sup>41</sup> The priority system thereby creates a transparent legal environment where stakeholders—especially third-party creditors—can assess asset encumbrances with clarity and confidence.

Despite these strengths, Japan does not operate a single, centralised online registry for all types of secured transactions. Instead, the country employs a sectoral model where different agencies oversee the registration of various asset classes.<sup>42</sup> The Ministry of Justice is responsible for movable property and receivables; the Ministry of Land, Infrastructure, Transport, and Tourism handles transport-related assets such as ships and motor vehicles; and intellectual property rights fall under the jurisdiction of the Japan Patent Office.<sup>43</sup> While this decentralised approach allows for technical specificity and agency specialisation, it also fragments access and complicates cross-asset searches, an issue that Japan continues to address incrementally.

Nevertheless, digitisation has progressed significantly. The Ministry of Justice has introduced an online registration and search

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<sup>40</sup>Article 177: The acquisition, loss, or change of real rights in real property cannot be asserted against third parties unless it is registered in accordance with the Real Estate Registration Act (Act No. 123 of 2004) or other registration laws. [https://laws.e-gov.go.jp/law/129AC000000089#Mp-Pa\\_2-Ch\\_1](https://laws.e-gov.go.jp/law/129AC000000089#Mp-Pa_2-Ch_1), accessed 05/5/2025. (I have used googletranslate)

<sup>41</sup>Article 373: When multiple mortgages are established on the same real property, the order of priority of those mortgages shall be determined by the order of registration. [https://laws.e-gov.go.jp/law/129AC000000089#Mp-Pa\\_2-Ch\\_1](https://laws.e-gov.go.jp/law/129AC000000089#Mp-Pa_2-Ch_1), accessed 05/5/2025.

<sup>42</sup>Secured Transactions, n.d

<sup>43</sup>The registration and search portal for movable property transfer and receivables registration managed by the Ministry of Justice, <https://www.touki-kyoutaku-online.moj.go.jp/>.

system for movable property and receivables, enhancing user access and public transparency. This digital infrastructure allows any party—including creditors, debtors, and potential investors—to search registration records or file notices electronically. Such openness aligns with global trends favouring public accessibility of registries, as it reduces information asymmetry and helps combat fraud or double-pledging of assets. As noted earlier, Campa et al. have averred that international best practices hold that:

“ideally, the registry should be accessible online around the clock to anyone, without the need to prove the parties’ consent to perform a registration. Personal appearance by one or both parties should not be required because it precludes remote registration (by an electronic interface, email, fax, or mail) and impedes use of the registry.”<sup>44</sup>

This position is in line with UNCITRAL recommendation 54 (f).<sup>45</sup>

This model contrasts with Vietnam's current system, which remains heavily reliant on manual registration procedures and lacks interoperability between institutional actors. Japan's efforts thus highlight the importance of administrative modernisation as a prerequisite for legal reform

In recent years, Japan has embarked on further structural reform of its secured transaction laws, particularly Book III of the Civil Code. In 2021, the Legislative Council of the Ministry of Justice established a dedicated committee for secured transactions reform, supported by three research groups affiliated with major regulatory agencies: the Ministry of Justice (MoJ), the Financial Services Agency (FSA), and the Small and Medium Enterprise Agency (SMEA).<sup>46</sup> These groups submitted competing proposals addressing both structural and procedural shortcomings in the current legal regime. One key innovation emerging from these discussions is the concept of “notice registration,” which focuses not on perfection per se, but on resolving priority conflicts between security interests. This reform concept introduces a dual-track system: one track adhering to the conventional

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<sup>44</sup>Campa, Croci Downes, and Hennig, *Making Security Interests Public*, 6.

<sup>45</sup>UNCITRAL, “UNCITRAL Legislative Guide on Secured Transactions,” 21.

<sup>46</sup> Souichirou Kozuka & Noriyuki Aoki (2022), Reform of the secured transactions law in Japan: the form and function tested against the global standard, *Uniform Law Review*, p.265.

rule of perfection, and another allowing “priority registration” to establish the precedence of secured claims in advance of their actual enforcement.<sup>47</sup> This shift toward notice-based registration reflects global best practices, particularly those recommended by UNCITRAL and exemplified in systems like Article 9 of the U.S. Uniform Commercial Code. By enabling early disclosure of security interests, notice registration strengthens transactional transparency and reduces the uncertainty that can discourage lending. For a developing legal system like Vietnam’s, such mechanisms could bridge the gap between formal perfection rules and practical enforceability, creating a more navigable and user-friendly secured transactions environment.

