**A NUMBER OF NEW NOTABLE CONTENTS OF DECREE NO. 02/2022/ND-CP on elaboration of certain articles of the law on real estate trading**

To overcome inadequacies and entanglements as well as update new regulations in the line with real estate investment and business practices in Vietnam, on 6 January 2022, the Government issued Decree No. 02/2022/ND-CP on elaboration of certain articles of the Law on Real Estate Trading. This Decree shall take effect from 1 March 2022 and replace Decree No. 76/2015/ND-CP. Accordingly, some notable new points of Decree No. 02/2022/ND-CP will be analyzed in this article as follows:

1. **Eligibility criteria for organizations and individuals conducting real estate trading**

The updates and amendments regarding regulations on eligibility criteria for organizations and individuals conducting real estate trading according to Decree No. 02/2022/ND-CP are not only synchronous with other relevant regulations, but it is also suitable for the real situation, which is expected to bring positive effects to individuals and organizations participating in the real estate market in the near future, specifically as follows:

***Firstly***, abolishing the regulation on legal capital for real estate trading entities. Previously, when organizations and individuals desired to participate in the real estate market, they not only had to incorporate enterprises or cooperatives in accordance with law, but also had to have legal capital that is more than 20 billion VND. However, pursuant to Article 4.1(a) of Decree No. 02/2022/ND-CP, the criteria for having more than 20 billion VND has been abolished. This abolition is meaning to create consistency with the provisions of the Investment Law 2020, because the Investment Law 2020 has officially abolished the regulation on legal capital of real estate business entities according to Article 75.2(a). In addition, the abolition of the legal capital above-mentioned facilitates small and medium-sized real estate trading entities to participate in the real estate market.

***Secondly***, supplementing requirements for publicizing information. In accordance with Article 4.1(b) of Decree No. 02/2022/ND-CP, organizations and individuals conducting real estate trading must publicize on the enterprise's website, at the head office of the Project Management Board (for projects on real estate trading and investment), at the real estate exchange (for the case of business through the real estate exchange) the following information:

* The enterprise’s information (including name, address of head office, contact phone number, name of the legal representative);
* Real estate to be put on market as prescribed in Article 6.2 of the Law on Real Estate Trading;
* Mortgage of houses, construction works, real estate projects to be put on market (if any);
* The number, type of real estate products being traded, quantity and types of real estate products sold, transferred, lease-purchased and the quantity and types of remaining products that are still being traded.

Compared with Decree No. 76/2015/ND-CP, this supplement is a strict requirement for organizations and individuals conducting real estate trading because they must promptly update and adjust the changed information. However, such supplementing requirement also contributes to help the real estate market become transparent and clear so that customers as well as investors could catch up with the information.

***Thirdly***, supplementing the provision “*Trading of eligible real estate as prescribed in Article 9, Article 55 of the Law on Real Estate Trading*”.

Accordingly, Article 9 of the Law on Real Estate Trading prescribes the requirements in terms of real estate to be put on the market as follows:

1. A building to be put on the market shall satisfy the following requirements:
* The ownership of the building on land is registered in the Certificate of land use right (hereinafter referred to as Certificate of land). Regarding an off-the-plan building in the real estate project, it is only required to have the Certificate of land as prescribed in regulations of law on land;
* There is no dispute about the land and ownership of the building on land;
* The building is not distrained.
1. Types of land permitted to be put on the market shall satisfy the following requirements:
* There are Certificates of land as prescribed in regulations of law on land;
* There is no dispute about the land;
* The land is not distrained;
* The land use term is still unexpired.

Compared with Decree No. 76/2015/ND-CP, this is a specific and strict supplement according to Law on Real Estate Trading.

1. **The regulation on sample contracts**

In addition to new criteria that organizations and individuals conducting real estate trading must satisfy, Decree No 02/2022/ND-CP also stipulates the sale, transfer, lease, lease purchase, sublease of real estate and transfer of real estate projects (“**real estate transaction**”) must be made according to the sample contract as prescribed in the Appendix attached to this Decree. This is a new notable regulation because instead of using a sample contract for parties to use for reference during the process of negotiating and concluding a contract pursuant to Decree No. 76/2015/ND-CP, it has become mandatory for the parties according to Decree No. 02/2022/ND-CP.

Mandatory regulation on applying the sample contract by parties shall give rise to advantages and disadvantages, as follows:

1. In terms of advantages: when parties apply the sample contract, it shall bring consistency in contents of real estate transaction contracts, and limit circumstances where real estate trading entities draft unfavorable terms for customers that shall secure legitimate rights and benefits of customers. In addition, Decree No. 02/2022/ND-CP also supplements sample contracts of both condotel and officetel. Although this Decree does not stipulate clearly about condotel and officetel, providing sample contracts of those contributes to construct a legal framework for their legal recognition; lay the foundation for the completion of the legal framework regarding such two types of real estate that have not yet been clearly defined.
2. In terms of disadvantages: Although applying the sample contract will create the consistency, the “strict” provision above-mentioned shall affect the freedom of agreement between the parties – a right set forth in the Civil Code 2015. This results in a question that is unanswered in Decree No. 02/2022/ND-CP is whether the parties could supplement/ or eliminate some specific provisions in the sample contract to suit the practical needs of the parties or not. Furthermore, the sample contracts of both condotel and officetel are supplemented; however, a number of similar products such as Shophouse or Villatel is still not regulated in this Decree. Therefore, in regard to transactions of two types of real estate above-mentioned, the remaining matters i.e. whether parties must apply the sample contract or not, and in case it is required to apply the sample contract, which form of sample contract to be used are still not prescribed.
3. **Rules for transfer of the whole (or a part) of real estate project**

Decree No. 02/2022/ND-CP supplements rules for the transfer of the whole (or a part) of real estate project, as follows:

* First of all, the transfer of the whole (or a part) of real estate project is only implemented when meeting two following conditions:
1. All the conditions specified in Article 49 of the Law on Real Estate Trading are satisfied;
2. The project is being executed in conformity with the approved project schedule and contents.
* Regarding the application of the law when transferring the whole or a part of a real estate project, Decree No. 02/2022/ND-CP has also clearly defined the following two circumstances:

***Firstly***, laws on investment shall be applied with respect to following projects:

1. Real estate projects approved by investors according to the Law on Investment 2020;
2. Real estate projects that are granted investment registration certificates in accordance with the Law on Investment 2020.

***Secondly,*** provisions of Law on Real Estate Trading and Decree No. 02/2022/ND-CP shall be applied with respect to projects not mentioned above.

The supplementation of the above principle contributes to unity, clarity and separation, which is in accordance with Article 46 of the Investment Law 2020, supports parties as well as relevant agencies and units to identify whether the project satisfies requirements for the transfer of the whole (or a part) or not, and in which cases the provisions of the Law on Investment or Law on Real Estate Trading shall be applied.

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