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Indonesia

New Procedures for the Issuance of SKPT from the National Land Office

インドネシアで不動産の権利関係を確認する場合、権利者から権利証書の提示を受け、管轄の土地局を訪問し、そこで保管されている権利証書との整合性を確認するというプロセスが一般的にとられてきたが、今般一連の確認手続をオンラインで行うことが可能となった。未だ全ての地域で利用可能な段階には至っていないが、これが実務的に利用可能になれば今後の不動産取引の迅速化にも繋がることが期待される。

Introduction

In real estate transactions, it is common for the investors or land purchasers to conduct land due-diligence to confirm the accuracy, correctness, and originality of the land certificate and to obtain the relevant information related to the land, for instance: whether there is any encumbrance on the said land or whether the land is under dispute between relevant parties. In order to conduct the land check process, the applicants are required to submit an application to the land office where the plot of land is located. This procedure takes time as the applicants need to wait for the outcome, which can take 1-2 weeks depending on how fast the land office issues the result.

In order to streamline the land check process and to enhance the use of electronic-based information in keeping the record of land-related information, the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (“BPN”) has established the Land Registration Certificate Service System. Following the introduction of the system, the BPN has issued Technical Guidelines No. 3/JUKNIS-HK.02/IV/2022 that will serve as a set of guideline and instruction for the use of such new system (“BPN Guidelines”). In general, the BPN Guidelines set out the mechanism of the application to obtain the Land Registration Certificate (“SKPT”) through the electronic system maintained by the BPN.

Procedure of Online Submission to obtain the SKPT

For online submission, the applicants shall go through the following procedures:

1. The applicant must register themselves on a web-based application maintained by the BPN.
2. The applicant must fill the relevant information related to the plot of land, such as: location, land certificate number, through the app;

3. The applicant must submit the scan copy of the land certificate, ID card, and power of attorney (if necessary);
4. Upon the receipt of application, the system will issue the payment instruction for the applicant to pay the official fees of issuance of SKPT. According to the Government Regulation No. 128 of 2015, the official fee for the issuance of SKPT is IDR 50,000 / SKPT;
5. The applicant must pay the SKPT fee within 3 calendar days from the issuance of the payment instruction, otherwise the application will be automatically cancelled and the applicant will be required to submit a new application;
6. Once the payment is confirmed by the system, the application will be processed by the BPN officer by conducting a verification of the documents submitted and the information filled by the applicant;
7. If all documents are deemed sufficient and confirm with the data maintained by the BPN, the BPN will issue the SKPT to the applicant;
8. However, if the documents are not sufficient or the information is not in line with the data maintained by the BPN, the BPN will invite the applicant to directly visit the BPN to bring over the required documents for validation purpose. After the manual validation is completed, the BPN will issue the SKPT to the applicant.

Status of Offline Application

While the new online system has been introduced, the BPN Guideline stipulates that applicants are still allowed to directly submit the application for issuance of SKPT at the BPN office. So far, there is no clarity as to whether the BPN will completely shift to online application.

Implementation in Practice

Based on our discussion with some Land Deed Officers (PPAT) in Jakarta, it is correct that now SKPT can be applied through the online system administered by the BPN. However, the integration from manual (offline) data to electronic data has not been fully synchronized, hence in some cases the PPAT are still required to visit BPN office for validation purpose. Even though it may take some time for the government to complete the integration of the land data, the shifting to electronic system can be considered as a major development to expedite SKPT process in Indonesia so that the relevant parties do not need to physically visit the BPN office and can obtain the SKPT in a relatively shorter time.

