

VIETNAM

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Increasing transparency in Vietnam’s housing market



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Vietnam’s housing market has brought about high profits for both local and foreign investors in recent years, thanks to rapid price increases. The market has, however, been frozen as of a few months ago: borrowers, including powerful property developers, have faced capital shortages, whilst banks have faced stricter rules regarding financing for real estate development projects as a result of the State Bank of Vietnam’s Circular 13/2010/TT-NHNN.

To cope with this problem, developers have found alternative ways to mobilize capital. One popular approach has been to lure money from brokers and future buyers at the very early stages of a project, by selling “paper houses” right after the developer has obtained the license from Government bodies for the project (though nothing has been done in practice e.g. equity capital from the developer is yet to be spent, construction activity is yet to occur, and in some instances even where site clearance is yet to be obtained). Buyers of such properties are not really seeking a place of residence, but wish instead to later sell the property and earn a profit margin. That way, they might spend some 10 to 30 percent on the house price, but earn a 100 percent profit margin when selling the “paper house” to other brokers or future buyers. Such multilevel sales have created a fake demand in the market, leading house prices to thus increase at amazing rates.

This situation prompted Vietnam’s Government to respond quickly, and after a year of consideration the Government did so by issuing the Decree No. 71/2010/ND-CP on 23 June 2010 (Decree 71). By setting forth tougher conditions for early mobilization of capital for projects, the Government has attempted to make the housing market more transparent whilst also giving a slap to the real estate market (and causing the recent freeze).

Early stage capital mobilization

The *Law on Residential Houses of Vietnam* prohibits project owners from selling houses to buyers in exchange for advance payments unless the building’s foundations have already been constructed. Yet the term “foundation” has not been defined clearly, causing controversial variations in practice. Some view that foundations are complete after piling, whilst others believe a project’s base-

ment must be finished. Laws are also silent on other viable forms of capital mobilization for housing projects, and project owners have therefore played around the laws by mobilizing capital early through so-called capital contribution contracts or business cooperation contracts.

To encourage transparency in the housing market, Decree 71 provides detailed conditions and forms of capital mobilization. Project developers are now explicitly required to complete certain stages – typically including completion of site clearance, and/or completion of construction of infrastructure or foundations – for early capital mobilization.

Notice & report requirements

A further requirement under Decree 71 is that project owners must send notices to provincial construction departments (where projects are located) at least 15 days before commencing capital mobilization. Project owners must also submit a list with full name information of proposed secondary investors and buyers, a requirement which raises concerns regarding the confidentiality and flexibility of transactions.

Transactions via real estate trading floors

The *Law on Real Estate Business of Vietnam* (the Law) requires that all real estate transactions be conducted via real estate trading floors, allowing potential buyers the chance to fairly bid the purchase on the floor. This aims at fairly providing house buyers with clear information and eliminates unlawful speculation. Decree 71 has eased that condition by allowing that a maximum of 20 percent of a project’s houses/apartments be traded outside real estate trading floors. Though such relaxation is aimed to provide developers with easier access to funds from potential buyers, it does cause a legal problem in that Decree 71 is controversial to the Law.

Dubious legality of transactions prior to Decree 71

Decree 71 does not give any hint on the legality of transactions concluded prior to its effective date, leading to a big question as to the certainty of those transactions.

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