

# Legal Alert

February 2022

## Decree No. 02/2022/NĐ-CP guiding the Law on Real estate business

On 06 January 2022, the Government of Vietnam issued Decree No. 02/2022/NĐ-CP guiding the Law on Real estate business 2014 ("**Decree 02**"). Decree 02 will come into force on **01 March 2022** and replacing Decree No. 76/2015/NĐ-CP governing the same subject matter ("**Decree 76**").

### 1. Notable changes in Decree 02

In general, the changes made in Decree 02 are to ensure consistency in the regulations on real estate business and the associated investment activities and land issues. Decree 02 also enhances some statutory conditions for the real estate business aimed at increasing information integrity in the real estate business.

Below are some notable changes in Decree 02:

#### **Information publicity is now a statutory condition applicable to companies in real estate business**

Information publicity, which is an obligation for real estate enterprises under Law on Real Estate 2014, now becomes one of mandatory conditions for enterprises to operate in the real estate business under Decree 02. Accordingly, real estate business enterprises are required to sufficiently publish and timely update the following information on their websites, at the relevant real estate project management offices or real estate trading floors (if any):

- the enterprise's information: name, contact, legal representative;
- information about real estate products put on the market: type, location, feature, price, master plan information, documentation on ownership, etc.;
- information about real estate mortgage (if any);
- information about quantity and type of real estate products permissible for trading, those that are already sold, transferred, hire-purchased, and those available for trading.

Furthermore, Decree 02 consolidates the regulations of the Law on Investment 2020 and those guiding the Law on Land 2013 by eliminating the requirement on minimum legal capital of 20 billion VND; stipulating the requirement on equity ratio of real estate business investors based on land usage area; and detailing the measure to determine such equity. Particularly, the investor's equity must account for at least 20% of the total investment capital in a real estate project which has land usage area under 20 hectares, and at least 15% if a real estate project uses 20 hectares of land or more. The investor's equity will be determined based on the audited financial statements for the same or preceding year in case of operating enterprises, or based on the charter capital actually contributed in case of newly-established enterprises.

Decree 02 requires the existing real estate business enterprises to satisfy the real estate business conditions, including information publicity, within **6 months** from the effective date (i.e. **no later than 01 September 2022**). Enterprises failing to meet this requirement by the given deadline are technically not permitted to do real estate business. However, Decree 02 does not provide a detailed scheme on management and supervision by competent authorities to enforce this regulation. Such guidance is expected to be issued by the Ministry of Construction in the near future.

## **Contract templates are now compulsory**

Unlike the corresponding regulations in Decree 76 saying that contract templates for real estate businesses are for reference purpose only, Decree 02 stipulates that transactions in real estate business must be concluded in accordance with templates provided in the Decree. This provision could be interpreted that contract templates are now compulsory. However, it is unclear under Decree 02 whether or not the contracting parties are allowed to modify and/or supplement the terms and conditions, especially commercial ones, while the key mandatory contents of the contract templates are maintained and the modified/supplemented terms are not contrary to the prevailing laws. Therefore, we expect further guidelines may be issued on the use of the templates.

Another change relating to the contract template is that Decree 02 now provides contract templates for different type of real estate properties (*i.e. condominium, tourist apartments ("condotels"), residential and commercial units ("officetels"), residential houses, and other non-residential units*) instead of the contract templates pursuant to transaction types (*e.g. purchase and sale, lease, lease and purchase*) as provided in Decree 76. Such changes will hopefully facilitate the adoption of those contract templates in reality and registration of the contract template (in case of contract on purchase and sale of condominium) at the competent authorities.

## **Clearer procedures for transfer of real estate projects**

Decree 02 clearly provides the principles for real estate project transfer which are in line with the prevailing regulations on investment, particularly:

- For real estate projects which are granted with investor approval decision and/or Investment Registration Certificate ("IRC") pursuant to the Law on Investment 2020, the transfer of such projects must be conducted in accordance with the investment regulations;
- For real estate projects which do not fall into the above cases (*e.g. construction projects of commercial building conducted by local investors which are not selected according to the investor approval process nor granted with the IRC*), the transfer of such projects must be conducted in accordance with the real estate business regulations.

Relevantly, Decree 02 provides a broad definition of a real estate project, *i.e.* "a construction investment project which is proposed, considered, approved in accordance with the law on construction". This means that the transfer of construction works which are previously not classified as "real estate business projects" (*for example: construction works of hotel or resort for the initial purpose of self-operation by the investor, not intended for sale, transfer, lease, sublease, lease and purchase*) will also need to comply with the regulations on real estate project transfer under Decree 02.

## **2. What should real estate business enterprises do to comply with Decree 02?**

Below are some points that real estate business enterprises may consider to ensure compliance with the new regulations of Decree 02 when it comes into effect on 01 March 2022:

- (i) Build and/or review, monitor the enterprise's websites to ensure the information about enterprise and real estate products that will be commercialised are published and updated in accordance with the regulations in the Law on Real estate business 2014 and Decree 02;
- (ii) Review the contract templates currently applied for real estate transactions from the effective date of the Decree, and make necessary adjustment to ensure alignment with the templates provided in Decree 02;
- (iii) Re-register the contract template on purchase and sale of condominium with competent authorities if there are any adjustments made to such template;
- (iv) If having plan for transferring real estate projects, thoroughly research the regulations to apply the appropriate procedures.

## **Questions:**

If you would like to find out more about this Decree 02 or have any legal questions regarding your business, please do not hesitate to get in touch by contacting us without obligation.

## **Looking for more?**

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