

Corporate Commercial

Decree Revising Legal Provisions and Regulations on Real Estate Trading Activities to Take Effect on 1 March 2022

On 6 January 2022, the Government issued Decree No. 02/2022/ND-CP ("**Decree 02/2022**") amending certain articles of the Law on Real Estate Business No. 66/2014/QH13 dated 25 November 2014 ("**Law on Real Estate Business**"). Decree 02/2022 replaces Decree 76/2015/ND-CP ("**Decree 76/2015**"), and takes effect from 1 March 2022.

The key features of Decree 02/2022 are set out below.

1. New eligibility conditions to trade in real estate

1.1 Removal of requirements on minimum legal capital:

Decree 02/2022 does not stipulate a requirement on minimum legal capital for organisations and individuals who participate in real estate business since it has already been removed in accordance with the amendments to the Law on Real Estate Business under Article 75.2 of Law on Investment 2020. Previously, it was VND 20 billion.

1.2 Other conditions:

Under Article 4 of Decree 02/2022, organisations and individuals must suffice the following conditions to conduct real estate business:

- i) Establish an enterprise or cooperative with a business line related to real estate;
- ii) Publicly disclose and update changes to the following information:
 - a) Information about the enterprise (i.e., name, head office address, telephone number, name of legal representative);
 - b) Information about real estate to be put on the market (*Law on Real Estate Business, Article 6.2*):
 - Type, location, scale of the real estate;
 - Information about zoning/planning related to the real estate;
 - Characteristics, utilities, and quality of the real estate; information about each utility and general use area if the real estate is a mixed-use building or an apartment building;
 - Actual conditions of constructions or services related to the real estate;

Corporate Commercial

- Documents on ownership of houses/buildings and land use right; documents related to real estate investment and construction; guarantee agreement; and written permission for off-the-plan building sale or lease purchase transactions granted by the competent agencies;
 - Restrictions on ownership of or rights to use real estate (if any); and
 - Sale, transfer, lease, sublease, and lease purchase prices;
- c) Information on mortgages of houses, construction works, and real estate projects to be put on market (if any);
- d) Information on the number and type of real estate products being traded and the quantity and types of real estate products sold, transferred, and lease-purchased; and
- e) Quantity and types of remaining products that are still being traded.

Note that the above information must be published via the following channels:

- on the enterprise's website;
- at the head office of the project management board (for projects on real estate trading and investment); and/or
- at the real estate exchange (for businesses trading through a real estate exchange).

iii) Only trade in eligible real estate (*Law on Real Estate Business, Article 9 and Article 55*):

- a) Eligible lands that satisfy the following requirements:
- There is a Land Use Right Certificate as prescribed in land law regulations;
 - There is no dispute over the land;
 - The land is not distrained; and
 - The land use term is not expired.
- b) Eligible houses and construction buildings that satisfy the following requirements:
- Ownership is registered in the Land Use Right Certificate for the land on which it is built;
 - There is no dispute over the land and ownership of the structure on land; and
 - The structure is not distrained.

Corporate Commercial

c) Eligible off-the-plan real estates that satisfy the following requirements:

- There are documents on land, project documents, or construction drawings approved by competent agencies and licenses for construction if required; documents on certification of completion of technical infrastructure is equivalent to project progress or is required to gain the certification of completion of the foundation of the building regarding off-the-plan apartment buildings or mix-used buildings; and
- There is a prior notice to and approval from the provincial agency in charge of housing before any sale or lease of such off-the-plan structure.

2. Six types of individuals and enterprises exempt from conditions for participating in real estate business

Article 5 of Decree 02/2022 providing guidelines for Article 10.2 of the Law on Real Estate Business regarding organisations, households, and individuals who sell, lease, or lease-purchase real estate in small scale and/or infrequently shall be exempted from conditions for participating in real estate business, including:

- i) Agencies and organisations that sell houses and construction works and/or transfer land use rights due to bankruptcy, dissolution, or division in accordance with law;
- ii) Agencies or organisations that sell, transfer, lease, and/or lease-purchase real estate as public property in accordance with the law;
- iii) Credit institutions, foreign bank branches, asset management companies (AMCs), and Vietnamese asset management companies (VAMCs) that sell houses and/or construction works, transfer land use rights, and/or transfer real estate projects which are put up as guarantee or collateral for debt recovery in accordance with law;
- iv) Organisations, households, and individuals that sell houses and/or construction works and/or transfer land use rights under decisions of courts or competent authorities when settling disputes, complaints, and whistleblowing reports;
- v) Organisations, households and individuals that sell, lease, or lease-purchase houses and construction works under lawful ownership and/or transfer, lease, or sublease land use rights under their lawful land use rights; and
- vi) Organisations, households, and individuals that sell, lease, lease-purchase, or transfer real estate that is invested and constructed by themselves, and this real estate is not for being put on the market in accordance with the law.

