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INDOCHINA  
 LEGAL

# Real Estate & Construction Legal Updates

## INDUSTRY HIGHLIGHTS

As compiled from VNExpress, Viet Nam News, The Saigon Times Daily, Tuoi Tre News, Vietnam Investment Review and Deal Street Asia

# Foreign investors flock to property market



**Vietnam's real estate market shows signs of flourishing as international investors, mainly from Japan, South Korea, Hong Kong and Singapore, seek to secure a foothold in the market.**

These regional companies have their eyes mainly on the country's two major cities: Hanoi in the north and Ho Chi Minh City in the south, with investors particularly interested in large-scale mixed-use developments comprising apartments, offices and retail space. Meanwhile central Vietnam (Da Nang, Nha Trang) continues to attract investment in the hospitality sector, mostly resorts and condotels.

Investors' interest is fueled by Vietnam's fast-growing economy, urbanization and an expanding middle class. Based on the General Statistics Office's figures, foreign investment into real estate hit \$1.68 billion in 2016, coming third after the manufacturing sector (first) and wholesale and retail trade (second).

### Japanese wave of investment

Vietnam's property market has captured the attention of international buyers, especially Japanese, as a potential investment destination, which may generate high annual return of up to 25 percent.

According to reports, Japanese companies have pledged an accumulated sum of \$2 billion in total for Vietnam's real estate sector.

One of Japan's largest builders, Kajima Corporation, has formed a joint venture with Vietnam-based real estate development fund Indochina Capital to channel funds worth of \$1 billion into property developments in Vietnam over the next 10 years. The 50:50 partnership has plans to kick off four large-scale high-end property projects in Hanoi, Ho Chi Minh City and Da Nang in the next 12-15 months.

Kajima's Overseas Division Head Keisuke Koshijima said that the company's strategy is to create high-value properties to cater to the growing middle class in Vietnam. After investing in office building and hotel projects, the company has recently acquired a 13-floor mixed-use facility in Da Nang.

Established in 1840, Kajima includes in its portfolio the Resorts World Sentosa in Singapore, Kansai International Airport, Dubai Metro in the UAE and the Suez Canal Bridge. Indochina Capital, meanwhile, has been investing in several high-end properties in Vietnam such as The Nam Hai, Six Senses Con Dao, Hyatt Regency Danang, Montgomerie Links Golf Courses and Indochina Plaza Hanoi.

Earlier in the year, another Japanese giant, Mitsubishi Corporation, diversified its portfolio in Vietnam by buying into a property development project in Hanoi, which has total investment of \$1.9 billion.

The Japanese company has become a partner of Vietnam's real estate firm, Bitexco Group, after acquiring 45 percent stake in the first phase of the former's The Manor Central Park project in the Hoang Mai District of Hanoi. Bitexco holds the remaining 55 percent.

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Mitsubishi is reportedly planning to pour about \$285 million to build 240 low-rise housing units and two condominiums with 1,036 apartments in the first phase. The low-rise housing will be introduced to the market by 2016 year-end while the apartments will be in 2017.

The Manor Central Park, to be developed on an area of 190 hectares, will include a 100-hectare park, commercial space, office buildings, research facilities and residential properties comprising 17 condominiums with 7,700 apartments and 1,000 low-rise houses. Construction costs are estimated at \$1.9 billion.

Mitsubishi's decision to invest in the project came as demand for housing in Hanoi has risen in recent years. The number of residences sold in the capital reportedly doubled to 20,000 in 2015.

Bitexco has developed various property projects across the country since 2000, including the iconic 68-storey Bitexco Financial Tower in Ho Chi Minh City's central District 1. Meanwhile Mitsubishi Corporation has representative offices in Hanoi and Ho Chi Minh City and a portfolio counting several industrial and commercial projects in Vietnam.

Moreover, Japanese Tokyu Group together with Vietnamese Becamex IDC are now developing the Tokyu Binh Duong project, with a capital of \$1.2 billion. Sora Gardens I, a component project, which is a 24-storey tower building, has been completed.

Japanese firms Hankyu Realty and Nishi Nippon Railroad will also acquire a combined stake of 50% in APSL-PLB-Nam Long Co. Ltd. under Nam Long Investment Corporation to invest in Fuji Residence project in HCMC. The Fuji Residence is part of Nam Long-Phuoc Long B urban area, with 84 Valora villas and 789 Flora apartments built on an area of 5.38 hectares by the Rach Chiec River.

Japanese investment funds have also entered into various investment deals in Vietnam's property market.

For instance, Vietnamese property developer SonKim Land is raising \$100 million funding from Japanese investors through an investment fund called Lemon Grass Master Fund. The real estate firm has received the first chunk



of \$46 million and is slated to secure the remaining \$54 million by the first quarter of 2017.

Meanwhile, a \$5-billion Japanese investment fund, Creed Group committed to pour VND600 billion in 2014, to acquire CityGate, a project in Ho Chi Minh City's District 8 developed by Nam Bay Bay Company. Later, it was Creed Group which signed with Nam Bay Bay agreements on contributing capital to two other projects.

Then recently, Creed Group signed a cooperation agreement with An Gia Investment on reserving an investment amount of \$200 million to develop real estate projects in Ho Chi Minh together with An Gia. Creed Group's President, Toshihiko Muneyoshi, commented that now is the right time to make investment as the Vietnamese real estate market has entered the recovery period.

### Investment funds, mergers and acquisitions

Many globally renowned investment funds have also shown interest in the Vietnamese property market after announcing multi-million-dollar investment deals in potential real estate firms.

Among the notable investments by foreign investors include the \$6 billion Saigon Peninsula project, a park and housing complex to be constructed on an area of

118 hectares in District 7, by two Malaysian giants Pavilion Group and Genting Group with Vietnamese partner Van Thinh Phat. Amata Long Thanh will earmark \$309 million to build up an urban development project in the southern province of Dong Nai.

In November 2016, Warburg Pincus and VinaCapital announced the establishment of a joint venture (JV) spanning over development, acquisitions, and operation in the hospitality industry across Southeast Asia. The JV will be seeded initially with up to approximately \$300 million of capital commitments from Warburg Pincus and VinaCapital and best-in-class hospitality assets, including a 100% stake of Serenity Holding as well as select resorts and city hotels in Vietnam such as the iconic Metropole Hotel in Hanoi.

In other VinaCapital investment deals, VinaCapital, in partnership with Hong Kong diversified group Cho Tai Fook and Macau-based junket operator Suncity Group, have recently set a timeline for its \$4 billion tourism and leisure project Nam Hoi An, now rebranded HOIANA, in central Vietnam.

