



LEGAL NEWSLETTER

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The Prominent New Points of the Electronic Transactions Law 2023

In order to keep up with social trends and implement the goal of digital transformation, the National Assembly has passed the Electronic Transactions Law No. 20/2023/QH15 on June 22, 2023 ("**Electronic Transactions Law 2023**"). The Electronic Transactions Law 2023 comes into effect on July 1, 2024, and will have many innovations to gradually recognize the legal value of electronic data, such as regulations on conversion between paper and electronic versions, regulations on electronic certificates, and expansion of the subjects of regulation, etc. This is considered a breakthrough in promoting electronic transaction activities, promoting the development of foreign economic exchange, simplifying administrative procedures, and resolving applications. Some of the prominent new points of the Electronic Transactions Law 2023 that are worth noting are as follows:

1. Amendments and supplements to the scope of regulation

The law only regulates the implementation of transactions by electronic means, and does not stipulate the content, conditions, and forms of the transactions. In cases where other laws regulate or do not regulate that transactions can be carried out by electronic means, the provisions of this Law shall apply. In cases where other laws stipulate that transactions cannot be carried out by electronic means, those provisions shall be followed.

2. Amendments and supplements to new legal terminology

The Electronic Transactions Law 2023 has added several new concepts such as electronic signature, digital signature, electronic signature certificate, electronic contract, data message, etc. The introduction of these new legal concepts is the starting point for regulations recognizing the legal validity of electronic data in particular and electronic transactions in general in the following chapters.



Additionally, the Electronic Transactions Law 2023 has also changed the interpretation of some terms. The "Electronic certificate" is one of the terms that has been changed. Accordingly, an electronic certificate in the Electronic Transactions Law 2023 is understood to be a license, certificate, accreditation, confirmation document, or other approval document issued by a competent authority in the form of electronic data. In contrast, in the Electronic Transactions Law 2005, an electronic certificate was only a data message to certify that an agency, organization or individual is the signer of an electronic signature. Thus, it can be seen that the Electronic Transactions Law 2023 has elevated the legal value of electronic certificates by defining this term as a form of electronic data for licenses, confirmation documents, and others.

The Prominent New Points of the Electronic Transactions Law 2023

3. Supplementing the conversion conditions between data messages and paper documents

Accordingly, Article 12 of the Electronic Transactions Law 2023 stipulates the conditions for data messages to be converted from paper documents and vice versa as follows:

The information in the data message is ensured to be as intact as the paper document and vice versa.

The information in the data message must be accessible and usable for reference (for conversion from paper to data message). It must have information to identify the information system and the manager of the information system that created, sent, received, and stored the original data message for consultation (for conversion from data message to paper document).

There must be a specific symbol to confirm that it has been converted from a paper document to a data message/from a data message to a paper document and the information of the agency, organization, or individual performing the conversion.

In case the paper document is a license, certificate, certification, confirmation document, or other approval document issued by a competent authority, the conversion must meet the prescribed requirements and have the digital signature of the agency or organization that performs the conversion, unless otherwise provided by law. In case the data message is an electronic certificate, the conversion must meet the prescribed requirements and must have the signature, and seal (if any) of the agency or organization performing the conversion following the provisions of law. The information system serving the conversion must have the function of converting from paper documents to data messages.



The Prominent New Points of the Electronic Transactions Law 2023

4. Use and recognition of foreign electronic signatures

In the new period of international integration, as the demand for electronic contracts and international trade is increasing, the requirement for international reliability that protects personal data, and national data, but still meets international treaties is very necessary. To meet this need, the Electronic Transactions Law 2023 has added provisions for **accepting foreign electronic signatures and foreign electronic signature certificates in international transactions**. Specifically, Article 27 stipulates:

Foreign electronic signatures and foreign electronic signature certificates accepted in international transactions are electronic signatures and electronic signature certificates of foreign organizations and individuals not present in Vietnam, which are valid on data messages sent to Vietnamese organizations and individuals.

Organizations and individuals choose and are responsible for accepting foreign electronic signatures and foreign electronic signature certificates on data messages in international transactions.

5. Supplement regulations on the conditions for a digital signature to be an electronic signature

Clause 3 of Article 22 of the Electronic Transactions Law 2023 stipulates that a digital signature is an electronic signature that meets the following requirements:

It confirms the identity of the signatory and affirms the signatory's consent to the data message.

The data used to create the digital signature is uniquely linked to the content of the approved data message.