Although Japan’s legal framework is still evolving, it already provides a sophisticated infrastructure for public access to registration data, particularly through its digital platforms. Registration services are widely accessible, allowing any stakeholder to file or search records with relative ease. This openness reinforces the role of registration as not just a legal formality, but a crucial public function that enhances legal visibility, reduces risk, and supports economic confidence. Vietnam, by comparison, lacks such user-centric design in its registry system, where regional fragmentation and bureaucratic hurdles continue to undermine access to timely and reliable information.

Overall, Japan’s experience illustrates that secured transaction registration is not merely a procedural requirement but a cornerstone of a transparent, functional market economy. The country’s reforms showcase how legal specificity and administrative efficiency can be balanced to create a registry system that upholds both private rights and public trust. For Vietnam, adopting elements of Japan’s approach—particularly the digitisation of registry services and the introduction of notice-based priority mechanisms—could significantly improve information accessibility, reduce legal disputes, and stimulate credit market growth.

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<sup>47</sup>The MoJ Pre-Report, p. 78. It provides two options. An option under which only the general priority rule will be accepted is called [Option 3.2.1.1], whereas the other option under which both perfection under the general priority rule and the “priority filing” rule is accepted is called [Option 3.2.1.2].

## **Agencies Implementing Registration and Providing Information on Security Measures Under Vietnamese Law**

In Vietnam, the legal framework for the registration of security measures is primarily governed by Article 298 of the Civil Code 2015, as further elaborated in Decree No. 99/2022/ND-CP dated November 30, 2022. These regulations outline not only the conditions under which security measures must be registered but also the role of registration in protecting legitimate rights and interests in secured transactions. Registration serves multiple legal and practical functions: it affirms the rights of secured creditors, publicises legal claims on assets, and lays the foundation for asserting payment priority in the event of asset enforcement. While formal registration is a necessary precondition for third-party effectiveness, the legal system also recognises other bases for determining priority—most notably, physical possession or control over the secured asset, which continues to play a complementary role in Vietnamese practice.<sup>48</sup> Equally important within this legal architecture is the principle of transparency. According to Clause 6, Article 8 of Decree 99/2022/ND-CP, the right to access information on registered security measures is not restricted solely to the registrant. It is extended to any relevant agencies, organisations, or individuals who seek to understand the legal status of an asset or verify the existence of encumbrances. This approach reflects a growing recognition of access to registry information as a public good, one that not only facilitates informed decision-making in credit and commercial transactions but also underpins legal certainty in asset-based lending.

Responsibility for both registering security measures and providing related information rests with a diverse network of specialised registration agencies, each assigned based on the nature of the secured asset. These implementing bodies form a complex administrative matrix that reflects Vietnam's sector-specific approach to asset governance. Among the key entities involved are the Land Registration Office and its local branches; the Civil Aviation Authority of Vietnam; the Vietnam Maritime Administration and its subordinate Maritime Port Authorities and Sub-Departments; the Center for Registration of Transactions and Assets (under the Ministry of Justice); and the Vietnam Securities Depository and Clearing Corporation. Each

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<sup>48</sup>Do Van Dai (Editor) (2016), *Scientific commentary on new points of the 2015 Civil Code*, Hong Duc Publishing House, Hanoi, p. 366.

of these institutions operates under a distinct regulatory framework and procedural regime, shaped by the type of asset being registered and the legal interests at stake.<sup>49</sup> In the following subsections, this paper examines the role, functions, and limitations of each of these registration agencies. Through this analysis, we aim to assess the institutional strengths and procedural inefficiencies currently affecting information access in Vietnam's secured transactions environment. Understanding how these agencies interact with registrants and the public is essential to identifying gaps in legal harmonisation and opportunities for system-wide reform—especially in the direction of greater centralisation, digitalisation, and interoperability.