The first phase of HOIANA, which is expected to launch in the first quarter of 2019, will feature a resort and casino complex, including a 445-room hotel, 200 apartment suites for sale on a buy-to-let basis operated by Hong Kong's



New World Hotels, with a luxury Rosewood spa resort, incorporating 75 guest villas and 25 exclusive residences, and a golf course designed by Robert Trent Jones II.

The developers also plan further investment for the \$4 billion township on the next construction phases, which are due to be completed over the course of 10-15 years.

Meanwhile, Singapore-based Frasers Centrepoint Limited has acquired a 70 percent stake in the \$100-million project, G Home, which covers one hectare in downtown Ho Chi Minh City.

Also, securities firm Mirae Asset, part of the independent financial services group Mirae from South Korea, spent \$350 million to become the owner of Vietnam's tallest building, the Keangnam Landmark.

In addition, Keppel Land from Singapore with its sterling portfolio of properties such as Saigon Centre, Estella Heights and Riviera Point, through its subsidiary Ibeworth Pte. Ltd. has clinched a deal with Nam Long to buy VND500 billion (\$22.4 million) worth of convertible bonds.

In August 2016, Keppel Land has opened its much-anticipated retail mall in Saigon Centre in Ho Chi Minh City, which is anchored by the city's first Takashimaya department store.

Keppel Land has also acquired 40 percent stake in Empire City Thu Thiem Limited Liability Company, which is developing Vietnam's tallest mixed-used project, from the latter's joint venture partners for \$93.9 million. Following the transaction, Hong Kong-based real estate private equity fund Gaw Capital Partners will have 30 percent in the venture while two Vietnamese partners Tien Phuoc Real Estate JSC and Tran Thai Real Estate Co Ltd will jointly own 30 percent.

Another Singapore-based developer CapitaLand has announced plans to expand its presence in Vietnam by establishing a \$500 million fund by next year for commercial property development, mainly in Hanoi and Ho Chi Minh City. The company sees strong potential in the office sector, especially Ho Chi Minh City upmarket segment.

CapitaLand has been operating in Vietnam since 1994, investing mainly in residential projects with more than 9,100 units in Hanoi and Ho Chi Minh City.

It now has plans to acquire more sites to develop around 2,000 to 2,500 more residential units in the cities, trying to capitalize on Vietnam's urbanization and a growing middle class.

Meanwhile, the US GEM Fund has committed to invest \$20 million in Hoang Quan Real Estate Group.

### Strong foreign buyers' interest in residential units

In a related development, relaxed ownership rules have created strong interest to purchase residential units in Vietnam among foreigners, mainly from Asia, according to the Vietnam Real Estate Association (VNREA).

In its new report, VNREA revealed that the number of property transactions in November 2016 soared 17 percent from the previous month, with Hanoi posting an 18-percent increase to more than 1,300 transactions in October 2016 and in Ho Chi Minh City rising nearly 17 percent, to about 1,200. Foreign buyers made up about 20 percent of the transactions in October 2016.

The report attributed this trend to the government's efforts to stabilize the local currency, control inflation and ease market access for foreigners.

Last year Vietnam relaxed restrictions on foreign ownership to lure foreign funds into the market, which had been saddled with oversupply since a real estate bubble burst in 2011. The amended law, effective from July last year, allows foreign investment funds, foreigners with valid visas, international firms with operations in Vietnam and overseas Vietnamese to buy residential properties.

VNREA has forecast promising prospects for the local market, saying demand from foreign buyers will continue to drive growth.

The number of foreigners living in the country has reached 320,000, said the property association.

Investors with business interests in Vietnam from Singapore, South Korea, China and Japan are the most likely buyers, attracted by the potential for higher yields in Vietnam than at home.

Industry insiders say local investors have also been flocking to the property market as a response to low returns on gold and bank savings.





## Strong local investment

Showing strong financial resources, access to land and capacity to deal with cumbersome administrative procedures, local developers have been launching new projects left and right.

Vinhomes, a brand of Vingroup, continued its robust development with the launch and construction of various large-scale projects nationwide. Notable projects launched in the first nine months of 2016 include Vinhomes Gardenia in My Dinh, Hanoi and Vinhomes Golden River as part of the Saigon-Ba Son Mixed Use Complex in Ho Chi Minh City. Several other projects such as Vinhomes Central Park and Vinhomes Times City-Park Hill continued to enjoy strong sales, resulting in thousands of pre-sold apartments, villas and shops.

Nam Long has recently launched under the Valora brand name 450 affordable villas and townhouses, with VND6 billion (\$272,700) and VND2.5 billion (\$113,600) starting prices respectively. After EHome and Flora, two affordable product lines for first-home and mid-income buyers, Valora is another highly efficient product at a reasonable price for successful professionals by Nam Long.

Meanwhile, Dai Quang Minh Real Estate Investment Company has spent nearly VND7 trillion, or some \$330 million, to develop infrastructure projects, under the build-transfer (BT) format, in Thu Thiem New Urban Area, including four major roads in the said area, the Central

Square and Riverside Park projects, the Thu Thiem 2 Bridge and a pedestrian bridge connecting District 1 with Thu Thiem new urban area.

The construction of Dai Quang Minh's 113.39-hectare Sala Residence project in Ho Chi Minh City, comprising low-height residential areas (Zones II and III), commercial office and high complex buildings (Zones IIa and IIIa), and a cruise harbor project, in the south of Mai Chi Tho as well as a residential and commercial complex in the north of Mai Chi Tho (Zone VI), is on track according to Dai Quang Minh General Director Tran Tran Ba Duong.

In other news, Ho Chi Minh City-based property developer Novaland, as of November 2016, ahead of its intended IPO, raised \$120 million by selling 10 percent of the company to 18 investors, mostly foreign financial institutions such as Dragon Capital, VinaCapital, GIC, JP Morgan, RWC Partners, Duxton Asset Management, VFM and Ban Viet.

By the end of December 2016, Novaland completed its IPO, becoming the country's second biggest listed housing developer. It listed almost 589.37 million shares at a starting price of VND50,000 (\$2.1). Within minutes, the share reached VND60,000 (\$2.6). At that price, its market capitalization topped VND35 trillion (\$1.5 billion), second only to Vingroup's VND111 trillion (\$4.8 billion).

Novaland is among the biggest real estate developers in the south with 40

projects in all segments like houses, villas, apartments, and office-tel. So far, it has developed more than 27 projects throughout the metropolis and has maintained the construction progress of its Sunrise Riverside, Richstar, The Sun Avenue, Golden Mansion, Orchard Parkview, and Botanica Premier projects.

Remarkably, Novaland has also bought over a 30-hectare land from foreign investment fund VinaCapital in South Rach Chiec in District 2 of Ho Chi Minh City to develop the renamed Lakeview City project, comprising a total of 960 units of townhouses, shophouses and semi-detached villas.

