



DN LEGAL

Legal Update

# New Decree on Land Law

20 April 2023

On 3 April 2023, the Government issued *Decree No. 10/2023/ND-CP* ("**Decree 10**") on amendment and supplement to several articles of the decrees guiding the implementation of the *Law on Land*. *Decree 10* will take effect from 20 May 2023.

We highlight the salient points of *Decree 10* as follows:

### **1. Condotels and resort villas can be granted ownership certificates**

In recent years, the Government has been trying to solidify the legal status of non-residential properties in the hospitality sector such as condotels and resort villas, also known as construction works for tourism accommodation purposes ("**Tourism Properties**"). Last year's *Decree No. 02/2022/ND-CP* showed great efforts by the Government where they provided the template contracts for the sale and purchase of all types of non-residential properties, including Tourism Properties.

*Decree 10* now takes a step further by confirming that owners of Tourism Properties can apply for issuance of the land use right certificates ("**LURC**") to certify their ownership of the same.

If the LURC for the Tourism Property is issued, the term of ownership will be subject to the term of land use right of the underlying project land, which is usually 50 years or less.

### **2. Force majeure event to be excluded from the 24-month project implementation window**

Under the *Law on Land* and the *Law on Investment*, if a real estate developer delays in implementing the real estate project on the project land for more than 24 months, the State will have the right to revoke and terminate both the real estate project and the land without paying any compensation. During the time of COVID-19, the question that investors tend to ask was: if any force majeure event occurs during such 24-month period, would it be excluded?

*Decree 10* sheds light on that issue by providing that the duration of the force majeure event shall not be counted towards the timeline of the project. The provincial level People's Committee will be in charge of determining the duration of the force majeure event.

### **3. Bidders participating in land use right auctions must meet stricter conditions**

*Decree 10* elaborates on the conditions that a real estate developer must meet to participate in a land use right auction under Article 119 of the *Law on Land*. In particular, the bidder must:

- (a) be eligible to receive the land use right via land allocation or land leasing;
- (b) ensure that there is no cross-ownership between it and another bidder;
- (c) have the legal and financial capacity to implement a real estate investment project pursuant to the *Law on Land*, *Law on Investment*, *Law on Residential Housing* and *Law on Real Estate Business*; and
- (d) place a non-refundable advance payment equivalent to 20% of the starting bid. This advance payment will be treated as deposit for paying the winning auction price if the bidder wins the auction. If the winning bidder fails to fulfil the payment obligations for the auctioned land use right, it will forfeit the 20% advance payment.

The land to be auctioned must also meet a number of conditions:

- (a) already have the starting price of bidding as determined by the authority;
- (b) already have the detailed 1:500 master plan as approved by the authority (applicable to auctions for land use rights to be used for developing residential housing projects and other real estate projects); and
- (c) each auction must be carried out on a per plot basis.

**4. Detailed conditions for converting rice paddy land and forestry land to another type of land for implementing investment projects**

Due to the wide-ranging impacts on national food security and environmental concerns, the use of rice paddy land and forestry land is strictly regulated by the State. Previous regulations addressed the procedures for converting rice paddy land and forestry land to another type of land for implementing investment projects. However, in practice there was a major uncertainty when a developer wants to carry out those conversion procedures, because there was no guidance on the conditions that need to be met before those procedures.

*Decree 10* addresses that uncertainty by providing the specific conditions that a real estate developer must satisfy before applying for a change in land use purpose to convert rice paddy land and forestry land to another type of land:

- (a) the land must be used for a project that has been previously approved through an in-principle investment approval or an Investment Registration Certificate;
- (b) the land use purpose conversion must comply with the district-level land use planning schemes and be slated for conversion on the list of district-level annual land use plans;
- (c) the real estate developer must submit an alternative reforestation plan for forestry and pay the afforestation levy for converting forest land OR submit a plan to use topsoil land and pay the rice paddy land protection levy for converting rice paddy land; and
- (d) the real estate developer has obtained a preliminary environmental impact assessment or environmental impact assessment.

**5. Clear methods for determining the dates of applying the new land rental in the cases of renewal of land lease term and change in land lease term**

Article 108 of the *Law on Land* provides in general that the land rental will be determined on the date that the State issues the decision on leasing the land. Guidelines how to determine the land rental are provided under *Decree No. 44/2014/ND-CP*, *Decree No. 46/2014/ND-CP* and *Decree No. 123/2017/ND-CP*. However, those guidelines are scattered and are not explicit on how to determine the date that the State would impose the new land rental in the scenarios where there is renewal of or change in land lease term.

*Decree 10* addresses that uncertainty by providing the following three scenarios and the corresponding dates that the new land rental will be determined and become effective:

Scenario	The time that new land rental will be determined
The land lease has expired, and a renewal approval has been granted	The first date of the new lease term.
The land lease has not expired, but there is an approval for changing the land lease term in the case of land leased with payment of lump sum rental	The date the State approves the change in land lease term.
The land lease has not expired, but there is an approval for changing the land lease term in the case of land leased with payment of annual rental	The date the State approves the change in land lease term (applicable for the first stable cycle of the new term).

For all currently processing or ongoing LURC applications and land auction procedures, the previous regulations and conditions applicable to such applications and procedures will continue to apply. *Decree 10* will only apply to new procedures initiated from 20 May 2023.

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