### **Land Registration Office and Land Registration Office Branches**

In Vietnam, the Land Registration Office (LRO) and its branches serve as the primary institutions responsible for implementing and administering the registration of security measures concerning land use rights and assets attached to land. This role is formally established in Clause 1, Article 10 of Decree No. 99/2022/ND-CP, which authorises the LRO—under the provincial Department of Natural Resources and Environment—to register and provide information related to secured transactions involving immovable property. These responsibilities are framed within the broader scope of Article 25 of the same decree, which elaborates on the categories of property subject to registration. The institutional mandate of the LRO is further clarified by Clause 1, Article 13 of Decree No. 102/2024/ND-CP, issued on July 30, 2024. The decree characterises the LRO as a public service unit under provincial-level management, tasked with a wide array of land-related functions. These include registering land transactions, issuing certificates of land use rights and ownership of immovable property, conducting cadastral surveys, maintaining and updating cadastral maps, managing and operating land information systems, and providing public services that support land administration. This diverse portfolio positions the LRO as a central authority not only in legal registration but also in the digitisation and dissemination of land-related data, which is critical for promoting transparency and legal certainty in secured transactions.

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<sup>49</sup>Clause 6, Article 8 of Decree 99/2022/ND-CP.

Substantively, the cases in which the LRO handles registration span both mandatory and voluntary registrations, reflecting the legal system's dual emphasis on obligation and flexibility. Registration is compulsory in transactions involving mortgages of land use rights, houses, and other certified assets affixed to land. It is also required in instances where land or land-attached assets are the subject of mortgage under various categories of investment projects, such as residential housing, infrastructure, agriculture, or forestry—especially when these projects are implemented on land allocated or leased by the State under payment-based terms. The LRO also processes changes or cancellations related to these registrations. These mandatory provisions serve to legally publicise secured interests, offering protection to third parties while supporting the enforceability of mortgage rights in the event of disputes.

In parallel, the legal framework recognises a category of registrations that may be carried out upon the request of involved parties. These include mortgages on future properties not yet constructed or completed, existing assets affixed to land that are not subject to compulsory ownership registration, and transitional registrations—such as converting a mortgage on a property right under a housing purchase contract into a mortgage on the completed physical property. As per Decree No. 99/2022/ND-CP of 30<sup>th</sup> November 2022 on registration of security interests, article 28 in Vietnam, the following cases must register secured transaction.

- 1) Mortgage of land use rights;
- 2) Mortgages of houses or other land-attached assets if the ownership thereof has been stated in certificates.
- 3) Mortgage of investment projects for house construction, investment projects for construction of non-housing works, investment projects in agriculture, forest development projects.<sup>50</sup>

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<sup>50</sup>Decree No. 99/2022/ND-CP; Ting Nguyen, Nhat Nguyen & Uyen Tran, “Vietnam: 21 frequently asked questions and answers about the registration of secured transaction or existing land-attached assets,” *BLawyers*, 15<sup>th</sup> June 2023. <https://www.blawyersvn.com/vietnam-21-frequently-asked-questions-and-answers-about-the-registration-of-secured-transaction-for-existing-land-attached-assets/>

Other optional registrations include notices of asset enforcement, as well as the amendment or cancellation of previously registered transactions. While these provisions offer flexibility and accommodate commercial realities, they also introduce legal and procedural ambiguities that can vary significantly across jurisdictions. For example, it has been argued that Decree 99/2022 has not explicitly stipulated whether the time registration of enforcement or amendment is compulsory or optional, hence some registrars have been noted to treat enforcement notices as mandatory for repossession while others treat them as voluntary. Another ambiguity that has been noted is that the registry provides for online, postal or in-person filing, yet the requisite supporting documents could differ from office to office. For example, you could have an instance where an office requires a notarised document, while another provides that a digital copy would suffice. Sometimes, a lacuna occurs in law where it is silent on the priority of enforcement notices and transfers. This lacuna could trigger disputes because third parties might raise priority disputes if the enforcement is registered after the sale process kicks off.<sup>51</sup>

As a result, the application of registration standards remains uneven, with the potential to undermine the predictability and transparency that secured transaction systems are intended to ensure.

Despite these comprehensive responsibilities, the effectiveness of the LRO system in practice depends heavily on the robustness of its land information infrastructure and the degree to which it can provide timely, accurate, and accessible data to interested parties. Although Vietnam has made significant progress in developing digital platforms and electronic land records, public access to registration data—especially for third-party searches—remains relatively limited compared to more advanced jurisdictions. For instance, while Japan’s secured transactions registry still lacks a unified system, it has adopted decentralised but specialised digital tools that allow for online searches and broader user access. By contrast, Vietnam’s system continues to be hampered by administrative fragmentation and inconsistent digital adoption across provinces.

