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CHANGES IN LAND REGULATIONS



Nguyen Dang Viet
Partner



Nguyen Tu Oanh
Associate

On 03 April 2023, the Government issued Decree No. 10/2023/ND-CP amending and supplementing a number of articles of Decrees guiding the implementation of the Land Law. (“**Decree 10/2023**”), taking effect from 20 May 2023.

The Decree 10/2023 is considered, amongst 04 other Decrees, significantly affecting the land sector and real estate market. the Decree 10/2023 aims to solve and remove certain difficulties and obstacles in land procedures, land valuation, and granting certificates of land use rights, ownership rights for non-residential real estates (condotel and villas and office real estate, etc.). In particular, the Decree 10/2023 sets out the following noteworthy new provisions:

1. Extension of land use period shall exclude force majeure affection time

Article 64.1.(i) of the Law on Land 2013 stipulates that “...*If [project] developers still fail to put the land into use when the extended time is over, the State shall revoke the [allocated] land without compensation for land and land-attached assets, except due to force majeure*”. Force majeure events had been specifically stated under Article 15.1 of the Decree 43/2014/ND-CP, however, this Decree is silent on handling the consequences of force majeure events. The Decree 10/2023 has now supplemented that *the period of time being affected by a force majeure event shall be excluded and added into the 24 months’ grace period*.

The following authorities have power to determine the period of force majeure effects: (i) Provincial People’s Committees for projects located in a province/ centrally-affiliated city and (ii) the Minister of Natural Resources and Environment for projects located in two or more provinces or centrally-affiliated cities.

2. Auction of land use rights

Article 119 of the Law on Land 2013 sets out only basic conditions for auctioning and entities to take part into land auction when the State allocates or leases land.

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The Decree 10/2023 supplements Article 17.a on auction of land use rights when the State allocates land with collection of land use fees or leases land:

(i) Conditions for organizations participating in the auction of land use rights:

If two or more companies having cross-ownership participate in auction of a parcel of land or a project sited at one or more parcels of land, only one company is allowed to participate in the auction; the deposit requirement is increased to 20% of starting price of the land parcel(s); and companies must satisfy the conditions prescribed by the law on housing and the law on real estate business in order to attend the auction of land for developing housing and other real estate business projects;

(ii) Conditions for land: apart from the conditions specified in Article 119.1 of the Law on Land, the following conditions must also be satisfied: (a) starting price of the auction is determined by a competent state authority; (b) process of auction is applicable to each single parcel; (c) The detail planning 1/500 of the parcel used for development of a housing construction project is approved by a competent authority.

Furthermore, Article 17.a also clearly stipulates on handling deposit in specific cases.

3. Issuance of certificates for condotels

The issuance of certificates of ownership of non-residential construction works, namely condotel, villas, etc., had been guided by the Minister of Natural Resources and Environment in the Official Letter. No. 703/BTNMT-TCQLDD dated 14 February 2020 (“**Official Letter 703**”). Accordingly, Official Letter 703 referred to Article 32 of Decree 43/2014/ND-CP on certification of ownership of non-residential construction works. However, Article 32 of Decree 43/2014/ND-CP does not have specific regulations on construction works used for travel accommodation purposes.

The Decree 10/2023 has supplemented Article 32.5 of the Decree 43/2014/ND-CP expanding its application to construction works used for travel accommodation purposes. This regulation clearly states that: *“For construction works developed to serve travel accommodation purposes on commercial or service land as prescribed in laws on tourism, if the construction works satisfy the conditions set forth in laws on land, laws on construction and laws on real estate business, the ownership of such construction works*

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attached to land can be granted certificates for commercial or service land use purposes.”. Nonetheless, we view that the Decree 10/2023 has yet to specify whether a developer of a project who develops construction works used for travel accommodation purposes can transfer a single construction work (ie. a condotel or villa) to other organizations or individuals, as in fact, such a transfer may lead to distortion of the original investment project granted to the developer, and whether the transfer is considered a transfer of a part of the investment project or not.

The regulation clearly states that owner of construction work used for travel accommodation purposes take legally responsibility to meet all conditions under the law on construction and real estate business, but it does not prescribe whether or not to comply with the law on investment.

