

HCM city, July 19th, 2010

SPECIAL LEGAL ARTICLE
New rules on investment, housing ownership
for foreign organizations and individuals in Vietnam

The real estate market is particularly sensitive to the legal mechanisms and policies of the State, therefore any changes on that will make effect on the general development of the industrial – construction sector.

To release the obstacles for this market during the past period, on June 23rd, 2010, the Government issued the Decree No.71/2001/ND-CP (Decree No. 71) to promulgate in detail, guide for the implementation the Housing Law, replace Decree No. 90/2006/ND-CP and abolish the previous regulations, which are contrary to Decree No. 71.

Considering as one of the most important legal documents, which will be effected from August 8th, 2010, Decree No. 71 is expected to drive the real estate develops in stable and transparency way.

Within this topic, Libra would like to set out the main issues that related to:

- (i) Housing ownership right of foreign organization and individual in Vietnam; and
- (ii) Condition allows foreign organization and individual can invest in construction of house for sale or leasing; related regulations regarding capital mobilization to deploy projects of residential development.

We hope that this subject will become a legal basis to assist you having a deep understand about legal regulations as well as how to apply its effectively in practice.

If you need to be consulted by our expert opinions per each specific issue, please contact us as the address aforementioned.

Sincerely,

LIBRA LAW FIRM



General provisions:

“Foreign organizations and individuals, who are settling in oversea, may own house in Vietnam through an investment form to construct house for selling, leasing; or may buy residential apartment in the commercial residential development project”

1. Housing ownership right in Vietnam through a form of buying apartments in the commercial residential development project:

The foreign organizations and individuals, who own house in Vietnam, can only use this houses for living purpose, can not lease it out or use it as an office or other purpose¹.

	Buy	Authorization	Mortgage	Sale	Donate	Inheritance ²	Note
A.	Foreign Individual						
Conditions	- Direct investment in VN or hired as managerial position by a company currently operates in VN. - Foreign individual has contribution to VN. - Individual is working in field of economics - society, who must have bachelor degree: equivalent or higher and having special technical knowledge and skills that VN require. - Get married with Vietnamese citizen. General provision: Foreign individual have been allowed by the State Authority to settle in VN from 01 year up; and this person is not belong to have any privileged rights, diplomatic exemption, consular.	within the ownership period	To mortgage the house at credit agency having operation permission in VN	After 12 months, from the issued date of Housing ownership certificate; or he/she is no more settling in VN		Ownership time is within 50 years	
Quantity	01 apartment						
B.	Foreign organization						
Conditions	Operate business in Vietnam from 01 year up according to Laws of investment, without real estate business function but having demand for apartment for their expert.	as above		Sale, donate the house owned by this organization after 12 months from the day obtained a Housing Ownership Certificate.		Ownership time is corresponding with the limitation time of IC	
Qty	01 or some apartment ³						

¹ Article 6, Decree No.19/2008/QH12.

² Article 129, The Housing Law.

³ Article 5, Decree No.19/2008/QH12.



2. Own house in Vietnam through an investment form to construct house for sale and leasing:

The foreign organization and individual who will be owned the house according to The Housing Law, when they execute the investment according to the Investment Law of Vietnam.

2.1. Regulations applied for investor of commercial residential development project:

Subject	100% FDI, Joint Venture Company
Conditions	Enterprise working on the real estate in Vietnam. Investment capital: - Not lower than 15% of total investment of project having using land scale less than 20 ha, - Not lower than 20% of total investments of project having using land scale from 20 ha up.
Investor choosing mode	- Bidding - Auction the right of using land - Assigned
Project Owner's right	- Request competent authorities to provide information for project's execution - Execute land users' rights - Select a form/ type of project management - Benefit privileged policies according to regulations of Laws - Sale ⁴ , lease ⁵ house and construction works within the project scale as regulated. - Execute other rights as regulated by Laws.
Obligations	- Organize, appraise, approve project and execute construction works. - Publicize the project's information after obtaining an approval decisions. - Mobilize capital as regulated. - The foreign organization and individual, who invest in construction of house for lease, shall not be sold that house. - Project in the city, town, new urban, the investors shall not transfer the right of using land under the form of selling house's foundation/ base have not be built. - Set out a separate area of Project to construct social house - Apply required procedure to obtain a Land using rights certificate, housing ownership certificate and attached assets on land in case construct the house for sale; and hand over related documents to Buyer within a maximum time of 50 days from the day of transfer to Buyer, excluding the Buyer volunteer to apply procedure of obtaining certificate. - In case the Owner are allowed to construct house for sale on leased land, he/she shall apply procedure to let the Authorities admits the land using right in long –term for Buyer and pay land using fee. - Maintain the house. - Maintain leased house fund that belong to Investor's right; and maintain house having technical infrastructure works, social infrastructure are not transferred. - Execute activities and services of housing management. - Organize the security management for project when not transfer administration management have tasks to local authorities. - Preside over an establishment of Building Management Boards. - Fulfill financial and other obligations according to regulations of Laws.

