

# Special Alert

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## New Decree on Administrative Penalties in Construction and Real Estate Sectors Issued

### Background

On 28 January 2022, the Government issued Decree No. 16/2022/ND-CP ("**Decree 16**"), which regulates administrative penalties in the construction sector and replaces Decree No. 139/2017/ND-CP ("**Decree 139**"). This Article will focus on the new points of Decree 16.

### Sanctioning the failure to publicize construction permits

Article 16.2 of Decree 16 imposes penalties for not publicizing construction permits as follows:

1. A fine from VND5,000,000 to VND10,000,000 shall be imposed for the construction of individual houses;
2. A fine from VND10,000,000 to VND20,000,000 shall be imposed for the construction of individual houses in protected areas, historical and cultural relics or other construction works;
3. A fine from VND20,000,000 to VND30,000,000 shall be imposed for construction of works requiring the preparation of a feasibility study report on construction investment or works that must make economic and technical reports on construction investment.

### Additional sanctions for not adjusting construction permits

Article 16.3 of Decree 16 clearly stipulates the sanctions for acts of failing to carry out procedures to adjust and renew construction permits as follows:

1. A fine from VND15,000,000 to VND20,000,000 shall be imposed for the construction of individual houses;
2. A fine from VND25,000,000 to VND30,000,000 shall be imposed for the construction of individual houses in protected areas, historical and cultural relics or other construction works.
3. A fine from VND60,000,000 to VND80,000,000 shall be imposed for construction works requiring the preparation of a feasibility study report on construction investment or works that must make economic and technical reports on construction investment.

### Increase fines for construction permit misconduct

Under Decree 139, penalties for the act of organizing construction works having incorrect contents in comparison with their permits ranged from VND10,000,000 to VND50,000,000. Decree 16 divides the penalty into two groups of acts and increases the level of the sanction, specifically (i) Article 16.4 of Decree 16 sets out penalties for the act of organizing the construction works having incorrect contents in comparison with their permits in the case permits are for repair, renovation or relocation of works and definite term construction permits; (ii) Article 16.6 of Decree 16 sets out penalties for the act of organizing the construction works having incorrect contents in comparison with their permits in the case of issuance of new construction permits.

### No difference between individual housing in urban and rural areas

Decree 139 only provided sanctions in case the construction of individual housing works in urban areas did not have a construction permit. Decree 16 removes the limitation and provides general sanctions for both urban and rural areas for the act of building individual houses without a construction permit.

### Violations on land in the case there are improper construction purposes

Decree 139 did not specify how the construction of works on land for improper purposes was sanctioned. In practice, when state agencies detected acts of building houses on agricultural land, they imposed sanctions for both of the following acts: (i) arbitrarily changing the purpose of land use under Decree No. 91/2019/ND-CP on sanctioning administrative violations in the field of land (“**Decree 91**”), and (ii) the unauthorized act of construction in urban areas under Decree 139.

Decree 16 now specifies that: for works built on land which are not in accordance with the land use purposes under the land law, sanctions will be imposed in accordance with the Government's decree on sanctioning administrative violations in the field of land.

Moreover, when individuals and organizations build on land, which works are not in accordance with the land use purposes, for example, building individual houses on agricultural land, they are only sanctioned for one act, which is changing the purpose of land use under Decree 91. Decree 16

obviates the sanction in the construction sector.

### Increase fines for disobeying suspension requests

Sanctions for acts by entities that already have a record of administrative violations who continue to violate, according to Article 16.2 of Decree 16, remain the same. However, Decree 16 has added new provisions on the continuation of violations before issuing decisions on sanctioning administrative violations by increasing (i) the minimum fine from VND5,000,000 to VND100,000,000 and (ii) increasing the maximum fine from VND350,000,000 to VND500,000,000.

### Change and supplementation of remedial measures

Decree 16 adds remedial measures of “carrying out procedures for adjustment or extension of construction permits” or “forcing publication of construction permits as prescribed by the laws” for the acts of not extending the term or not publicizing construction permits.

Decree 16 amends the measure of "forced dismantling" to "forced demolition" of works and parts of construction works in violation. This provision is in line with Article 118 of the amended Construction Law 2020 (the “**Construction Law**”) and with the reality of construction works that cannot be dismantled but must be demolished.

