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Decree 02/2022/ND-CP dated on January 06, 2022 of Government on elaboration of certain articles of the Law on Real Estate Trading



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In recent years, real estate business in Vietnam has always been on the top list of industries with the highest profit growth. According to the statistics of the PROFIT500 Ranking, conducted by Vietnam Report in the period 2017 - 2021¹, the top 7 industries achieved the highest compound annual growth rate ("CAGR²") and made great contributions to the overall growth: Steel Industry (34.5%); Retail (17.5%); Finance sector (17.3%); Agriculture (16.0%); Food and Beverage Industry (11.9%); Chemical Industry (11.7%) and Real Estate - Construction Industry (10.8%). Not only the high

¹ <https://vietnamreport.net.vn/Top-500-Doanh-nghiep-loi-nhuan-tot-nhat-Viet-Nam-nam-2021-9998-1006.html>

profit growth rate, the real estate industry also appears many new types such as officetel, condotel, resort villa or shophouse that require a legal corridor to govern.

Facing the rapid development of the market, on January 6th, 2022, the Government issued Decree No. 02/2022/ND-CP on elaboration of certain articles of the Law on Real Estate Trading ("Decree 02") to meet new requirements on State management in the field of real estate business. This Decree takes effect from March 1st, 2022 and replaces Decree No. 76/2015/ND-CP dated September 10th, 2015 of the Government detailing the implementation of a number of articles of the Law on real estate business ("Decree 76"). There are several notable new points in this Decree 02 as followings:

1. Real estate businesses must disclose information

Decree 02 stipulates the responsibility for information disclosure as an eligibility criterion for organizations and individuals to conduct real estate trading, whereby real estate businesses, real estate project management Boards, and real estate trading floors must publicize information on enterprises' websites, the headquarters of the Project Management Board, and the trading floor. The required

² Compound Annual Growth Rate

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information to be disclosed consist of (i) business information; (ii) information on real estate put into business; (iii) information on mortgage of houses, construction works, real estate projects put into business; and (iv) information on the quantity and type of real estate products being traded, sold, transferred or leased out, and the rest are continuing to do business.³

The above regulation is a new regulation compared to Decree 76, concretizing the provisions in Article 6 of the Law on Real Estate Business 2014 on publicizing information about real estate put into business. This regulation aims to make information transparent in real estate business and, if it is implemented effectively, it will create reference information channel for those in need of real estate transaction.

2. Regulations on legal capital and equity of investors

Decree 76 stipulates the conditions for organizations and individuals doing real estate business to have a legal capital of not less than 20 billion VND.⁴ This provision is annulled under the Investment Law 2020 and accordingly abolished in Decree 02.

In addition, Decree 02 supplements regulations on the owner's equity of real estate project investors based on land use scale, consistent with regulations on owners of real estate project investors under the Decree 43/2014/ND-CP (not less than 20% of the total investment capital for projects using less than 20 hectares of land, not less than 15% of the total

The Government has promulgated Decree 02/2022/ND-CP ("Decree 02") to replace Decree 76 to meet new requirements on state management in the real estate business.

investment capital for projects with less than 20 hectares of land or more) as well as the method of determining

this level of equity. The determination of equity specified in this Clause is based on the results of the most recent audited financial statements or the results of independent audit reports of the operating enterprise (made in the year or immediately preceding year); In the case of a newly established enterprise, the equity capital shall be determined according to the actual contributed charter capital as prescribed by law.⁵

Decree 02 clarifies conditions on financial capacity of real estate project investors which was not provided under Decree 76,

³ Article 4.1 (b) Decree No. 02/2022/ND-CP

⁴ Article 3.1 Decree No. 76/2015/ND-CP

⁵ Article 4.2 Decree No. 02/2022/ND-CP

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ensuring synchronization between the law on real estate business and land law as well as new provisions of the Investment Law 2020.

3. Applying the general contract form in real estate business

One of the new points of Decree 02 is the application of model contracts in transactions of sale, transfer, lease, lease-purchase, sub-lease of real estate and transfer of real estate projects, including: Sample contract for sale/lease-purchase of tourist apartments, office apartments combined with accommodation, etc.

Decree 02 promulgates the form of a contract of sale/lease-purchase of tourist apartments, office apartments combined with accommodation for uniform application, which stipulates clearly and in detail the provisions related to such as: definition for "Tourist apartment/office apartment combined with accommodation", "Shared ownership", "Private ownership", "Maintenance expenses", "Warranty", "Features of Tourist apartments/office apartments combined with accommodation are bought, sold/lease-purchased, "Rights and obligations of the parties"...This is an important step forward in

terms of legality for these new real estate products.

In addition, it is worth noting that the forms of contracts specified in Decree 02 are mandatory and not only for reference in the process of signing contracts as the previous regulations in Decree 76.⁶

For real estate transfer transactions that have been signed before the effective date of the Decree 02, the parties do not need to re-sign the Contract according to the provisions of Decree 02. However, for cases where the parties are carrying out procedures for signing contracts for purchase and sale, lease-purchase of houses and construction works but the parties have not yet signed contracts by the effective date of this Decree, they must sign contracts according to regulations of Decree 02.⁷

4. New points in buying and selling housing projects to be formed in the future and existing houses and constructions

Decree 02 has detailed regulations on conditions for the transfer of contracts for sale and purchase of houses to be formed in the future⁸, in addition to regulations on conditions

⁶ Article 7.2 (a) Decree 02/2022/ND-CP

⁷ Article 14.1 and 14.2 Decree No. 02/2022/ND-CP

⁸ Article 7 Decree No. 02/2022/ND-CP

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for transfer of lease-purchase contracts available in Decree 76. The transfer of a contract for purchase, sale, or lease purchase of a house or construction work must satisfy the following conditions: (i) a contract is drawn up according to the provisions of Article 6 of Decree 02; (ii) are in the category of not yet submitting the application for the Certificate to the competent state agency; (iii) the contract is not subject to dispute and (iv) the house and works under the contract are not subject to distraint or mortgage to secure obligations, unless otherwise agreed by the mortgagee.

Decree 02 also stipulates in detail the order and procedures for transferring contracts of purchase, sale and lease-purchase of houses to be formed in the future and existing house and construction lease-purchase contracts.

5. The new regulation of transferring all or part of a real estate project

Decree 02 clearly stipulates the principle of transferring all or part of a real estate project. Accordingly, the transfer of real estate projects can only be done when all conditions are met and the project is being implemented under the

approved schedule and contents. This is a new point and stricter requirement for real estate projects to be transferred, compared to the regulation *"In case of transfer of the entire infrastructure construction investment project, the construction must be completed corresponding technical infrastructure works according to the approved schedule"*⁹ of the Law on Real Estate Business, forcing investors to strictly comply with the approved schedule and content of the project.

For real estate projects which investors are approved according to Law on Investment 2020 and projects that are granted with an Investment Registration Certificate in accordance with the provisions of the Law on Investment 2020, when transferring, the law on investment will be applied. Projects not falling into the above cases will be transferred according to the provisions of the Law on Real Estate Business and Decree 02.

Decree 02 includes 16 articles along with contract templates, to replace Decree 76, shall create new legal corridor for the real estate market in the coming years.

⁹ Article 49.1 (b) Law on Real Estate Trading on 2014

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Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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