



# Special Alert

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## Draft Decree in replacement of Decree 76 providing detailed regulations for implementation of Law on Real Estate Business

On 10 September 2015, the Government issued Decree No. 76/2015/ND-CP (“**Decree 76**”) providing detailed regulations for implementation of the Law on Real Estate Business 2014 as amended on 17 June 2020 (the “**LoREB**”). After six years (2015-2021) of effectiveness, the implementation of Decree 76 has revealed several difficulties and obstacles requiring research, amendment, supplementation or replacement to accord with current situations.

In addition, to unify with laws related to investment, construction, real estate business which were enacted by the National Assembly last June 2020, the Ministry of Construction (the “**MOC**”) recently circulated a draft decree (the “**Draft Decree**”) in replacement of Decree 76 for collection of opinions. Some notable points under the Draft Decree are as below.

### Conditions for organizations and individuals to conduct real estate business

The Draft Decree amends the entire contents of Article 3 of Decree 76 to ensure consistency with the content of Clause 1 Article 10 of the LoREB which was amended and supplemented at Article 75.2(a) of the Law on Investment 2020; meanwhile, it has also provided conditions for real estate business organizations and individuals by way of disclosure of business information only to trade qualified and conditional real estate in accordance with Article 9 and Article 55 of the LoREB.

The Draft Decree has also eliminated the condition of requiring legal capital of no less than twenty (20) billion Vietnamese Dong applicable to real estate business enterprises. Instead, the Draft Decree requires legal capital based on the scale of the respective real estate investment project.

### Clarification on the definitions of real estate transaction on “small scale” and “irregular” for

## practical application

Article 5 of the Draft Decree has explained the definition of “small-scale”<sup>1</sup> transaction, and listed out the cases of “irregular” transactions including:

- (i) Sale of houses, construction works, transfer of land use rights due to bankruptcy, dissolution and separation in accordance with law;
- (ii) Sale, transfer, lease out or grant hire purchase of state-owned real estate when permitted by competent authority in accordance with law;
- (iii) Credit institutions, foreign bank branches, asset management companies of credit institutions (AMC), asset management companies of Vietnamese credit institutions (VAMC) sell houses, construction works, transfer land use rights, transfer guaranteed projects, mortgage for debt recovery in accordance with law;
- (iv) Organizations, households and individuals selling residential houses, construction works or transferring land use rights according to decisions of courts and competent authority when settling disputes, complaints or denunciations;
- (v) Organizations, households and individuals selling, transferring, leasing, leasing residential houses, construction works, land use rights under ownership, legal use rights below the land area, floor area for construction of residential houses and construction works prescribed by the Provincial People's Committee.

## Amendments to the contents of sample contracts and regulations used in the mandatory application of sample contracts in real estate business

Issue	Decree 76	Draft Decree
Types of sample real estate business contracts (the “Sample Contracts”)	<ul style="list-style-type: none"><li>(i) Contract of purchase and sale of a house or building either existing or to be formed in the future;</li><li>(ii) Contract of lease out of a house or building either existing or to be formed in the future;</li><li>(iii) Contract granting hire purchase of a house or building either existing or to be formed in the future;</li><li>(iv) Contract of transfer, lease out or sub-lease out of a land use right;</li><li>(v) Contract of transfer of the entire or a</li></ul>	<p>The Draft Decree has additionally provided the below Sample Contracts besides those regulated in Decree 76 as follows:</p> <ul style="list-style-type: none"><li>(i) contracts for sale and granting hire purchase of apartments;</li><li>(ii) contracts for sale and granting hire purchase of individual houses.</li></ul>

<sup>1</sup> The definition of “small-scale” transaction is stipulated in Article 5.2 of the Draft Decree.

Issue	Decree 76	Draft Decree
	part of real estate project.	
The transfer of land use rights attached to real estate business contracts	Not clearly provided	The execution of contracts for sale, granting hire purchase of houses, construction works and the transfer of the entire or a part of real estate project must be associated with the transfer of land use rights.
Legal application of the Sample Contracts	The Sample Contracts <b>are for reference</b> by the parties during negotiation and execution of a contract.	Real estate trading contracts <b>must be made according to the Sample Contracts</b> provided by the Draft Decree. Based on these forms, the parties may agree and add other contents to the contract to suit each specific case but must not be conspicuous to the terms, clauses and contents stated in the contract form, contrary to social ethics and provisions of law.

[Amendment of regulations on conditions for transfer of contracts of sale and purchase, granting hire purchase of residential houses to be formed in the future and conditions for transfer of contracts of granting hire purchase of houses, construction works](#)

In consideration of the conditions for these two types of transfer which are available with the same general requirements, the Draft Decree has consolidated the contents of Article 8 and Article 10 of Decree 76 into Article 7 of the Draft Decree for clarity and convenience. The Draft Decree further regulates that the contract transferee must re-establish the contract of sale and purchase, granting hire purchase of houses, construction works or make annexes to the contract of sale and purchase, granting hire purchase of houses, construction works with the project investor for the houses, construction works transferred before carrying out the procedures for transfer of contracts in cases where the contract includes many houses, construction works but the contract applies to only one or some of the houses or construction works.

[Amendment of regulations on procedures for transfer of contracts of sale and purchase, granting hire purchase of residential houses to be formed in the future and procedures for transfer of contracts of granting hire purchase of houses, construction works](#)

In consideration of the procedures for these two types of transfer which are available with the same general requirements, the Draft Decree has consolidated the contents of Article 9 and Article 11 of

Decree 76 into Article 8 of the Draft Decree for clarity and convenience. The Draft Decree also amended the transfer sequence and procedures of such contracts to accord with the regulations of LoREB.

The Draft Decree also includes a clause in dealing with transactions, contracts which have been implemented, executed by the related parties prior to the effectiveness of the Draft Decree.

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