

LEGAL UPDATES

March 2022

What's new this month?

—
Notable Changes to Laws
on Real Estate Business in
Vietnam

—
Introduction of several
changes to some
regulations in the
economic fields



- Contributed by Benjamin Yap Soon Tat and Dang Thi Tuong Vi -

Noteworthy Amendments and Changes to Several Legal Frameworks of Various Sectors

being effective from March 2022

With the coming into effect of two new legal instruments this March, Law No. 03/2022/QH15 dated 11 January 2022 and Decree No. 02/2022/ND-CP dated 6 January 2022, certain existing regulations governing different fields which may be no longer suitable for the practice in Vietnam at the present, such as the field of investment and real estate, have been accordingly amended as well as replaced in order to ensure more progressive regulatory frameworks.

Legal Updates – March 2022



Picture from: <https://www.sushihousemb.com/what-is-real-estate-business/>

Notable Changes to Laws on Real Estate Business in Vietnam

Matters in relation to implementation of real estate business used to be governed by Decree No. 76/2015/ND-CP dated 10 September 2015 ("**Decree 76**") shall, from 1 March 2022, be guided by new Decree No. 02/2022/ND-CP detailing the implementation of a number of articles of Law No. 66/2014/QH13 on Real Estate Business ("**Decree 02**") with the expectation of positively affecting the operation of the real estate market of Vietnam in the near future.

To begin with, Decree 02 reconfirms the 2020 Law on Investment's removal of the VND20 billions of minimum charter capital requirement for a real estate business enterprise. Alternatively, Decree 02 takes a more practical approach to the financial capacity of real estate project investors, which now shall be based on the land use scale (i.e. not less than 20% of the total investment capital applicable to projects using less than 20 hectares of land, or not less than 15% of the total investment capital applicable to projects using at least 20 hectares of land). Moreover, Decree 02 further clarifies that the owner's equity of real estate project investors must be determined by the latest audited financial statements or independent auditing report for the current or preceding year (in case of already existing enterprises); or by the contributed charter capital in accordance with relevant laws (in case of newly established enterprises).

Another remarkable change is that Decree 02 introduces a new responsibility for real estate enterprises in comparison with the previous Decree. Particularly, they are required to make certain information available on their website, at the headquarters of the Committee for Project Management (for real estate business investment projects), at the real estate exchange (for business conducted through real estate exchange), including the name; head office address; contact phone number; name(s) of legal representative(s); information related to the properties to be put into business; information on mortgage of the house, construction works and/or real estate project put into business (if any); information on the quantity and type of real estate products put into business; the quantity and type of real estate products sold, transferred, and lease-purchased; and the remaining quantity and types of products that are still being traded. Also, if the publicized information changes for any reason, such changes must be promptly updated.

With regard to real estate business contracts, Decree 02 still provides for templates for different types of real estate business contracts (with the addition of template for condotel/officetel sale and lease-purchase contract) in its attached appendices. However, one key point that should be paid attention to is that Decree 02 expressly requires the sale, transfer, lease, lease-purchase, sublease of real estate, and transfer of real estate projects to follow such templates, rather than using for reference only like previously regulated under Decree 76.

Regarding requirements for the transfer of contracts for sale, purchase, or lease-purchase of off-plan houses and for the transfer of contracts for lease-purchase of existing houses and construction works, whilst Decree 76 only prescribes generally that such transfers are permitted if there has yet any application for issuance of the Certificate of land use rights or ownership of houses and other land-attached assets been submitted to the competent authority, Decree 02 now detailing more specific requirements, particularly:

- (i) A contract for the sale, purchase, or lease-purchase is made in accordance with the law; in the case where the parties signed a contract before the effective date of Decree 02, they must have in their possession that signed contract;
- (ii) The contract for the sale, purchase, or lease-purchase of houses and construction works is not under dispute or lawsuit;
- (iii) The houses and construction work under the contract for sale, purchase, and lease-purchase are not subject to distraint or mortgage to ensure the fulfilment of obligations as prescribed by law, unless otherwise agreed by the mortgagee.

Moreover, this regulation of Decree 02 also states clearly that such transfer does not to a contract for the sale, purchase, or lease-purchase of social houses.

One other notable update of Decree 02 is that, in the case of lease-purchase of many houses or apartments under the same contract, the transferor may need to reach an agreement with the investor to amend the contract for sale, purchase, or lease purchase of houses or construction work; or sign an appendix to the contract before transferring each individual house or apartment.

Legal Updates – March 2022

Decree 02 also sets out two principles for the transfer of all or part of real estate projects as follows:

- (i) In case of real estate projects that are (i) approved for investors in accordance with Law No. 61/2020/QH14 on Investment (“2020 LOI”), or (ii) granted Certificate of investment registration following the 2020 LOI, a transfer thereof shall comply with the provisions of the 2020 LOI.
- (ii) For real estate projects not falling in cases prescribed above, a transfer thereof shall comply with the Law on Real Estate Business and the Decree 02.

