

Hanoi, 21 May 2008

CIRCULAR
PROVIDING GUIDELINES FOR
IMPLEMENTATION OF DECREE 153-2007-ND-CP OF
THE GOVERNMENT DATED 15 OCTOBER 2007 IMPLEMENTING
THE LAW ON REAL ESTATE BUSINESS

Pursuant to Decree 17-2008-ND-CP of the Government dated 4 February 2008 on the functions, duties, powers and organizational structure of the Ministry of Construction;

Pursuant to Decree 153-2007-ND-CP of the Government dated 15 October 2007 ("*Decree 153*") providing detailed regulations and guidelines for implementation of the *Law on Real Estate Business*;

Pursuant to Decree 13-2008-ND-CP of the Government dated 4 February 2008 on the organization of specialist bodies belonging to provincial people's committees;

The Ministry of Construction hereby provide the following guidelines:

**I. GUIDELINES ON ORDER AND PROCEDURES FOR CERTIFICATION
OF CAPITAL DURING REAL ESTATE BUSINESS**

1. Order and procedures for certification of legal capital on establishment of a real estate business enterprise or on supplementing business lines to include real estate business (as stipulated in article 3.2 of Decree 153)

Any newly established enterprise or co-operative conducting real estate business, or any enterprise or co-operative which is currently operating (all hereinafter referred to as *enterprises*) and which wishes to add real estate business to its business lines must have, in addition to the file required by the regulations on business registration procedures, a document certifying its capital and sent to the business registration office in order to obtain a business registration certificate or in order to add real estate business to its business lines as follows:

1.1 The application file of a newly established enterprise for a legal capital certificate shall comprise:

1.1.1 Minutes of capital contribution from founding shareholders in the case of a shareholding company or from founding members in the case of a limited liability company with two or more members; decision of the owner on assignment of capital in the case of a one member limited liability company of which the owner is an organization; and letter of registration of investment capital by the enterprise owner in the case of a private enterprise or a one member limited liability company of which the owner is an individual.

1.1.2 For capital contributed in cash there must be a certificate from a commercial bank authorized to operate in Vietnam regarding the amount lodged as a deposit by founding members. The minimum amount of such deposit must equal the capital contribution in cash by founding members, and shall only be permitted to be disbursed after the enterprise is issued with its business registration certificate.

- 1.1.3 For capital contributed in the form of assets there must be a certificate from a valuer operating in Vietnam on the results of valuing the assets provided as capital contribution. The certificate must be valid up until the date of lodging the application file with the business registration office.
- 1.2 The application file for a legal capital certificate from a currently operating enterprise which wishes to add real estate business to its business lines, shall contain a certificate from an independent auditor regarding the current amount of capital belonging to such enterprise as recorded in the most recent financial statements of the enterprise (namely of the year of registration or of the year immediately preceding the year of registration) ensuring that such amount is equal to or more than the amount of legal capital (six billion dong) required by Decree 153.
- 1.3 Any enterprise conducting real estate business must, throughout its operational process, maintain the level of its charter capital at no less than its legal capital (including any enterprise issued with a real estate business certificate prior to the date on which Decree 153 took effect).
- 1.4 Any organization or individual directly certifying legal capital shall be jointly liable for the accuracy and truthfulness of the sum certified on the date of certification.
- 2. Order and procedures for certification of capital belonging to the investor on registration to implement a new urban zone, residential housing project or industrial zone technical infrastructure project** (as stipulated in article 5 of Decree 153)
- 2.1 Capital belonging to the investor means equity of the investor calculated up to the year immediately preceding the year in which the investor implements the project and confirmed by way of financial statements of the enterprise certified by an independent auditor.
- 2.2 The equity of the investor of a newly established enterprise shall be authenticated as follows:
- 2.2.1 In the case of capital being Vietnamese dong or a foreign currency, the commercial bank where the enterprise has opened its account must certify the balance in the deposit account of the enterprise, and the certificate must be dated within thirty (30) days prior to the date of lodging the application file for project approval.
- 2.2.2 In the case of capital being assets, there must be a certificate from a valuer operating in Vietnam on the results of valuing such assets of the enterprise, and the certificate must be valid up until the date of lodging the application file for project approval.
- 2.3 The investor of a new urban zone, residential housing project or industrial zone technical infrastructure project must own the amount of investment capital stipulated in article 5.1 of Decree 153), and specifically:
- 2.3.1 The amount of investment capital which the investor must own shall be based on the total investment capital of each project which shall be determined in accordance with the law on management of costs of investment and construction.
- 2.3.2 If a project investor already has the right to use land or an area of land to implement a project for which the site has been cleared and compensation paid, [and] the project investor is a Grade 1 investor (only investing in infrastructure business) then when calculating the total investment capital of the project, only that portion of investment capital for the technical infrastructure works shall be included and not the land use expenses, the expenses for site

clearance and compensation, or the expenses for investment and construction in other building works.

