



Legal update

January 2021

Barristers | Solicitors

15 January 2021 – 31 January 2021





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NEWS IN FOCUS



HIGHLIGHTS OF THE NEW DECREE GUIDING THE LAND LAW

**TAKING EFFECT FROM
08 FEBRUARY 2021**



On 18 December 2021, the Government enacted Decree 148/2020/ND-CP amending and supplementing several Decrees stipulating in detail the implementation of the Land Law ("*Decree No. 148/2020/ND-CP*"), which comes into effect from 08 February 2021 and removes:

- Clause 4 Article 41 of Decree No. 43/2014/ND-CP; and
- Clauses 8, 10, 15, 31, 46, 56 Article 2 of Decree No. 01/2017/ND-CP amending Decree No. 43/2014/ND-CP.

In this legal update, we reveal some of the most outstanding changes of Decree No. 148/2020/ND-CP.

No.	Contents	Decree 43/2014/ND-CP	Decree 148/2020/ND-CP
1	<p>Conditions for land allocation, land lease, and the change of land use purpose to the implementation of investment projects</p>	<p>Projects using land must apply the conditions specified in Clause 3 Article 58 of the Land Law.</p>	<p><u>Supplement regulation:</u> Investment projects using land <i>for non-commercial purposes</i> are <i>not subject to</i> the conditions specified in Clause 3 Article 58 of the Land Law.</p>
2	<p>Land allocation, land lease in case of land use levy exemption</p>	<p>No regulation.</p>	<p>Competent authorities implement the land allocation not via auction of the land use rights, not via bidding of projects using land for cases are exempted from land use or land lease levy in several years or the entire land use term towards the investment projects under the field of investment incentives or in areas having investment incentives. Excluding:</p> <ul style="list-style-type: none"> - Only exempt the land use and land lease levy during the period of basic building of the projects; - Using land for commercial and service purposes; - Using land to implement the investment projects of building commercial housings.

No.	Contents	Decree 43/2014/ND-CP	Decree 148/2020/ND-CP
3	<p>Land allocation, land use for small and narrow parcels managed by the State</p>	<p>No regulation.</p>	<p>Supplement 5 criteria to be allocated or leased parcels managed by the State:</p> <ul style="list-style-type: none"> - The parcels which do not belong to the recovered lands fund in accordance with the decision of a competent State authority, the lands have not been assigned or leased or being assigned to manage the recovered lands fund...; - The parcels have an area or shape that does not meet the criteria for area and minimum dimension to be permitted to separate the parcel; - Parcels comply with the land use plan or detailed plan for the construction of urban, rural population areas, new rural communes which are approved; - Parcels do not belong to the land areas for implementation of projects and constructions which were determined the land use plan, and publicly approved and announced by competent authorities; - Parcels estimated for allocation or lease do not have disputes or complaints ... <p>Supplement the principle: “Prioritize the use of small and narrow parcels managed by the State for public purposes. In case of not being able to use for public purposes, the land allocation with land use or land lease levy will be performed for the adjacent land user”. In case having 02 adjacent land user and more have demand to use those parcels, auction will be implemented.</p>

No.	Contents	Decree 43/2014/ND-CP	Decree 148/2020/ND-CP
4	Conditions for issuance of the Housing Ownership Certificate	Domestic households and individuals shall have <i>Construction Permit for housings</i> towards cases which have to apply for a Construction Permit in accordance with the laws on constructions.	<u>Supplement</u> : Construction Permit for housings or <i>Construction Permit for housings in term</i> are both recognized.
5	Conditions for issuance of the Ownership Certificate for building constructions which are not housings	Domestic households and individuals and residential community shall have <i>Construction Permit for construction</i> towards cases which have to apply for a Construction Permit in accordance with the laws on constructions.	<u>Supplement</u> : Construction Permit for construction or <i>Construction Permit for construction in term</i> are both recognized.
6	Cases that are permitted to renew the issued Certificate, Housing Ownership Certificate and Ownership Certificate for building constructions	Decree No. 148/2020/ND-CP inherits Clause 1 Article 76 of Decree No. 43/2014/ND-CP and <i>removes</i> the case “due to the implementation of consolidating and swapping the parcels”.	

