

THE MINISTRY OF CONSTRUCTION

No. 13/2008/TT-BXD

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom - Happiness

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CIRCULAR

GUIDING THE IMPLEMENTATION OF A NUMBER OF POINTS OF THE GOVERNMENT'S DECREE No. 152/ 2007/ND-CP OF OCTOBER 15, 2007. DETAILING AND GUIDING THE IMPLEMENTATION OF THE LAW ON REAL ESTATE BUSINESS

Pursuant to the Government's Decree No. 17/ 2008/ND-CP of February 4, 2008, defining the functions, tasks, powers and organizational structure of the Construction Ministry;

Pursuant to the Government's Decree No. 153/ 2007/ND-CP of October 15, 2007. detailing and guiding the implementation of the Law on Real Estate Business;

Pursuant to the Government's Decree No. 13/ 2008/ND-CP of February 4, 2008. stipulating the organization of specialized bodies of provincial/ municipal People's Committees;

The Construction Ministry specifically guides some provisions of Decree No. 153/ND-CP as follows:

Part I

GUIDANCE ON ORDER AND PROCEDURES FOR CERTIFICATION OF CAPITAL IN REAL ESTATE BUSINESS

1. Order and procedures for certification of legal capital upon establishment of real estate business enterprises or addition of the real estate business line for enterprises (under Clause 2. Article 3 of the Government's Decree No. 153/ 2007/ND-CP of October 15, 2007, detailing and guiding the implementation of the Law on Real Estate Business, which is below referred to as Decree No. 153/2007/ND-CP):

Newly established real estate business enterprises and cooperatives or operating enterprises and cooperatives (below collectively referred to as enterprises) that wish to additionally conduct real estate business shall, apart from dossiers required for business registration, obtain written certifications of their capital and send them to agencies that have granted business registration certificates for carrying out procedures to grant business registration certificates or add the real estate business line under the following regulations:

1.1. For newly established enterprises, a dossier of certification of legal capital comprises:

1.1.1. A written record of capital contribution by founding shareholders, for joint- stock companies, or founding members, for limited liability companies with two or more members: a decision on assignment of owner's capital, for one-member limited liability companies owned by organizations: a written registration of investment capital of enterprise owner, for private enterprises and one-member limited liability companies owned by individuals:

1.1.2. For capital amounts contributed in cash, there must be written certifications of commercial banks licensed to operate in Vietnam of deposit amounts of founding members. Deposit amounts must be at least equal to capital amounts contributed in cash by founding members and released only after enterprises are granted business registration certificates;

1.1.3. For capital mounts contributed in assets, there must be deeds issued by organizations having the function of price appraisal and operating in Vietnam certifying results of the price appraisal of assets used for capital contribution. Certification deeds must be still valid on the date of submission of the dossier to the business registry office.

1.2. For an operating enterprise wishing to additionally conduct real estate business, its dossier of legal capital certification must contain an independent audit organization's written certification of the existing capital owned by it and stated in its latest financial statement (for the year of registration or the year preceding the year of registration), which must be at least equal to the legal capital prescribed in Decree No. 153/ 2007/ND-CP (VND 6 billion).

1.3. In the course of operation, real estate business enterprises shall maintain their charter capital not lower than the legal capital (including enterprises that were granted real estate business registration certificates before the effective date of Decree No. 153/2007/ND-CP).

1.4. Organizations and individuals that directly certify legal capital shall take joint responsibility for the accuracy and truthfulness of capital amounts at the time of certification.

2. Order of and procedures for certification of capital under ownership of investors upon their registration for execution of projects on new urban centers, residential housing complexes or infrastructure works of industrial parks (under Article 5 of the Government's Decree No. 153/ 2007/ND-CP):

2.1. Capital under an investor's ownership means capital amounts actually owned by that investor up to the year preceding the year of project execution as stated in the enterprise's financial statement certified by an independent audit organization.

2.2. For investors being newly established enterprises, their actual capital amounts are identified as follows:

2.2.1. For capital amounts in Vietnamese currency or a foreign currency, there must be certifications by commercial banks where these enterprises open their accounts of the balances of their deposits. The time of certification must be within thirty (30) days before the date of submission of dossiers of application for approval of projects;

2.2.2. For capital amounts in assets, there must be deeds issued by price appraisal organizations operating in Vietnam certifying results of the price

appraisal of these enterprises' assets. Certification deeds must be still valid on the date of submission of dossiers of application for approval of projects.