4. Authority to issue title certificates

Currently, the Decree 43/2014/ND-CP, as amended and supplemented by the Decree 01/2017/ND-CP stipulates that: For localities in which Land Registration Offices have been established, the Department of Natural Resources and Environment is the competent agency to grant certificates of land use rights and ownership of houses and other land-attached assets to land users and

owners of land-attached assets (“Certificate”) in the following cases: (i) When land users or asset owners exercise the rights of land users or owners of land-attached assets, which requires the grant of a new Certificate; (ii) Renewal or re-grant of Certificates.

The Decree 10/2023 has amended the authority to issue Certificates or to confirm changes to the issued Certificates in a manner that create favorable conditions for people in carrying out these administrative procedures (being implemented at Land Registration Offices without having to go to the Department of Natural Resources and Environment).

5. Online land administrative procedures

Article 1.7 of the Decree 10/2023 provides clearer guidance on procedures for registration and issuance of Certificates in the electronic environment.

The applicants of some land related administrative procedures are now able to undertake online and receive the results of issuing documents by post without having to go directly to the competent authorities. This regulation will help saving time and costs.

6. Conditions for conversion of use purpose of land for rice

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cultivation, protective forest land, and specialized use forest land to implement investment projects

Regarding the conversion of use purpose of land to implement investment projects as to land for rice cultivation, forest land, etc., Article 1.9 of the Decree 10/2023 has supplemented Article 68.a of Decree 43/2014/ND-CP on conditions and criteria for the conversion of use purpose of land, notably:

- Having alternative afforestation plans or written document confirm completion of obligations to pay for alternative afforestation in accordance with the laws on forestry in case of the conversion of use purpose of protection forest or special-use forest land or ; having topsoil use plans and written document confirming completion of obligations to pay for protection and development of land for rice cultivation in accordance with the laws on crop production in case of the conversion of use purpose of land for rice cultivation.
- Having a preliminary environmental impact assessment and environmental impact assessment

in accordance with the law on environmental protection (if any).

7. Application dossier for granting Certificates in housing development projects, real estate business projects other than housing development projects

For housing development projects, after the completion of the construction, the investors shall no longer be responsible for submitting the Report on project implementation to the Department of Natural Resources and Environment. This regulation is possibly to reduce administrative procedures, given that there is already procedure for inspection and acceptance of the construction completion to be put into use.

For real estate business projects other than a housing development projects, after completion of construction, the investors shall be responsible for sending the Notification of specialized construction authority that allows investors to conduct taking-over of construction items, construction work or approve the result of taking-over in accordance with laws on construction together with other papers.

Partners / Luật Sư Thành Viên



Nguyen Anh Tuan
M: +84 903404242
tuanna@bizconsult.vn



Nguyen Dang Viet
M: +84 913028222
vietnd@bizconsult.vn



Le Hong Phong
M: +84 968 695 468
phonglh@bizconsult.vn



Nguyen Trong Nghia
M: +84 936334499
nghiant@bizconsult.vn



Nguyen Bich Van
M: +84 913231019
vannb@bizconsult.vn



Trinh Hoang Lien
M: +84 904242684
lienth@bizconsult.vn



Nguyen Thu Huyen
M: +84 912908579
huyennt@bizconsult.vn



Ha Thi Hai
M: +84 963718558
haiht@bizconsult.vn



Tran Cong Quoc
M: +84 934778119
quoctc@bizconsult.vn

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Chúng tôi giữ quyền sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này hoặc bất kỳ phần nào của bản tin mà không thông báo trước. Chúng tôi không chịu bất kỳ trách nhiệm nào về các sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này.

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

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For receiving our LegalNews, kindly contact us / Để nhận các Bản tin Pháp lý, vui lòng liên hệ với chúng tôi:



Trang Vu

Mobile: +84 934551191

trangvm@bizconsult.vn

bizconsult
LAW FIRM

No. 20, Tran Hung Dao St.
Hoan Kiem district
Hanoi
Vietnam
E-mail: info-hn@bizconsult.vn

8th Floor, Sailing Tower
111A Pasteur, District 1
Ho Chi Minh City
Vietnam
E-mail: info-hcm@bizconsult.vn

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