No.	Contents	Decree 43/2014/ND-CP	Decree 148/2020/ND-CP
7	<p>Conditions for transfer the land use rights (LUR) in the investment project on construction and trading of housings for sale, or for sale and lease</p>	<p>Decree 148/2020/ND-CP inherits Clause 1 Article 41 of Decree 43/2014/ND-CP stipulating conditions for transfer the LUR under the manner of dividing parcels, and <i>amends</i> as follows:</p> <ul style="list-style-type: none"> - <i>Remove the condition:</i> “Comply with the district-level annual land use plan”; - <i>Supplement the condition:</i> “Other conditions in accordance with the laws on urban planning, urban building and developing, real estates and housings trading”. 	<p>Decree 148/2020/ND-CP inherits Clause 1 Article 41 of Decree 43/2014/ND-CP stipulating conditions for transfer the LUR under the manner of dividing parcels, and <i>amends</i> as follows:</p> <ul style="list-style-type: none"> - <i>Remove the condition:</i> “Comply with the district-level annual land use plan”; - <i>Supplement the condition:</i> “Other conditions in accordance with the laws on urban planning, urban building and developing, real estates and housings trading”.
8	<p>Conditions for an individual to be able to practice consultancy of making the land use plan</p>	<p>Decree 148/2014/ND-CP inherits Clause 2 Article 10 of Decree 43/2014/ND-CP stipulating the conditions for an individual to be able to practice consultancy of making the land use plan, and <i>amends</i> as follows:</p> <ul style="list-style-type: none"> - <i>Remove the condition:</i> “Having civil act capacity”; - <i>Supplement the condition:</i> “directly participated in making at least 01 land use plan in the same level”. 	<p>Decree 148/2014/ND-CP inherits Clause 2 Article 10 of Decree 43/2014/ND-CP stipulating the conditions for an individual to be able to practice consultancy of making the land use plan, and <i>amends</i> as follows:</p> <ul style="list-style-type: none"> - <i>Remove the condition:</i> “Having civil act capacity”; - <i>Supplement the condition:</i> “directly participated in making at least 01 land use plan in the same level”.

No.	Contents	Decree 43/2014/ND-CP	Decree 148/2020/ND-CP
9	Assets attached to the land are not certified the ownership when being issued the Certificate of Land Use Right, Asset and Asset attached to the land ownership (LURC)	Decree 148/2014/ND-CP inherits Clause 4 Article 35 of Decree 43/2014/ND-CP stipulating cases that assets attached to the land are not certified the ownership, and <i>supplements</i> regulation: “ <i>Except for the cases that the owner of housings, or building constructions which are not housings in accordance with Article 31 and Article 32 of this Decree 43/2014/ND-CP has the Construction Permit in term according to the laws on constructions.</i> ”	
10	Authorities receive the dossiers and return the resolving results of registration procedure for land, other assets attached to the land; issue, renew and re-issue the LURC	Land Registration Authority.	<u>Supplement</u> : Branch of Land Registration Authority
11	Procedure for issuance the LURC at home	No regulation.	Citizens can deal to be issued the LURC quickly at home according to their demands; however, cannot be longer than the procedure execution time stipulated by the Provincial People’s Committee.

