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COMMERCIAL HOUSING PROJECTS DEVELOPING ON AGRICULTURAL, NON-RESIDENTIAL LAND: A LEGAL MILESTONE



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ABSTRACT:

On 30th November 2024, the 15th National Assembly deliberated and officially passed Resolution No. 171/2024/QH15, introducing a pilot framework for the implementation of commercial housing projects under agreements on acquiring land use rights or utilizing existing land use rights (“**Resolution 171**”). Resolution 171 marks a groundbreaking trial phase in Vietnam with notable keys as follows:

- **Flexible pilot mechanism:** The Resolution enables commercial housing projects to be developed not only through agreements to

acquire land use rights but also be applicable to non-residential land.

- **Commercial housing development:** With the removal of longstanding legal barriers, the Resolution encourages a transformative boost in the real estate market, particularly in major urban centers with high-rise demand for housing.
- **Enhancing governance and transparency:** The Resolution aims to provide a transparent and sustainable development of the real estate market.
- **Attracting investment:** The Resolution opens up opportunities for investors to easily engage in commercial housing development.
- **Addressing housing challenges:** Resolution 171 is expected to play a crucial role in remediating the housing shortage, especially for low and middle-income individuals in major urban centers.

1. SCOPE OF REGULATION

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Resolution 171 is experimental applied nationwide to the following real estate investors/developers:

- (a) Projects involving the acquisition of land use rights;
- (b) Projects utilizing existing land use rights;
- (c) Projects combining both the utilization of existing land use rights and the acquisition of land use rights;
- (d) Projects established by entities who currently hold land use rights to develop commercial housing projects on the location that was previously used by such entities but are being requested to relocate due to environmental pollution issues or under the urban planning master-plan.

In line with the principles of consistency and alignment with the Law on Land, commercial housing projects developed by real estate business organizations who: (i) acquire residential land use rights or (ii) already hold residential land use rights, or a combination of residential and other land use rights, are not subjects to be regulated by Resolution 171 but will be governed by existing Land Law.

The agreements on acquiring land use rights for the pilot project shall be implemented through the transfer of land use rights in accordance with Land Law. In cases within the area where the pilot project is developed having partial land managed by state agencies that cannot be separated into an independent project, such land managed by the state entities shall be added to the total project area. The State will then reclaim allocate or lease to the investor without bidding procedures for acquiring land use rights.

2. SCOPE OF APPLICATION

Resolution 171 is applicable to three subjects: (i) state-owned authorities, (ii) real estate entities, and (iii) land users. Applicable subjects implement their rights and obligations accordingly with related provisions of laws on land, housing, real estate business, investment, and other relevant legal regulations.

3. CONDITIONS FOR IMPLEMENTATION OF THE PILOT PROJECT

Conditions for land parcels:

- Aligned with the district-level land-use plan or urban

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- construction and development plan;
- Aligned with approved local housing development plans, programs;
- Under the list of land for pilot projects approved by the provincial People's Council.
- Non-agricultural land (non-residential land);
- Residential land and other lands within the same parcel applied for agreement on land use right acquisition;
- Defense and security land that have been reallocated for non-defense or non-security purposes according to planning.

Conditions for project implementing entity (Real estate business entities):

- Being qualified for the conditions as set out in the laws on land, housing, real estate business, investment, and other relevant legal regulations;
- Having approval from the provincial People's Committee regarding the agreement on the acquisition of land use rights for implementing pilot project for the circumstances mentioned in points (a) and (c) Section 1 above **or** approval from the Ministry of National Defense for defense lands and Ministry of Public Security for security lands.

Conditions for land types:

- Agricultural land;

4. CRITERIA FOR SELECTING PILOT PROJECTS

- Being implemented in urban areas or areas planned for urban development;
- The total residential land area within pilot projects (including existing residential land and land proposed for conversion to residential use) must not exceed 30% of the additional residential land within the planning phase (compared to the current residential land use) under the approved provincial land-use plan for 2021–2030;
- Not fall under the projects specified in clause 4 Article 67 Law on Land;
- For cases: (a) Section 1 above, the land designated for the pilot

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project should not be included in the list of land recovery projects approved by the provincial People's Council as per Clause 5 Article 72 Law on Land.

5. EFFECTIVENESS AND IMPLEMENTATION

Resolution 171 takes effect from 01 April 2025 and shall remain in full force for 5 years. Upon its expiration, real estate business entities those are in the process of implementing pilot projects in accordance with their approved schedules may continue to execute their projects until completion. For individuals acquiring land use rights or ownership of assets attached to land under the pilot

projects, their rights, and obligations will be governed by the provisions of laws applicable to land users and asset owners.

CONCLUSION:

Resolution 171 represents a groundbreaking milestone in reforming and enhancing efficiency within Vietnam's real estate field. It opens new avenues for commercial housing projects while maintaining alignment with land regulations and ensuring fairness in project access for all involved parties. Simultaneously, Resolution 171 lays a foundation for stabilizing the supply of commercial housing and enhances the development of a transparent and sustainable real estate market.

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Bản tin này cùng với các nội dung trong bản tin chỉ nhằm mục đích cung cấp thông tin chung. Chúng tôi không cam kết hoặc bảo đảm về tính chính xác, tính thời sự hoặc sự đầy đủ của các thông tin cung cấp trong bản tin này. Bản tin này không thể hiện quan điểm, ý kiến chính thức hay tư vấn pháp luật của chúng tôi. Bạn không nên sử dụng những thông tin trong bản tin này để thay thế cho việc tham khảo ý kiến tư vấn pháp luật của chúng tôi hoặc của luật sư của bạn. Việc bạn sử dụng các thông tin trong bản tin này không hình thành mối quan hệ “luật sư – khách hàng” giữa bạn và chúng tôi, trừ khi và cho đến khi một thỏa thuận được ký kết giữa bạn và chúng tôi theo đó chúng tôi được yêu cầu tư vấn về vấn đề cụ thể của bạn.

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 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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