

Client Alert

October 2010

Residential Property Development Rules Relaxed Slightly

Implementing Decree No. 71,¹ on September 1, 2010, the Ministry of Construction issued Circular No. 16.² The circular details how a number of provisions of Decree No. 17 are to be interpreted and implemented in a manner intended to facilitate stable residential property development. Circular No. 16 introduces a few noteworthy new developments, as follows:

- (i) The circular now clearly provides that the housing regulations apply to all types of residential properties, including resort/tourism properties;
- (ii) In projects where the primary developers transfer part of the project to secondary developers, only the land area to be transferred, not the entire land area of the project, is required to be cleared;
- (iii) Individuals and households that enter into business cooperation contracts ("**BCC**") with developers for the 20% trading floor exemption – if they choose to receive products (i.e., residential units) as their yield of investment – are allowed to do that *once* and receive *one* unit in any given province or city under the central control. In such a case, the developers must apply with the provincial department of construction for a certification of the distribution of the units to the BCC partners. This certification replaces the certificate of transaction via trading floor issued by a real estate trading floor and is the legal basis for the authorities to issue the certificate of ownership to the BCC partners. Any second unit obtained by such individuals/households through a BCC in the same province or city would not be recognized before the law and such transaction would be invalid. Such individuals/households are not allowed to assign or transfer their rights of receipt of the units to other parties until a sale and purchase agreement is later signed with the developer. However, such rights can be bequeathed;

Baker & McKenzie (Vietnam) Ltd.
12th Floor, Saigon Tower
29 Le Duan Blvd
District 1
Ho Chi Minh City
Socialist Republic of Vietnam
Tel: +84 8 3829 5585
Fax: +84 8 3829 5618

Baker & McKenzie (Vietnam) Ltd.
Hanoi Branch Office
13th Floor, Vietcombank Tower
198 Tran Quang Khai Street
Hoan Kiem District, Hanoi
Socialist Republic of Vietnam
Tel: +84 4 3825 1428
Fax: +84 4 3825 1432

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 Circular No. 16/2010/TT-BXD dated September 1, 2010, of the Ministry of Construction Providing Specific Provisions and Guidelines for the Implementation of a Number of Provisions of Decree No. 71/2010/ND-CP dated June 23, 2010, of the Government, Providing Details and Guidelines for the Implementation of the Housing Law ("**Circular No. 16**").

Should you wish to obtain further information or want to discuss any issues raised in this alert with us, please contact:

Fred Burke
+84 8 3520 2628
fred.burke@bakermckenzie.com

- (iv) In a project that is developed in stages, the 20% ratio of units that can be traded outside of a real estate trading floor must apply pro rata by development stage, i.e., developers can only sign BCCs with buyers for the 20% of the units in any given stage of the development of the project, not for 20% of the entire units of the project;
- (v) Apartments that are developed by individuals or households (i.e., not by real estate development companies) are not required to be transacted via a trading floor, but have to be notarized by notaries public or certified by local authorities, to be valid. Buyers of these apartments will be granted ownership certificates;
- (vi) The circular confirms that real estate trading floors are allowed to broker the sale of residential properties after the developers complete the foundation of the residential component in the project;
- (vii) The circular also confirms that, unlike a sale and purchase agreement for a residential property, lease agreements can only be entered into after the residential properties are completed;
- (viii) Power of attorney or contracts for the management of residential properties can only be executed after the buildings are completed;
- (ix) The circular imposes mandatory templates for contracts involving residential properties; and
- (x) The circular clarifies that the three-month residency requirement applicable to Viet kieu (i.e., overseas Vietnamese) that are eligible to buy and own residential properties means only a three-month visa, rather than an actual three-month length of stay.

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