No.	Contents	Decree 43/2014/ND-CP	Decree 148/2020/ND-CP
12	<p>Procedures to revoke the issued LURC which is in compliance with the regulations</p>		<p>Decree 148/2014/ND-CP inherits Clause 4 and Clause 5 Article 87 of Decree 43/2014/ND-CP stipulating the LURC revoking, and supplements regulation: <i>“In case the competent People’s Court which resolves the land disputes whose valid judgment or decision has the conclusion on revoking the issued LURC, the LURC revoking will be implemented in accordance with that judgment or decision”</i>.</p>
13	<p>Issuance procedures of LURC for the assignee of LUR in the housings development projects</p>		<p>Decree 148/2020/ND-CP inherits Article 72 of Decree 43/2014/ND-CP, and supplements regulations on several documents that the investor of housings development projects is responsible for submitting the Department of Natural Resources and Environment after finishing the construction:</p> <ul style="list-style-type: none"> - In case of changing the financial obligations, the investor shall submit the documents proving the fulfilment of financial obligations towards that change; - Notification of a construction-specialized agency permitting the investor to accept the construction work or accept the result of the acceptance of completing the construction work to put into usage in accordance with the laws on construction.

WEEKLY NEW LEGAL DOCUMENTS



INVESTMENT

- Government Office's Official Correspondence No. 379/VPCP-CN in 2021 on implementing the land clearance of the North - South Expressway Construction Project in the East
(Effective date: 16 January 2021)
- Prime Minister's Decision No. 106/QD-TTg in 2021 on establishment of the Interdisciplinary Appraisal Council to organize the appraisal of the Pre-Feasibility Study Report of the Airport Construction Investment Project of Sa Pa, Lao Cai Province
(Effective date: 22 January 2021)

TRAFFIC – CONSTRUCTION

- Decree No. 03/2021/ND-CP on compulsory insurance of civil responsibility for the motor's owner
(Effective date: 01 March 2021)
- Decree No. 05/2021/ND-CP on management and exploitation of airports
(Effective date: 10 March 2021)
- Decree No. 06/2021/ND-CP guiding the quality management, construction and maintenance of construction works
(Effective date: 26 January 2021)
- Ministry of Finance's Circular No. 04/2021/TT-BTC guiding Decree No. 03/2021/ND-CP on compulsory insurance of civil responsibility for the motor's owner
(Effective date: 01 March 2021)
- Ministry of Transport's Decision No. 174/QD-BGTVT in 2021 on standard and standards and norms for the usage of special-used cars of a number of units under the Civil Aviation Authority of Vietnam
(Effective date: 22 January 2021)

FINANCE – BANKING

- Minister of the Ministry of Construction's Decision No. 65/QD-BXD in 2021 on the capital for investing in work construction and the total construction cost for structural components of the work construction in 2020
(Effective date: 20 January 2021)
- Official Correspondence No. 246/TCHQ-TXNK in 2021 on the tax policy towards software enacted by the General Department of Customs
(Effective date: 18 January 2021)
- Government Office's Official Correspondence No. 361/VPCP-CN in 2021 on deployment the non-stop electronic road toll collection system
(Effective date: 15 January 2021)

IMPORT AND EXPORT

- Ministry of Finance's Circular No. 07/2021/TT-BTC stipulating the submission time of documents certifying the origin of importing and exporting goods under the Free Trade Agreement between Vietnam and the European Union
(Effective date: 11 March 2021)

ADMINISTRATIVE – JUDICIARY

- Decree No. 04/2021/ND-CP stipulating the sanction of administrative violations in the field of education (Effective date: 10 March 2021)
- Decree No. 07/2021/ND-CP stipulating the multi-dimensional poverty standards in the period of 2021-2025 (Effective date: 15 March 2021)
- Ministry of Public Security's Circular No. 06/2021/TT-BCA stipulating the sample of the Citizen identification card (Effective date: 23 January 2021)
- Decision No. 70/QD-BTP in 2021 announcing the List of legal documents which are invalid, ceased in whole or in part in the field of state management of the Ministry of Justice in 2020 (Effective date: 19 January 2021)
- Decision No. 60/QD-BTTTT in 2021 announcing the List of legal documents which are invalid, ceased in whole or in part in the field of state management of the Ministry of Information and Communications in 2020 (Effective date: 20 January 2021)



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