II. GUIDELINES ON ASSIGNMENT OF AN ENTIRE PROJECT

The assignment of an entire new urban zone, residential housing project or industrial zone technical infrastructure project (as stipulated in articles 6, 7, 8 and 9 of Decree 153) shall be implemented as follows:

1. Authority to permit assignment of an entire project

- 1.1 The State body authorized to permit an investment project shall also be the body authorized to permit assignment of the entire project.
- 1.2 The application file for permission to assign a project must be evaluated by an expert unit belonging to the body authorized to permit the assignment, before any decision granting permission is issued. The project evaluation co-ordinator shall send the application file to the relevant bodies to obtain their opinions. In the case of any project for which the Prime Minister of the Government granted permission for the investment, the provincial people's committee shall organize an evaluation and obtain opinions from the relevant ministries and branches prior to making a submission to the Prime Minister for his consideration and decision.

2. Order and procedures for assignment of an entire project

- 2.1 An application file for permission to assign an entire project shall be lodged with the provincial evaluation co-ordinator in the province where the project exists (in the case of a new urban zone project and a residential housing project, the provincial co-ordinator shall be the Department of Construction; and in the case of an industrial zone technical infrastructure project, the co-ordinator shall be as decided by the chairman of the provincial people's committee).
- 2.2 The provincial evaluation co-ordinator shall evaluate the application file within thirty (30) business days from the date of receipt of a complete file.
- 2.3 After completing the evaluation, the evaluation co-ordinator shall make a submission to the provincial people's committee to issue a decision permitting assignment of the project if the committee is so authorized, or shall make a submission to the Prime Minister of the Government for his consideration and decision.

3. The application file for assignment of an entire project shall comprise:

- 3.1 Request for assignment of the project completed by the former investor on the standard form in Appendix 1 issued with this Circular.
- 3.2 Document permitting the investment from the authorized State body; application file for the project as approved; decision on approval of the project; land lease contract, decision allocating the land or land use right certificate; and application file from the new investor.
- 3.3 Report on the process of implementation of the project up until the date of assignment.
- 3.4 Application file from the new investor, comprising:
 - 3.4.1 Business registration [certificate] specifying the function of real estate business.

3.4.2 Undertaking from the new investor that when it receives the assignment of the project it will be liable to discharge the obligations owing to the State and to clients as undertaken by the former investor, on the standard form in Appendix 2 issued with this Circular.

3.4.3 Document certifying the financial capacity of the new investor in accordance with clause 2 of Section I of this Circular.

4. Items to be evaluated in an application file for assignment of an entire project

4.1 The reason for the assignment.

4.2 Conditions to which project assignment is subject.

4.3 Conditions on capacity of the new investor.

4.4 Plan for implementing the project from the new investor.

5. Procedures for handover between the former investor and the new investor

5.1 The new investor and the former investor must sign the contract on assignment of the project on the standard form in Appendix 3 issued with this Circular and complete handover of the project within thirty (30) days from the date of the decision issued by the authorized body permitting the assignment. The new investor shall be responsible to continue commencement of implementation of the project immediately after handover.

5.2 The former investor shall handover the entire project file to the new investor including minutes of the handover enclosing a list of the contents of the file. There must be an on-site handover of the actual land boundaries of the project in accordance with the law on land.

5.3 At least fifteen (15) days prior to conducting handover procedures, the former investor must provide a written notice to clients (if any) about the assignment and about their rights, and also make such announcement on the mass media (in at least three consecutive editions of a newspaper issued locally, on local or central television, and on any website of the provincial evaluation co-ordinator in the province where the project exists).