This new update is consistent with the regulation of Article 46 of the new 2020 LOI and helps distinguish the governing scope with that of the Law on Real Estate Business.

Law No. 03/2022/QH15 introducing several changes to some regulations in the economic fields

Supplementation to list of conditional business lines

Under the prevailing Law on Investment, there are 227 business lines which are subject to additional or special conditions upon licensing. The new law supplements that the trading or service businesses in relation to “network security products and services (excluding cyber-information security and civil cryptographic)” will also be regarded as one of the conditional business lines.

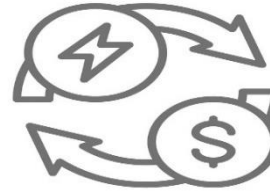
The subject of “network security products and services” was touched upon in the Law on Cyber-Information Security. The related provisions on the issuance of business license along with the responsibility of the trading company are also stipulated in the Law on Cyber-Information Security.

All economic sectors being encouraged to invest in the construction of power grid

Power transmission has been a state monopoly since Law No. 28/2004/QH 11 on Electricity.

However, under the new law, some steps (including construction of power grids) in the entire process of power transmission will be opened for investment from entities from all economic sectors. And the law also allows such business entities to operate the power grid in which they had invested in.

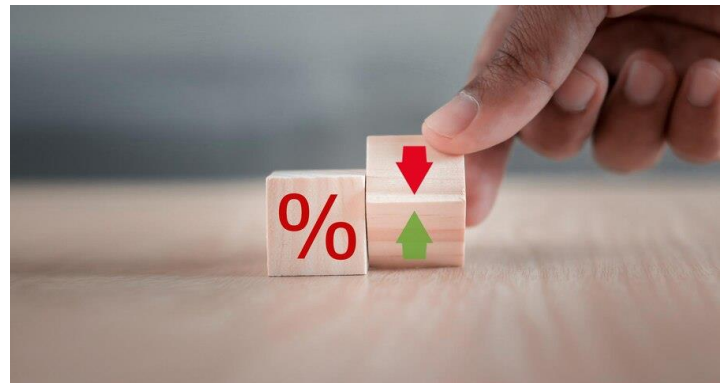
This new regulation helps develop the electricity market in the direction of openness, equality, and healthy competition to improve efficiency in electricity activities, and concurrently protect the interests of electricity users.



Worth of note, the investment in the construction of power grids must also be made on the basis of ensuring national defence, national security, and in accordance with applicable planning and specialized advice.

Picture from <https://www.freepik.com/search?format=search&query=electricity%20market>

Decrease in special consumption tax rate on electricity-powered cars



Picture from: <https://www.freepik.com/search?format=search&query=tax%20decrease>

Under Law No. 27/2008/QH12 on Special Consumption Tax, tax rates applied for electricity-powered cars are divided into four categories based on seating capacity and the design purpose and vary from 10% to 25%.

However, the new law divides the tax rate into two main categories with various sub-contents. The new tax rates vary from 1% to 15% based on the design purpose and seating capacity with specific schedules for application. This amendment clearly shows the Government's policy on encouraging the use of electricity-powered cars to protect the environment.

Contributors



Benjamin Yap (Mr.)

Senior Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
benjamin.yap@rhtlaw.com.vn



Dang Thi Tuong Vi (Ms.)

Partner
Ho Chi Minh City Office
Tel. (+84) 28 3820 6448
vi.dang@rhtlaw.com.vn

Our offices

>

RHTLaw Vietnam

Suite 1101, 11th Floor, Sofitel Central Plaza 17
Le Duan Boulevard, District 1, Ho Chi Minh City,
Vietnam
Tel: +84 28 38206 448

>

RHTLaw Vietnam - Hanoi Branch

Unit 1501B, 15th Floor, Charmvit Tower 117
Tran Duy Hung Street, Cau Giay District, Hanoi,
Vietnam
Tel: + 84 24 3974 8881

RHTLaw Vietnam is a Vietnam law practice registered as a limited liability company in Vietnam (the "**LLC**"). It works in collaboration with the Singapore law practice RHTLaw Asia LLP. The LLC is a distinct legal entity in Vietnam.

Our model is driven by the focus on helping clients succeed, which translates to clear and precise solutions with high-level legal and commercial insights. We proactively grow our practice in tandem with regional and international fast-growing industries and areas like Banking & Finance, Capital Market, M&As, Inward & Outward Investment, Intellectual Property, Trading & Commerce, Real Estate & Construction, Telecommunications, Employment and Litigation.

Find out more about us at www.rhtlaw.com.vn.



Disclaimer: All materials have been prepared for general information purposes only. The information is not intended as, and should not be taken as, legal advice. Do not act or refrain from acting based upon information provided herein without first consulting our lawyers about your factual and legal circumstances.