

monthly legal update

July 2010

1. Decree introduces stricter rules on real estate investment

The Government issued Decree No 71/2010/ND-CP on June 23, pursuant to the Law on Housing.

Decree 71 contains detailed provisions on financing of residential construction, including loan agreements with credit organisations or investment funds, or bond issues, contracts for capital contribution or investment co-operation with organisations or individuals, business co-operation contracts with real estate enterprises, and advance down payment provisions in housing purchase contracts.

A project owner defined as a Level I project owner may sign capital contribution agreements or business co-operation contracts with project owner of Level II for the purposes of transferring land or technical infrastructure.

Investors under capital contribution or business co-operation contracts may receive profits in cash or shares or receive completed residential units as agreed with the project owners. However, in-kind distribution shall apply to only investors eligible to own homes in Viet Nam and may not constitute more than 20 per cent of the total units in a project.

Decree 71 also provides that a project owner can only raise capital from

organisations and individuals once the project has been approved, construction has broken ground, and a notice sent to the Department of Construction that investors were being sought.

Decree 71 takes effect on August 8, 2010, and replaces Decree No 90/2006/ND-CP.

2. National Assembly passes Law on Credit Institutions

The National Assembly passed the new Law on Credit Institutions on June 16, including a number of new provisions aimed at ensuring the safe and effective operation of the nation's banking system.

The new law gives specific restrictions on ownership ratios in credit institutions. Accordingly, an individual shareholder in a credit institution is not allowed to hold a stake of more than 5 per cent, and no organisation shareholder can hold an interest greater than 15 per cent.

In a credit institution organised as a limited liability company with two or more members, each member must be a legal entity as prescribed by the law of Viet Nam, and the maximum capital ownership of any member and its affiliates would not be allowed to exceed 50 per cent of capital charter.

The law no longer requires commercial banks to maintain a compulsory reserve ratio of 20 per cent of total deposits, but the State Bank of Viet Nam is empowered to set such a rate from time to time.

The law prohibits credit institutions from financing enterprises engaged in the securities business which are under the primary control of such credit institutions.

Taking effect next January 1, and replacing the 1997 law and its amendments, the new law also governs the functions, powers and organisations of bank inspectors and the oversight powers of the State Bank of Viet Nam.

3. Lawmakers approve new Law on Land Use Taxation

The National Assembly passed the Law on Land Use Taxation on June 17. Under the new law, the following kinds of land use rights would be subject to taxation: (i) urban and rural residential land use rights; (ii) land used for non-agricultural production, such as industrial parks, production facilities and mines; and (iii) other non-agricultural land uses for business or religious purposes, including cemeteries.

This new law specifies methods of tax calculation and provides for progressive tax rates beginning at a minimum of 0.03 per cent and rising to a maximum of 0.15 per cent.

The law will take effect on January 1, 2012, and will replace the 1994 Ordinance on Housing and Land Use Taxation and its amendments.

4. Decree regulates science and technology deals

The Government issued Decree No 80/2010/ND-CP on July 14, regulating investment and co-operation with foreign partners in the area of science and technology.

There are three forms of co-operation with foreign partners in science and technology area:

Assisting, financing, offering, devoting for science and technology activities;

Science and technology agreements;

Co-operation with foreign partners in science and technology activities such as taking part in science and technology organizations; research, training in science and technology activities.

It requires co-operation agreements in science and technology area to be in the form of a written agreement or memorandum of understanding, the execution of which must be reported to the competent State authority within 15 days from the date of execution.

Foreign investment procedures in science and technology must be carried out in accordance with State law. Science and technology organisations established with foreign capital must be approved by competent State authorities and meet other investment conditions, including an investment certificate, a charter stating an appropriate scope of activities, specialised human resources and appropriate facilities. They must also be approved in writing by the provincial People's Committee in which the headquarters of the organisation is located and meet environmental requirements.

Foreign science and technology organisations that have been in operation for at least one year will be allowed to establish a representative office in Viet Nam. Those with five years in operation will be allowed to establish branches, consistent with Viet Nam's commitments under international agreements. Term of certificate of establishment and operation of branch/representative office of foreign science and technology organization is not over 5 years.

5. New rules govern social networking sites

The management of websites and online social networks will be governed by Circular No 14/2010/TT-BTTTT, issued by the

Ministry of Information and Communications on June 29.

Under the new regulation, websites that introduce products, services, or business lines of an enterprise or organisation and do not entail an exchange of information will not be required to have a license or other registration. However, the homepage must show the name, address, phone number and email address of the organisation managing the site, as well as the name of the webmaster in charge of maintaining the site.

The circular also extends the scope of websites that required registration to sites providing online social networking services, websites of media agencies, websites providing specialised applications or services, and sites that provide general information in the spheres of politics, economics, culture and society.

In addition to the information that must be shown on the homepages of unregistered sites, the homepage of a registered site must list the site's license number and issue date.

The procedure for granting a license is the same as those that are already in place for registering websites. Under the new rules, however, all registered sites must notify the licensing authority of the site's termination 10 working days prior to termination.

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