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Vietnam

Court Precedents in Vietnam

ベトナムにおいて判例制度が始まったのはここ7~8年のことであり、いわゆる判例といえるものはそれまでは存在しなかった。本稿では、ベトナムにおける判例制度についての概要及び現在の判例を巡る状況についてご紹介したい。

I. Introduction

In many countries, where a court considers a case, it would be required to follow (or at least take into account) the rules or principles decided by other (generally, higher) courts in previous similar cases. Meanwhile, in Vietnam, the judges have been deciding cases based on application of legal principles and have traditionally not been required to follow or consider, court precedents¹. However, since 2015, Vietnam has been taking steps to recognize and apply court precedents with an intent to ensure consistent application of law in adjudication. For the first time, the new Civil Code and the Civil Procedure Code which were passed in 2015 require the courts to apply, among other things, court precedents to settle cases where there are no express applicable legal provisions². Several legal instruments have been issued to set out regulations regarding court precedents.

This article discusses the current regulations of Vietnam regarding the announcement and application of court precedents.

II. Selection of Court Precedents

Under the Law on Organization of People's Courts 2014, the People's Supreme Court has been assigned to select certain relevant cassation decisions and other judgments which have come into effect, to summarize and develop them into court precedents for courts to study and apply in trial³.

Under the Resolution No. 04/2019/NQ-HDTP dated 18 June 2019 of the Council of Justices of the Supreme People's Court ("Resolution 04"), a court precedent is defined to mean arguments and rulings in a legally effective judgment or decision of the courts that is selected and published by the Supreme People's Court in order for other courts to study and apply when deciding later cases. The criteria and process for selecting court precedents are set out in the Resolution 04.

Accordingly, one of the most important criteria to select a court precedent is that it must be able to clarify ambiguous provision(s) of the law which have different interpretations, to analyze and explain legal issues or events, and to specify legal principles and guidelines to be followed in a specific situation or equality to be applied in issues which are not governed by any provisions of the law.

The judgements proposed to be selected as court precedents will be reviewed by the Court Precedent Advisory Board⁴ and then decided by a majority decision in a meeting of the Council of Justices of the Supreme People's Court with the attendance of at least ¾ of its members. The court precedents are published on the website of the People's Supreme Court (<https://anle.toaan.gov.vn/webcenter/portal/anle/home>).

It is reported that from 2016, 1,531 judgments have been considered for being selected as court precedents but as at 30 June 2022, only 52 court precedents have been issued of which only 10 are commercial cases. As per information available on the website of the People's Supreme Court, another 5 precedents are expected to be published soon.

III. Application of Precedent

Once a court precedent is published, Resolution 04 requires the judges and juries (if any) to study and apply the

1 It is noted that from time to time, the Supreme Court has provided guidance for certain specific legal issues under its resolutions. Such resolutions are also regarded as legal regulations that courts must follow.

2 The Criminal Proceeding Code also has similar provision.

3 Article 22.2 of the Law on Organization of People's Courts

4 This board is set up by the Chief Justice of the People's Supreme Court.

precedent to settle similar cases so that the two cases with similar facts have the same settlement results. If the precedent is not applied in a case with similar facts, the case settlement tribunal must provide explanation in the judgment.

However, according to Article 45 of the Civil Procedure Code, it seems that the court can only apply court precedents to settle the case if there is no legal provision applying to the case and the court is unable to apply established customs or legal analogy to the case.

At this stage, the application of court precedents by courts in practice is very limited. According to the report of the People's Supreme Court dated 8 January 2022, during the period between 1 October 2020 and 30 September 2021, among 436,660 cases settled, the courts applied court precedents only to approximately 200 cases⁵. It is also reported that from 2016, court precedents have applied to only approximately 1,200 cases. It is expected that more court precedents will be published in the near future and they will be widely applied.

IV. Annulment of Precedents

Precedents will be annulled if they are no longer suitable due to changes in the laws or when the Council of Justices of Supreme People's Court decides the annulment of precedent in certain circumstances specified in Resolution 04.

