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LEGAL DOCUMENTS
**- AMENDMENTS TO SOME DECREES ON
IMPLEMENTATION OF THE LAND LAW –
JANUARY 2021**

Decree No. 148/2020/ND-CP issuing amendments to a number of decrees guiding the implementation of the 2013 Law on Land (“**Decree 148**”) will come into effect on 8 February 2021. In addition to the concretization of the regulations on the implementation of 2013 Land on Law, Decree 148 has supplemented a number of new provisions to Decree No. 43/2014/ND-CP (“**Decree 43**”); Decree No. 47/2014/ND-CP (“**Decree 47**”) and Decree No. 01/2017/ND-CP (“**Decree 01**”).

We will discuss below the most important points of interest.

1. Conditions for land allocation, land lease, change of land use purpose for implementation of investment projects

Under Decree 43, projects using land to which conditions for land allocation or land lease, or change of land use purpose to implement investment projects must apply, are narrowly regulated by listing out as follows:

- i. Investment projects for construction of residential houses for sale, for lease, or for combined sale and lease in accordance with the laws on residential housing;
- ii. Investment projects for business in real property attached to land use right in accordance with the laws on real estate business;
- iii. Manufacturing or business projects not funded by the State budget.

Decree 148 broadens the applicable investment projects which are subject to the State’s application of conditions for land allocation, land lease and change of land use purpose to implement investment projects, only excludes investment projects using land for non-commercial purposes.

2. Supplement to guidance on land allocation and land lease

The guidance on land allocation and land lease for small land parcel managed by the State and in case of exemption from land use fee, land rental is for the first time introduced in Decree 148.

2.1. For small land parcel managed by the State

Under the new regulations, the small and narrow land parcels managed by the State shall be administered through land allocation and land lease. The small land parcel must meet the criteria as follows:

- Belonging to the fund of land which has been recovered under a decision of a competent authority, unallocated land, land

not yet leased or land being allocated for management of the recovered fund of land, land used for public purposes allocated at the locality for which the President of the People’s Committee of the commune is responsible;

- Having an area or shape that does not meet the criteria for the minimum area and size for division of parcels of land;
- In accordance with the land use plans and planning or detailed planning for urban construction, construction of rural residential areas, approved planning for new rural construction;
- Not located in the area of land for the projects and works identified in the land use planning and plans as approved and publicly announced by competent agencies;
- The land expected to be allocated or leased is not subject to disputes, complaints, violations or is subject to disputes, complaints or violations, but already settled by a written resolution from competent authority.

Previous regulations did not specify how to deal with small land parcel being managed by the State alternating in the land fund of the project. This new provision has filled the "gaps" that have existed in the management and implementation of the 2013 Law on Land for a long time. This may help enterprises put projects into implementation soon.



2.2. In case of exemption from land use fee, land rental

New key point of Decree 148 is to provide for an incentive applied to cases of exemption from land use fee, land rental for a number of years or for the entire duration of investment projects in preferential investment industries or preferential investment geographical areas. Specifically, in those cases, the competent authority will allocate and lease-out land without auctioning of land use rights or bidding for projects using land. That incentive however shall not apply to following projects:

- Projects only being exempted from land use fees, land rental during the construction period of the project;
- Projects using land for commercial and service purposes;
- Projects using land to build commercial houses.



3. New regulations on dividing land into plots and selling floor area

The division of land into plots and sale of floor area are activities which often have many potential disputes. That is the reason for the necessity to have a completed and suitable legal framework on practical conditions to govern this activity. For that purpose, Decree 148 has amended following provisions:

Firstly, Decree 148 provides for some amendments to conditions for transfer of land use right in the form of dividing land into plots and selling the floor area in respect of investment projects in construction and business of residential houses for sale or for combined sale and lease.

In particular, Decree 148 abolished a requirement in the Decree 43 on the conformity of the project with the annual district-level land use plans. However, under Decree 148, such transfer of land use right which must comply with other additional conditions prescribed by law on urban planning, construction, urban development, real estate and housing is a new requirement, not only under the laws on land stipulated in Decree 43.

Secondly, Decree 148 provides for more areas and the type of urban zones where it is not allowed to transfer the use right in respect of lands located in those areas and zones in the form of dividing land into plots and selling the floor area.

Accordingly, the transfer of land use right in the form of dividing land into plots and selling the floor area currently is not allowed to be implemented within the **inner wards** (instead of **inner district** as stipulated in Decree 43) of

special urban centres and class 1 urban centre under Central Government (instead of only special urban centres under Decree 43).



4. Regulations on land user's continuance of leasing land in case of land recovery by the State without compensation

When the State makes a decision on recovery of the land of non-agricultural production establishments without land compensation from the person who leases land from the State with annual rental payment, the State may consider letting the land users continue leasing the land for manufacturing and business purposes. However, satisfaction of following conditions is a must in order to enjoy that incentive:

- The remaining land use term up to the date of land recovery decision issued by a competent authority is at least equal to 1/3 of the land lease term stated in the land lease contract;
- Land recovery affects the lives and jobs of many workers who directly engage in non-agricultural production.
- Person leasing land from the State (i) has the financial capability to guarantee the land use in accordance with the schedule of the investment project; (ii) pays a deposit in accordance with the laws on investment; and (iii) does not commit any breach of the laws on land in a case where such person currently uses land allocated or leased by the State to implement another investment project.

Hence, currently, pursuant to the new promulgated provisions above of Decree 148, rights of person leasing land from the State with annual rental payment are also guaranteed by the State.

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