

LEGAL UPDATES (September 15th, 2020)

In these legal updates, we would like to send clients the legal updates on some following issues:

- Ministry of Construction has just issued an official letter to manage the investment and construction of condotel, officetel, resort villas, shophouse projects.
- Updating some new supplements on investment registration regulations under Law on Investment 2020.

1. **Ministry of Construction has just issued an official letter No. 4308/BXD-HĐXD on management the investment and construction of condotel, officetel, resort villas, shophouse projects**

In recent years, to meet the needs of the real estate market, new types of real estate such as accommodation/tourism apartments, offices combined with accommodation, resort/tourism villas, and shophouses have arisen. Along with the management of construction investment in accordance with the current law, new legal regulations are also being completed by ministries to adjust the specific factors of these new real estate types, specifically:



- The Ministry of Culture, Sports and Tourism issued Decision No.3720/QĐ-BVHTTDL dated October 28, 2019, promulgating the Regulation on management and business of tourist apartments and tourist villas.
- The Ministry of Natural Resources and Environment has issued document No.703/BTNMT-TCQLĐĐ dated February 14, 2020, guiding the land use regime and certification of non-housing ownership.
- The Ministry of Construction has issued document No.276/BXD-QLN dated January 20, 2020, to the People's Committees of centrally-affiliated cities and provinces on the management of investment, construction, and trading of tourist apartments and villas travel; proposing the implementation of investment and construction management, issuance of a certificate of land use rights, ownership of houses and land-attached assets in accordance with current law, ensuring compliance with the plan, which the state agencies have approved and cautiously consider the conversion of functions and purposes of commercial and service works into housing. In addition, the Ministry of Construction has also issued national technical regulations for each of these types of real estate. Furthermore, the Ministry of Construction has also drafted for the Ministry of Science and Technology to announce national standards to propose general design requirements for these types of constructions.

However, in the process of investing, constructing, and operating the real estate projects mentioned above, there are still several issues that still exist and have not been effectively resolved, for instance: construction planning projects have been identified the function of accommodation but have not been calculated specific population; shortcomings, problems in the operation, management and use of the building with many owners, users, operation and exploitation; granting ownership papers, converting the functions, using purposes.

To improve state management efficiency and overcome outstanding problems, the Ministry of Construction requested the People's Committees of provinces and centrally-run cities to direct in construction management and implementation of administrative procedures of the above real estate project, which should consider the following contents:

- (i) When evaluating and approving the subdivision planning, detailed construction planning, it is necessary to ensure compliance with the current system of standards and technical regulations, clarify the size of the construction floor area, the number of bases, population target.
- (ii) When deciding on the investment policy, it is necessary to ensure the consistency of the investment purpose, land use purpose with the function of the work, and the actual situation in the locality.
- (iii) Consider the issuance of new legal procedures to permit construction investment (approval of planning, the decision on the policy of investment projects).
- (iv) When carrying out project appraisal, construction design, construction licensing, and checking and acceptance; it is necessary to carefully check and review legal bases on construction planning, investment policy, evaluating the compliance with the system of technical standards and regulations, especially newly issued standards and techniques. Contacting local state authorities on construction for population information. Notifying the results of appraisal and inspection of the pre-acceptance test to the state management agencies in charge of local construction for management during project implementation.



2. Updating some new supplements on investment registration regulations under Law on Investment 2020

- (i) At Clause 1 Article 22 Investment Law 2020 stipulates foreign investors are not required to apply for an investment registration certificate in case of establishment of a small and medium-sized innovative startup and investment fund creative industry under the provisions of the law on supporting small and medium-sized enterprises.

The creative startup medium and small enterprises: According to regulation at clause 2 article 3 Law on assistance for small and medium-sized enterprises 2017, The creative startup medium and small enterprises are SMEs that is established to implement its business ideas based on the exploitation of intellectual property, technology and new business models and is able to grow quickly. Accordingly, to become a creative startup medium and small enterprises have to fulfil the conditions:

- Be SMEs. According to regulations at Article 4 law provision of assistance for small and medium-sized enterprises 201, An SME is either a micro-enterprise, small enterprise or medium-sized enterprise having the annual average number of employees who participate in social insurance is not greater than 200 and satisfying one of the following criteria:
 - + The total capital is not greater than 100 billion dong;
 - + The enterprise's revenue of the previous year is not greater than 300 billion dong.
- Enterprises established to express ideas on the basis of exploiting new intellectual property, technology, and business models;
- Capable of rapid growth.



Creative startup fund: According to regulation clause 2 article 2 Decree 38/2018/ND-CP Creative startup fund is funded that established from private investor capital to carry out creative startup investment. The investment in the establishment of a creative startup investment fund can be referred to the provisions of Decree 38/2018 / ND-CP dated March 11, 2018, detailing investment for small and medium-sized enterprises creative startup.

- (ii) Making investment by contributing capital, purchasing shares or purchasing capital contributions

Law on Investment 2014 generally stipulates that Investors shall carry out the procedures for registration of capital contribution, share purchasing or capital contributions purchasing when contributing capital, purchasing shares or purchasing capital contributions to economic organizations operating in business line with conditions applied to foreign investors or contributing capital, purchasing shares or purchasing capital contributions leads to foreign investors holding 51% or more of the charter capital of economic organizations.

Law on Investment 2020 stipulates more specifically cases that foreign investors carry out the procedures for registration of capital contribution, share purchasing or capital contributions purchasing when:

- The capital contribution or purchase of shares or stakes increases the ownership ratio by foreign investors in a business entity conducting business in the business lines allowed in the market with conditions applied to foreign investors; or
- The capital contribution or purchase of shares or stakes results in a foreign investor or business entity specified in Points a, b and c Clause 1 Article 23 of this Law holding **over 50% of the charter capital** of the economic organization in the following cases: The charter capital ownership ratio by the foreign investor is increased from **less than or equal to 50% to over 50%**; the charter capital ownership by the foreign investor is increased while such foreign investor is holding over **50% of the charter capital** of the business entity; or
- The foreign investor that contributes capital, purchases shares or stakes of a business entity has a certificate of rights to use land on an island or in a border or coastal commune; in a coastal commune; in another area that affects national defence and security.

Currently, Law on Investment 2020 is becoming effective soon (January 01, 2021), so, to carry out the procedures for registration of capital contribution, share purchasing or capital contributions purchasing to economic organizations, foreign investors need Decrees with specific guidances and forms.

We hope this short Letter of legal updates would bring you useful information.

Chúng tôi hi vọng rằng Thư cập nhật pháp lý ngắn này sẽ mang lại những thông tin hữu ích đến cho bạn.

Best regards.

Trân trọng.

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