The data used to create the digital signature is under the sole control of the signatory at the time of signing.

Any changes to the data message after the time of signing can be detected.

It must be guaranteed by a digital signature certificate. In the case of a specialized public service digital signature, it must be guaranteed by a digital signature certificate from an organization providing specialized public service digital signature certification services. In the case of a public digital signature, it must be guaranteed by a digital signature certificate from an organization providing public digital signature certification services.

The means of creating the digital signature must ensure that the data used to create the digital signature is not disclosed, collected, or used for forgery purposes; ensure that the data used to create the digital signature can only be used once; and does not alter the data to be signed.

The Electronic Transactions Law 2023 helps to perfect the legal framework, facilitates the transition of activities to the digital environment, expands the scope of application of electronic transactions to all activities of social life, helps society save much more costs compared to traditional transactions, and brings greater efficiency.

New Points in Decree No. 46/2024/NĐ-CP amending and supplementing certain articles of Decree No. 99/2013/NĐ-CP dated August 29, 2013, of the Government regulating administrative sanctions in the field of Industrial property, which was amended and supplemented by Decree No. 126/2021/NĐ-CP dated December 30, 2021, of the Government

On May 4, 2024, the Government issued Decree No. 46/2024/NĐ-CP amending and supplementing certain articles of Decree No. 99/2013/NĐ-CP dated August 29, 2013 of the Government regulating administrative sanctions in the field of industrial property ("**Decree 99**"), which was amended and supplemented by Decree No. 126/2021/NĐ-CP dated December 30, 2021 of the Government, to take effect from October 1, 2024 ("**Decree 46**"). Accordingly, Decree 46 has many notable supplementary provisions as follows:

1. Supplementing forms of punishment, remedial measures

Decree 46 has supplemented the application of the following remedial measures:

Temporary seizure, compulsory revocation of domain name.

Compulsory distribution or use for non-commercial purposes goods that infringe on trademark or geographical indication.

Compulsory change of enterprise name.

Compulsory expulsion from Vietnamese territory or re-export of imported or in-transit goods that infringe on the trademark or geographical indication; imported materials and means mainly used to produce or trade in goods infringing on trademark or geographical indication after removing the infringing elements on the violated exhibits and means.

Compulsory additions of indications of industrial property.

Compulsory restoration of the initial state.

Compulsory remittance of the illegal profits gained from committing the administrative violation if there are bases to determine the illegal profits; compulsory remittance of an amount equal to the value of the violated exhibits and means that have been sold, dispersed, or destroyed in contrary to the law if there are bases to determine the value of the violated exhibits and means that have been sold, dispersed, or destroyed; compulsory provision of compensation if there are bases to determine the transfer price of the right to use the violated patent, utility solution, industrial design, or layout design within the respective use scope and duration.

The compulsory distribution or use for non-commercial use of goods that infringe on trademark or geographical indication as stipulated in Point b, Clause 3, Article 3 of Decree 99 must meet the conditions prescribed in the Decree detailing some articles and measures to implement the Intellectual Property Law on industrial property, protection of industrial property rights, rights to plant varieties, and state management of intellectual property.

It can be seen that Decree 46 has added regulations allowing the application of more appropriate measures to prevent and ensure the handling of administrative violations in line with the development of technology affecting them, which will contribute to building a solid legal framework to timely prevent administrative violations as well as to ensure strict handling of violations.

New Points in Decree No. 46/2024/NĐ-CP amending and supplementing certain articles of Decree No. 99/2013/NĐ-CP dated August 29, 2013, of the Government regulating administrative sanctions in the field of Industrial property, which was amended and supplemented by Decree No. 126/2021/NĐ-CP dated December 30, 2021, of the Government

2. Supplementing the principles for determining the value of infringing goods

According to Decree 46, the principle for determining the value of infringing goods is carried out by the principles stipulated in the Decree detailing some articles and measures of the Intellectual Property Law on industrial property, protection of industrial property rights, rights to plant varieties, and state management of intellectual property. Accordingly, the value of the infringing goods is determined by the infringement handling agency at the time the infringement occurs and is based on the following priority bases: (i) Listed price; (ii) Actual selling price; (iii) Cost price of the infringing goods, if they have not been circulated; (iv) Purchase price.

