

NEW REGULATIONS ON GUIDING IMPLEMENTATION OF LAW ON LAND

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On April 3, 2023, Decree 10/2023/ND-CP (**Decree 10**) was issued to amend and supplement several articles of Decrees providing guidelines for implementation of the Law on Land, which will take effect from May 20, 2023. Decree 10 introduces notable amendments and supplements regarding investment projects regulated by Decree 43/2014/ND-CP, as amended and supplemented by Decree 01/2017/ND-CP (**Decree 43**), as follows:

Firstly, amending and supplementing provisions on land recovery in case of terminating investment projects as prescribed in laws on investment. Previously, in the case where the 24-month deadline for extension of land use rights has expired, and the investor fails to transfer the land use rights or sell the legal land-attached property to another investor (if the State assigns land subject to land use levies, or leases land for a lump-sum land rent) or fails to sell the legal land-attached property to another investor (if the State leases land and collects land rent on an annual basis), in accordance with Article 15b of Decree 43, regulated land recovery shall be conducted under point i, clause 1, Article 64 of the Law on Land 2013. However, currently, according to Decree 10, in the two cases mentioned above, the State will carry out land recovery without compensation for the land and legal land-attached property, except for the force majeure events specified in clause 1, Article 15 of Decree 43.

Secondly, supplementing regulations on granting ownership certificates for construction works developed to serve tourism accommodation purposes. The implementation of procedures for granting such ownership certificates under the Law on Land 2013 and Decree 43 encounters numerous difficulties due to the lack of consistency in understanding and implementation among localities. Therefore, Decree 10 has provided specific regulations on granting ownership certificates for this type of construction work. Accordingly, construction works for tourism accommodation purposes as regulated by the laws on tourism in commercial and service land (such as hotels,



tourist villas, tourist apartments, etc.) that meet the conditions prescribed by the laws on land, construction, and real estate business shall be *granted with ownership certificates for the land-attached construction works according to commercial or service purposes*. The ownership certification shall comply with the regulations on ownership certification of non-residential construction works in Article 32 of Decree 43. Land use term for these types of construction works is determined under regulations of clause 3, Article 126, and clause 1, Article 128 of the Law on Land. Besides, the owners of these construction works are legally responsible for satisfying the conditions prescribed by the laws on construction and the laws on the real estate business.

Thirdly, supplementing conditions and criteria for granting permission to change the use purpose of land for rice cultivation, protection forest or special-use forest to implement investment projects. The new regulation aims to detail the content regarding the change in the use purpose of land for rice cultivation, protection forest, and special-use forest as stated in Resolution 39/2021/QH15 of the National Assembly on National Land Use Planning for the 2021-2030 period, with a vision to 2050, and the 5-year National Land Use Plan 2021-2025. Accordingly, the criteria are specified in Decree 10 as follows:

- (i) The investment project needs to obtain approval of investment policy or certificate of investment registration according to the laws on investment.
- (ii) The change in the use purpose must comply with the district-level land use plannings, and the investment project must be subject to the list of district-level annual land use plans that are approved by law;
- (iii) There are alternative afforestation plans or written notifications on discharge of obligations to pay for alternative afforestation under the laws on forestry in case of change in the use purpose of land

for protection forest or special-use forest; there are topsoil use plans and written notifications on discharge of obligations to pay for protection and development of rice cultivation land under the laws on crop production in case of changing the use purpose of rice cultivation land.

(iv) A preliminary environmental impact assessment or environmental impact assessment is conducted under the laws on environmental protection (if any).

COMMENTS AND RECOMMENDATIONS

The promulgation of Decree 10 is to improve land-related regulations and addresses some obstacles faced by localities, people, and businesses in the implementation of the Law on Land 2013 and its guiding decrees. In addition to clearer regulations on land recovery in the cases of land assignment and lease by the State, new regulations on granting the ownership certificate for construction works developed to serve tourism accommodation purposes and conditions to change the use purpose of land for rice cultivation, protection forest, and special-use forest, Decree 10 also introduces new points on land procedures. Therefore, enterprises should update and study Decree 10 to ensure compliance with new land-related regulations.