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Detailed provisions launched in Vietnam



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The Vietnam Law on Real Estate Business went into effect on January 1, 2007 to manage the real estate market in an ordered and professional manner. However, some blame the lack of guidance on the prescribed legal capital for the limited number of business licenses issued so far. Below we explore some issues of the long-awaited governmental Decree 153/2007/ND-CP, dated October 15, which will guide the law in Vietnam's growing real estate market.

Business conditions

Decree 153 outlines the minimum capital required to sustain an active enterprise in real estate business. After several drafts, the legal capital was set at six billion dong (US\$400,000). The decree also stipulates conditions for granting professional certificates to those performing brokerage and appraisal services. To qualify for such certificates, an individual must pass a training course offered by one of the organizations posted on the website of the Vietnam Ministry of Construction. Vietnam recognizes brokerage and appraisal licenses granted by foreign authorities, which is promising, given that it is still not clear whether the country will create a recognition procedure.

Advance payment

In Vietnam, it is common for buyers of (future) real property to give advance payments to sellers. Decree 153 recognizes advance payments, but buyers must make them on numerous occasions, and they can only make the initial (or first) payment after the seller has completed construction of the infrastructure servicing the real property. Subsequent advance payments must

be consistent with the schedule to create the real property. Sellers can only use advance payments from buyers to invest in the creation of the real property.

Further capital requirement

The new legislation enforces the financial capability requirement, which applies to those investing in the new urban zone, residential buildings or industrial infrastructure projects. It requires investors to have an equity capital of no less than 20 percent of the approved investment capital of the new urban zone or industrial infrastructure project. For residential building projects, the minimum equity capital will depend on the size of the land allocated for the project. A rate of 15 percent applies to a project of less than 20 hectares occupancy, and one of 20 percent applies to other projects.

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Transfer of whole projects

Decree 153 includes a significant provision that applies to the transfer of whole projects for cases when investors cannot complete projects according to their approved schedule. There are certain conditions for such transfers to take effect. The transferor must have a land lease contract, land allocation decision or land

use right certificate. The transferor must also finish the compensation works of the whole project, in stages if necessary, and complete the construction of the technical infrastructure initially outlined in the approved schedule.

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