3. Supplementing the basis to carry out verification of administrative violations of intellectual property rights

Instead of stipulating provisions on the subjects and basis for the subjects to exercise the right to request handling of violations, Decree 46 only mentions the basis for verifying the violation, specifically:

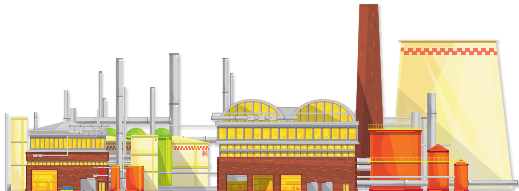
- Having a request to handle the infringement of the intellectual property rights holder;

- Having the results of inspections or audits by the competent authority to handle administrative violations;

- Recommendations from organizations or individuals who have been or are likely to be harmed by unfair competition in the field of intellectual property;

- Information provided by individuals or organizations that have detected acts of infringement of intellectual property rights causing harm to consumers or society, violations related to goods, labels, trademarks, and geographical indications.

Supplementing additional grounds for verifying violations will help the competent authorities effectively carry out their tasks, and make accurate and appropriate decisions on the application of handling measures in accordance with the law.



New Points in Decree No. 46/2024/NĐ-CP amending and supplementing certain articles of Decree No. 99/2013/NĐ-CP dated August 29, 2013, of the Government regulating administrative sanctions in the field of Industrial property, which was amended and supplemented by Decree No. 126/2021/NĐ-CP dated December 30, 2021, of the Government

4. Receiving and processing administrative violation claims

a) Timeline

Clause 19 of Article 1 of Decree 46 stipulates that the time limit for guiding the applicant to submit the claim to the right competent authority is 10 days from the date of receipt. Additionally, the time limit for the party accused of the violation to provide information, evidence, and explanation upon the request of the claim resolution authority is 30 days from the date of the request.

b) Processing when complaints or disputes arise

Clause 20 of Article 1 of Decree 46 supplements the process when complaints or disputes arise after the administrative violation claim has been received, specifically:

- The receiving authority will suspend the processing of the claim per point a of Clause 2, Article 28 of Decree 99.
- The receiving authority will require the relevant parties to initiate the procedures to request the resolution of the complaint, denunciation, or dispute at the competent authority within 10 days from the date the dispute is recorded.
- The receiving authority will cooperate with the Intellectual Property Office to clarify the legal status of the industrial property rights that are the subject of the complaint, denunciation, or dispute within no more than 10 days from the date of receiving the request.
- Within 30 days from the date of receiving the response from the Intellectual Property Office, the receiving authority is responsible for responding on whether to proceed with or refuse the request to handle the infringement of the industrial property rights of the party requesting the administrative penalty.

Thus, Decree 46 was issued to contribute to limiting and tightening administrative violations in the field of industrial property to create a healthy environment for the development of this field and ensure the legitimate rights and interests of the relevant parties.

Case law no.36/2020/AL regarding the validity of mortgage contracts for land use rights when the land use rights certificate is revoked, cancelled

The land use rights mortgage contract is one of the most common methods that the borrower chooses to mortgage their land use rights as collateral to borrow credit from the bank. In practice, there are many disputes arising from the non-performance of the borrower with the bank for a long time, leading to the bank initiating a lawsuit against the borrower to the Court for resolution. However, during the period when the mortgage contract is valid, the borrower's Land use rights certificate is revoked or cancelled. Similar events occur quite often in practice and Caselaw No. 36/2020/AL is a typical example for the Court to apply in practice when adjudicating cases with similar content. In this article, TNTP's lawyers will comment and clarify the content of Caselaw No. 36/2020/AL.

1. Summary of the case

a) On March 22, 2010, Bank V entered into Credit Contract No. 10.36.0015 with Mr. Nguyen Van C and Mrs. Vu Thi T. Accordingly, Bank V lent Mr. C and Mrs. T 900.000.000 VND, with an annual interest rate of 12% within the term; the overdue interest rate is 150% of the in-term interest rate; the loan term is 12 months.

