

SOME NEW REGULATIONS ON REAL ESTATE BUSINESS ACTIVITIES

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On January 6, 2022, the Government issued Decree 02/2022/ND-CP providing details for the implementation of some articles of the Law on Real Estate Business (**Decree 02**), replacing Decree 76/2015/ND-CP (**Decree 76**). Some notable contents of this Decree are as follows:

Firstly, supplementing regulations on the obligation of real estate businesses to disclose information. One of the fundamental principles of real estate business under the Law on Real Estate Business 2014 is to be "conducted honestly, publicly and transparently". Based on this principle, Decree 02 stipulates that in addition to the obligation to publicize information about the real estate products put into market in Article 6 of the Law on Real Estate Business 2014, real estate businesses must also disclose information about their businesses (including name, head office address, contact phone number, names of legal representatives); information on mortgage of houses, construction works, real estate projects put into market (if any); information on the quantity and type of real estate products being traded, the quantity and type of real estate products sold, transferred, lease-purchased and the remaining quantity and types of products that are still being traded.

Secondly, amending and supplementing regulations on the mandatory application of real estate model contracts and on the change of model contract types. Decree 76 and Decree 02 both provide a number of real estate model contracts in their Appendix. However, while Decree 76 only stipulates that these model contracts "are for the parties' reference in the process of negotiating and signing a real estate contract", Decree 02 requests the parties to apply the model contracts in compliance with Article 6, Decree 02. Thus, the parties will have to apply the model contracts without modifying or supplementing the contract terms. At the same time, Decree 02 also provides separate model contracts based on the type of real estate instead of



transaction types as in Decree 76.

Thirdly, supplementing the Model Contract for purchase, sale and lease purchase of condotels, officetels. The model contract has a number of notable contents such as detailed provisions on "Shared ownership", "Separate ownership", "Maintenance expenses", "Warranty", "Features of the condotel/officetel purchased, sold/lease-purchased", "Rights and obligations of the parties", etc.

COMMENTS AND RECOMMENDATIONS

It is found that the new regulations of Decree 02 are issued with the aim of building a more information-transparent real estate market. In addition, the regulation on mandatory application of model contracts will create a remarkable shift to the way the parties enter into contracts in the current situation of real estate transactions where real estate project owners are less inclined to use statutory model contracts than their custom-made contracts, which in some cases are unfavorable to real estate buyers and users, especially controversial products such as condotels or officetels.

Real estate businesses need to publicize information within 6 months from March 1, 2022 (the time Decree 02 takes effect) to avoid interruption in their business activities. In addition, businesses also need to update and carefully study the terms of the Model Contracts issued under Decree 02 to ensure the legal validity of contracts and transactions with their customers.