2.3. Investors of projects on new urban centers, housing complexes or technical infrastructure works of industrial parks must satisfy the condition on investment capital under their ownership specified in Clause 1. Article 5 of Decree No. 153/ 2007/ND-CP, specifically as follows:

2.3.1. The required level of investment capital under investors' ownership shall be identified on the basis of total investment capital of each project, which is determined under legal provisions on management of construction investment expenses;

2.3.2. If the project investor has already obtained land use rights, compensation has been paid for the clearance of the land plot for project execution or the project investor is grade-1 investor (investing and dealing only in infrastructure works), the total investment capital of the project only includes investment capital for technical infrastructure works, excluding land use expenses, compensations for ground clearance or expenses for investment in building other works.

Part II

GUIDANCE ON SOME POINTS ON TRANSFER OF WHOLE PROJECTS

The transfer of whole projects on new urban centers, housing complexes or technical infrastructure of industrial parks (Under Articles 6, 7, 8 and 9 of the Government's Decree No. 153/ND-CP) is carried out as follows:

1. Competence to permit the transfer of whole projects:

1.1. State agencies competent to permit investment in projects may permit the transfer of these projects in whole.

1.2. Before issuing decisions to permit transfer of whole projects, agencies competent to permit project transfer shall designate their specialized units to

evaluate dossiers of application for permission for project transfer. Units in charge of project evaluation shall send these dossiers to concerned agencies for their opinions. For projects in which investment has been permitted by the Prime Minister, provincial-level People's Committees shall organize the evaluation and consult concerned ministries and branches before submitting them to the Prime Minister for consideration and decision.

2. Order of and procedures for transfer of whole projects:

2.1. Dossiers of application for permission for transfer of whole projects shall be submitted to provincial-level agencies in charge of project evaluation in localities where projects are located (for projects on new urban centers and housing complexes, provincial-level agencies in charge of project evaluation are provincial-level Construction Services, for projects on technical infrastructure works of industrial parks, the agencies in charge of evaluation shall be designated by presidents of provincial-level People's Committees);

2.2. Provincial-level agencies in charge of project evaluation shall evaluate dossiers for transfer of whole projects within 30 working days after receiving complete dossiers.

2.3. After completing the evaluation, the agencies in charge of project evaluation shall propose provincial-level People's Committees to issue decisions to permit project transfer under their competence or to propose these projects to the Prime Minister for consideration and decision.

3. A dossier of application for transfer of a whole project comprises:

3.1. The old investor's application for project transfer, made according to a set form:

3.2. The investment permit of a competent state agency; the dossier of the approved project: the decision on project approval; the land rent contract or the decision on land allocation or the land use rights certificate: the new investor's dossier:

3.3. A resort on the project execution as of the time of transfer;

3.4. The new investor's dossier, comprising:

3.4.1. A business registration covering the real estate business line;

3.4.2. The new investor's commitments upon receiving the transferred project, covering the responsibility to fulfill the obligations committed by the old investor toward the State and customers:

3.4.3. A certificate of the new investor's financial capability under Point 2, Part I of this Circular.

4. To-be-evaluated contents of a dossier of application for transfer of a whole project:

4.1. Reasons for the transfer:

4.2. Conditions on the project transfer;

4.3. The condition on the new investor's capability;

4.4. The new investor's plan on project execution.

5. Procedures for handover between the old investor and the new investor of a project:

5.1. Within 30 (thirty) days after the issuance of a decision on transfer permission by a competent agency, the new and old investors shall enter into a project transfer contract, made according to a set form, and complete the project handover. The new investor shall continue executing the project immediately after the handover:

5.2. The old investor shall handover to the new investor all project dossiers, make a written record of the handover enclosed with a list of dossiers. The onsite handover of land boundaries of the project must comply with the land law;

5.3. Before carrying out handover procedures, the old investor shall notify in writing to all customers (if any) and make an announcement on the mass media 15 days in advance on at least three consecutive issues of a local newspaper, for three times on a central or local television station and the

website (if any) of the provincial-level agency in charge of evaluation in the locality where the project is located), notifying the project transfer and customers' interests.

Part III

GUIDANCE ON REAL ESTATE TRANSACTIONS ON REAL ESTATE TRADING FLOORS

Real estate business enterprises shall sell, transfer, lease or hire-purchase real estate through real estate trading floors (except for social housing projects under the Housing Law) under the following regulations:

1. Only real estate which satisfies the conditions specified by law can be sold, transferred, leased or hire-purchased;
2. Investors may themselves establish real estate trading floors or select real estate trading floors established by other entities for introducing their real estate and conduct real estate transactions.
3. Real estate trading floors shall disclose information (specified at Point 2. Part IV of this Circular) on real estate that needs to be sold, transferred, leased or hire-purchased on their trading floors for customers to know and register for trading. The duration of information disclosure on a trading floor is at least 7 (seven) days. During this time limit, information on names of projects, types and quantity of real estate, locations of and time for sale, transfer, lease or hire-purchase of real estate must be published on at least 3 (three) consecutive issues of a local newspaper, broadcast for at least 1 (one) time on a television station in the locality where the projects are located, and posted on the trading floor's website (if any). Expenses for information disclosure shall be paid by project investors (or project owners).
4. Upon the expiration of the time limit for information disclosure as specified at Point 3 of this Part, investors (or authorized real estate trading floors) may organize the sale, transfer, lease or hire-purchase of publicized real estate. In case there are two or more customers registering for the same real estate or the number of registered customers is higher than that of real estate, investors (or authorized real estate trading floors) may select

customers through lucky draws or auctions. The payment of deposits before a lucky draw or an auction is organized shall be agreed upon by involved parties in accordance with law;