Corporate Commercial

3. Amendment on model contracts for real estate trading

Decree 02/2022 provides eight new model contracts for real estate trading, based on its revision of the five model contracts in Decree 76/2015. Whereas in Decree 76/2015 model contracts are categorized in terms of trade forms (sale, purchase, or lease-purchase), Decree 02/2022 categorises contracts in the types of real estate themselves. Specially, Decree 02/2022 additionally provides model contracts with respect to new types of real estate (i.e., condotel and officetel).

Further, it is important to note that Decree 02/2022 has removed a regulation on “non-binding” application of model contracts for real estate trading which was stipulated in Article 7 of Decree 76/2015. Subsequently, from 01 March 2022, application of model contracts on real estate trading is strictly bound to participating parties. This new regulation is considered as necessary and suitable to the actual status of real estate trading in Vietnam.

Particularly, Decree 02/2022 stipulates as follows:

“Article 6: Contract of real estate trading

The sale, transfer, lease, lease purchase, sublease of real estate and transfer of real estate projects must be made into a contract according to the following forms:

- 1) *Contract for sale, purchase, and lease-purchase of an apartment;*
- 2) *Contract of sale, purchase, lease-purchase of tourist apartment (condotel), officetel;*
- 3) *Contract for sale, purchase, and lease-purchase of detached houses;*
- 4) *Contract for purchase, sale, lease purchase of house and constructions other than the above;*
- 5) *Contract for lease of house or construction work;*
- 6) *Contract for transfer of land use rights;*
- 7) *Contract for lease or sublease of land use rights;*
- 8) *Contract for transfer of the whole (or part) of the real estate project.”*

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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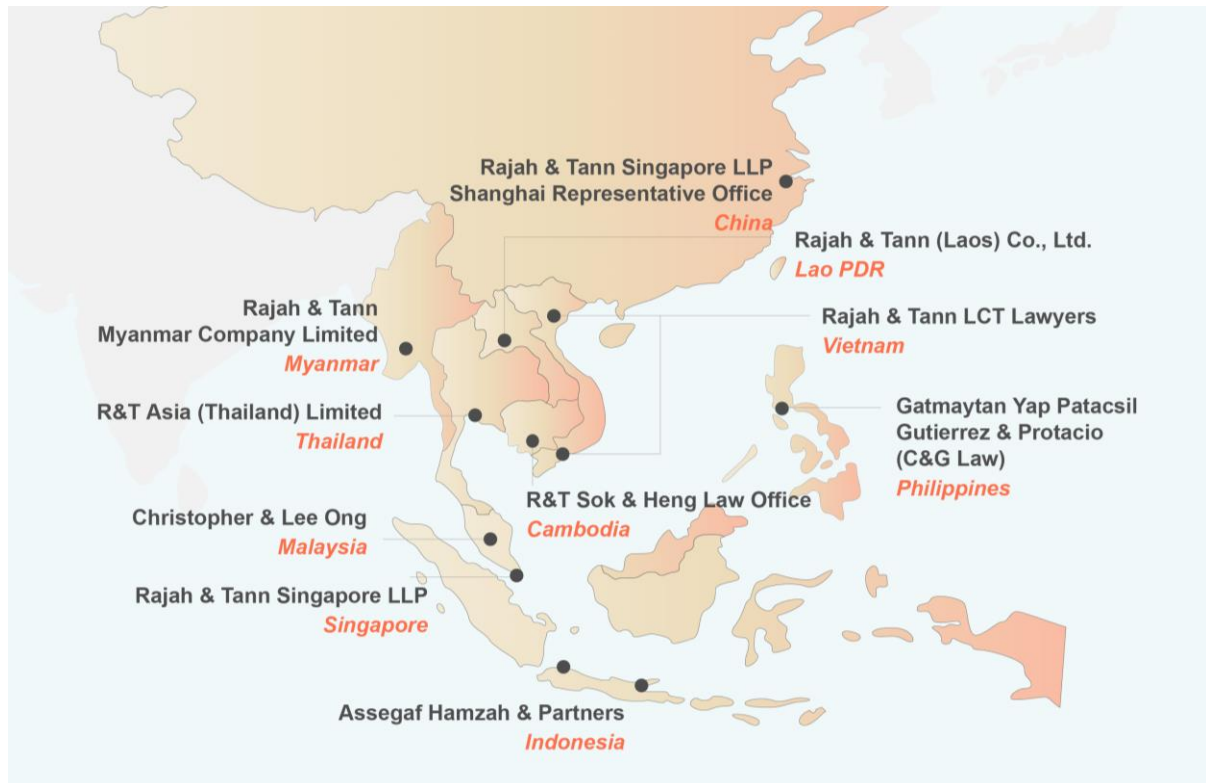
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