Novaland will also replace South Korea's Daewon Cantavil to resume the construction of the long-delayed Da Phuoc International New Town project in the central city of Da Nang. The company will co-operate with Bac Nam 79 Construction JSC to develop the project. In addition, the project will be renamed The Sunrise Bay.

The construction of the Da Phuoc International New Town project was kicked in February 2008 with a total investment capital of \$250 million, in Hai Chau district. Being the first new international town built on land reclaimed from the sea, the 210-hectare project includes an international hotel and conference center, a 60-storey office building, villas, 8,500 apartments, an 18-hole international standard golf course, as well as an amusement park, and shopping malls.

Aside from the launch of various numerous projects by local developers, the number of newly established companies in the real estate sector also almost doubled to 2,160 during January-September 2016, compared to the same period in 2015, the Ministry of Investment and Planning reported.

That means, on average, eight property firms were launched every day in the first nine months of 2016. The registered capital of new property companies also increased 2.5 times year-on-year.

About 22 percent of overseas remittances have also been flowing into Vietnam's real estate market on average. The country recorded \$12.25 billion in overseas remittances in 2015, slightly up from \$12 billion in 2014, according to data released by the central bank. ■



# Mortgaged housing projects safe for buyers: experts

**Experts say that taking out mortgages for property projects is normal practice among developers, and laws will protect the interests of buyers of mortgaged property products.**

This position is in response to the controversial publication by the Ho Chi Minh City Department of Natural Resources and Environment (DONRE) of a list of 77 apartment projects that have been registered at land registration offices as mortgaged assets, which action is said to have been prompted by the earlier Harmona scandal in the city, wherein more than 600 buyers of Harmona apartments in the city's Tan Binh District got a rude shock one day when they were told their homes would be seized by a bank because the developer had mortgaged the building and failed to repay the loan. That meant nearly 2,000 people living there had to leave their apartments despite already making full payments. As a result, the city has decided to make the legal status of property projects public to reduce the risk for buyers.



Later, Hanoi's DONRE also published a list of 26 apartment projects that had taken out mortgages at banks to get capital for developing the projects. Now, the capital city has a total of 300 property projects, while Ho Chi Minh City has 584 property projects.

Phạm Ngọc Lien (Lien), director of the Ho Chi Minh City Land Registration Office, said that the announcement was necessary to protect the interest of buyers, investors and banks, and to ensure transparency on the property market.

Vu Thi Khuyen, a representative of the Ho Chi Minh City Construction Department, meanwhile said that it was normal for enterprises to mobilize capital from society, including buyers and banks, to develop property projects, and investors of the projects must therefore be certified by the city's construction department to be eligible investors of mobilizing capital.

Bank and financial expert Dang Quoc Tien said all enterprises could take loans out for their businesses, and that banks pay attention to the ability of investors to repay loans, as well as the legal status and feasibility of the projects, before deciding to give them loans, he said.

Le Hoang Chau (Chau), chairman of the Ho Chi Minh City Real Estate Association (HOREA), said it was the responsibility of parties involved in the projects to release public information about the mortgaged property projects. However, Chau said, the parties should carefully consider their announcements regarding mortgage information to avoid misunderstandings from buyers, who sometimes have the misconception that mortgaged projects are weak projects, even though it is a common practice.

Le Hung Manh, general director of Gia Hoa Company, which has mortgaged projects in Ho Chi Minh City, supports publicizing information on mortgaged property projects. He notes, however, that the Ho Chi Minh City DONRE had not prepared well for this plan and suggests that the department should cooperate with property enterprises and media to hold press conferences on announcing the mortgaged projects in order to provide thorough information on this issue.

## Protecting buyers

Nguyen Huu Nghia, deputy director of Hanoi DONRE, said mortgages taken out for commercial projects are both normal in business and in compliance with the law. He adds that State offices have controlled mortgaged projects, and mortgages would not affect the interests of apartment buyers. In fact, apartment buyers of some mortgaged projects had received ownership of real estate certificates. In addition, developers of those projects had implemented all their rights and obligations in lending capital and selling property products.

In the future, the Ho Chi Minh City DONRE and the Ho Chi Minh City Land Registration Office will update information regarding the repayment of loans for mortgaged projects, said Lien. He continues that the departments expect to organise a meeting between investors, banks and apartment buyers to find the best solutions and ensure more transparency on the local property market.

To protect property buyers, Chau said DONRE should provide more information about investors' purpose of mortgaging their projects at banks, including plans for developing and constructing the project as buyers would need to know this information before deciding to buy the property product. He added that banks should also supervise investors that have mortgaged projects to ensure that investors use loans and capital mobilized from buyers for the right purpose - completing the projects and handing the apartments over to buyers.

Phạm Sy Liem, deputy chairman of the Vietnam Construction Association, notes that some investors mortgaged their property projects to get bank loans to develop the projects, but in fact, they used the loans for other purposes, prohibiting them from handing over apartments to buyers. Therefore, he said property buyers should take down information at State management offices about the property products they want to buy before deciding to buy apartments that are part of mortgaged property projects. ■

# Multi-house tax proposal causes stir

The idea of taxing those owning multiple houses, in a bid to prevent speculation, is causing a stir over whether such tax is feasible, and the impact it may have on the housing market.

The market has recently been heated, following the disclosure that the Finance Ministry was studying a draft on collecting a housing tax from those owning more than one house. The idea was initially raised as early 2009, with three possible tax plans on the table then.

The first plan was to levy fixed taxes on the second and any subsequent homes, with buildings under two stories being exempted while those with three stories and above being subject to a tax of VND2,000 per square meter per year. The second plan considered a 0.003 percent tax on the value of the second and any subsequent homes after deducting VND1 billion (around \$45,000). The final proposal sought to tax the extra area of the house after deducting 200 square meters, with the tax ranging from VND2,000 to VND4,000 a square meter per year.

These plans failed to meet with approval from the law-making National Assembly, with lawmakers saying it was not the right time to impose housing taxes and that taxes collected would not contribute significantly to State coffers.

To date, although the Director of the Finance Ministry's Department of Tax Policy Pham Dinh Thi recently said that the idea was a long-term orientation and would certainly not come into effect next year, as rumored, it caused concerns among industry experts over its feasibility, as well as the impact it may have on the property market.

## International practice

Tax-related tools to regulate the realty market have been used in many countries and territories, such as mainland China, Taiwan, Korea, Japan, Singapore, European countries and the United States.



Singapore was one among the countries which imposed the highest taxes on owning multiple houses, up to 7 percent on a second house and 10 percent on a third house, which came into effect in 2013.

In Japan, tax rates were 1.4 percent to 2.1 percent, and prices were set at market prices, which were reviewed every three years.

