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Priority payment right in secured transactions: Japanese experience and lessons for Vietnamese law

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Abstract
This article examines the legal problems surrounding priority payment rights in secured transactions in Vietnam, where the absence of a unified and coherent order of payment creates conflicts and uncertainty among creditors. Using doctrinal legal analysis and comparative examination, the study reviews existing Vietnamese regulations in the Civil Code and the Law on Bankruptcy and compares them with the Japanese Civil Code. The analysis finds that Vietnamese law lacks consistency and clear classification of priority claims, particularly when multiple creditors compete over the same secured assets. In contrast, Japanese law provides a systematic structure that distinguishes between general and specific priority rights based on asset types and claims. Drawing from the Japanese experience, the article proposes reforms to clarify payment priority rules in Vietnam. These recommendations aim to enhance legal certainty, balance stakeholder interests, and improve the efficiency of dispute resolution in secured transactions.

Keywords: Priority payment, comparative law, legal mechanism, financial obligations, secured creditors, collateral liquidation

1. Introduction

Civil and commercial transactions play a central role in facilitating economic activity in Vietnam's increasingly integrated market economy. Alongside their benefits, such transactions inherently involve risks, particularly the risk of non-performance of obligations. To mitigate these risks and safeguard legal relationships, legal systems commonly employ security measures that ensure creditors can recover debts when obligations are breached. Vietnamese law recognizes the freedom of parties to agree on security measures within statutory limits, thereby protecting legitimate interests and promoting transactional certainty [1].

A crucial component of secured transactions is the right to priority payment, which determines the order in which creditors are satisfied from secured assets when a debtor defaults or enters bankruptcy. The 2015 Civil Code of Vietnam marked a significant step by formally recognizing priority payment rights as a mechanism to protect parties in civil and commercial relations and to enhance transparency in the enforcement of secured obligations [2]. Priority rules also assist judicial and enforcement authorities in resolving disputes involving secured assets by providing a legal basis for allocating proceeds among competing claimants. In practice, when secured assets are liquidated through judgment enforcement or bankruptcy proceedings, a clear order of priority is essential to ensure fairness and efficiency [3].

Despite these advancements, the current Vietnamese legal framework governing priority payment remains fragmented. Priority rules are dispersed across the Civil Code, the Law on Bankruptcy, and related legislation, without a unified or systematic approach applicable to all secured transactions [4]. Existing provisions primarily rely on the effectiveness of security measures against third parties, particularly through registration or possession, rather than establishing a comprehensive hierarchy of claims. While this represents progress compared to earlier Civil Codes that emphasized registration alone, it still leaves significant gaps. In cases involving multiple creditors asserting rights over the same assets, the absence of a clear and consistent order of payment often leads to legal uncertainty, conflicting interpretations, and prolonged dispute resolution [5].

Comparative legal scholarship has increasingly emphasized the importance of coherent priority systems in secured transactions, especially in civil law jurisdictions [6]. Among these, Japan offers a noteworthy model. The Japanese Civil Code explicitly recognizes priority payment rights as a distinct security mechanism. It systematically classifies them into general and specific priority rights based on the nature of claims and assets [7]. This structure not only strengthens creditor protection but also enhances predictability and efficiency in enforcement. Japanese secured transaction law is widely regarded as aligned with international legal developments, reflecting the influence of Western civil law traditions while maintaining internal coherence [8].

Vietnamese legal reform has not been isolated from Japanese influence. During the drafting process of the 2015 Civil Code, extensive consultations and academic exchanges were conducted with the participation of Japanese legal experts under international cooperation programs [9]. However, despite these efforts, the right to priority payment was not ultimately codified as an independent security measure, nor was a unified payment hierarchy established. Against this background, this article aims to examine the current legal framework governing priority payment rights in Vietnam, identify its limitations, and situate it within broader comparative scholarship. By analyzing the Japanese approach, the study seeks to draw lessons that may inform future reforms, contributing to a more transparent, consistent, and effective system of secured transactions in Vietnam.