III. GUIDELINES ON CONDUCTING REAL ESTATE TRADING VIA A REAL ESTATE TRADING FLOOR

All real estate business enterprises must conduct sales, transfers, leases and hire purchases of real estate via a real estate trading floor [hereinafter referred to as *trading floor*], except for social residential housing projects pursuant to the *Law on Residential Housing*, as follows:

1. Real estate must satisfy all the conditions stipulated by law before it is made available for sale, transfer, lease and/or hire purchase.
2. An investor may itself establish a trading floor or it may select a trading floor established by another entity in order to introduce real estate items and to conduct real estate transactions.
3. A trading floor must publicize information (pursuant to clause 2 of Section IV of this Circular) regarding the real estate available for sale, transfer, lease and/or hire purchase on such trading floor for the information of clients and to enable registration for the transaction. The time-limit for publicizing information shall be a minimum of 7 days [in advance] on the trading floor. Within such

time-limit, the following information must be publicized namely project name, type and quantity [or volume] of real estate, and the location and time for holding the sale, transfer, lease and/or hire purchase, to be published in a minimum of three consecutive editions of one locally issued newspaper, at least once on local television in the place where the project exists, and on any website of the trading floor. Costs of publishing information shall be payable by the investor (or owner).

4. At the expiry of the time-limit for publicizing information as stipulated in clause 3 of this Section, the investor (or the trading floor if so delegated with authority) shall be permitted to hold the sale, transfer, lease and/or hire purchase of the publicized real estate item. If two or more clients register for the same type of real estate, or if the number of registered clients is more than the quantity of the real estate items, then the investor (or the trading floor if so delegated with authority) must select a client by drawing lots or by holding an auction. The payment of a deposit before drawing lots or holding an auction shall be as agreed by the parties in accordance with law.
5. An auction of real estate at a trading floor shall be implemented in accordance with the law on auction of property [or assets].
6. A trading floor shall certify which real estate items of which real estate business enterprise have been traded via the floor (on the standard form in Appendix 4 issued with this Circular) in order to verify that real estate items were correctly traded in accordance with law.
7. It shall not be compulsory to publicize the information stipulated in clause 3 of this Section for any real estate item of an organization or individual not engaged in real estate business, which is traded via the real estate trading floor.

IV. GUIDELINES ON REAL ESTATE TRADING FLOORS

1. Organizational and operational model for real estate trading floors

- 1.1 A real estate trading floor ["*trading floor*"] must be a legal entity with the function of providing real estate business services. If a real estate business enterprise establishes its own trading floor, then such floor may have separate legal entity status or it may use the legal entity status of the enterprise in order to operate.
- 1.2 A trading floor shall be permitted, in addition to providing services of conducting transactions being purchase and sale, transfer, lease, hire purchase and real estate brokerage, to also conduct one, a number, or all of the following additional services:
 - 1.2.1 Real estate valuation.
 - 1.2.2 Real estate consultancy.
 - 1.2.3 Real estate advertising.
 - 1.2.4 Real estate auctioneering.
 - 1.2.5 Real estate management.
- 1.3 The organizational structure of a trading floor shall comprise a director, deputy directors and the professional sections appropriate for the operational items of such trading floor.

- 1.4 Individuals managing and operating trading floors must satisfy all the conditions stipulated in article 21 of Decree 153.
- 1.5 A trading floor must have a minimum of two staff working as brokers who have a real estate broker's practising certificate¹. If the trading floor provides valuation services, it must have at least two staff conducting such work who have a real estate valuer's practising certificate issued by the authorized body.
- 1.6 A trading floor must have an area to be used for trading of a minimum of fifty (50) square metres servicing brokerage and trading activities, and an additional twenty (20) square metres for additional services activities, and must also ensure that it has the facilities and equipment appropriate for its operational items.
- 1.7 A trading floor must have the following items stabilized for a minimum period of 1 year (12 months), namely its name, signboard and trading address. Any change of trading location must be notified to the local State administrative body and to clients who have registered for transactions, for their information. A trading floor must, prior to commencing its operation, forward a file including its business registration [certificate] and its Operational Rules to the local Department of Construction which shall report same to the Ministry of Construction for uniform administration and for uploading items onto the website of the real estate trading floor network of Vietnam.
- 1.8 All trading floors must have Operational Rules containing the following basic particulars:
 - 1.8.1 Provisions on the function, duties and powers of the trading floor.
 - 1.8.2 Provisions on organization of the apparatus and operation of various sections of such trading floor.
 - 1.8.3 Provisions on the financial management regime applicable to the trading floor.
 - 1.8.4 Provisions on the relationship with clients during trading.
 - 1.8.5 Provisions on information about real estate items made available for trading; and a regime on management and supply of information about real estate items and transactions conducted on such trading floor.
- 1.9 The various types of real estate items permitted to be introduced and made available for trading on the trading floor must satisfy the conditions stipulated in articles 6 and 7 of the *Law on Real Estate Business*, and complete information must be provided on them as stipulated in clause 2 of this Section.
- 1.10 All services activities conducted by a trading floor must be implemented via a contract.
- 1.11 Rights and obligations of organizations and individuals participating in a trading floor must be implemented in accordance with article 62 of the *Law on Real Estate Business*.