In the UK, second property assets with a value of more than £40,000 (\$49,000) would be taxed an additional 3 percent, while those valued at more than £1.5 million would be taxed up to 15 percent.

In Korea, different tax rates were given to different types of property, such as 0.25 percent on apartments and 4 percent on villas.

In Vietnam, however, there were taxes on land use, but no tax on property assets.

According to the Law on Non-Agricultural Land Use Tax, in effect from the beginning of 2013, residential land in urban areas was taxed between 0.03 percent to 0.15 percent of the Government's land prices. A problem, however, was caused by the Government's land prices, which were much lower than market prices, so the impact on the property market was modest.

## Worries

Several property experts agree with the idea of taxing those owning multiple houses.

According to the Ho Chi Minh City Real Estate Association President Le Hoang Chau Chau, imposing taxes on second houses would help reduce speculation and property prices would decrease as a result, forcing property developers to

improve their products to meet market their products to meet market demands. He continued that with the aim of first preventing speculation, the tax would, in the long term, stabilize housing prices and improve market transparency. He noted, however, that tax rates should be considered carefully and calculated based upon property asset values and total area.

The tax should not be applied on social houses, relocation houses and commercial houses valued at less than VND 1 billion, Chau added, stating that finding a method to clarify ownership of multiple houses to be subject for the tax was also a matter of concern.

Economic expert Tran Du Lich said that the tax should be applied, in line with international practices. He added that property asset taxes would become the major revenue of urban areas, where land is limited.

Meanwhile, according to economic expert Le Ba Chi Nhan, the finance ministry should pay attention to that policy, if applied, since it could cause the market to become depressed if people would be hesitant to purchase another house, especially when the market was showing signs of slowing down.

Nguyen Van Duc, deputy director of Dat Lanh Real Estate Company, said he did not agree with the idea of imposing taxes on second house. He noted that when buying houses, buyers now pay value added taxes and land use fees, which were estimated to add 20-30 percent to the cost. In addition, he added that the Vietnamese property market was not transparent enough to apply this type of asset tax. ■



## NEW LEGAL DOCUMENTS

# New housing guidelines issued

- 📖 Decree No. 99/2015/ND-CP of the Government dated 20 October 2015 (Housing Decree) on guidelines for implementation of the Law No. 65/2014/QH13 dated 25 November 2014 on housing (Housing Law)
- 📖 Circular No. 19/2016/TT-BXD of the Ministry of Construction dated 30 June 2016 on guidelines for implementation of some contents of the Housing Law and the Housing Decree (Housing Circular)

The Government via its issuance of the Housing Decree on 20 October 2015, followed by the Ministry of Construction via its issuance of the Housing Circular on 30 June 2016, recently provided detailed guidance on the implementation of the provisions of the Housing Law.

The following are among the notable points under the Housing Decree and the Housing Circular.

## Restriction on form of capital mobilization in commercial housing projects

Under the Housing Law, residential housing developers are allowed to mobilize capital via the following channels: (i) capital contribution, cooperation in investment, business cooperation or joint venture; (ii) advanced payment for purchase, lease or hire purchase of off-plan residential housing; or (iii) loans from credit or financial institutions operating in Vietnam.

Of note, although not expressly prohibited by law, it seems that offshore loans (including offshore loans from offshore credit institutions) are excluded from the list of sources for capital mobilization of residential housing projects.

Under the Housing Decree, capital contributors, cooperators and partners to a commercial housing development project are only allowed to receive distribution of profit in money or shares according to their contribution ratio.

In particular, residential housing developers are not allowed under the Housing Decree to raise capital by distributing housing products, giving priority to buy houses, paying deposits, obtaining the right to buy houses, or distributing land use right of the project to the capital contributors.



Moreover, the developer shall only be entitled to sign the relevant capital mobilization contract upon satisfaction of the following conditions: (i) having the project approved by the competent authority, (ii) having completed site clearance, (iii) having the hand-over minutes of the project's boundaries and (iv) receiving the notice on satisfaction of conditions for capital mobilization from the local Department of Construction (DOC).

Decree 99 further provides that if the developer fails to comply with the regulations on capital mobilization, such capital mobilization shall not be enforceable and the developer: (i) shall be liable to pay an administrative fine, and (ii) would be required to compensate the capital contributor or cooperator or partner.

## Eligibility of foreigners to own residential housing

The Housing Decree clarifies the conditions and documents evidencing the eligibility of foreigners to own residential housing in Vietnam, as follows:

**Foreigners being organizations** must (i) have a valid investment registration certificate or other similar documents issued by the relevant licensing authorities

(IRC), and (ii) be in one of the following categories: (a) investing in the construction of residential houses in accordance with the relevant property project (foreign developers), and (b) foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign investment funds and branches of foreign banks operating in Vietnam.

**Foreigners being individuals** must (i) have a valid passport affixed with the seal of the relevant Immigration Department of Vietnam certifying valid entry into Vietnam, and (ii) not be in the category of individuals entitled to preferential treatment or diplomatic immunity.

**Foreign individuals who concurrently retain their Vietnamese nationality or have a Certificate of Vietnamese origin issued by the Vietnamese competent authorities**, meanwhile, are entitled to register their eligibility for ownership of a residential house as foreign individual or a Vietnamese residing overseas (Vietkieu).

## Maximum number that can be owned by foreigners

Foreigners may own up to 30% of the total number of residential apartments in an apartment building (including apartment



to 30% of the apartments in all the buildings in one geographical area with a population equivalent to one administrative ward level (Ward Area). If an apartment building has more than one unit or block, foreigners may own up to 30% of residential apartments of each unit or block.

As to the number of separate houses (including terraced residential houses, independent residential houses or villas) owned by foreigners, although the Housing Law provides for a maximum of 250 separate houses to be owned by foreigners in a Ward Area, the Housing Decree further sets out the following limitations:

- If there is only one project with not more than 2,500 separate houses in a Ward Area, then foreigners are only permitted to own up to 10% of the total number of separate houses of such project.
- If there is only one project with the number of separate houses equivalent to 2,500 houses in a Ward Area, then foreigners are only permitted to own up to 250 houses.
- If there are two or more projects in a Ward Area, then foreigners are only permitted to own up to 10% of the number of houses in each project, and the aggregate number of separate houses which may be owned by foreigners in all projects must not exceed 250 houses.

Of note, every housing transaction undertaken by foreigners exceeding the number of houses that foreigners are permitted to own as discussed above and every housing transaction in which

foreigners are not the eligible owners of the residential house shall be invalid and accordingly, shall not be granted a certificate of land use rights and ownership of buildings and other assets attached on land (LURC). As such, prior to purchasing or hire purchasing a house, foreigners should check the following information on the website of the relevant DOC:

- List of projects and number of houses in the locality within areas where foreigners are permitted to own houses
- Number of houses (including residential apartments in an apartment building and separate houses) permitted to be owned by foreigners in each building or project

The DOC website will also publish other information such as the number of houses which have already been purchased or hire purchased and/or for which they have been granted a LURC.

