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## Vietnam: NOTABLE IMPLICATIONS OF DECREE 148 ON THE LAW ON LAND

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Since the effective date of the Law on Land 2013 (1 July 2014), Vietnamese authorities have issued 13 decrees and 48 circulars and joint circulars for the purpose of enhancing its practical implementation. However, after more than six years, many difficult issues remain unresolved.

In an effort to overcome such obstacles, the government of Vietnam recently issued Decree No. 148/2020/ND-CP dated 18 December 2020 (Amendments and Supplements to Several Decrees, Providing Detailed Regulations on Implementation of the Law on Land) (“**Decree 148**”), which came into effect on 8 February 2021. We discuss below some notable points of Decree 148.

### 1. Solution for Interlaced Land Plots in Projects

#### (a) Current Situation

Under the Law on Residential Housing, investor selection for commercial residential housing projects occurs through an approval process established under the Law on Investment 2020 if the investor has the lawful right to use the land in question.

However, in acquiring such lawful right to use the land, investors sometimes encounter difficulties stemming from the fact that residential housing projects often involve mixed-use lands (commonly, about 10% residential land, 80% agricultural land, and 10% roads, canals (including intra-field canals), and embankments managed by the state). Even residential housing projects in urban areas involve “mixed-use” land due to the existence of various roads, alleys and other public lands and accesses. Collectively, these small parcels of public land and accesses (“**Small Public Land Plots**”) are managed by state authorities; and investors are required to obtain such Small Public Land Plots through public auctions of land use rights or bidding. However, given the absence of detailed guidance under the law prior to Decree 148 as well as the fact that Small Public Land Plots only represent a small portion of potential projects, state authorities were inconsistent in their treatment of Small Public Land Plots, which often led to suspensions and delays in the approval of the relevant investors for the implementation of such projects.

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**(b) What Has Changed?**

Decree 148 provides the much-needed detailed guidance for dealing with Small Public Land Plots.

In principle, Small Public Land Plots will be prioritized for public use purposes. In cases where they cannot be used for public purposes, state authorities may allocate/lease such Small Public Land Plots to the adjacent land user subject to certain conditions, such as the land not meeting area standards and minimum size requirements for division and not being subject to any disputes or complaints, among other things.

If there are two or more adjacent land users who wish to use a Small Public Land Plot, the land allocation or lease of such Small Public Land Plot will be awarded via auction.

It is worth noting that only the adjacent land users are qualified to receive the land use right for Small Public Land Plots, which makes it easier for the state authorities to allocate/lease them to the developers whose projects are located on or around the area, as long as the aforementioned conditions are satisfied.

This change is expected to allow investors to smoothly acquire the necessary land-use rights for Small Public Land Plots, which will aid them in becoming the official developers of the relevant commercial residential housing projects.

## 2. Restricting Sub-division of Land for Sale

**(a) Current Situation**

The sub-division of land into plots for sale has seen various treatments by the laws of Vietnam from time to time. In 2004, for example, the prime minister prohibited the sub-division of land into plots for sale; however, from 2007, this prohibition was only applied to certain cities and other designated areas. From 1 July 2014, the effective date of Decree 43/2014/ND-CP (“**Decree 43**”), which details a number of Articles of the Law on Land, the restriction on sub-division of land into plots for sale was relaxed, and such activity was only prohibited in highly developed urban districts in municipal cities, such as Hanoi and Ho Chi Minh City.

Still, in practice over the years, many problems have arisen from the sub-division of land into plots for sale, even after the effective date of Decree 43, for two main reasons. First, the local People’s Committees, as the competent management authorities, have not been able to adequately manage and supervise the sub-division of land by investors. Second, unrestricted sub-divisions of land plots have resulted in the construction of residential houses and unorganized urban areas that are not consistent with urban plans.

**(b) What Has Changed?**

Decree 148 further restricts the sub-division of land into plots for sale by expanding the areas where land sub-division is not allowed, which now includes most of the inner districts of cities in almost all provinces.

Moreover, before a project is implemented, each provincial People’s Committee is now responsible for publishing the areas in which it is permissible to construct houses for sale, or combined sale and lease, and transfer land-use rights for sub-divided land parcels.

Thus, investors interested in housing investment projects by way of sub-division of land into plots for sale will need to carefully consider potential areas for development in line with the new regulations of Decree 148.

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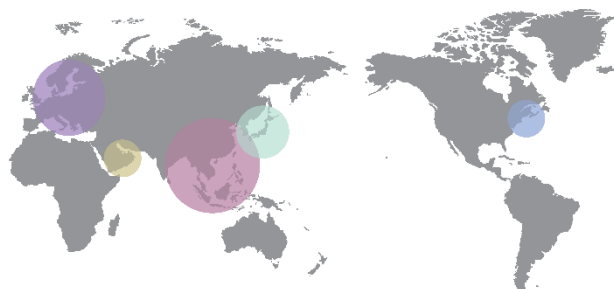


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