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<sup>51</sup>IFC–World Bank report “Vietnam: Increasing Access to Credit Through Collateral and Secured Transactions Reform,” p. 34–37; Vietnam Business Forum Legal Working Group 2023 submissions.

Overall, the Land Registration Office and its branches occupy a crucial position in the implementation of secured transactions involving land and land-attached assets. Their legal and administrative functions provide the foundation for a functioning security interest regime. However, to fully realise the potential of this institutional architecture—particularly in ensuring access to information and protecting third-party interests—Vietnam must invest in technological modernisation, standardise registration practices, and move toward a more transparent, user-oriented system that aligns with international standards. The importance of ease of access to information for a secured transactions regime to function efficiently, as seen earlier in UNICTRAL recommendation 54 (f) is that all parties be able to determine with a reasonable degree of certainty the extent of the rights of a grantor and third parties in assets to be encumbered.<sup>52</sup>

### **Civil Aviation Authority of Vietnam**

The Civil Aviation Authority of Vietnam (CAAV), operating under the Ministry of Transport, is the designated agency responsible for the registration of security measures involving aircraft. This authority is conferred under Clause 2, Article 10 of Decree No. 99/2022/ND-CP, which specifies that the CAAV is both the registering body and the official source of information regarding secured transactions that involve aircraft as collateral. Within the broader legal framework governing secured transactions in Vietnam, the CAAV holds a uniquely specialised role, being the sole agency empowered to manage the registration of security interests related to aircraft. Under Article 38 of the same decree, the CAAV is vested with the authority to process a defined set of secured transaction registrations. These include the registration of aircraft mortgages and pledges, the reservation of ownership over aircraft, and the formal notification of enforcement procedures concerning aircraft used as secured assets. The CAAV is also responsible for registering modifications to these entries or cancelling them when required by law or at the request of eligible parties. This scope of authority reflects the high value, complexity, and mobility of aircraft as secured assets, which demand a centralised and technically proficient registration mechanism.

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<sup>52</sup>UNCITRAL, "UNCITRAL Legislative Guide on Secured Transactions," 21

The exclusive role of the CAAV in registering security measures over aircraft serves several important legal and commercial functions. First, it ensures legal certainty by clearly identifying the parties with enforceable interests in aircraft, especially in cross-border transactions or multi-party financing arrangements common in the aviation industry. Second, it enables transparency by maintaining a publicly accessible registry that can be consulted by financiers, lessors, and other interested parties to verify the encumbrance status of an aircraft. Finally, the system supports risk mitigation and dispute resolution by recording priority rights and preserving evidence of compliance with formal requirements for enforceability against third parties.

While the CAAV has established its authority in secured transactions over aircraft, the effectiveness of its registry is also linked to broader developments in aviation law and asset finance regulation. In recent years, global frameworks such as the Cape Town Convention on International Interests in Mobile Equipment and its Aircraft Protocol have provided model rules to standardise the treatment of aircraft security rights across jurisdictions. Although Vietnam is not yet a contracting state to this convention, the growing interconnectedness of aircraft financing markets makes it increasingly important for the CAAV's registry system to align with international best practices. Issues such as registry accessibility, electronic filing, interoperability with international registries, and recognition of interests recorded abroad are becoming central to regulatory reforms in this field.

In this context, the CAAV's role is not only administrative but also strategic. By managing the legal infrastructure surrounding aircraft security registration, the agency contributes to Vietnam's investment climate and its integration into global aviation markets. Continued improvements in the quality of registration services—such as digitalisation, timeliness, and user access—would enhance legal predictability for lenders and investors, thereby supporting broader economic goals tied to aviation growth and infrastructure development. The above observations show that the Civil Aviation Authority of Vietnam functions as a specialised and centralised body for registering security interests in aircraft, with clearly delineated legal powers. Its role is vital for safeguarding the rights of secured creditors and facilitating the transparency of high-value asset transactions. However, to maximise its effectiveness, ongoing reform efforts should prioritise modernisation, harmonisation with international norms, and enhanced

access to information—all of which are essential in promoting the integrity and global compatibility of Vietnam's secured transactions regime in the aviation sector.