### Expiry of foreigners' term of ownership

Three months prior to the expiry of their 50-year term of ownership, foreigners wishing to extend the same shall submit to the relevant provincial People's Committee: (i) as to foreign developers and other foreign organizations: (a) a request for an extension of the term of ownership, (b) a certified copy of the LURC, and (c) a certified copy of the IRC; and (ii) as to foreign individuals: (a) a request for an extension of the term of ownership, and (b) a certified copy of the LURC.

Based on the written consent of the relevant provincial People's Committee, the relevant licensing authority shall record the extended term of ownership in

the LURC, but in any case, the extended term shall not exceed 50 years from expiry of the initial ownership duration.

Meanwhile, if a foreigner does not wish to extend the term of ownership on a residential house, such foreigner may sell or donate the residential house to another eligible owner in Vietnam, either directly or by authorizing another person to act on its/his/her behalf. If the foreigner fails to sell or donate its/his/her residential house by the time the term of ownership expires, such residential house shall become State-owned residential housing.

Where, however, the foreigner being a foreign developer terminates its business activity before expiration of its housing ownership duration due to its IRC withdrawal by the Vietnamese competent authority, it shall sell or donate its residential house to an eligible owner in Vietnam.

Finally, if the foreigner is forced to leave Vietnam or cease operations in Vietnam by the relevant State authorities due to the use of such residential house being in violation of the laws of Vietnam, then the relevant State authorities shall determine the fate of such residential house.

### Transfer of the maintenance/ "sinking" fund

As a measure to protect house purchasers, the Housing Decree clarifies the regulations on the transfer of fees for maintenance of common areas of multi-owner apartment buildings.

Thus, the developer of an apartment building shall open a bank account at a credit institution in Vietnam to receive 2% of the value of the apartment or other area sold or hire purchased (the sinking fund) contributed by the purchaser or hire purchaser. This sinking fund is not subject to taxation.

If the developer fails to collect the sinking fund at the time of the handover of the apartment or other area to the purchaser or hire purchaser, the developer shall contribute such amount.

As to apartments or other areas retained by the developer not for sale or hire purchase, or which are (i) not yet sold or hire purchased as at the time of acceptance of the building and putting it into operation and (ii) subject to the obligation to contribute such sinking fund, the developer shall contribute such amount.



Within seven days after the management board of the apartment building is established and issue a written request for transfer of such sinking fund under the temporary management of the developer, the latter shall transfer such sinking fund including interest to the management board, and notify the DOC of such transfer.

If the investor fails to transfer the sinking fund to the management board, the latter is entitled to request the relevant People's Committee to compel the developer to transfer such amount.

### Conditions for sale/ lease purchase of future houses or off-plan houses

Under the Housing Circular in relation to the Law on Real Estate Business, once put on the market, potential apartment buildings or apartment complexes that are intended for housing must obtain minutes of acceptance on the completion of the foundation of those buildings.

To clarify the concept of "completion of foundation," the Housing Circular defines it as the completed construction of the foundation of any housing works (including residential housing with mixed use), meaning the stage of completing the foundation framework and bracing or to the elevation of the lowest floor of such housing works.

Where a developer applies top-down construction measures (i.e., constructing the upper floors of any residential works before constructing the foundation framework and bracing or the lowest floor plan of such housing works according to the approved construction drawing design), the finishing of the first-floor plan of the construction works is determined as equivalent to the completion of construction of the foundation by the normal method.

### Management of lease of housing by foreigners

Before signing a lease contract, the foreign owner of a residential house shall send a notification to the Housing Management Office of the district where the house is located. This notification shall specify the owner's name, address of the house, lease term and use purpose, along with a copy of the LURC attached thereto.

Where Vietnamese law requires that the house leasing business must be

registered, the foreign landlord shall apply for business registration. Upon termination of a lease agreement, a notification shall be sent to the Housing Management Office of the district where the house is located.

The Housing Management Office shall then be responsible to notify the tax authority for tax collection and submit bi-annual and annual reports to the DOC on house lease by foreigners in the province. The DOC shall in turn submit a report to the provincial People's Committee and the Ministry of Construction.

### Conditions for transfer of house sale contracts

Under the Housing Circular, organizations and individuals purchasing residential houses from commercial housing project developers may transfer the commercial house sale contract to another so long as the application for LURC issuance for such house has not been submitted to a competent authority, regardless of whether the house has already been handed over or not.

The transferee of the commercial house sale contract may then still transfer the same, provided that the application for the LURC issuance has not been submitted to a competent authority.

The transfer of such contract shall, however, apply only to a separate house or apartment. If the contract covers more than one apartment or house, all the apartments or houses in the contract shall be transferred. If the transferor wishes to transfer one or some of the houses or apartments, the transferor shall make out a new sale contract or appendix to the

contract before following contract transfer procedures.

### Procedures for transfer of house sale contracts

The Housing Circular sets out the following procedures for transfer of commercial house sale contracts:

- The parties shall enter into an agreement on transfer of the sale contract in accordance with the template provided by the Housing Circular.
- The transfer agreement must be notarized and authenticated if so required under Vietnamese law (i.e., if the transferor is not an enterprise licensed to conduct real estate business).
- After all taxes, fees and charges for the transfer of the contract are fully paid, the transferee shall submit an application requesting confirmation by the developer of the transfer agreement. Where an investor is not identified (due to its dissolution, bankruptcy, cessation of operations or other reasons), the transfer agreement (provided the sale contract is transferred before the effective date of the Housing Circular (i.e., 15 August 2016) and a LURC has still not been issued to the transferred house) must be certified by the People's Committee of the commune where the house is located.
- The last transferee of the sale contract shall be granted the LURC in accordance with the Land Law. ■



# Guidance on the mortgage of housing projects and off-plan residences

 Circular No. 26/2015/TT-NHNN of the State Bank of Vietnam dated 9 December 2015 on guidelines for procedures and formalities for mortgaging and releasing mortgage of housing construction projects and off-plan residences (Circular 26)

## What can be mortgaged

Circular 26 provides guidelines for the procedures and formalities on mortgaging and releasing of the mortgage of the following properties at credit institutions and branches of foreign banks in Vietnam:

- Housing construction projects and future houses or off-plan residences
- Off-plan residences belonging to organizations and individuals purchasing off-plan residences in housing construction projects
- Off-plan residences to be constructed on organizations' and individuals' legitimate land

## Types of housing projects eligible for mortgage loans

Under Circular 26, a house construction project must be one of the following to be eligible for mortgage to credit institutions:

- Projects for building or renovating an independent residence or a cluster of residences
- Projects for building residential area synchronized with technical and social infrastructure in rural areas
- Projects for building urban areas or projects using multi-purpose land which have residential land plots
- Projects for building works for both residential and business purposes

## Requirements for mortgaging housing construction projects and off-plan residences

Developers can mortgage a part of or an entire housing construction project upon fulfillment of all the following requirements: (i) have the project's documents and technical designs approved; (ii) have the certificates or decisions on land assignment and land lease; and (iii) being one of the above-mentioned projects eligible for mortgage loans from credit institutions.

