



# Special Alert

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## New Decree for Development of Residential Projects

On 26 March 2021 (the “**Effective Date**”), the Government issued Decree No. 30/2021/ND-CP (“**Decree 30**”), which took effect since then. In general, Decree 30 provides amendments and supplements several provisions of Decree No. 99/2015/ND-CP implementing the Law on Housing 2014. Accordingly, Decree 30 has significantly changed the development and implementation of residential projects. Some worthwhile points are as follows:

### *Selection of investors for residential projects including commercial residential projects or township projects*

An investor who is selected for residential projects and has a properly established enterprise with registered real estate business lines and financial capabilities under the provisions of the Law on Housing 2014 may be selected through the following methods:

- (a) Being the successful winner of an auction of land use rights in accordance with the land law; or
- (b) Being the successful bidder of land use rights under the laws on competitive bidding; or
- (c) The investor has acquired valid land use rights in the following situations:
  - ✓ Having lawful land use rights designated for residential land;
  - ✓ Having lawful land use rights of other types of land that are allowed to change their use purposes to residential land by the competent authority; or
  - ✓ Acquiring land use rights in compliance with laws on land to construct commercial housing.

### *Funds for maintenance of areas under common ownership in an apartment building with multiple owners*

- (a) For an apartment or another area in an apartment building sold or hire purchased by the

investor, the buyer/tenant/investor shall contribute two percent of the value of the apartment or of the area sold or hire purchased:

- ✓ Before execution of the sale and purchase agreement into an account to receive the maintenance funds which must be opened between the investor and a credit institution or foreign bank branch operating at the place where the housing in question is located (the “**Account**”);
  - ✓ For each housing project that has apartments, the investor must open the Account to receive the maintenance funds;
  - ✓ After opening the Account, the investor must send a notice to the Department of Construction where the project is located to inform them of the Account’s name, Account’s number, the name of the credit institution with whom the Account is opened and the deposit term of the Account; and
  - ✓ In case the buyer/tenant does not contribute their funds for maintenance into the Account, they must not be given possession of the apartment. If the investor fails to collect the funds prior to handover, the investor will be responsible for payment of the maintenance funds into the Account.
- (b) For apartments or other areas in an apartment building retained by the investor that are not for sale or hire purchase, or which are not yet sold or hire purchased as at the time of commissioning the apartment building, except for areas under common ownership, the investor must contribute two percent of the value of the apartments or areas retained into the Account.

In case the investor fails to pay the maintenance funds or fails to hand over the maintenance funds, the investor shall be administratively sanctioned, forced to hand over the funds and may be prosecuted for criminal liability.

*Procedure for enforcing transfer of the maintenance funds of shared areas of apartment buildings (the “Procedure”)*

The Procedure shall be implemented as follows:

- ✓ The Management Committee of apartment buildings (the “**MC**”) shall send a request to the Provincial People’s Committee (the “**PC**”) where the apartment buildings are located;
- ✓ Within 15 days from the date of receipt of the MC’s request, the PC shall check the request and issue a document requesting the investor to hand over the maintenance funds to the MC;
- ✓ Within seven days from the date of receipt of this document, the investor must hand over the maintenance funds. If the investor fails to do so, the PC shall issue a decision to the investor for enforcing the transfer fund for maintenance to the MC via the credit institution where the Account is opened; and

- ✓ Within three days from the date of receipt of the PC's enforcing decision, the credit institution shall transfer the fund for maintenance into an account opened by the MC for using and management under the laws of housing and judgment enforcement.

#### *Transfer of a part or all of a real estate project*

When the investor submits the application dossier for transfer of a part or all of a real estate project, the investor can choose to submit a certified copy or simply a copy and provide reference to the originals for comparison.

#### *Transitional Provisions*

- (a) In case a competent authority has issued a document on investor selection for a residential project before the Effective Date, re-selection is not required. However, in case the competent authority has received the application dossier of the investor selection for a residential project before the Effective Date and any document on investor selection is not issued, the selection shall be made in accordance with the condition herein and the law on investment.
- (b) If, prior to the Effective Date of Decree 30, an investor in a housing construction project who has not fully collected the fund for maintenance of common areas of the apartment building, they must open a separate account to transfer the collected amount and notify the buyer/tenant to pay the maintenance funds into this account. The investor is also responsible for payment of the maintenance funds to this account and handing all these funds over to the MC.

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