2. Materials and Methods

This study employs a doctrinal legal research methodology to analyze, compare, and evaluate the legal norms governing priority payment rights in secured transactions. Logical reasoning and analytical–synthetic methods are applied to interpret statutory provisions, judicial principles, and doctrinal views within Vietnamese law, particularly the Civil Code and related legislation. These methods enable the identification of normative objectives underlying existing rules and the assessment of their practical implications for creditor protection, administrative efficiency, and the safeguarding of third-party rights [10]. The enumerative method is employed to systematically identify and organize relevant legal materials, including statutory provisions, policy documents, and scholarly interpretations from both Vietnam and Japan. This approach facilitates a structured presentation of legal sources and supports a clear comparison between the two legal systems, particularly with respect to the classification and enforcement of priority payment rights [11].

Comparative legal analysis constitutes a core methodological component of the study. The Japanese Civil Code is selected as a comparative benchmark due to its well-developed and coherent system of priority rights in secured transactions. By contrasting Japanese and Vietnamese legal frameworks, the study evaluates differences in legislative techniques, conceptual structures, and enforcement mechanisms, thereby identifying normative gaps and potential areas for reform in Vietnamese law[12]. In addition, qualitative content analysis of secondary sources, including academic articles, legal commentaries, and reports from legislative and reform bodies, is conducted. This method provides insight into the practical operation of priority payment rules and the policy considerations that have shaped legal reforms in Japan. It also helps contextualize Vietnamese law within broader international and comparative legal scholarship [13].

3. Results and Discussion

3.1. Japanese Legal Experience on the Priority of Payment in Secured Interests

The Japanese Civil Code (Minpō) constitutes a foundational pillar of Japan's civil law system, governing core legal relationships among individuals and legal entities in areas such as property, obligations, contracts, family law, and succession. Enacted in 1896 and effective from January 1, 1898, the Code has undergone substantial modernization to respond to economic development and evolving transaction practices. The most significant recent reform occurred in 2018, with amendments taking effect in April 2022, introducing notable revisions concerning security for the performance of obligations and clarifying the structure of priority payment rights [14].

3.1.1. Priority Payment Rights as a Statutory Security Measure

Japanese law adopts a closed system of real rights (*numerus clausus*), under which security interests may only be established in forms expressly recognized by statute. Article 175 of the Civil Code codifies this principle by prohibiting the creation of security rights beyond those provided by law[15]. Within this framework, Chapter III of the Civil Code identifies four principal measures for securing obligations: pledge, mortgage, right of retention, and statutory priority payment rights. Although judicial practice has developed functionally equivalent mechanisms, most notably *jōto tanpo*, which involves transferring ownership as security, these devices operate outside the formal statutory system. They are subject to judicial scrutiny rather than codified protection [16]. In contrast, priority payment rights are expressly recognized as a form of property security, reflecting legislative intent to provide certain creditors with superior protection based on the nature of their claims.

Article 303 of the Japanese Civil Code defines priority payment rights as statutory liens entitling the holder, in obligations prescribed by law, to satisfaction of claims ahead of other creditors from specific assets of the debtor [17]. This provision explicitly departs from the principle of pari passu distribution and acknowledges that not all creditors stand in equivalent positions. The prioritization of specific claims reflects a normative balance between economic efficiency and social justice, particularly in protecting vulnerable parties such as employees or those who preserve the debtor's assets.