As to off-plan residences in housing construction projects, developers can mortgage the same subject to satisfaction of



the following requirements: (i) have the project's documents and technical designs approved; (ii) have the certificates or decisions on land assignment and land lease; (iii) being one of the above-mentioned projects eligible for mortgage loans from credit institutions; (iv) the foundation of the residences to be mortgaged have been completed; (v) the residences are not parts of the housing construction project mortgaged by the developers; (vi) no dispute, complaint or lawsuit on ownership exists; (vii) there is no seizure for enforcement of an effective administrative decision; and (viii) no administrative decision on land resumption, notice of freezing of assets or notice on destruction exists.

For organizations and individuals mortgaging off-plan residences built on their legitimate land, the following requirements must be satisfied: (i) have a lawful LURC, (ii) possess building permit, if so required by law; (iii) no dispute, complaint or lawsuit on ownership exists; (iv) there is no seizure for enforcement of an effective administrative decision; and (v) no administrative decision on land resumption, notice of freezing of assets or notice on destruction exists.

Meanwhile for organizations and individuals mortgaging off-plan residences purchased from developers' housing construction projects, the following requirements must be satisfied: (i) have house purchase contracts made with the developer; (ii) have the agreements for transfer of house purchase contracts, if being the transferees of house purchase contracts according to regulations; (iii)

have written evidence of installment payments for the residences to the developer according to the schedule agreed in the house purchase contract; (iv) no complaint, lawsuit or dispute over house purchase contracts or transfer of house purchase contracts exists; (v) no dispute, complaint or lawsuit on ownership exists; (vi) there is no seizure for enforcement of an effective administrative decision; and (vii) no administrative decision on land resumption, notice of freezing of assets or notice on destruction exists.

## No double mortgage

Circular 26 also provides two significant principles against double mortgaging of the same properties. Thus:

- Developers that have already mortgaged housing to be formed in the future as part of their housing construction projects are only permitted to then mortgage the remaining part of such projects after excluding the already mortgaged housing to be formed in the future.
- Where an asset right relating to a housing construction project or to housing to be formed in the future has already been mortgaged, and such asset is within the type permitted by law to be mortgaged, then such housing construction project or such housing to be formed in the future will not be permitted to be mortgaged in accordance with the provisions of Circular 26. ■



# New regulations on the mortgage of land use rights and assets attached to land

 **Joint Circular No. 09/2016/TTLT-BTP-BTNMT of the Ministry of Justice (MOJ) and Ministry of Natural Resources and Environment (MONRE) dated 23 June 2016 on instructions on registration of mortgaging of land use rights and properties on land (Joint Circular 09)**

## Coverage

Joint Circular 09 covers the registration of a mortgage of land use rights (LUR) and/or assets attached to land and/or future-acquired assets on land, registration of a written notification on the disposal of mortgaged assets in the case of a registered mortgaged, and deregistration of a registered mortgage.

## Future-acquired assets on land

Joint Circular 09 provides a broad coverage of the term “future-acquired assets on land” to mean assets attached to land that are to take form in the future, including (i) future-acquired housing construction projects and houses owned by housing construction project developers; (ii) future-acquired houses owned by organizations and individuals that purchase future-acquired houses in housing construction projects; (iii) future-acquired houses that are constructed on a parcel of land owned by individuals and organizations undertaking such construction; (iv) other construction projects; and (v) production forests as planted forests and perennial plants which are formed or have already formed and the rights to ownership of which are established by the mortgagor after the signing date of the mortgage agreement.

## Competent registrar

The competent authorities on registration of mortgage of LUR and assets attached to land are the (i) land registration offices and (ii) branches of land registration offices (LRO).

For localities where no LRO has been established yet, the registration of the mortgage of LUR and assets attached to land of (i) local organizations, (ii) Vietnamese residing overseas, (iii) foreign organizations, (iv) foreign individuals, or (v) enterprises with foreign-owned capital, shall be conducted with the provincial-level LRO. Meanwhile, the registration of the mortgage of LUR and assets attached to land of (i) domestic households and (ii) Vietnamese residing overseas (as to owned housing attached to LUR in Vietnam), as well as (iii)

the transfer of LUR in projects under the development of residential housing, shall be conducted with the commune-level LRO.

## Key principles of registration

Joint Circular 09 mandates that the LRO must not register a mortgage of an off-plan residential house if the property rights under the sale and purchase agreement of such property have already been mortgaged and registered with the National Registration Agency for Secured Transaction (NARST).

In addition, if before selling houses from a housing construction project, the developer has mortgaged and registered the mortgaging of such housing construction project or future house, then the developer shall fulfill procedures for registration of changes in the registered mortgage content (i.e., partial withdrawal of collateral).

To be eligible for mortgage registration, future-acquired assets on land used as collateral should be attached to the land parcel where the asset is located.

Finally, mortgage registration of future-acquired assets on land by the LRO is merely ministerial. The applicant for registration is the one responsible for the legality and accuracy of the information declared and documents accompanying the application.

## Registration methods

Applications for mortgage registration may be done by (i) direct or personal submission, (ii) post, or (iii) online

registration in localities operating a land database system and having the guidance issued by the MOJ and MONRE on online registration of security transactions of LUR and assets attached to land.

## Effective date


Mortgage registration and deregistration shall take effect upon recording of information by the LRO in the cadastral book.

If the LRO does not yet use an electronic cadastral book, the registration of the mortgage of future-acquired assets on land shall take effect once the LRO records information concerning the registration in the cadastral book or the register of mortgaging of future-acquired assets on land.

In the case of addition of collateral properties such as LUR and assets attached to land without a new mortgage agreement being signed by the parties, the registration shall take effect once the LRO records information concerning the registration in the cadastral book or the register of mortgaging of future-acquired assets on land. However, if the registration of changes to registration contents is outside the above scenario, or in cases of requests for correction of errors by the registries or the transition of registration of mortgaging of property rights derivative of the contract for sale and purchase of houses, the validity date of the registration shall be the date of initial mortgage registration. ■



# Towards the better management of condominiums/apartment buildings

 **Circular No. 02/2016/TT-BXD of the Ministry of Construction dated 15 February 2016 regulations on management and use of apartment buildings (Circular 02)**

On 15 February 2016, the Ministry of Construction issued Circular 02, which took effect on 2 April 2016 and is expected to tackle conflicts and thereby improve the relationship among residents, developers and building management boards. Discussed below are several key points of Circular 02 vis-à-vis the Housing Law.