### Additional behavior is determined as wrongful conducts

Article 16.17 of Decree 16 specifies that: In case of improper implementation of construction permits as issued but not in cases where construction permits must be adjusted in accordance with the Law on Construction, such implementation shall not be considered as wrongful construction compared with the contents of the granted construction permit.

### Amendment of regulations on cases in which construction permits must be obtained

Article 15.12(b) of Decree 139 only stipulated that in case of illegal or unauthorized construction works, or construction works that were not in accordance to design but were under construction, an administrative violation record will be made, the construction will be stopped, and the violating individual and organizations will be given 60 days to ask for permission to continue construction. This regulation caused difficulties for regulators and violators, because there are many works that were not eligible for a construction permit but that still had to wait 60 days for procedures, which led to a continuous construction violation.

Article 81 of Decree 16 specifically stipulates that only the cases that are eligible for a grant of a construction permit or adjustment of a construction permit or adjustment of construction design that are under construction will be required to meet the time limit of 90 days, or 30 days to carry out the procedures for obtaining a permit.

## Legalization for unauthorized residential housing

Legalization of unauthorized construction housing is a procedure for requesting the competent authorities to issue construction permits or grant adjusted construction permits for housing after it has been sanctioned for administrative violations.

According to Article 81 of Decree 16, violations specified in Clauses 4, 6, 7 and Clause 8 of Article 16, in the following cases, are eligible for a grant of construction permits or adjustment of construction permits or adjustments to construction designs under construction:

1. To organize the construction works against the contents of the construction permit granted in the case of issuance of that permit to repair, renovate or relocate the work and the construction permit with a definite term;
2. To organize the construction works against the contents of the issued construction permit, for the case of issuance of a new construction permit;
3. To organize the construction works without a construction permit, but the works require a construction permit according to regulations;
4. Construction works not conforming to the appraised construction design in case of construction permit exemption;

If a specific case under construction falls into the above and it is eligible for a grant of a construction permit or adjustments to construction permits or adjustments to construction designs, it may be legalized by the competent authorities.

## Administrative penalties regarding real estate business

As regulated under Section I, Chapter V of Decree 16, in case the Developer of a real estate project conducts the acts as listed under Article 58 of Decree 16, such as “*receiving payments from the buyer or tenant of housing to be formed in the future inconsistently with the project progress or in excess of the prescribed percentage of the contract value as regulated by law*”, an administrative penalty of VND400,000,000 to VND600,000,000 shall be imposed.

According to Article 58.4(dd) of Decree 16, in case the act of raising capital by the Developer is not in accordance with the laws, a fine of VND800,000,000 to VND1,000,000,000 shall be imposed.

## Administrative penalties regarding real estate brokers/dealers

Decree 16 also adds new regulations to rectify the activities of real estate brokers/dealers. According to Article 62.2 of the 2014 Real Estate Business Law (the “**LoREB**”), any individual wishing to conduct business of real estate brokerage services independently must have a real estate broker's

practicing certificate and must register payment of taxes in accordance with the law on taxation. Failure to do so shall receive a fine from VND40,000,000 to VND60,000,000 according to Article 59.1(a) of Decree 16 (formerly, under Article 58.1 of Decree 139, this act only received a fine from VND10,000,000 to VND15,000,000).

The broker/dealer shall also receive remuneration and commissions as regulated under Articles 64 and 65 of the LoREB. If they receive any income other than from those sources, a fine from VND120,000,000 to VND160,000,000 according to Article 59.2(dd) of Decree 16, shall be imposed (under Article 58.2(dd) of Decree 139, this act only received a fine from VND30,000,000 to VND40,000,000).

Brokers/dealers have the responsibility to supply the file and information on the real estate for which the broker engages in brokerage and to be liable for the file and information which the broker supplies. Failure to do so shall receive a fine from VND200,000,000 to VND250,000,000 according to Article 59.3 of Decree 16 (under Article 58.3 of Decree 139, this act only received a fine from VND40,000,000 to VND50,000,000).

#### [Authorization to apply sanction and the time-limit](#)

The levels specified in Chapter VI of Decree 16 are for the imposition of fines for an administrative violation by an organization. The levels of fines for administrative violations by individuals is equal to 1/2 those of organizations.

The time-limit for sanctioning administrative violations, according to Article 5.1 of Decree 16, is one year for real estate business, management of technical infrastructure works and production of construction materials; the time-limit for sanctioning administrative violations is two years for construction, management and development of houses.

Decree 16 took effective on 28 January 2022.

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