In order to secure the loan, Mr. C and Mrs. T have mortgaged their asset, which is the land use rights of a parcel with an area of 3.989,7 m² belonging to parcel No. 12, map sheet No. 05, H Commune, B Town (Land use rights certificate No. Đ544493 issued by the People's Committee of B Town on July 14, 2004) under Mortgage Contract No. 10.36.0015 dated March 18, 2010. The secured transaction was registered at the Land Use Rights Registration Office of B town on March 19, 2010.

b) After borrowing the money, Mr. C and Mrs. T did not fulfill their payment obligations to Bank V. Therefore, Bank V filed a lawsuit demanding that Mr. C and Mrs. T repay the entire debt of VND 1.449.537.500 (of which VND 900.000.000 is the principal and VND 549.537.500 is the temporary interest calculated as of July 17, 2013 and interest until the date of debt repayment).

c) During the time the Mortgage Contract was in effect, the People's Committee of B town issued Decision No. 3063/QĐ-UBND dated August 31, 2011 to revoke Land use rights certificate No. Đ544493. However, Bank V determined that although Land Use Rights certificate No. Đ544493 no longer exists, the land use right of the 2,400 m² area that Mr. C and Mrs. T had previously transferred (after being adjusted according to the actual situation) has been completed, so it still has collateral value for the loan of Mr. C and Mrs. T. Bank V will request the Civil judgment enforcement Agency of B city to prioritize the auction of the collateral asset to Bank V.

d) The defendant, Mr. Nguyen Van C, stated that he confirmed the information about the Credit Contract and Mortgage Contract as presented by Bank V is correct. After borrowing, he paid Bank V a portion of the interest debt, which is 122.775.000 VND, but he has not paid the principal amount, and he agrees with Bank V's lawsuit request.

Case law no.36/2020/AL regarding the validity of mortgage contracts for land use rights when the land use rights certificate is revoked, cancelled

e) Mr. C and Mrs. T had filed an administrative lawsuit against Decision No. 3063/QĐ-UBND dated August 31, 2011 of the People's Committee of B Town. However, both the court of first instance and the court of appeals did not accept their request, so he requested the Court to resolve the case according to the provisions of the law, as the collateral asset no longer exists.

f) In the First Instance Commercial Judgment No. 04/2013/KDTM-ST dated December 10, 2013, the People's Court of Ba Ria - Vung Tau province decided:

Mr. Nguyen Van C and Mrs. Vu Thi T are required to pay Joint Stock Commercial Bank V - B Branch the amount of VND 1.449.537.500, of which VND 900.000.000 is the principal and VND 549.537.500 is the interest.

The Mortgage Contract No. 10.36.0015 dated March 18, 2010, signed between Joint Stock Commercial Bank V - B Branch and Mr. Nguyen Van C and Mrs. Vu Thi T regarding the mortgage of a land area of 3,989.7 m² belonging to parcel No. 12, map sheet No. 05, H Commune, B Town, as per Land use rights certificate No. D544493 issued by the People's Committee of B Town (now the People's Committee of B City) on July 14, 2004, in the names of Mr. Nguyen Van C and Mrs. Vu Thi T, is declared void. Therefore, it has no collateral value for the repayment of the debt under Credit Contract No. 10.36.0015 dated March 3, 2010.

g) On December 23, 2013, Joint Stock Commercial Bank V - B Branch filed an appeal.

h) In the Appellate Commercial Judgment No. 48/2014/KDTM-PT dated August 15, 2014, the Appeals Court of the People's High Court in Ho Chi Minh City decided:

Dismiss the appeal request of Joint Stock Commercial Bank V - B Branch; to uphold the First Instance Commercial Judgment No. 04/2013/KDTM-ST dated December 10, 2013, of the People's Court of Ba Ria-Vung Tau province.

To accept the request of Joint Stock Commercial Bank V - B Branch regarding the dispute over the credit contract against Mr. Nguyen Van C and Mrs. Vu Thi T.

- To order Mr. Nguyen Van C and Mrs. Vu Thi T to pay Joint Stock Commercial Bank V - B Branch the amount of VND 1.449.573.500, of which the principal is 900.000.000 VND and the interest is 549.573.500 VND.
- To declare the Mortgage Contract No. 10.36.0015 dated March 18, 2010, signed between Joint Stock Commercial Bank V - B Branch and Mr. Nguyen Van C and Mrs. Vu Thi T regarding the mortgage of an area of 3,989.7m² belonging to parcel No. 12, map sheet No. 5, H Commune, B Town according to the Land use rights certification No. D544493 issued by the People's Committee of B Town (now B City) on July 7, 2004, in the name of Mr. Nguyen Van C and Mrs. Vu Thi T is invalidated. It has no value to secure the payment of the debt for the credit contract No. 10.36.0015 dated March 22, 2010.