### **Vietnam Maritime Administration or Maritime Sub-Departments, Maritime Port Authorities According to the Assignment of the Vietnam Maritime Administration**

In a manner analogous to the registration of aircraft, the registration of ships as secured assets falls under the jurisdiction of designated maritime authorities. Specifically, according to Clause 3, Article 10 of Decree No. 99/2022/ND-CP, the Vietnam Maritime Administration—operating under the Ministry of Transport—serves as the principal agency responsible for registering security measures involving ships. This responsibility may also be delegated to Maritime Sub-Departments or Maritime Port Authorities, depending on the administrative structure assigned by the Vietnam Maritime Administration. Collectively referred to as the Vietnamese Ship Registration Agency, these bodies are entrusted with implementing and managing the secured transaction registration system for maritime assets within their respective jurisdictions. The legal framework for ship registration is shaped not only by Decree No. 99/2022/ND-CP but also by the Vietnamese Maritime Code, which serves as a sector-specific legislative foundation. Together, these legal instruments ensure the procedural integrity and legal recognition of secured transactions involving ships and other floating structures. According to Decision No. 319/QD-BGTVT, which outlines the organisational functions of the Vietnam Maritime Administration, Vietnam currently operates two Maritime Sub-Departments located in Hai Phong City and Ho Chi Minh City. In addition, there are 25 Maritime Port Authorities dispersed across the country, each tasked with performing state management functions over maritime activities at seaports and in coastal regions, as stipulated in Circular No. 32/2019/TT-BGTVT.<sup>53</sup>

The scope of registration authority exercised by the Vietnamese Ship Registration Agency is articulated under Article 41 of Decree No. 99/2022/ND-CP. This provision includes the registration of mortgages

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<sup>53</sup>Clause 2, Article 3 of Decision 319/QD-BGTVT issued on March 27, 2023, stipulating the functions, tasks, powers, and organizational structure of the Vietnam Maritime Administration.

over ships, the reservation of ship ownership, and the registration of notices related to the disposal or enforcement of ship-related security. The agency is also authorised to manage amendments to or cancellations of previously registered entries. Moreover, in cases where non-conventional maritime assets—such as public service vessels, submarines, submersibles, floating warehouses, or mobile rigs—are used as security for obligations, and there is a legal basis or specific request for registration, such assets are to be treated under the ship registration framework provided by Decree 99. The centralised and specialised nature of maritime registration in Vietnam underscores the need for legal certainty and transparency in transactions involving high-value and mobile assets such as ships. By vesting registration authority in sector-specific bodies like the Maritime Administration and its branches, Vietnam ensures that the technical and legal complexities of maritime property rights are handled by institutions with the requisite expertise. This is particularly important given the international dimension of shipping, where vessels frequently operate across borders and may be subject to claims by multiple parties under various legal systems.

In terms of legal effects, the registration of security measures with a competent maritime agency provides public notice of existing encumbrances and helps establish the priority of creditors in the event of default or asset enforcement.<sup>54</sup> It also strengthens the enforceability of security interests against third parties, a function that is critical to maintaining trust and fluidity in maritime financing and leasing markets. Notably, while Vietnam's maritime security registration system is still developing toward full digital integration, the structured and delegated nature of its institutional framework provides a solid foundation for future improvements in service delivery, transparency, and accessibility. The above observations reveal that the Vietnamese Ship Registration Agency, including the Vietnam Maritime Administration, Maritime Sub-Departments, and Maritime Port Authorities, plays a pivotal role in safeguarding the legal interests of parties involved in ship-related secured transactions. By aligning national maritime asset registration practices with broader principles of publicity, legal certainty, and creditor protection, these agencies contribute significantly to the integrity and modernisation of Vietnam's

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<sup>54</sup>Maritime Code 2015, Art. 33(1); Decree 99/2022/ND-CP, Art. 6

secured transactions regime in the maritime domain.

### **Centre for Registration of Transactions and Assets**

The Centre for Registration of Transactions and Assets, operating under the National Registration Agency for Secured Transactions within the Ministry of Justice, serves as the principal authority responsible for the registration of security measures involving movable assets not falling under the jurisdiction of other specialised registration bodies. As stipulated in Clause 5, Article 10 of Decree No. 99/2022/ND-CP, this Centre is tasked with registering and providing information on security interests involving movable property—excluding aircraft, ships, and centrally registered securities—as well as in other cases enumerated in Article 44 of the same Decree. Functioning as a centralised registration body for a broad spectrum of movable assets, the Centre addresses an essential need within the legal and commercial landscape. It fills the gap left by sector-specific registries by offering a structured avenue for the voluntary registration of secured transactions involving movable property, thereby enhancing legal certainty and facilitating the enforceability of such transactions. The establishment of this institution is a response to the increasing demand within society for mechanisms that can affirm and protect legal rights in secured transactions, particularly where public notice of a security interest significantly impacts third-party rights and creditor priority.