## Coverage

The regulations under Circular 02 apply to apartment buildings with residential purpose and mixed-use purpose (i.e., both residential and other purposes according to the Housing Law), including:

- Commercial apartment buildings
- Social apartment buildings, except those used as collective residence for pupils, students and workers in the form of several persons sharing a room
- Apartment buildings for relocation
- State-owned old apartment buildings being renovated or reconstructed

## Establishment of a building management committee

Pursuant to the Housing Law, the establishment of a building management committee is compulsory for apartment buildings with more than twenty apartments and more than one owner. In such case, the building management committee shall be an organization with legal capacity and having its own legal stamp.

Where an apartment building has one owner, or has multiple owners and less than twenty (20) apartments, the apartment building owners and users shall decide whether to establish the building management committee or not. If so



established, such management committee shall not have its own legal capacity and stamp.

## Rules and regulations on management and use of apartment buildings

Apartment buildings within the coverage of Circular 02 are required to have their own rules and regulations on management and use of apartment buildings with the following contents:

- Regulations applicable to owners, occupants, temporary residents and guests
- Prohibited acts in the use of apartment building and handling of violations
- Regulations on use of common areas of the apartment building
- Regulations on repair work for damage, changes of equipment in privately-owned areas and emergency responses
- Regulations on fire and explosion prevention and combat
- Regulations on public disclosure of information in relation to the use of the apartment building

- Regulations on obligations of owners and occupants
- Other regulations depending on the characteristics of each apartment building

## First apartment building meeting (first meeting)

Per apartment building block, within 12 months from the date on which such apartment building is handed over and commissioned for use (i.e., at least 50% of the total apartments have been handed over), the first meeting of an apartment building block must be held.

If after the 12-month period, there is less than 50% of the number of handed-over apartments, the first meeting shall be held after the 50% threshold number is met.

Similarly, the first meeting of a group of apartment buildings must be held when at least 50% of the number of apartments of each block in the group are handed over/ commissioned for use and at least 75% of the representatives of the owners of the handed-over/ commissioned-for-use apartments of each block agree to merge their block into the group of apartment buildings.

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The first meeting shall be convened if there is an attendance of the stipulated sufficient number of participants in accordance with Circular 02. During the first meeting, the following matters shall be discussed and made:

- Regulations on apartment building meetings
- Regulations on the apartment building management committee
- Amendments and additions (if any) to the internal rules on management and use of the apartment building
- Regulations on management and operation of the apartment building
- Funds to be contributed by apartment building owners and users during use of the apartment building

If the first meeting is not held, the developer shall be responsible for making these rules and regulations on management and use of apartment buildings, attaching the same to the apartment purchase and lease purchase contract, and making public disclosure of the same in the community activity areas, stair halls and reception area of the apartment block.

When the first meeting is organized, amendments and supplements to the rules and regulations established by the developer shall be considered but should not be contrary to the Housing Law and the regulations under Circular 02.

After the first meeting, the management committee shall be responsible for making public disclosure of these rules.

### Service fee for management and operation of apartment buildings

The service fee shall be determined on each type of apartment building and on agreement with the relevant management and operation unit of the apartment building (the building operator).

Per the Housing Law, the building operator is the entity that performs and maintains the management and operation of the technical system, equipment and furnishings of the apartment building.

Where the apartment building has been handed over for use but the first meeting has not been held, the service fee shall be decided by the developer and specified in the purchase and lease purchase contract. Otherwise, after the first meeting is held, the service fee shall be determined by the meeting on an agreement with the building operator.

The service fee shall be denominated in Vietnamese dong and calculated for each usable square meter (m<sup>2</sup>) or other areas within the apartment building (calculated on the net area).

As to mixed-use apartment buildings, the service fee for the functional areas (i.e., service fee for office, service or commercial areas) and privately-owned areas used as auto parking spaces shall be agreed by the parties. Where the parties cannot agree on such service fee, the service fee brackets determined by the People's Committee of the province where such apartment building is situated shall be used instead.

### Parking lots

The ownership and management of the parking lots of apartment buildings shall be in accordance with the following principles under Circular 02.

- For apartment buildings with a single owner, the parking lot shall belong to the ownership and management of the apartment building owner but must be used in accordance with the content of the approved project. For those apartment buildings that must have a building operator, such building operator shall manage the parking lot and where a building operator is not required, the owner shall manage the parking lot or hire another entity to manage the same.
- The parking spaces under common ownership (as prescribed under the Housing Law) shall be managed by the building operator. Where an apartment building does not require a building operator but must have an apartment building management committee, the apartment building meeting shall make a decision on assigning the management committee or another entity to manage such parking spaces on behalf of owners. If the apartment building does not require a building operator or does not have a management committee, the owners shall agree to manage themselves or hire another entity to manage such parking spaces.
- For auto parking space intended for apartment building owners:
  - (i) Persons who purchase or lease purchase an apartment or other space within the apartment building (i.e., the apartment purchasers) shall decide whether to purchase or lease auto parking spaces intended for apartment building owners. In this regard, the developer shall ensure that the number of parking spaces



purchased or leased by each apartment owner or space owner (i.e., owner of other space within the apartment building) does not exceed the number of parking spaces designed for each apartment or privately-owned portion of an apartment building under the approved project.

- (ii) If an apartment building has insufficient auto parking space for each apartment, the developer shall make arrangements based on the agreements among the apartment purchasers.

Where the apartment purchasers fail to reach an agreement, the developer shall decide on the basis of a lucky draw for purchase or lease of such car parking spaces.

- (iii) If a parking space purchaser needs to transfer or rent out this parking space, such transfer or rent out must be made with owners or occupants of such apartment building or with the developer.

- (iv) Where the purchaser or hire purchaser of an apartment does not purchase the car parking space, the parties must specify in the contract for sale and purchase or hire purchase of the apartment that such area is under ownership and management by the developer and the developer is not permitted to include costs of investment in construction of such car parking space in the selling price or hire purchase price of the apartment.

Where the purchaser or hire purchaser of the apartment purchases or leases such car parking space, the developer must separate the selling price or hire purchase price of the car parking space from the selling price or hire purchase price of the apartment.

- (v) Auto parking spaces of an apartment building shall be managed by the building operator or the owners themselves or other units (in case the building operator is required by such apartment building).