Case law no.36/2020/AL regarding the validity of mortgage contracts for land use rights when the land use rights certificate is revoked, cancelled

i) After the appellate trial, Joint Stock Commercial Bank V submitted a petition requesting a review under the cassation procedure for the above-mentioned appellate judgment.

j) On August 15, 2014, the Chief Justice of the People's Supreme Court filed a cassation appeal against the Commercial Appellate Judgment No. 48/2014/KDTM-PT of the Appellate Court of the People's High Court in Ho Chi Minh City regarding the part declaring the Mortgage Contract No. 10.36.0015 dated March 18, 2010, invalidated; requesting the Judicial Council of the People's Supreme Court to hear the cassation and vacate a part of the above-mentioned Commercial Appellate Judgment and vacate a part of the Commercial First Instance Judgment No. 04/2013/KDTM-ST dated December 10, 2013 of the People's Court of Ba Ria - Vung Tau Province regarding the part declaring the Mortgage Contract No. 10.36.0015 dated March 18, 2010 invalid; returning the case file to the People's Court of Ba Ria - Vung Tau Province to re-trial at the first instance following the provisions of law.

k) At the cassation trial, the representative of the People's Supreme Procuracy proposed that the Judicial Council of the People's Supreme Court accept the Cassation Appeal of the Chief Justice of the People's Supreme Court.

2. Assessment of the Court

Bank V and Mr. Nguyen Van C both confirmed that Bank V and Mr. Nguyen Van C, Mrs. Vu Thi T signed Credit Contract No. 10.36.0015 dated March 22, 2010, and Mortgage Contract No. 10.36.0015 dated March 18, 2010. The mortgaged asset is a land area of 3,989.7 m2 belonging to parcel No. 12, map sheet No. 05, H Commune, B Town, according to Land use rights certificate No. Đ544493 issued by the People's Committee of B Town on July 14, 2004, in the name of Mr. Nguyen Van C and Mrs. Vu Thi T. The asset was registered for secured transactions at the Land Use Rights Registration Office of B Town on March 19, 2010. According to the provisions of Article 343 of the Civil Code 2005; Point c, Clause 1, Article 10 and Point a, Clause 1, Article 12 of Decree No. 163/2006/NĐ-CP dated December 29, 2006, of the Government on secured transactions, the mortgaging of the above land use rights is following the provisions of law.



Case law no.36/2020/AL regarding the validity of mortgage contracts for land use rights when the land use rights certificate is revoked, cancelled

Main point of Case law: On August 31, 2011, the People's Committee of B Town issued Decision No. 3063/QĐ-UBND on the revocation and cancellation of the Land use rights certificate No. Đ544493 issued by the People's Committee of B Town on July 14, 2004, in the name of Mr. Nguyen Van C and Mrs. Vu Thi T. The revocation and cancellation of the aforementioned Land use rights certificate was due to errors in the land area and the order and procedures for issuing the Land use rights certificate to Mr. C and Mrs. T. However, the revocation and cancellation of the Land use rights did not deprive the lawful land use rights of Mr. C and Mrs. T, as the transfer of land use rights between the couple Mrs. Tran Thi Ngoc H, Mr. Tran Huynh L and the couple Mr. C, Mrs. T had been completed, and the parties had no disputes over this transfer contract.

On the other hand, before the Land use rights certificate of Mr. C and Mrs. T was revoked, Mr. C and Mrs. T had mortgaged this land use right to the Bank multiple times to borrow money, most recently on March 19, 2010. The land use rights mortgage contract between Mr. C, Mrs. T, and the Bank complied with the provisions of the law, so this contract is legally valid. The court of first instance and the court of appeal based on Article 411 of the Civil Code 2005 stated that the land use rights mortgage contract No. 10.36.0015 dated March 18, 2010, mentioned above is invalid because the object of this mortgage contract no longer exists is not appropriate.

According to Official Letter No. 887/CNVPĐK-ĐKCG dated March 28, 2017, the Branch of the Land Registration Office of B City determined that: After the People's Committee of B Town issued Decision No. 3063/QĐ-UBND on the revocation and cancellation of the Land use rights certificate No. Đ544493 and the Administrative Judgment No. 01/2013/HC-PT dated January 4, 2013 of the People's Court of Ba Ria - Vung Tau Province took effect, the Civil Judgement Enforcement Agency of B City had issued Decisions on Judgment Enforcement following the effective civil judgments that Ms. Tran Thi Ngoc H had the obligation to enforce. Accordingly, the property of 2.741,1 m2 of land in parcel 386, map sheet No. 05, H Commune was organized for auction. Mr. Bui Van C1 was the successful bidder for the land use rights of 2.747,1 m2 of land. On March 14, 2016, the People's Committee of B City issued the Land Use Rights Certificate No. CA959055 for the auctioned area to Mr. Bui Van C1.

