



## VIETNAM



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## New regulation on title retention in Vietnam

The retention of title, a legal concept recognised throughout the world, has now officially become one of the security measures for the performance of obligations in Vietnam. Civil Code No. 91/2015/QH13 dated November 24, 2015, effective from January 1, 2017 (Civil Code 2015) outlines the regulations.

The term “title retention” was mentioned in previous Civil Code No. 33/2005/QH11 dated June 14, 2005, but it is only now that this concept has earned a position as one of the security measures for the performance of obligations.

### Definition and purpose of title retention

Title retention may be a familiar legal concept in many legal systems outside Vietnam. The best generally accepted definition for title retention states that it is a provision in a sales contract of goods that cause the purchaser to fulfil its obligations, mainly relating to payment, otherwise the seller remains in ownership of the goods. The definition of title retention in Civil Code 2015 is essentially in line with the above.

Title retention also has the purpose to protect the benefits of the seller or supplier,

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especially the transactions in which the payment is divided into several instalments. Such transactions contain risks for the seller and makes them a vulnerable party.

### Core contents of title retention

Title retention does not itself take effect automatically, except for the case of a contract with deferred payment or instalment payment clauses. Title retention is considered as a contractual provision. This is to say that it must be made in the sales contract or in separate documents. Such title retention as a security measure may be registered as

agreed by the contracting parties or provided by law, and once so registered, shall be enforceable against third persons as from the time of registration.

The breach in the payment obligation of the purchaser shall lead to the right of the seller to reclaim its property. The seller, in return, has to reimburse the payment already made by the purchaser with the deduction of depreciated value due to use. In case the property is lost or damaged, such loss or damage shall be incurred by the purchaser by way of compensation.

Under Civil Code 2015, the ownership right comprised of the possession right, the using right and the disposition right. The purchaser, as a transferee in a sales contract of goods, shall have the right to possess and use the property, which means that the yield or income derived therefrom shall be at the sole discretion of the purchaser. Since the full ownership right has yet to be transferred, the purchaser within the effective term of title retention, shall have no disposition rights.

The Civil Code 2015 provides three termination cases of the title retention, consisting of the case where the obligation to make payment to the seller has been discharged, or where the seller recovers the property of which the ownership right is reserved, or whereas agreed by the contracting parties.