3.1.2. Classification of Priority Payment Rights under Japanese Law

A defining feature of Japanese priority payment regulation is its systematic classification by subject matter. The Civil Code distinguishes three categories of priority rights: general priority rights, priority rights over movable property, and priority rights over immovable property. This structure enhances legal certainty by clearly delineating the scope and effect of each category.

a) General Priority Rights

General priority rights confer priority over all assets of the debtor, both movable and immovable. These rights are considered the most effective form of statutory lien, though they remain subject to certain limitations where mortgages or pledges already encumber assets. Articles 306 to 310 of the Civil Code enumerate four types of general priority rights. First, priority rights for expenses incurred for the common benefit of creditors arise under Articles 306 and 307. These include costs related to the preservation, liquidation, or distribution of the debtor's assets, provided such expenses benefit all creditors [18]. This priority incentivizes third parties to undertake necessary actions that maintain or enhance asset value, thereby facilitating enforcement and distribution. Second, priority rights arising from employer–employee relationships are recognized under Articles 306 and 308. These rights secure claims for salaries and related employment benefits accrued within six months before asset liquidation [19]. The temporal limitation reflects a balance between employee protection and creditor equality, ensuring that priority does not extend indefinitely to the detriment of secured creditors. Third, priority rights for funeral expenses are governed by Articles 306 and 309. These rights cover reasonable funeral costs incurred for the obligor or for relatives whom the obligor was legally bound to support [20]. This provision underscores the social policy dimension of Japanese priority rules, extending protection beyond purely economic considerations. Finally, priority rights for the supply of daily necessities are provided under Articles 306 and 310. These apply to claims arising from the provision of food, fuel, electricity, and similar essentials supplied within six months preceding enforcement [21]. Importantly, this priority extends not only to the debtor but also to cohabiting family members and domestic servants, reflecting the law's emphasis on household welfare.

b) Priority Rights over Movable Property

Priority rights over movable property attach to specific assets and arise from a direct functional relationship between the claim and the asset concerned. The Civil Code recognizes several such rights, including those relating to the leasing of immovable property, hotel accommodation, and the transportation of passengers and luggage (Articles 311–318). These priority rights are limited in scope and duration, attaching only to movable assets directly connected to the underlying obligation. Their rationale is to ensure that service providers can recover costs incurred in relation to the asset, thereby promoting transactional reliability in everyday commercial and service activities.

c) Priority Rights over Immovable Property

Priority rights over immovable property are regulated under Articles 325 to 328 of the Civil Code. These include claims related to the preservation of real estate, construction work, and sale transactions involving immovable property. Unlike general priority rights, these rights must be registered to be effective against third parties, ensuring transparency and protecting reliance interests [22]. The registration requirement reflects the higher economic value and complexity of real estate transactions, as well as the need to coordinate priority rights with mortgages and other registered interests.

3.1.3. Order of Priority and Conflict Resolution

Japanese law provides detailed rules for resolving conflicts between competing priority rights. As a general principle, priority is determined by the time of the right's establishment. However, this temporal rule operates within a statutory hierarchy that considers the type of priority right at issue. This system is commonly referred to as the "order of priority rights" [23]. For general priority rights, Article 335 prescribes a specific method of settlement designed to minimize interference with other creditors' interests. Payment must first be made from movable property, followed by immovable property not subject to other obligations, and finally from encumbered immovable property [24]. This approach ensures that priority claims are satisfied while preserving the value of secured interests to the greatest extent possible. Articles 330 and 334 further refine conflict resolution by granting special protection to parties who preserve property. Article 330 establishes a first-rank priority for preservation claims, even allowing later preservers to outrank earlier ones where necessary to protect legitimate expectations[25]. Article 334 clarifies that, where movable property is subject to both a general priority right and a pledge, the pledge prevails, reflecting the stronger proprietary nature of possessory security.

3.1.4. Enforcement and Realization of Priority Rights

When a debtor fails to perform its obligations, Japanese law permits secured creditors to realize on collateral through either a judicial auction or a direct sale by agreement. At the enforcement stage, priority payment rules play a decisive role in determining the order of distribution among competing creditors. The clarity and internal coherence of Japanese priority rules significantly reduce disputes over enforcement. Creditors can anticipate their relative positions *ex ante,* thereby enhancing transactional predictability and reducing litigation costs. This stands in contrast to fragmented systems, where priority must be determined across multiple statutes with overlapping or conflicting provisions.