If the Chief Justice of the Supreme People's Court receives a proposal⁶ for annulment of a court precedent, he must, within 30 days, hold a meeting of Council of Justices of Supreme People's Court to consider the annulment of the precedent. The Council of Justices of the Supreme People's Court shall vote on the annulment in the same manner of selecting the precedents (as discussed above). However, so far, no precedents have been annulled.

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⁵ This report is available in the website of the People's Supreme Court

⁶ Article 10.1 of the Resolution 04 states that "individuals, agencies, organizations and/or courts" can propose the People's Supreme Court if they think the precedents fall into circumstances of annulment specified in the Resolution 04. This provision suggests that any person can propose the annulment but it is unclear as to whether the Supreme Court can actually consider all proposals.

Philippines

Guidelines for Online Businesses in the Philippines

新型コロナウイルスの感染拡大は消費者の行動に大きな変化をもたらし、フィリピンにおいてもイー・コマース取引が急速に拡大しつつある。それを受けて、フィリピンでは 2022 年 3 月 4 日、フィリピン貿易産業省（DTI）、知的財産庁（IPOPHL）、国家プライバシー委員会（NPC）、保健省、農務省、環境天然資源省の共同で、オンラインビジネスに関するガイドラインを発表した。本稿ではこのガイドラインについて概説する。

Guidelines for online businesses were issued on 4 March 2022 through Joint Administrative Order No. 22-01 (the “**Guidelines**”) by the Philippine Department of Trade and Industry (“**DTI**”), Intellectual Property Office (“**IPOPHL**”), National Privacy Commission (“**NPC**”), Department of Health, Department of Agriculture, and Department of Environment and Natural Resources.

Overview

Acknowledging that the COVID-19 pandemic has disrupted traditional business models and accelerated the growth of e-commerce in the Philippines, the Guidelines aim to increase consumer confidence in e-commerce transactions by ensuring that online businesses are conducted in line with laws and regulations.

The Guidelines generally reiterate and consolidate laws and regulations applicable to online businesses and consumers. It covers all online businesses (which includes e-commerce platforms, e-marketplaces, e-retailers, and online sellers or merchants) whether natural or juridical, formal or informal, engaged in electronic transactions, including but not limited to the sale, procurement or avilment of goods, digital content / products, digital financial services, entertainment services, online travel services, transport and delivery services and education services.

Key Aspects of the Guidelines

Apart from requiring all online businesses to comply with all Philippine laws, rules and regulations, including laws which protect the public against hazards of health and safety, the Guidelines also highlight the following:

a. Protection of online consumers from deceptive, unfair and unconscionable sales and practices

Deceptive, unfair and unconscionable sales and practices are already penalized under Republic Act No. 7294 or the Consumer Act and Republic Act No. 8293, as amended or the Intellectual Property Code. However, the Guidelines enumerate additional acts which may be considered as deceptive sales and practices. These include cases when the seller or supplier of a product is not duly authorized by the trademark holder to act as distributor / retailer/ seller of the product, or when consumer product or service is misrepresented as being of a particular standard, quality, grade, style, model, shape, etc., or as being propriety, having regulatory approval or legally compliant with existing laws or regulations, when it is not.

The Guidelines also provide clarification on the circumstances to be considered in determining whether a sales act or practice is unfair or unconscionable. Among such circumstances are, when the electronic transaction was entered into “the price grossly exceeded the price at which similar products or services were readily obtainable in similar transactions by like consumers”, or when a consumer was induced to enter into excessively one-sided transaction in favor of the seller or supplier.

b. Warranties and standards to be observed in product listing

Under the Guidelines, online businesses shall comply with the pertinent warranty and labelling requirements under the Civil Code and Consumer Act. Product listings of e-retailers or online merchants on e-marketplaces or platforms must reflect the prices of the product or services in Philippine Pesos and display payment policies, delivery options, returns, refunds and exchange policy and other charges, if applicable. The total price must be clearly and accurately indicated in high visibility areas, preferably near the product title or add-to-cart buttons. The Guidelines also clarify that the practice of providing prices through private or direct messages to consumers is considered a violation of the Republic Act No. 71, as amended or the Price Tag Law.

