



Special Alert

September 2021

www.indochinecounsel.com

New Regulations for upgrading and rebuilding apartment buildings

On 20 October 2015, the Government issued Decree No. 101/2015/ND-CP (“**Decree 101**”) providing regulations for upgrading and rebuilding apartment buildings. After six years (2015-2021) of being in effect, the implementation of Decree 101 has met with several difficulties leading to the slow and ineffective upgrading and rebuilding of apartment buildings.

To attempt to remedy the problems, on 15 July 2021, the Government issued Decree No. 69/2021/ND-CP (“**Decree 69**”) to replace Decree 101. Decree 69 also provides detailed regulations for implementation of some articles under the Law on Residential Housing 2014 (as amended and supplemented from time to time) (the “**Law on Residential Housing**”).

Addition of principles of upgrading and rebuilding apartment buildings

To meet the current situation and resolve the aforesaid difficulties, Article 4 of Decree 69 adds the following principles:

- (a) Demolition of an apartment building as a result of an incident, natural calamity, fire or explosion when such apartment building **has not yet** been listed in the approved plan of upgrading and rebuilding apartment buildings;
- (b) Making of investment in stages by investors for upgrading and rebuilding apartment buildings in accordance with Decree 69; and
- (c) No longer requires that land to build social residential housing be set aside in accordance with the Law on Residential Housing in a project for upgrading and rebuilding apartment buildings.

Cases in which apartment buildings are demolished for re-construction or for construction of other works under plans

As the elements to determine the cases in which apartment buildings are demolished for re-construction under Article 5 of Decree 101 and Article 110 of the Law on Residential Housing are unclear, Article 5 of Decree 69 has clarified several cases as follows:

- (a) An apartment building which must be demolished urgently as a result of an incident, natural calamity, fire or explosion in accordance with law;
- (b) Where the useful life of an apartment building expires, or has not yet expired pursuant to the law on construction but the provincial residential housing management agency has reached conclusion after the inspection as stipulated in Article 5.2 of Decree 69; and
- (c) One of the primary bearing structures of the apartment building comprising the foundation, columns, walls or beams is seriously damaged and fails to satisfy the normal requirements on use but is not in the category required for demolition in accordance with the clause above though it is located in the area where there is an apartment building required to be demolished by Article 110.2 of the Law on Residential Housing.

Inspection and assessment of quality of apartment buildings

The inspection and assessment of the quality of apartment buildings under Article 6 of Decree 101 has failed to satisfy the demands on living quality and environment for residents. Therefore, Section 1 of Chapter 2 of Decree 69 regulates that besides relying on the law on construction, the delegated entities must also determine the criteria as stipulated in Article 5 of Decree 69 to identify the list of apartment buildings which must be demolished for re-construction. This regulation aims to address the apartment buildings that have been partially damaged, although they can still be used, as such apartments have been seriously degraded, no longer ensuring the environment and landscape in urban areas. Therefore, it is deemed necessary to include such apartment buildings in the list of apartment buildings that need to be demolished for re-construction.

Formulation and approval of plans on upgrading and rebuilding apartment buildings

Decree 69 allows for the inspection and assessment of the quality of apartment buildings to be completed after issuing the plan on upgrading and rebuilding apartment buildings. In this case, on a semi-annual basis, the provincial residential housing management agency is responsible to review and organize a quality inspection and assessment of apartment buildings and to prepare a list of apartment buildings in the category required to be upgraded and rebuilt¹, to report this to the provincial people's committee for approval and addition to plans on upgrading and rebuilding

¹ In accordance with Articles 5.2 and 5.3 of Decree 69 and those prescribed in Article 110.3 of the Law on Residential Housing.

apartment buildings. This regulation should help local agencies accelerate the implementation of renovation and rebuilding of apartment buildings.

Zoning of areas where apartment buildings are upgraded and rebuilt

Several supplements and amendments to zoning of areas where apartment buildings are upgraded and rebuilt were included in Decree 69 as follows:

- (a) The competent State agency is responsible to organize formulation, evaluation and approval of detailed zoning for areas where apartment buildings or complexes in the list required to be upgraded and rebuilt are to be upgraded and rebuilt. This regulation acts as a guarantee for the possibility to formulate a plan for compensation and resettlement assistance, and arranging temporary accommodation (collectively referred to the “**Compensation Plan**”)² so that residents may select the project investor;
- (b) The formulation, evaluation and approval of zoning for areas where apartment buildings or complexes are to be upgraded and rebuilt may be implemented together with quality inspection and assessment of such apartment buildings and the formulation and approval of the plan on upgrading and rebuilding such apartment buildings; and
- (c) During the process of formulation of zoning, in addition to collecting opinions from the residential community and relevant individuals in accordance with regulations, the competent agency may seek opinions from investors who wish to participate in upgrading and rebuilding projects in order to ensure feasibility and conformity with the actual circumstances.

Selection of developers of projects to upgrade and rebuild apartment buildings

Decree 69 allows for the selection of developers of projects to upgrade and rebuild apartment buildings (i) where there is an agreement between the owners and a real estate business enterprise, or (ii) in the form of tendering, or (iii) where the State directly implements projects for upgrading and rebuilding apartment buildings.