Therefore, to ensure the rights and obligations of the parties involved, when re-adjudicating the case, the court of first instance needs to rely on Clause 4, Article 68 of the Civil Procedure Code to bring in the Civil judgment enforcement Agency of B City, Ms. Tran Thi Ngoc H, Mr. Bui Van C1, and the People's Committee of B City as parties with related rights and obligations, to comprehensively and thoroughly resolve the case.

Case law no.36/2020/AL regarding the validity of mortgage contracts for land use rights when the land use rights certificate is revoked, cancelled

3. Comment on Case law

Regarding the subject matter of a Mortgage Contract

According to the regulations in the Land Law 2013, to be able to mortgage the land use rights ("**LUR**"), the following 4 conditions must be fully satisfied:

- (i) The land to be mortgaged must have a Land use rights certificate;
- (ii) The land must not be in dispute;
- (iii) The LUR must not be seized for the enforcement of a judgment;
- (iv) The land must still have a remaining term of use, and only the LUR within the remaining term of use can be mortgaged.

According to the definitions in the Land Law 2003 and the Land Law 2013, the Land use rights certificate is a legal document by which the State confirms the LUR of the person who has the LUR (Clause 20 Article 4 of the Land Law 2003 and Clause 16 Article 3 of the Land Law 2013). The issuance of a Land use rights certificate occurs when the land user has already had the LUR, and it is only applied to those entities that have the LUR. This also means that in practice, there will be entities that have the LUR but have not yet been issued a Land use rights certificate.

Thus, in essence, it is not that the entity only has the LUR after being issued a Land use rights certificate. The LUR of the entity may have arisen before the entity was issued a Land use rights certificate.

According to the content recorded in the Case law, LUR is the subject matter of the mortgage relationship. The important issue is to determine whether the mortgagor still has the LUR and the remaining LUR after the Land use rights certificate is revoked. The conclusion of the cassation review has affirmed that "... **The revocation, cancellation of the Land use rights certificate does not deprive the legitimate of the transferred land use rights**" (of the mortgagor). The consequence of this only occurs when the revocation, or cancellation of the Land use rights certificate "**is due to errors in the land area and the order and procedures for issuing the Land use rights certificate**". Furthermore, the mortgagor's LUR in this case still exists. Specifically, the Case law has clearly stated that the transaction "**has been completed, and the parties have no disputes about this transfer contract**". When the LUR transfer contract is not deemed invalid, the LUR of the transferee (the mortgagor) is still

Accordingly, the above is the basis for the Case law to affirm that the land use rights (LUR) of the mortgagor "**are not lost**".

Case law no.36/2020/AL regarding the validity of mortgage contracts for land use rights when the land use rights certificate is revoked, cancelled

Regarding the validity of the Mortgage Contract:

The determination of the validity of the Mortgage Contract in this case aims to recognize the obligation to perform the contract of the parties. Specifically, both the court of first instance and the court of appeal have concluded that the Mortgage Contract in this case is invalid.

According to Clause 1, Article 411 of the Civil Code 2005, stated that ***"in the event that, from the time of conclusion, the contract has an object that cannot be executed for objective reasons, then this contract shall be invalidated"***. The content of this provision has also been reiterated in Clause 1, Article 408 of the Civil Code 2015. Comparing the case with the regulation, it can be seen that this case does not fall within the scope of application of this Article. When entering into the contract, Mr. C and Mrs. T's couple, and even Bank V, did not know that the revocation of the Land use rights certificate would occur in the future. The provisions in Clauses 2 and 3, Article 411 of the Civil Code 2005 are also not compatible, as the Land use rights certificate in this case was revoked due to an error in the area. This means that the remaining land use rights after the adjustment are the assets securing the debtor's debt repayment obligation (if the mortgage contract is determined to be valid).

It can be seen that the prerequisite condition for declaring the contract invalid in this case is that the ***"object cannot be performed"*** must appear from the time of signing the mortgage contract. However, according to the content of the case, the revocation of the Land use rights certificate occurred after the parties had entered into the Mortgage Contract, and in fact, the dispute over the mortgage of land use rights arose after the mortgage contract had been signed. Because of that, the mortgage contract still has legal validity.

Thus, it can be seen that the cassation decision of the People's Supreme Court's Judicial Council to not recognize the first-instance and appellate judgments when they declared the contract invalid is completely reasonable.