5. Real estate auctions on trading floors must comply with legal provisions on property auction;

6. Real estate trading floors shall certify the origin of real estate of real estate business enterprises allowed to be traded on these floors according to a set form, in order to certify traded real estate in strict accordance with law;

7. For real estate of non-real estate business organizations and individuals which are traded on real estate trading floors, information disclosure under Point 3 of this Part is not required.

Part IV

GUIDANCE ON SOME POINTS ON REAL ESTATE TRADING FLOORS

1. Models of organization and operation of real estate trading floors

1.1. Real estate trading floors must be legal entities with the function of providing real estate services. In case a real estate business enterprise establishes a real estate trading floor that floor must have its own legal entity status or use the founding enterprise's legal entity status in its operation.

1.2. Apart from providing services related to the sale, purchase, transfer, lease, hire-purchase and brokerage of real estate, real estate trading floors may provide one. several or all of the following services:

1.2.1. Real estate price appraisal:

1.2.2. Real estate consultancy.

1.2.3. Real estate advertisement:

1.2.4. Real estate auction;

1.2.5. Real estate management.

1.3. The organizational apparatus of a real estate trading floor is composed of the director, deputy directors and professional sections suitable to its operations.

1.4. Managers and executive officers of real estate trading floors must satisfy the conditions specified in Article 21 of Decree No. 153/2007/ ND-CP.

1.5. A real estate trading floor must have at least 2 (two) staff members working as certified real estate brokers. If this floor conducts real estate price appraisal, it must have at least 2 (two) staff members working as real estate price appraisers who possess real estate price appraisal certificates granted by the competent authority.

1.6. A real estate trading floor must have a trading area of at least 50 m² for brokering and trading activities and an additional area of 20 m² for each additional service operation, and at the same time be furnished with equipment suitable to its operations.

1.7. A real estate trading floor must have its own name, signboard and location kept unchanged for at least 1 year (12 months). Any change of its transaction place must be notified to the concerned local state management agency and existing customers. Before conducting its operations, it shall send a dossier comprising its business registration certificate and operation regulation to the provincial-level Construction Service, which shall report it to the Construction Ministry for unified management and posting on the website of the network of Vietnamese real estate trading floors.

1.8. A real estate trading floor must have its operation regulation, which has the following principal provisions on:

1.8.1. Its functions, tasks and powers;

1.8.2. The organizational apparatus and operation of its sections:

1.8.3. The financial management applicable to it;

1.8.4. Relationships with customers during transactions:

1.8.5. Information on real estate to be traded; management and supply of information on real estate and real estate transactions on the floor.

1.9. Real estate, when being introduced and traded on real estate trading floors, must satisfy the conditions specified in Articles 6 and 7 of the Law on Real Estate Business and their owners shall fully declare information on them under Clause 2 of this Section.

1.10. Real estate trading floors' services must be provided under contracts.

1.11. Organizations and individuals participating in real estate trading floors have their rights and obligations as provided in Article 62 of the Law on Real Estate Business.

1.12. Individuals independently providing real estate services must possess real estate broker certificates and business registration certificates under the provisions of law on business registration.

2. Guidance on some contents of information on real estate under Article 11 of the Law on Real Estate Business

2.1. Information on real estate to be traded must be sufficient under Article 11 of the Law on Real Estate Business.

2.2. Information on types of real estate:

2.2.1. For residential houses, there must be information indicating whether they are detached houses or apartments. Detached houses must be classified into villas, semi-detached houses and garden houses;

2.2.2. For service real estate, there must be information indicating whether they are offices, shops, department stores, supermarkets, markets, hotels, guest houses or inns;

2.2.3. For industrial real estate, there must be information indicating whether they are infrastructure of industrial parks or workshops, factories, warehouses or storing yards:

2.2.4. For land use rights, there must be information indicating whether they are held by users of non-agricultural land (residential land, industrial park

land, grounds for production or business, etc.), agricultural land or land of other categories (if any).