¹ Allens Arthur Robinson footnote: Appendix 8, which is the standard form for a broker's or valuer's certificate, uses the term "practising certificate" and although it does not appear in the main Vietnamese text, this term is used throughout in this translation.

1.12 Any individual providing independent real estate brokerage business services must have a real estate broker's practising certificate and must have business registration in accordance with the law on business registration.

2. Guidelines on information about real estate which is made available for trading (as stipulated in article 11 of the *Law on Real Estate Business*)

2.1 Publicized information about real estate items must be complete in terms of the requirements in article 11 of the *Law on Real Estate Business*.

2.2 Information about the type of real estate

2.2.1 Whether a residential house is a private house or an apartment in a complex, and in the case of a private house whether it is a villa, a semi-detached house, a house with a garden or what other type.

2.2.2 Applicable to real estate services, whether the item is an office, shop, supermarket, market, hotel, rest house, boarding house or so forth.

2.2.3 In the case of industrial real estate, whether it is industrial zone infrastructure, a factory, a plant, a warehouse, a store yard or so forth.

2.2.4 Applicable to a land use right, whether it is non-agricultural land (residential land, land in an industrial zone, land used as the surface area for production or business or so forth) or whether it is agricultural land or some other type of land stating which.

2.3 Information about the position of real estate

2.3.1 Applicable to real estate in an urban area for which addresses have been fixed, the number of the house; the name of the lane, alley or street; the district and the city or province. Applicable to a housing complex, the number of rooms and storeys, and the number of rows of houses. Applicable to a rural area, the address of the real estate item in terms of the sub-hamlet, hamlet, commune, district and province.

2.3.2 Applicable to real estate for which addresses have not yet been fixed (because the administrative unit has not yet been established), the project name and the symbol of the block of land (applicable to blocks of land on which private houses or other buildings are to be constructed), and the symbol of each apartment (applicable to a housing complex).

2.4 Information about the scale and size of area of real estate

2.4.1 Applicable to a private house, the area of the land frame, the area of the building constructed on the land, the number of storeys and the total floor area; applicable to an apartment in a complex, the total number of apartments, the floor area of each apartment and the number of rooms and so forth.

2.4.2 Applicable to other real estate items, the area of the land frame, the number of storeys, the total floor area, the area of common use land, and the output (if any).

2.4.3 Applicable to industrial zone infrastructure, the size of the area of the entire industrial zone, the construction density, the size of the public land area (common use land), the size of the area of land in each block and so forth.

2.4.4 Drawings (if any) of the total surface area and the area of each floor or storey.

2.5 Information about the special characteristics, nature, use function and quality of the real estate item

2.5.1 Regarding special characteristics and nature, the following items must be specified: the structure of the building works, the foundations, framework, walls, floors and rooves.

2.5.2 The use function of the real estate item in accordance with its initial design.

2.5.3 Quality of the real estate item specifying its year of construction and the grade and class of construction works.

2.5.4 Photo (if any) taken of the entire works at the time when the real estate item is being introduced.

2.6 Information about rights and interests of any related third parties regarding ownership, use right, entitlement to benefits, and the current status of any lease, mortgage, lending or allowing others to reside in the house (if any) and so forth.

Real estate items shall be introduced on the standard form in Appendix 5 issued with this Circular.