In practical terms, when a movable asset does not fall under the purview of other agencies such as the Civil Aviation Authority for aircraft or the Vietnam Maritime Administration for ships, its related security interest is registered at the Centre for Registration of Transactions and Assets. This includes but is not limited to, tangible movable property, certain forms of intangible property, and specific legal rights that are capable of being the subject of a security agreement. The Centre thus plays a pivotal role in ensuring that such transactions are not rendered vulnerable due to the lack of a recognised or accessible registration framework. Article 44 of Decree No. 99/2022/ND-CP outlines the scope of the Centre's registration authority. It encompasses a range of transactions, either registered voluntarily or as mandated by law. These include mortgages over movable assets, reservations of ownership in such assets, and the pledge, deposit, or escrow of movable property under agreements between parties or at the request of the

secured creditor. It also extends to security measures involving securities that are not subject to central registration, including dividends and property rights derived from such securities—provided these rights are not centrally registered themselves. Additionally, the Centre registers security interests over assets temporarily affixed to land, such as annual crops or temporary structures, which due to their movable nature, fall outside the land registration system. It also processes the registration of notices regarding the enforcement or disposal of secured assets and handles any subsequent amendments or cancellations related to previously registered transactions.

The significance of this Centre within Vietnam’s secured transactions regime lies in its capacity to consolidate and formalise legal relationships involving a wide variety of movable assets. Through its operations, the Centre ensures transparency and publicity, two foundational principles that protect the interests of both creditors and third parties. It fosters a climate of legal predictability by allowing stakeholders to assess the risk associated with potential assets, verify encumbrances, and determine the enforceability of claims. Furthermore, the Centre plays a vital role in harmonising Vietnam’s registration practices with international standards, especially in areas such as asset-based lending, equipment leasing, and commercial financing, where movable assets form the primary collateral. In essence, the Centre for Registration of Transactions and Assets represents a cornerstone in the broader effort to build a modern, efficient, and legally robust secured transactions framework in Vietnam. By serving as a comprehensive registry for movable property, it provides the essential legal infrastructure to support commerce, promote creditor confidence, and ultimately contribute to the development of a more dynamic credit market.

### **Vietnam Securities Depository and Clearing Corporation**

The Vietnam Securities Depository and Clearing Corporation (VSDC) plays a specialised and indispensable role in the registration of security measures involving centrally registered securities. According to Clause 4, Article 10 of Decree No. 99/2022/ND-CP, the VSDC is designated as the competent authority responsible for implementing registration and providing information on security interests established over such

securities, following the provisions of the securities law.<sup>55</sup> Established as a state-owned enterprise, the VSDC operates under a one-member limited liability company model with 100% state-owned charter capital. As stipulated in Decision No. 26/2022/QĐ-TTg issued on December 16, 2022, the Corporation possesses full legal personality, its own official seal, and the capacity to maintain accounts in both Vietnamese dong and foreign currencies with the State Treasury, domestic commercial banks, and branches of foreign banks. It is independently managed and financially autonomous, subject to statutory obligations concerning accounting, auditing, statistical reporting, financial disclosures, and compliance with fiscal regulations under Vietnamese law.

From an institutional and functional perspective, the VSDC represents a centralised infrastructure designed to support the registration and clearing of securities-related transactions. Its authority extends to all matters concerning the establishment, registration, and publicity of security interests in centrally registered securities, thus ensuring both legal certainty and market transparency. By serving as a single, specialised registry, the VSDC not only reinforces the enforceability of secured transactions in the securities market but also contributes to the integrity and stability of Vietnam's financial system. Operationally, the Corporation maintains its headquarters in Hanoi and operates a branch in Ho Chi Minh City, providing national coverage and access to stakeholders across Vietnam's principal financial centres. Through this institutional setup, the VSDC is uniquely positioned to manage a high volume of security transactions efficiently, while also upholding the legal framework that governs the capital market. Its centralised role is particularly important in the context of risk mitigation, enabling creditors, investors, and regulatory bodies to verify existing encumbrances, establish creditor priority, and monitor compliance with financial obligations. The current study notes that the Vietnam Securities Depository and Clearing Corporation serves as the authoritative body for the registration of secured transactions involving centrally registered securities. It does so within the framework of securities law and broader national regulations on financial disclosure and market integrity. This function is essential not only for protecting

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<sup>55</sup>Clause 1, Article 1 of Decision No. 26/2022/QĐ-TTg issued on December 16, 2022, on the establishment, organization, and operation of the Vietnam Securities Depository and Clearing Corporation.

the rights of parties involved in secured transactions but also for fostering transparency, confidence, and efficiency within Vietnam's securities market.