3.1.5. Analytical Implications for Comparative Law

The Japanese model demonstrates the advantages of codifying priority payment rights as a distinct security mechanism within the Civil Code. By classifying priority rights according to asset type and claim function, Japanese law achieves a balanced allocation of risk among creditors while safeguarding social interests. The detailed hierarchy and settlement rules further enhance legal certainty and administrative efficiency. For comparative purposes, Japan offers a valuable reference point for jurisdictions such as Vietnam, where priority payment rules remain dispersed and conceptually underdeveloped. The Japanese experience illustrates that priority rights need not undermine secured lending if they are carefully structured and transparently enforced.

3.2. Priority of Payment Rights in Secured Transactions under Vietnamese Law

Unlike the Japanese legal system, Vietnamese law does not recognize the right to priority payment as an independent security measure. Instead, payment priority is a derivative consequence of secured transactions and is regulated by a combination of general civil-law provisions and specialized statutes. This fragmented approach reflects a functional rather than a conceptual treatment of priority, in which creditor ranking depends on the procedural context of enforcement rather than on a unified theory of secured interests. As a result, Vietnamese law lacks a consistent framework for determining priority among competing claims to the same assets, particularly in complex enforcement or insolvency proceedings.

The notion of priority payment first appeared in Vietnamese civil legislation in Article 325 of the Civil Code 2005. However, this provision was substantially revised in the Civil Code 2015 to address practical enforcement issues better and to strengthen the protection of secured creditors[26]. The central provision governing priority among secured creditors is now Article 308 of the Civil Code 2015, which governs cases in which a single asset secures multiple obligations. Under this article, priority is determined primarily by the effectiveness of security measures against third parties, rather than solely by the time of their establishment. Specifically, Article 308 provides that where all security measures are effective against third parties, priority follows the order in which such effectiveness arose. Where only one security measure is effective against third parties, that measure takes precedence. When none of the security measures are effective against third parties, priority is determined by the order in which they were established. This framework reflects a significant conceptual shift from earlier civil codes by recognizing the importance of publicity and reliance interests in secured transactions [27].

Vietnamese doctrine generally identifies two decisive criteria for determining priority among secured creditors: the time at which the security interest becomes effective against third parties, and the time at which the secured transaction is established [28]. The law further allows parties to modify the priority order by agreement, provided that such agreement does not prejudice the rights of other secured creditors who are not parties to it [29]. This contractual flexibility reflects respect for the parties' autonomy, but it also introduces potential uncertainty when third-party interests are not adequately protected. A security measure is considered effective against third parties when one of several legally recognized conditions is met, including registration of the security interest, possession or control of the collateral by the secured party, or deposit of the collateral into an escrow arrangement[30]. By equating registration with possession with respect to third-party effectiveness, the Civil Code 2015 departs from a purely registration-based model and adopts a more functional approach to publicity [31]. Where multiple security measures apply to the same asset, a measure effective against third parties will prevail over one that is not, even if the latter was established earlier.

While these rules enhance predictability among secured creditors, their scope remains limited. The Civil Code 2015 regulates priority only in relationships between secured parties. It does not address how secured claims rank vis-à-vis other categories of creditors, such as employees, tax authorities, or parties incurring expenses for asset preservation. Consequently, the determination of payment priority in practice often depends on the application of specialized legislation, leading to divergent outcomes across enforcement contexts. The Law on Civil Judgment Enforcement, as amended in 2014 and 2022, introduces a distinct priority scheme applicable when assets are subject to enforcement. Under Article 47, proceeds from enforcement are first used to cover enforcement costs, followed by payments for alimony, wages, severance pay, social benefits, and compensation for personal injury, then court fees, and finally other enforceable obligations. However, where mortgaged or pledged assets are enforced, secured creditors are granted priority over most other claimants after deducting enforcement-related costs [32]. This creates a hybrid priority structure in which secured creditors are both subordinated to specific social claims and elevated above them depending on the nature of the asset and the enforcement entitlement.