Among other requirements, online businesses are required to exhibit or indicate the corresponding license or permit number for the sale of items which are regulated by government agencies, and it shall generally be unlawful for e-commerce platforms, e-marketplaces and the like to advertise any food, drug, cosmetic, device, or hazardous substance unless the product is duly registered and approved by the relevant government agency for use in any advertisement.

c. Data privacy compliance and considerations

Online sellers, merchants and e-retailers are expected to handle all personal data of consumer with utmost care and respect and comply with Republic Act No. 10173 or the Data Privacy Act. They shall publish on their websites or online platforms a privacy notice which shall provide consumers with information regarding the purpose and extent of processing of their personal data in relation to their transaction, including if there is any data sharing, profiling, direct marketing, or automated decision-making.

Online businesses shall also avoid online spamming and allow consumers to choose whether they wish to receive commercial messages and provide adequate mechanisms for them to opt-out from the same. Online merchants that operate their own online application or similar platforms are also prohibited from asking unnecessary permissions from consumers.

d. Liabilities of online businesses and enforcement actions

Defective product or services

In case of defective product and services, the Consumer Act applies and online sellers or merchants shall be held liable when it is not possible to identify or there is no clear identification of the manufacturer, builder, producer or importer of a defective product, or when perishable goods are not adequately preserved.

Intellectual property violations

E-commerce platforms, e-marketplaces and the like shall verify if the goods sold by online sellers or merchants and e-retailers are original, genuine, and/or licensed. They may be required by holders of intellectual property rights (“**IP Holder**”) to take-down posts of infringing goods or contents. In the event the e-commerce platform fails to respond to take down requests of the IP Holder, the IP Holder may notify the IPOPHL for appropriate action. Complaints regarding counterfeit and pirated goods may also be brought before other government agencies having jurisdiction over the same (e.g., the Optical Media Board, Food and Drug Administration, etc.).

Enforcement action by government agencies; extent of liability

In case of prima facie violation of pertinent laws or regulations committed in an online post by the online seller or merchant, e-retailer, e-commerce platform, e-marketplace and the like, the relevant government agency shall issue a notice giving the violator a maximum of 3 calendar days to take down such post, without prejudice to filing the appropriate administrative actions. Failure to take down the post within such period shall be considered an intentional and overt act that aggravates the offense. While a take down notice may be appealed following the procedures set under applicable laws, no reposting will be allowed pending appeal.

E-commerce platforms, e-marketplaces and the like shall be treated and held liable in the same manner as online sellers or merchants and e-retailers when the latter commits any violation of the laws implemented by the Guidelines. On the other hand, delivery platforms shall only be liable in the same manner as online sellers or merchants and e-retailers when they are carrying or delivering restricted, prohibited or infringing items.

Responsibility of e-commerce platforms and e-marketplaces in enforcement actions

E-commerce platforms and e-marketplaces have the authority to enforce the rights of the IP Holder in accordance with their respective internal mechanisms. The Guidelines recognize that the usual modes of enforcement by platforms include temporary or permanent suspension or restriction of the infringing seller’s accounts.

E-commerce platforms and e-marketplaces are therefore directed to enact and strictly enforce internal mechanisms or rules aimed to prohibit online sellers or merchants, previously found administratively liable for violation of pertinent laws and regulations, from selling, posting or offering items for sale on their respective platforms. Otherwise, the failure to enact or strictly enforce such internal mechanisms shall be construed as an intentional and overt act which aggravates the offense.

Conclusion

The Guidelines emphasize the legal framework under which online businesses operate, and serves as a reminder to online businesses of their obligations and accountability under existing consumer-related laws and regulations. Considering that consumer confidence is key for the growth of any business sector, the Guidelines are a step in the right direction to foster the development of e-commerce in the Philippines.

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