⁴ The State will not issue Land Using Registration Certificate, Housing Ownership Right and attached assets on land to the Owner in case the Owner invest to construct houses for sale. After complete a construction of houses, the Owner has their right to sell those houses to other organization, individual belong to a group have ownership right in Vietnam as regulated.

⁵ The State will issue Land Using Registration Certificate, Housing Ownership Right and attached assets on land to the Owner in case the Owner invest to construct houses for lease. House ownership time is the time regulated in the Investment Registration Certificate as well as defined in Land Using Registration Certificate, Housing Ownership Right and attached assets on land.

2.2. Forms of capital mobilization:

Types	Authorization of assessment, project approval , investment approval for residential development project	Form of capital mobilization (*)
Residential development projects ⁶	People's Committee of province approves for the residential project's scale under 500 houses (except having project's bidding and the residential development project of the Owner at level II)	a. Signing loan contract of credit agencies or issuing the bond ⁷ b. Signing capital contribution contract or cooperation and investment contract with the investor at level II c. Signing contract, document of capital contribution; or contract, investment cooperation document with other organization, individual to invest in housing construction d. Signing cooperation contract with other enterprise which having the function of real estate trading
	The Prime Minister generally approves for project's scale above 2500 houses (irrespective the capital investment source and the land using scale)	e. Mobilize capital from deposited buying money by signing purchasing house contract will be formed in future Capital mobilization by the forms regulated at points: a, b, c, d and e in this article
Independent housing development project ⁸		

2.3. The time and conditions to mobilize capital:

(*)	The condition of capital mobilization	The other regulations	Limit
A	The bond buyers do not have the priority rights to buy or register to buy the house		Limited the capital mobilization ability in early of the investors
B	- Site clearance completed - Processed the ground breaking to start construction of infrastructure projects	The investor's level II only signed the capital contribution contract when the land using right transferring contract is signed by the investor level I in which allow the investor level II to process the capital mobilization. And the investor level II had enough conditions to process the capital mobilization	Be restricted in the number of house distributed The distributes do not allow to transfer the house distribution right to other organizations and individuals
C	- The project approved - Processed the ground breaking - Public announcement to Construction Department	Capital contributors or the Parties in business cooperate contract have just received the benefit (by cash or stock) or product sharing by house according to the capital contribution rate as per agreement but not exceed 20% of housing in each project.	Limited the capital mobilization ability in early of the investors
D	- The project approved - Site clearance - Hand over the minutes of records and boundary demarcation - Public announcement to Construction Department		
E	- The master plan approved - Completed the foundation - Completed purchasing procedures through real estate transaction center - Public announcement to Construction Department		

Note:

In case the mode of capital mobilization does not comply with the forms and conditions, which provided in the laws, it will lead to illegal actions. The breaching party shall be subject to sanctions as stated in Decree No. 23/2009/ND-CP dated Feb 27rd, 2009 of the Government./.

⁶ The housing development projects with the purpose investment in building system of technical infrastructure, social infrastructure and the other structures according to approved scheme (project level I), in this technical infrastructure which was built by investor's level 1 who directly invests to built; house and the other constructs (project level II) which was built directly by the investor level 1 or level II.

⁷ The Decree on issuing corporate bonds are in the drafting process, allows all forms of enterprises include limited company, Joint stock company which is allowed to issue individual bonds on the Vietnam and bonds to international capital markets.

⁸ The housing development projects with the purpose invest in only one independent housing or cluster housing, including the mixed-using works for residential, office, shopping center, service center on the land which has the technical infrastructure (project level II) or the independent housing development project in the innovatory urban area (the independent housing development project)