Further complexity arises under the Law on Credit Institutions 2024, which establishes a detailed order of priority for the disposal of collateral securing non-performing loans. Under Article 199, proceeds are distributed first to cover preservation and disposal costs, followed by court fees and taxes directly related to the transfer of the collateral, then to secured obligations owed to credit institutions, and finally to unsecured obligations [33]. This statute explicitly subordinates secured creditors to tax claims arising from asset transfers, reflecting fiscal policy priorities but also increasing credit risk for lenders. In insolvency proceedings, the Law on Bankruptcy 2014 provides yet another priority framework. The treatment of secured debts depends on whether the collateral is necessary for business recovery. Where collateral is essential to a restructuring plan, its disposal must comply with the resolution of the Creditors' Meeting, and priority among secured creditors may be temporarily suspended[34]. Where no recovery plan is implemented, secured obligations are enforced in accordance with the security contract's maturity. If the collateral is insufficient to satisfy the secured debt, the remaining balance is treated as an unsecured claim; if there is a surplus, it is returned to the debtor's estate [35].

Upon a declaration of bankruptcy, Article 54 of the Bankruptcy Law establishes a statutory order of distribution: bankruptcy expenses, employee-related claims, post-petition liabilities, and finally financial obligations to the State and unsecured claims, including unpaid secured portions. Only after these claims are satisfied may any remaining assets be distributed to enterprise owners [36]. This framework prioritizes social and procedural costs over secured claims, reflecting insolvency policy objectives but further fragmenting the overall priority system. From an analytical perspective, the Vietnamese approach reveals a fundamental tension between secured credit protection and competing social and fiscal priorities. While secured creditors benefit from clear priority rules within the Civil Code, their position is frequently altered or subordinated under specialized legislation. This multiplicity of priority regimes creates uncertainty, increases transaction costs, and complicates enforcement. Moreover, the absence of a unified conceptual framework gives rise to potential circular priority situations, particularly where multiple statutes apply concurrently [37].

Comparative insolvency theory suggests that an optimal priority system should minimize bankruptcy costs while preserving non-bankruptcy entitlements of both senior and junior creditors [38]. However, the Vietnamese system's reliance on context-specific priority rules undermines this objective by making creditor outcomes highly contingent on procedural classification rather than substantive rights. As a result, secured creditors face heightened risk, which may discourage lending or increase the cost of credit, particularly for small and medium-sized enterprises. Overall, while Vietnamese law has made notable progress in clarifying the priority among secured creditors, it remains fragmented and inconsistent. The lack of integration between the Civil Code and specialized statutes contrasts sharply with the coherent and hierarchical approach observed in Japanese law. This structural divergence underscores the need for reform to establish a unified priority framework that balances secured credit protection with legitimate social interests.

3.3. Inadequacies in payment priority rights under Vietnamese law and analytical implications from a comparative perspective with Japan

3.3.1. Fragmentation and inconsistency in payment priority regulations: empirical findings and legal implications

The analysis of Vietnamese legislation governing payment priority rights reveals a structurally fragmented and internally inconsistent legal framework. Although the 2015 Civil Code (CC 2015) establishes foundational principles on secured transactions and priority of payment, its regulatory scope remains narrow and incomplete. Specifically, the Code focuses on priority among multiple secured creditors holding security interests in the same asset. Still, it fails to address priority conflicts between secured creditors and other parties with legally protected interests in the secured property. These include buyers of secured assets, transferees receiving exchanged collateral, holders of use rights, unsecured creditors of the secured party, and the State as a tax authority [39]. This omission is analytically significant because, in practice, disputes over secured assets rarely involve only competing secured creditors. Instead, priority conflicts often arise in multi-party enforcement contexts in which multiple claims converge. The absence of explicit rules governing these relationships creates a legal vacuum that must be filled through judicial interpretation or reliance on specialized legislation, resulting in inconsistent outcomes across cases.