2.3. Information on real estate locations:

2.3.1. For real estate in urban areas and with specific addresses, there must be information on their house numbers, passages, lanes, streets, districts, cities (provinces). For apartment buildings, there must be information on apartment numbers, floors and building lots. For rural areas, real estate addresses must include names of hamlets, villages, communes, districts and provinces:

2.3.2. For real estate without specific addresses (in areas not yet established into administrative units), their projects' names and signs of land plots (for land plots for building detached houses or other construction works) or signs of each apartment (for apartment buildings) must be provided.

2.4. Information on size and area of real estate:

2.4.1. For a detached house, there must be information on the area of its premises, construction area, number of floors, total floor area: for an apartment building, there must be information on the total number of apartments, floor area of each apartment, number of rooms, etc.;

2.4.2. For another real estate, there must be information on the area of its premises, number of floors, total floor area, area for common use, capacity (if any);

2.4.3. For infrastructure works of an industrial park, there must be information on the total land area of the whole industrial park, building density, public land area (for public use), area of each land lot. etc.:

2.4.4. General site plan and floor plans (if any).

2.5. Information on features, characteristics, utilities and quality of real estate: Features and characteristics: There must be information on the work structure, foundation, framework, w all. floor and roof;

2.5.1. Utilities of real estate: There must be information taken from the original design:

2.5.2. Quality of real estate: There must be information on the year of construction, grade and class of the work:

2.5.3. Photos showing the overall view of the work at the time of introduction if any).

2.6. Information on rights and interests of a concerned third party, including ownership right, use rights, right to benefit from the work, current state of lease, mortgage, temporary stay by others (if any).

Part V

GUIDANCE ON GRANT OF REAL ESTATE BROKERAGE OR PRICE APPRAISAL CERTIFICATES, AND MANAGEMENT OF REAL ESTATE BROKERAGE AND PRICE APPRAISAL

1. Order of and procedures for the grant of real estate brokerage or price appraisal certificates

1.1. Persons who apply for new or renewed real estate brokerage or price appraisal certificates shall file applications (made according to a set form, not printed herein) to provincial-level Construction Services in localities where training establishments are located or where they reside (permanently or temporarily for a long period).

1.2. Before granting a real estate brokerage or price appraisal certificate, the provincial-level Construction Service shall evaluate the dossier of application for certificate as follows:

1.2.1. Considering the satisfaction of the conditions by the applicant (specified in Clause 1, Article 14 of Decree No. 153/2007/ND-CP for real estate brokerage certificates and Clause 1. Article 15 of Decree No. 153/2007/ND-CP for real estate price appraisal certificates'):

1.2.2. (under the provisions of Clause 2 Article 14 of Decree No. 153/2007/ND-CP for real estate brokerage certificates and Clause 2. Article 15 of Decree No. 153/2007/ND-CP for real estate price appraisal certificates).

1.3. Evaluation results must be recorded in writing (according to a set form, not printed herein).

1.4. Directors of provincial-level Construction Services shall decide on lists of certificate holders (made according to a set form, not printed herein); and organize the printing, distribution and signing of decisions on grant of certificates according to forms set in Appendices 4 and 5 to the Construction Minister's Decision No. 29/2007/ QD-BXD of December 31, 2007.

1.5. Provincial-level Construction Services shall preserve dossiers and sum up lists of holders of real estate brokerage or price appraisal certificates. Annually (or when requested), provincial-level Construction Services shall report on results of grant of real estate brokerage certificates or real estate price appraisal certificates to the Ministry of Construction for summing up of the list of holders of real estate brokerage certificates or real estate price appraisal certificates nationwide and post it on the website of the network of Vietnamese real estate trading floors.

2. Management of real estate brokerage and price appraisal activities

2.1. Provincial-level Construction Services are local state management agencies in charge of real estate brokerage and price appraisal activities in their localities.

2.2. Management of real estate brokerage and price appraisal activities covers management of appraisal, management and administration of real estate trading floors: grant of real estate brokerage or price appraisal certificates: management of the operation of real estate brokerage offices: inspection, examination and handling of violations in real estate brokerage and price appraisal activities.

2.3. Before providing training in real estate brokerage and price appraisal or management of real estate trading floors, training establishments shall send

written notices (made according to a set form, not printed herein) to provincial-level Construction Services in localities where they are located for unified management.

Part VI

IMPLEMENTATION EFFECT

1. This Circular takes effect 15 days after its publication in "CONG BAO."
2. Provincial-level People's Committees shall direct provincial-level Construction Services and concerned agencies in organizing the strict implementation of the provisions of the Law on Real Estate Business, the Government's Decree No 153/2007/ND-CP of October 15, 2007, detailing and guiding the implementation of the Law on Real Estate Business, and the provisions of this Circular.

Any difficulties and problems arising in the course of implementation should be promptly reported by localities to the Construction Ministry for coordinated settlement according to its competence or reporting to the Prime Minister for consideration and decision.

FOR THE CONSTRUCTION MINISTER

VICE MINISTER

Nguyen Tran Nam