V. GUIDELINES ON ORDER AND PROCEDURES FOR ISSUANCE OF REAL ESTATE BROKER'S AND VALUER'S PRACTISING CERTIFICATES, AND ADMINISTRATION OF ACTIVITIES OF REAL ESTATE BROKERS AND VALUERS

1. Order and procedures for issuance of real estate broker's and valuer's practising certificates

1.1 An applicant for a new or re-issued real estate broker's or valuer's practising certificate shall lodge an application on the standard form in Appendix 6 issued with this Circular with the Department of Construction in the province where the training establishment has been set up, or where the applicant resides (permanent residence or long-term temporary residence).

1.2 The Department of Construction must evaluate the application file prior to issuing a certificate, and the evaluation shall comprise:

1.2.1 A consideration of whether or not the individual satisfies the conditions stipulated in article 14.1 of Decree 153 in the case of a broker, or in article 15.1 of Decree 153 in the case of a valuer.

1.2.2 A consideration of whether the contents of the application file comply with article 14.2 of Decree 153 in the case of a broker, or with article 15.2 of Decree 153 in the case of a valuer.

1.3 The results of the evaluation must be reduced to writing on the standard form in Appendix 7 issued with this Circular.

1.4 The director of the Department of Construction shall issue a decision and a list of people issued with certificates on the standard form in Appendix 8 issued with this Circular; and shall organize printing, issuance and signing of decisions issuing certificates for each individual on the standard forms in Appendices 4 and 5 issued with Decision 29-2007-QD-BXD of the Minister of Construction dated 31 December 2007.

1.5 Departments of Construction shall be responsible to retain application files and to collate lists of individuals to whom real estate broker's and valuer's practising certificates have been issued, and on an annual basis² (or on a one-off basis pursuant to a request) shall report the results of issuance of such certificates to the Ministry of Construction on the standard form in Appendix 9 issued with this Circular so that the Ministry may collate an overall list on a nationwide basis and publish it on the website of the real estate trading floors of Vietnam.

2. Administration of activities of real estate brokers and valuers

2.1 The Department of Construction shall be the local State administrative body responsible for activities of real estate brokers and valuers within such locality.

2.2 The contents of administration of activities of real estate brokers and valuers shall comprise administration of training on brokerage and valuation and on management and operation of trading floors; issuance of real estate broker's and valuer's certificates; administration of operations of real estate brokerage offices; and checks and inspections and dealing with breaches during real estate brokerage and valuation activities.

2.3 Prior to any training establishment on real estate brokerage or valuation or management of real estate trading floors conducts such training, it must provide a written notice on the standard form in Appendix 10 issued with this Circular to the local Department of Construction for the latter's information and uniform administration.

VI. EFFECTIVENESS

1. This Circular shall be of full force and effect after fifteen (15) days from the date of its publication in the Official Gazette.

2. People's committees of provinces and cities under central authority shall be responsible to direct their Department of Construction and other relevant bodies to correctly implement the provisions in the *Law on Real Estate Business*, Decree 153 and this Circular.

If any problem arises during the course of implementation, the locality should report same to the Ministry of Construction to resolve or to submit to the Prime Minister of the Government for resolution.

For the Minister of Construction
Deputy Minister
NGUYEN TRAN NAM

² Allens Arthur Robinson footnote: Appendix 9 in fact provides for these reports to be made on a 6-monthly basis.

LIST OF APPENDICES

(Not translated)

| No. | Title | Prepared by |
|-----|---|----------------------------------|
| 1. | Request for assignment of an entire project | Former investor |
| 2. | Undertaking from new investor that when it receives the assignment of the project it will be liable to discharge the obligations owing to the State and to clients as undertaken by the former investor | New investor |
| 3. | Contract on assignment of a project | New investor and former investor |
| 4. | Certification of which real estate items of which real estate business enterprise have been traded via the real estate trading floor | Real estate trading floor |
| 5. | Introduction of a real estate item [to be offered for sale, transfer, lease or hire purchase on a real estate trading floor] | Real estate trading floor |
| 6. | Application for a real estate broker's or valuer's practising certificate | Applicant |
| 7. | Results of evaluation of an application for a real estate broker's or valuer's practising certificate | Department of Construction |
| 8. | Decision issuing a real estate broker's or valuer's practising certificate | Department of Construction |
| 9. | Six-monthly report on results of issuance of real estate broker's and valuer's practising certificates | Department of Construction |
| 10. | Notice to the local Department of Construction by a training establishment that it will hold courses on real estate brokerage, valuation and management of a real estate trading floor. | Training establishment |