Moreover, CC 2015 does not articulate a coherent system of preferential claims (privileges), despite their widespread recognition in comparative legal systems. Preferential claims, such as employee wage claims or tax obligations, are typically justified on socio-economic grounds and are often ranked above secured claims in insolvency or enforcement proceedings. The lack of express provisions on such privileges in the Civil Code undermines predictability and weakens the normative coherence of Vietnam's secured transactions regime. The empirical comparison of related statutes demonstrates that this gap has been partially, but inconsistently, addressed by specialized laws. The Law on Enforcement of Civil Judgments (LECJ) [40] expands the scope of priority payments to include alimony, wages, severance pay, unemployment benefits, and compensation for personal injury. However, it simultaneously reaffirms the priority of secured creditors over these claims when the assets in question are pledged or mortgaged. This dual approach reflects an unresolved tension between protecting vulnerable creditors and preserving the economic function of security interests.

A more pronounced inconsistency emerges when comparing the LECJ with sector-specific legislation. The Law on Credit Institutions 2024 [41] adopts a creditor-centric model that prioritizes, in sequence, costs related to asset preservation and enforcement, court fees, taxes, fees arising directly from asset transfers, secured debts owed to credit institutions, and, finally, unsecured claims. This approach reflects the legislative intent to safeguard financial stability and reduce credit risk within the banking system. However, it effectively elevates State fiscal interests and institutional creditors above other socially protected claimants, such as employees. In contrast, the Law on Bankruptcy 2014 [42] prioritizes bankruptcy costs, employee-related debts, and State financial obligations before secured creditors in certain circumstances. This approach aligns more closely with international insolvency norms but diverges sharply from both the Civil Code and the Law on Credit Institutions. As a result, the priority position of the same secured creditor may vary significantly depending on whether enforcement occurs through civil judgment execution, credit institution recovery, or bankruptcy proceedings. From an analytical perspective, these inconsistencies reflect a deeper structural issue: the absence of a unified policy rationale governing payment priority across Vietnamese private and public law. Each statute adopts its own implicit hierarchy of interests, shaped by sectoral objectives rather than a coherent national framework for creditor ranking.

3.3.2. Legal uncertainty and enforcement inefficiency as systemic outcomes

The divergence in payment priority rules produces significant legal uncertainty, particularly for secured creditors and third parties who rely on predictable enforcement outcomes. In theory, security interests are designed to reduce transactional risk by granting creditors a clear and enforceable priority right.[43] In practice, however, the multiplicity of conflicting statutory rules undermines this function. Courts and enforcement agencies are frequently required to reconcile contradictory provisions in the absence of clear interpretative guidance [44]. This not only prolongs dispute resolution but also increases the likelihood of inconsistent judicial decisions across jurisdictions. Enforcement officers face heightened administrative burdens when determining applicable priority rules, particularly in cases involving mixed claims under different legal regimes. These systemic inefficiencies have broader economic implications [45]. Legal uncertainty increases the cost of credit, discourages secured lending, and weakens confidence in asset-based financing. From a law-and-economics perspective, the unpredictability of priority outcomes diminishes the incentive effects that secured transactions are intended to create.

3.3.3. Analytical lessons from Japan: coherence, publicity, and functional prioritization

The Vietnamese experience contrasts sharply with Japan's approach to payment priority rights. Japanese law adopts a functionally integrated system in which secured transactions, preferential claims, and insolvency priorities are coordinated across the Civil Code, the Bankruptcy Act, and related enforcement statutes. While Japanese law recognizes various types of statutory privileges, such as employee wage claims and tax obligations, it clearly defines their scope and hierarchy relative to secured claims. A key analytical lesson from Japan lies in the emphasis on publicity and registration as the primary determinants of priority. Security interests that are adequately perfected through registration or possession enjoy strong priority, whereas statutory privileges are narrowly defined and justified by compelling public interests. Importantly, exceptions to secured creditor priority are explicitly codified rather than left to judicial discretion.