### **Deficiencies in Accessing Information Through Registration of Security Interests Under Vietnamese Law and Improvement Solutions Based on Lessons From Japan**

This section critically examines existing limitations in Vietnam's framework for registering security interests, focusing on the accessibility and legal effect of such registrations. It also proposes reform solutions inspired by Japan's experience, particularly in clarifying legal effects and enhancing digital infrastructure for efficient access to security interest information.

### **Deficiencies in Accessing Information Through Registration of Security Interests Under Vietnamese Law**

Although Vietnamese law has gradually evolved to align with international standards on security interest registration, particularly through the enactment of the 2015 Civil Code, significant legal and practical shortcomings persist. These deficiencies hinder both the effectiveness of security interest registration and third-party access to information, undermining legal certainty and transparency. A central issue concerns the legal effect of registering security transactions. Globally, two primary models of registration exist: the constitutive system, in which rights arise only upon registration, and the declaratory system, where rights are established through agreement but registration serves to protect them against third parties.<sup>56</sup> However, Vietnamese law remains ambiguous on which model it adopts. Clause 1, Article 298 of the 2015 Civil Code states that “*registration is a condition for the security transaction to be effective only in cases where the law provides,*” without clarifying whether “*effective*” refers to the creation of the right itself or its enforceability against third parties. This ambiguity hampers interpretation and implementation. The uncertainty

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<sup>56</sup>Ho Quang Huy (2025), *Some basic contents about measures to secure the performance of obligations in the 2015 Civil Code*, <https://tuoitrebtp.moj.gov.vn/Pages/chi-tiet-tin.aspx?ItemID=45&l=Traodoinghiencuu>, access on 08/5/2025.

extends to other legal instruments. For instance, Clause 1, Article 29 of the Law on Civil Aviation (as amended in 2014 and 2022) requires registration of rights in aircraft, such as mortgages and pledges, but does not specify whether such registration establishes the right or merely renders it opposable to third parties. The same lack of clarity appears in the Maritime Code. Article 39 stipulates that ship mortgages become effective once recorded in the national registry, yet it remains unclear whether this registration creates the right or simply publicises it. By contrast, for retention of ownership, Clause 3, Article 331 of the 2015 Civil Code explicitly states that effectiveness against third parties arises upon registration, highlighting an inconsistency in the treatment of similar types of secured transactions.

Moreover, Clause 1, Article 22 of Decree 21/2021/ND-CP provides that notarised or authenticated security contracts become effective from the time of notarization or authentication. This suggests that certain secured transactions acquire legal effect through formal validation, not registration, thereby raising further questions about the function of registration in the broader legal framework.<sup>57</sup> This is compounded by Clause 1, Article 5 of the Notarization Law 2024, which confirms that notarial acts are effective from the moment the notary signs and seals the document. In light of Clause 2, Article 3 of the Civil Code,<sup>58</sup> which asserts that civil agreements, including those securing obligations, must be respected by all third parties regardless of registration, the necessity and scope of registration become even more uncertain.<sup>59</sup> Another major deficiency lies in the accessibility and transparency of registered information. A fundamental purpose of security interest registration is to publicise information about encumbered assets so that third parties can make informed decisions.<sup>60</sup> This principle is supported by Clause 3, Article 106 of the Civil Code, which mandates that property registration be made public. Similarly, Clause 4, Article 54 of Decree 99/2022/ND-CP emphasises the need to build and manage databases that connect and share data on registered

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<sup>57</sup>Clauses 2 and 3, Article 331 of the Civil Code 2015: “2. Retention of ownership must be established in a separate document or recorded in the purchase contract; 3. Retention of ownership generates effectiveness against third parties from the time of registration.”

<sup>58</sup>Clause 4, Article 400 of the Civil Code 2015.

<sup>59</sup>Article 401 of the Civil Code 2015.