- Management of a public parking lot (i.e., a parking lot designed for people other than apartment building owners



and occupants) shall be as follows:

- (i) If the owner of the functional area purchases the public parking lot from the developer, this owner shall be responsible to manage such public parking lot.
- (ii) If the public parking lot belongs to the developer's ownership, the developer shall take the responsibility. Meanwhile, if the owner of the functional area leases the public parking lot from the developer, the management of this parking lot shall be negotiated in the contract for parking rent.
- (iii) If the public parking lot is managed by the State per the approved project, the unit tasked by the State with managing this parking lot shall take the responsibility.

### Settlement of disputes

Disputes over ownership of apartment buildings shall, in case of failure of amicable negotiations between the parties, be brought to the People's Courts for settlement in accordance with the laws.

For disputes over expenditures on administration and operation of apartment buildings, handover, and management and use of expenditures on maintenance of apartment building parts under common

ownership, the disputes shall be settled by the provincial People's Committees where the apartment building is situated. In case of disagreement with the decision given by the provincial People's Committees, the dispute may be submitted to the People's Courts for settlement in accordance with the laws.

Meanwhile, disputes between members of the management committee shall be settled in accordance with the operational rules of the management committee adopted by the apartment building meeting.

As to disputes between the management committee with the owners or the occupants of the apartment building over election, dismissal or replacement of members of the management committee, they shall be resolved on the basis of an amicable negotiations; otherwise, an apartment meeting should be convened for settlement.

Finally, for disputes over the service contract or maintenance contract between service providers and managing units, the disputes shall, in case of failure to reach an amicable negotiation between the parties, be brought to the People's Courts in accordance with the laws. ■



# New detailed regulations on investment through public-private partnership (PPP)

📖 Circular No. 06/2016/TT-BKHDT of the Ministry of Planning and Investment (MPI) dated 28 June 2016 (PPP Circular) guiding the Government's Decree No. 15/2015/ND-CP of 14 February 2015 on PPP investment (PPP Decree)

Following the Government's issuance of the PPP Decree on 14 February 2015, the MPI, in guiding further the implementation of the PPP Decree, issued on 28 June 2016 the PPP Circular, whose significant points are discussed below.

## Equity capital of PPP investors

The investor's equity capital shall be contributed in accordance with the schedule as agreed in the PPP project contract.

The equity ratio of an investor must not be lower than 15% of the total investment capital. In the case of a project with a total investment capital above VND 1,500 billion, the equity ratio shall be determined progressively as follows:

- (a) With respect to the capital portion up to VND 1,500 billion, the equity ratio must not be less than 15% of such portion;
- (b) With respect to the capital portion above VND 1,500 billion, the equity ratio must not be less than 10% of such portion.

As at the time of registration for establishing the "project enterprise", the investor shall decide the value of assets (equity) owned by the investor for contribution to the charter capital in compliance with the Law on Enterprises. If the charter capital of the project enterprise is less than the amount of the required equity ratio as mentioned above, the investor must undertake to increase the charter capital during the process of project implementation. The PPP Circular, however, does not clearly state the specific timeframe for raising the charter capital in such case.



## Procedures to obtaining an investment registration certificate (IRC)

The PPP Circular sets out the procedures to obtain an IRC to a PPP project.

The MPI shall have the authority to approve the project and issue the IRC for the following projects: (i) projects of national importance in accordance with the laws on public investment; (ii) projects for which ministries sign project contracts, or for which agencies authorized by ministries being competent authorities sign project contracts; and (iii) projects implemented in two or more provinces. The application files must be directly submitted to the MPI for approval and issuance of an IRC.

For other projects which are not within the competence of the MPI, the investor shall submit the application dossier to the Department of Planning and Investment, and the People's Committee shall issue the IRC.

Within 25 days from the receipt of the full and valid application dossier, the competent authority will issue the IRC of the project enterprise.

## Conversion of already carried out State-funded investment projects into PPP projects

Conversion of State-funded investment projects into the PPP form shall proceed subject to fulfillment of the following conditions:

- (i) conformity to the program or the plan for the development of sectors/ regions and the plan for the local socio-economic development;
- (ii) conformity to the investment sector;
- (iii) be capable of attracting and accessing commercial capital sources, technology, and managerial experience of investors; continuous and stable production of products and services which satisfy quality standards and user demand;
- (iv) total investment capital of at least VND 20 billion (approximately \$1 million), except for projects under the operation and management contract, and the projects on infrastructure works for agriculture and rural

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development, and the services for enhancing the correlation of agricultural production with farm product processing and sale.

The PPP Circular provides two options for converting existing State-funded investment projects to PPP projects, namely by: (i) full withdrawal of State capital funded for the work; or (ii) use of partial or entire State investment for implementing the project. Depending on the option selected, the rights and obligations of the investor and the State will be determined accordingly.

The conversion of State-funded investment projects to the PPP form must be conducted through a due appraisal process as follows:

1. The relevant ministry or provincial People's Committee shall arrange the preparation of an application file proposing conversion of investment form (i.e., a letter proposing conversion and enclosures to the same).
2. The relevant ministry or provincial People's Committee shall then conduct an assessment and grant approval to the plan on conversion of investment form and project proposal within their competence.

If the project is within the authority of the Prime Minister to provide the in-principle approval of the investment policy, then the relevant ministry, or provincial People's Committee shall report to the Prime Minister for such decision prior to approval of the conversion plan.

3. After approval of the conversion plan and project proposal mentioned above, the relevant ministry or provincial People's Committee shall arrange the formulation, evaluation and approval of a modified feasibility

study report, and selection of investor to negotiate the project contract.

4. The selected investor and the authorized competent agencies shall negotiate the project contract, conclude an investment agreement, conduct procedures for the issuance of IRC, and establish an enterprise to implement the project.

### Project contract transfer by investors

A PPP investor may transfer, partially or entirely, its rights and obligations specified in the project contract to a lender or other investors, provided that the transferee: (i) has financial and management capability to execute the project contract and relevant contracts; (ii) commits to continue performing the rights and obligations authorized by the transferor based on the provisions of the project contract and the relevant contracts; and (iii) complies with other requirements as agreed in the project contract, the loan contract and relevant agreements between the competent authorities and the investor.

The transfer of a part or all of the rights and obligations under the project contract shall not affect the target, scope, technical standards and progress of the project. Additionally, such transfer must meet the conditions for investment and operation according to the regulations under the Law on Investment and other agreed requirements specified in the project contract.

The investor shall then go through the application procedures for modification of the IRC. Where the transfer of rights and obligations to a project contract results in changes to contents of the enterprise registration certificate (ERC), the project management enterprise shall carry out procedures for modification of the ERC under the Law on Enterprises. ■

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