Furthermore, Japanese insolvency law harmonizes priority rules applicable both inside and outside bankruptcy proceedings, thereby reducing strategic behavior and forum shopping. This coherence ensures that creditors can reasonably anticipate their recovery prospects regardless of the enforcement pathway [46]. Applying these insights to the Vietnamese context highlights the need for a unified conceptual framework governing payment priority. Rather than allowing specialized statutes to redefine priority hierarchies independently, Vietnamese law would benefit from a central set of principles articulated in the Civil Code, with limited, clearly defined deviations in sectoral laws.

Overall, the findings indicate that inadequacies in Vietnam's payment priority regime are not merely technical defects but manifestations of a more profound lack of legislative coordination. The coexistence of competing priority hierarchies reflects unresolved policy tensions between protecting secured credit, safeguarding social interests, and ensuring State revenue. Without a harmonized approach, these tensions are externalized into the judicial and enforcement systems, resulting in inefficiency and unpredictability [47]. The comparative analysis with Japan demonstrates that legal certainty in payment priority is achievable through coherence, explicit prioritization, and systemic integration. While contextual differences must be acknowledged, the analytical value of the Japanese model lies in its structural clarity rather than substantive replication. These insights provide a robust foundation for proposing reforms to rationalize Vietnam's payment priority framework in the subsequent sections.

3.4. Recommendations for enhancing the consistency of legal provisions governing payment priority: Lessons from Japan

To enhance consistency and legal certainty in the regulation of payment priority rights in secured transactions, Vietnam should undertake a comprehensive, systematic restructuring of its legal framework. This reform should begin with a coordinated review of the Civil Code, the Law on Enforcement of Civil Judgments, the Law on Bankruptcy, the Law on Credit Institutions, and related implementing instruments. The objective is not merely to amend isolated provisions, but to establish a unified hierarchy of payment priority that reflects coherent policy choices and applies predictably across enforcement and insolvency contexts. At the core of this reform, the Civil Code should be positioned as the primary source articulating general principles on payment priority. It should clearly define the ranking of claims arising from secured transactions, including the relative positions of secured creditors, employees, tax authorities, and other parties with legally recognized interests in secured assets, such as buyers or transferees of collateral. While specialized laws may continue to regulate sector-specific issues, their provisions should be designed to supplement, rather than contradict, the general framework established in the Civil Code.

In this regard, the traditional principle that special laws prevail over general laws should be applied with caution. Although lex specialis remains a fundamental interpretive rule, its uncoordinated application has contributed significantly to the current fragmentation of payment priority rules. Drawing on Japanese legislative practice, conflicts between general and special laws should be minimized through ex ante harmonization rather than resolved ex post through interpretation. Specialized statutes should only derogate from the Civil Code where justified by compelling policy considerations, and such deviations should be explicitly stated and narrowly construed.

In civil transactions involving security interests, it is also essential to reaffirm the legal effect of secured agreements vis-à-vis third parties. Third parties who interact with secured assets whether as purchasers, transferees, or users should be required to respect duly established and publicly disclosed security rights. This approach aligns with fundamental principles of Vietnamese civil law, including freedom of contract and the protection of lawful agreements. Treating third-party claims as automatically equivalent to secured claims would undermine the economic function of security interests and weaken incentives for registration and transparency.

From both doctrinal and economic perspectives, it is reasonable to prioritize secured debts over other obligations from the value of secured assets, particularly in bankruptcy proceedings. Secured creditors, especially credit institutions, typically incur costs to perfect their security interests, such as registration and valuation, thereby providing public notice of their rights. Allowing subsequent claims to displace secured creditors without a clear statutory justification would increase credit risk and reduce the effectiveness of asset-based financing.