- (a) In terms of the agreement between the owners and a real estate business enterprise, the following points are worthy of note:
 - ✓ The selection of the project developer is carried out by way of collecting opinions from apartment owners under Article 14 of Decree 69 instead of holding an apartment building meeting under Decree 101;
 - ✓ There must have at least 70% of the apartment owners participating and the selected enterprise must be approved by at least 75% of the total participating apartment owners;

² The Compensation Plan shall comply with Articles 20, 21, 22 and 23 of Decree 69.

- ✓ If multiple enterprises apply to be the developer, then the enterprise obtaining the highest percentage agreement of owners but not less than 51% of the total number of owners of such apartment building or complex giving consent is selected as the developer³; and
 - ✓ The selection of the project developer must be recorded as minutes and signed on behalf of the district people's committee in the locality where the project is located, on behalf of the provincial residential housing management agency, on behalf of the apartment owners and by the selected enterprise.
- (b) Selection of a developer of a project for upgrading and rebuilding an apartment building in the form of tendering as stipulated in this article shall apply in the case of failure to select the project developer by agreement between the owner and a real estate business enterprise and other cases as stipulated in Article 15.1 of Decree 69. A winning investor according to a decision approving contractor selection results is the developer of a project for upgrading and rebuilding an apartment building.
- (c) The State directly makes investment in implementation of a project for upgrading and rebuilding an apartment building in the category stipulated in Article 6.1 of Decree 69 with capital sources stipulated in Article 36.3 of the Law on Residential Housing (as amended in Article 99.6(a) of the Law on Public Private Partnership 2020).

Plans for compensation, resettlement assistance, and arrangement of temporary accommodation for apartment owners or users (the Compensation Plan)

Decree 69 has provided principles and contents of the Compensation Plan, including⁴:

- (a) deciding on the coefficient k for compensation which is one or two times as much as the used area of an old apartment recorded in a certificate issued from time to time or as much as the area eligible to be issued with the certificate, which is the basis for a developer to formulate a compensation plan;
- (b) for owners living on the 1st floor using a part of their apartment area for commercial purposes and the project allocates a part of the area for business, service and commercial purposes in accordance with the approved zoning, then in addition to entitlement to compensation, if the owners need to purchase or hire a part of the trading floor area to conduct business then they may do so;
- (c) for a head office or office housing, the owner of the same is entitled to compensation according to the coefficient $k = 1$ multiplied by the old land area;

³ This clause has provided amendment to Article 9.1 (dd), (e) and (g) of Decree 101.

⁴ These supplements are applicable to residential housing and construction works not owned by the State as stipulated in Article 21 of Decree 69.

- (d) if an owner is unable to arrange accommodation by themselves, then the Provincial People's Committee where the project is located is responsible to take the lead in coordinating with the investor to arrange temporary accommodation for such owner; and
- (e) if the temporary housing may be sold and the owner staying in such temporary housing wishes to buy it, then such housing may be sold to the owner instead of resettlement.

Regimes on land

Article 25 of Decree 69 has clearly identified the time of land recovery or allocation, land lease, or granting permission for conversion of land use purposes to implement a project for upgrading and rebuilding apartment buildings. Furthermore, Decree 69 has also clarified regulations of the developer's exemption from land use fees, land rent and fees for conversion of land use purpose on land allocated for implementation of the project.

Transitional Provision

Decree 69 also provides rules with regards to (a) BT projects currently implemented under the Law on Residential Housing 2014 and Decree No. 101; and (b) selection of project developers and compensation plans which have been approved prior to the effective date of Decree 69.

Decree 69 takes effect from 1 September 2021.

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

- Inward Investment
- Corporate & Commercial
- Mergers & Acquisitions
- Securities & Capital Markets
- Banking & Finance
- Property & Construction
- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

A full list of partners, associates and other professionals is available on our website. |

Contact Us

For further information or assistance, please contact the following Indochine professionals:



Dang The Duc

Managing Partner
duc.dang@indochinecounsel.com



Nguyen Thi Hong Anh

Partner, Head of IP&T Practice Group
anh.nguyen@indochinecounsel.com



Le Nguyen Huy Thuy

Partner
thuy.le@indochinecounsel.com



Le Van Duong

Partner, Head of Hanoi Office
duong.le@indochinecounsel.com



Phan Anh Vu

Partner
vu.phan@indochinecounsel.com



Steven Jacob

Foreign Associate
steven.jacob@indochinecounsel.com



Pham Thi Thanh Lan

Partner
lan.pham@indochinecounsel.com



Greater China Desk
Ly Nghia Dzung / 李義勇

Associate
dung.ly@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam
T +84 28 3823 9640
F +84 28 3823 9641
E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam
T +84 24 3795 5261
F +84 24 3795 5262
E hanoi@indochinecounsel.com

www.indochinecounsel.com

This Special Alert is designed to provide our clients and contacts with general information of the relevant topic for reference only, without the assumption of a duty of care by Indochine Counsel. The information provided is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.

© 2021 Indochine Counsel. All Rights Reserved.