

Forms and conditions for raising capital for commercial residential housing projects

In June and September 2010, the Government and the Ministry of Construction promulgated Decree 71/2010/ND-CP and Circular 16/2010/TT-BXD providing detailed regulations on implementation of the 2005 Law on Residential Housing. Below are a number of points on the forms and conditions for raising capital for projects that developers of commercial residential housing projects should pay attention to.

CONDITIONS FOR CAPITAL RAISING

Housing developers must use capital already raised for the correct objective of constructing residential housing development projects and may not use it for any other purpose or for other residential housing development projects. If capital is not raised for the correct objective and if all the following conditions have not been satisfied, then such signed contracts shall be invalid and the party which raised the capital shall be dealt with in accordance with current regulations. Housing developers are permitted to raise capital in four (4) forms and on the conditions as follows:

Firstly, by signing loan agreements with credit institutions and/or investment funds or by issuing bonds. Under this form, lenders or bondholders shall not be granted a pre-emptive right to purchase or subscribe for purchase of housing units. The developers shall borrow loans from credit institutions and/or investment funds which are currently operative in Vietnam; the time of signing of loan agreements shall be agreed by the parties.

Secondly, by signing capital contribution or investment co-operation contracts. A developer shall only be permitted to sign such contracts with organizations and/or individuals after: (i) the residential housing development project has been approved, (ii) construction of the residential housing work has commenced and (iii) notice has been given to the Department of Construction in the project locality at least 15 days prior to signing the contracts.

Capital contributors or participants in the investment cooperation may only be distributed: (i) profit (in cash or in shares) or (ii) housing units, on the basis of their capital contribution ratios as agreed, with the number of housing units limited to a total of 20% of housing units in each project permitted to be distributed not via a real estate trading floor; but notice must be given to the Department of Construction in the project locality for confirmation. After construction of housing

foundations has been completed, the developer shall sign contracts for the sale of the housing units to the entities to whom they were distributed, to supersede the previously signed contracts or documents. If the party entitled to distribution [of a housing unit] is a household or an individual, each such household or individual is only entitled to distribution on one occasion of one housing unit within the scope of any one province or city under central authority. A party entitled to distribution of a housing unit shall only be permitted to transfer such entitlement to a third party after it has signed a sale and purchase contract for residential housing with the developer.

Thirdly, by signing business co-operation contracts. A developer shall only be permitted to sign business co-operation contracts with real estate enterprises after: (i) the residential housing development project has been approved, (ii) site clearance has been completed, the minutes of handover of the project site boundary landmarks has been obtained and (iii) notice has been given to the Department of Construction.

Fourthly, by signing contracts for sale and purchase of the residential units to be formed in the future. The developer is permitted to raise capital from the advance payments made by entities permitted by the 2005 Law on Residential Housing to own residential houses in Vietnam. The developer may only sign a contract for sale and purchase of a housing unit after the following conditions have been fully satisfied: (i) the technical design has been approved, (ii) construction of the foundation of the residential housing unit has been completed, (iii) procedures for sale and purchase via a real estate trading floor stipulated by the laws on real estate business have been completed, and (iv) after notice has been given to the Department of Construction. In the case of a sale and purchase of a housing unit not via a real estate trading floor where such trading floor has been available, the signed contract shall be invalid and the purchaser shall not be issued with a Certificate.

As for commercial housing lease contracts, the developer is only permitted to sign a commercial housing lease contract after (i) construction of such housing unit has been completed (i.e. the developer has already been issued with an ownership Certificate for the housing unit, or there has been minutes of completion of construction of the construction work), (ii) procedures for lease via a trading floor have been completed (the lessee has obtained written confirmation by the trading floor of lease via the trading floor); and (iii) notice has been given to the Department of Construction.

FORMS AND CONTENTS OF RESIDENTIAL HOUSING CONTRACTS

A capital contribution contract/business cooperation contract must specify the following items: the parties participating in capital contribution or business cooperation; the form of capital raising; the term for paying the contribution; the method of distributing profit. In case of distribution in the form of a housing unit, then the contract must also specify the type, position and area of the housing unit; the time limit for refund of capital or handover of the housing unit; rights and obligations of the parties; dispute resolution, and other arrangements.

A contract for sale and purchase of a residential house shall specify the following items: the warranty period for the house and the warranty responsibilities; the value of the land use right in the selling price of the house and the responsibility of the seller to pay land use fees to the State; total construction floor area of the housing unit; total residential land use area; origin of the land; major equipment associated with the housing unit; and enclosed legal documents related to the residential house and land. A contract for sale and purchase of an apartment must, in addition to the aforementioned contents, specify the commonly owned area and the privately owned area of the owner of the apartment building; the maintenance fee of 2% of the sale proceeds; the method used to calculate the area of the sold apartment; the amount of fees for the work of management and operation of the apartment building, and the principles for adjusting such fee contribution payable (on the basis that it shall not exceed the ceiling prices issued by the provincial people's committee) unless otherwise agreed by the parties; and the list of building materials used both inside and outside the apartment.

In order to ensure that the capital raising is compliant with the laws and ensure the effectiveness of residential housing contracts, the developers should clearly understand and properly follow the aforementioned provisions.

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