<sup>60</sup>Clause 1, Article 5 of the Notarization Law 2024.

security interests.<sup>61</sup> Nevertheless, practical implementation has lagged, largely due to the fragmentation of registration authorities and limited technical infrastructure.<sup>62</sup> The existence of multiple, uncoordinated registration bodies prevents the consolidation of information and frustrates attempts to develop a unified electronic portal.<sup>63</sup> Moreover, the continued preference for in-person registration reflects both user habits and the system's inability to provide user-friendly digital alternatives, thereby reducing overall efficiency and legal transparency.

## **Recommendations for Improving Regulations on Accessing Information Through Security Interest Registration**

### ***Based on Experience From Japan***

Drawing on Japan's regulatory experience, several recommendations can be proposed to enhance Vietnam's legal and institutional framework for registering security interests. First, there is an urgent need to clarify the legal consequences of registration under the 2015 Civil Code. Specifically, Clause 1, Article 298 should be revised to eliminate ambiguity. A suggested amendment could read: "*Registration of security measures is a condition for the transaction to generate effectiveness against third parties in cases where the law provides.*" This revised wording would reflect a declaratory registration model and provide clarity for legal practitioners, registries, and third parties. Furthermore, specialised laws should include provisions that clarify the distinction between contractual effectiveness and opposability to third parties. Such reforms would harmonise Vietnam's legal framework with international best practices and help resolve long-standing inconsistencies, especially between types of secured transactions involving similar assets.

Second, Vietnam must prioritise the development of a modern, centralised digital platform for registering and accessing security

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<sup>61</sup>Dinh Trung Tung (Editor) (2017), *Basic new points of the 2015 Civil Code*, Labor Publishing House, p. 156.

<sup>62</sup>Le Thi Nguyet Chau (Editor) (2018), *Textbook on securing obligations*, Can Tho University Publishing House, p. 159.

<sup>63</sup>Do Thi Hoa (2017), *Renovating the approach to registration of security measures in the Civil Code and issues for the current administration*, Journal of State Management, No. 255, p.40.

interest information. This initiative aligns with the objectives outlined in Resolution No. 57 of the Politburo, which emphasises technological innovation and digital transformation as national priorities. In practical terms, the government should develop integrated software that links all relevant registration agencies and streamlines procedures. This system should enable real-time synchronisation of data, support online registration, and facilitate secure information exchange between competent authorities. Such a platform would significantly enhance transparency, reduce registration time, and allow stakeholders, including financial institutions and investors, to quickly verify encumbrances on movable and immovable assets. To ensure effective implementation, training and professional development must be institutionalised. Quarterly training sessions should be organised for officials responsible for security interest registration, covering both conventional and digital procedures.<sup>64</sup> These programs should also include mechanisms for reporting and evaluating the effectiveness of registration processes. Regular assessments will help identify weaknesses and promote continuous improvement. In addition, public awareness campaigns and stakeholder engagement initiatives are essential to encourage the transition from manual to electronic registration.

## CONCLUSION

Registration of security transactions is a vital mechanism for securing the performance of obligations by publicly affirming the rights of security recipients over secured assets. This process provides individuals and organisations with transparent and reliable information, which is essential for making informed decisions before entering into agreements. One critical aspect that this study acknowledges is the fact that both Japan and Vietnam have undertaken law reform on the subject of secured transactions within the past 20 years. This approach indicates that the legal frameworks of both Japan and Vietnam are

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<sup>64</sup>Electronic Government Newspaper, Full text of Resolution 57-NQ/TW on breakthrough development of science, technology, innovation, and national digital transformation, <https://xaydungchinhsach.chinhphu.vn/toan-van-nghi-quyet-ve-dot-pha-phat-trien-khoa-hoc-cong-nghe-doi-moi-sang-tao-va-chuyen-doi-so-quoc-gia-119241224180048642.htm>.

already applying some concepts of modern principles in relation to secured transactions. Drawing on Japan's advanced experience in developing integrated, digital registration systems, Vietnam can significantly enhance its registration framework. Japan's model of centralised, efficient online registration platforms offers valuable lessons in improving accessibility, data management, and inter-agency coordination. By adopting similar technological innovations and administrative approaches, Vietnam can build a more transparent, efficient, and user-friendly registration system. Such improvements will not only strengthen the legal certainty and protection of security interests but also create a more stable and attractive environment for both domestic and foreign investors. Ultimately, leveraging Japan's expertise and best practices can accelerate Vietnam's progress toward a modernised registration infrastructure that reduces transaction costs, improves information accuracy, and supports sustainable economic development.

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