

Client Alert

October 2010

Residential Housing Development Decree

On June 23, 2010, the Ministry of Construction (MOC) issued **Decree No. 71**,¹ replacing Decree No. 90² in implementing the Housing Law.³ Decree No. 71 is a development of Decree No. 90, covering various issues concerning the development, construction, management, use, ownership (including overseas Vietnamese and foreign ownership), and transactions involving residential properties. It has 84 articles and took effect on August 8, 2010.

Decree No. 71 has some noteworthy developments, as follows:

- (i) It specifically provides for timing and forms of capital mobilization for development of residential projects:
 - (a) loans from lenders or corporate bonds: loans can be made and bonds can be issued at any time during development, but lenders and bond holders may not be granted priority in buying houses in the project;
 - (b) business cooperation contracts (“**BCC**”) with secondary developers: primary developers are allowed to transfer land use rights *with* infrastructure to secondary developers, and such transfers can be made after work on the infrastructure has commenced;
 - (c) BCC with entities (including real estate companies) and/or individuals: BCC partners (except primary developers) are entitled, on the basis of their capital contribution ratio, to profits or products of the project (these units, so long as they are no more than 20% of the number of units in the project, can be distributed to BCC partners outside of a real estate trading floor); and
 - (d) pre-sale to buyers who are eligible to own residential properties in Vietnam: pre-sale can only start after the foundation is completed.

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1 Decree No. 71/2010/ND-CP dated June 23, 2010, of the Government, Providing Details and Guidelines for the Implementation of the Housing Law (“**Decree No. 71**”).

2 Decree No. 90/2006/ND-CP dated September 6, 2006, of the Government, Providing Details and Guidelines for the Implementation of the Housing Law (“**Decree No. 90**”).

3 Law No. 56/2005/QH11 on Housing, adopted by the National Assembly on November 29, 2005, effective July 1, 2006 (“**Housing Law**”).

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- (ii) It broadens the opportunities for 'Viet-Kieu' to buy residential properties. It is likely that this will result in an increase in the 'normalization' of existing nominee-held properties, rather than quick surge of new purchases.
- (iii) It provides that low-income earners can now buy properties developed under the social housing program, in addition to the lease and lease-to-buy options provided in Decree No. 90. Low-income earners can pay for the houses they buy over a period of at least 10 years and are required to pay no more than 20% of the price in their first payment.
- (iv) It regulates the types of apartments developed by individuals (i.e., not by real estate development companies). Apartments developed and sold by individuals can have an area of as little as 30m², i.e., below the required minimum area of 45 m² provided in the Housing Law.
- (v) It confirms that a residential property transaction (i.e., sale and lease) made by a real estate company outside a real estate trading floor is invalid.
- (vi) It also clarifies that real estate trading floors are not allowed to invest or trade residential properties on their own. They are only allowed to broker such transactions.
- (vi) It requires that contracts for the management of residential properties be notarized or certified.

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