At the same time, social considerations, most notably the protection of employees, must be carefully integrated into the priority system. Rather than prioritizing employee claims over secured creditors, which could significantly erode collateral value, a more balanced approach is recommended. Employee-related claims should be prioritized immediately after secured claims, ensuring social protection without fundamentally destabilizing secured lending. Tax obligations should follow employee claims, as granting tax authorities super-priority over secured creditors would disproportionately shift fiscal risk onto private lenders. This sequencing is crucial for credit institutions. If taxes are consistently prioritized above secured debts, banks may face systematic recovery shortfalls, leading to tighter credit conditions, especially for small and medium-sized enterprises. Such an outcome would run counter to broader economic development objectives. The proposed hierarchy, therefore, reflects a calibrated balance between social protection, fiscal interests, and financial stability.

Valuable guidance for structuring this hierarchy can be drawn from Japanese law, which distinguishes between general and specific priority rights based on the concept of "property." General priority rights apply to all debtor assets and typically cover claims related to common interests, such as employee wages, taxes, and costs necessary to preserve and liquidate assets. Specific priority rights, by contrast, attach to particular assets and include secured claims arising from mortgages, pledges, and similar arrangements. Adopting a similar conceptual division within the Vietnamese Civil Code would significantly enhance clarity. General priority rights could be limited to claims that serve collective or public interests and lack a specific asset-based foundation, such as employee remuneration, taxes, state fees, and enforcement-related costs. Specific priority rights would apply to claims secured by security agreements, including those of secured creditors and parties acquiring rights through the exchange or sale of secured assets. This framework also provides a principled basis for resolving disputes among creditors. When multiple creditors share the same priority category, payments should follow a clearly defined internal order. Costs related to preserving, seizing, and disposing of secured assets should be paid first, as these expenditures enable the realization of collateral and benefit all claimants. Employee claims should follow, then financial obligations to the State, with unsecured claims ranked last.

In cases involving conflicts between general and specific priority rights, specific priority should prevail, reflecting the asset-based nature of secured claims.[48] An exception should be made for costs incurred in handling secured assets, which should retain their priority regardless of classification, given their instrumental role in enforcement. Overall, these recommendations aim to transform Vietnam's payment priority regime from a fragmented collection of rules into a coherent and predictable system. By integrating lessons from Japanese law while respecting domestic legal principles and economic realities, Vietnam can enhance legal certainty, reduce enforcement disputes, and strengthen the institutional foundations of secured transactions.

4. Conclusion

The right to priority payment in secured transactions is fundamental for ensuring fairness, transparency, and efficiency in resolving financial obligations when debtors cannot meet their commitments. A clear and systematic framework provides predictability for creditors, employees, tax authorities, and other stakeholders, particularly when secured assets must be liquidated. Although Vietnamese law has made some progress, the current system remains fragmented, with inconsistent rules across the Civil Code, the Law on Bankruptcy, and the Law on Credit Institutions. This lack of harmonization creates confusion and disputes, especially in cases involving multiple creditors with competing claims. A comparative analysis of Japan's Civil Code reveals a coherent model that classifies priority rights into general and specific categories based on the nature of assets and claims, thereby establishing a transparent hierarchy among secured creditors, employees, and the State. Drawing from these lessons, Vietnam could adopt a similar integrated approach, clearly distinguishing between different claim types while ensuring consistency across all relevant legislation. Such reform would enhance the protection of secured creditors while safeguarding employee and tax claims, reduce conflicts, and improve judicial efficiency. Ultimately, establishing a unified, transparent, and predictable payment-priority system would strengthen Vietnam's business and investment environment, foster stakeholder confidence, and contribute to a more stable and equitable financial system, thereby balancing economic efficiency with social and fiscal considerations.

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