
Corporate Commercial

Decree Revising Legal Provisions and Regulations on Real Estate Trading Activities Took Effect on 1 March 2022

On 6 January 2022, the Government issued Decree No. 02/2022/ND-CP ("**Decree 02/2022**") amending certain articles of the Law on Real Estate Business No. 66/2014/QH13 dated 25 November 2014 ("**Law on Real Estate Business**"). Decree 02/2022 replaces Decree 76/2015/ND-CP ("**Decree 76/2015**"), and takes effect from 1 March 2022.

The key features of Decree 02/2022 are set out below.

1. New eligibility conditions to trade in real estate

1.1 Removal of requirements on minimum legal capital:

Decree 02/2022 does not stipulate a requirement on minimum legal capital for organisations and individuals who participate in real estate business since it has already been removed in accordance with the amendments to the Law on Real Estate Business under Article 75.2 of Law on Investment 2020. Previously, it was VND 20 billion.

1.2 Other conditions:

Under Article 4 of Decree 02/2022, organisations and individuals must suffice the following conditions to conduct real estate business:

- i) Establish an enterprise or joint venture with a business line related to real estate;
- ii) Publicly disclose and update changes to the following information:
 - a) Information about the enterprise (i.e., name, head office address, telephone number, name of legal representative);
 - b) Information about real estate to be put on the market (*Law on Real Estate Business, Article 6.2*):
 - Type, location, scale of the real estate;
 - Information about zoning/planning related to the real estate;
 - Characteristics, utilities, and quality of the real estate; information about each utility and general use area if the real estate is a mixed-use building or an apartment building;
 - Actual conditions of constructions or services related to the real estate;

Corporate Commercial

- Documents on ownership of houses/buildings and land use right; documents related to real estate investment and construction; guarantee agreement; and written permission for off-the-plan building sale or lease purchase transactions granted by the competent agencies;
 - Restrictions on ownership of or rights to use real estate (if any); and
 - Sale, transfer, lease, sublease, and lease purchase prices;
- c) Information on mortgages of houses, construction works, and real estate projects to be put on market (if any);
- d) Information on the number and type of real estate products being traded and the quantity and types of real estate products sold, transferred, and lease-purchased; and
- e) Quantity and types of remaining products that are still being traded.

Note that the above information must be published via the following channels:

- on the enterprise's website;
- at the head office of the project management board (for projects on real estate trading and investment); and/or
- at the real estate exchange (for businesses trading through a real estate exchange).

iii) Only trade in eligible real estate (*Law on Real Estate Business, Article 9 and Article 55*):

- a) Eligible lands that satisfy the following requirements:
- There is a Land Use Right Certificate as prescribed in land law regulations;
 - There is no dispute over the land;
 - The land is not distrained; and
 - The land use term is not expired.
- b) Eligible houses and construction buildings that satisfy the following requirements:
- Ownership is registered in the Land Use Right Certificate for the land on which it is built;
 - There is no dispute over the land and ownership of the structure on land; and
 - The structure is not distrained.

Corporate Commercial

c) Eligible off-the-plan real estates that satisfy the following requirements:

- There are documents on land, project documents, or construction drawings approved by competent agencies and licenses for construction if required; documents on certification of completion of technical infrastructure is equivalent to project progress or is required to gain the certification of completion of the foundation of the building regarding off-the-plan apartment buildings or mix-used buildings; and
- There is a prior notice to and approval from the provincial agency in charge of housing before any sale or lease of such off-the-plan structure.

2. Six types of individuals and enterprises exempt from conditions for participating in real estate business

Article 5 of Decree 02/2022 providing guidelines for Article 10.2 of the Law on Real Estate Business regarding organisations, households, and individuals who sell, lease, or lease-purchase real estate in small scale and/or infrequently shall be exempted from conditions for participating in real estate business, including:

- i) Agencies and organisations that sell houses and construction works and/or transfer land use rights due to bankruptcy, dissolution, or division in accordance with law;
- ii) Agencies or organisations that sell, transfer, lease, and/or lease-purchase real estate as public property in accordance with the law;
- iii) Credit institutions, foreign bank branches, asset management companies (AMCs), and Vietnamese asset management companies (VAMCs) that sell houses and/or construction works, transfer land use rights, and/or transfer real estate projects which are put up as guarantee or collateral for debt recovery in accordance with law;
- iv) Organisations, households, and individuals that sell houses and/or construction works and/or transfer land use rights under decisions of courts or competent authorities when settling disputes, complaints, and whistleblowing reports;
- v) Organisations, households and individuals that sell, lease, or lease-purchase houses and construction works under lawful ownership and/or transfer, lease, or sublease land use rights under their lawful land use rights; and
- vi) Organisations, households, and individuals that sell, lease, lease-purchase, or transfer real estate that is invested and constructed by themselves, and this real estate is not for being put on the market in accordance with the law.

Corporate Commercial

3. Amendment on model contracts for real estate trading

Decree 02/2022 provides eight new model contracts for real estate trading, based on its revision of the five model contracts in Decree 76/2015. Whereas in Decree 76/2015 model contracts are categorized in terms of trade forms (sale, purchase, or lease-purchase), Decree 02/2022 categorises contracts in the types of real estate themselves. Specially, Decree 02/2022 additionally provides model contracts with respect to new types of real estate (i.e., condotel and officetel).

Further, it is important to note that Decree 02/2022 has removed a regulation on “non-binding” application of model contracts for real estate trading which was stipulated in Article 7 of Decree 76/2015. Subsequently, from 01 March 2022, application of model contracts on real estate trading is strictly bound to participating parties. This new regulation is considered as necessary and suitable to the actual status of real estate trading in Vietnam.

Particularly, Decree 02/2022 stipulates as follows:

“Article 6: Contract of real estate trading

The sale, transfer, lease, lease purchase, sublease of real estate and transfer of real estate projects must be made into a contract according to the following forms:

- 1) *Contract for sale, purchase, and lease-purchase of an apartment;*
- 2) *Contract of sale, purchase, lease-purchase of tourist apartment (condotel), officetel;*
- 3) *Contract for sale, purchase, and lease-purchase of detached houses;*
- 4) *Contract for purchase, sale, lease purchase of house and constructions other than the above;*
- 5) *Contract for lease of house or construction work;*
- 6) *Contract for transfer of land use rights;*
- 7) *Contract for lease or sublease of land use rights;*
- 8) *Contract for transfer of the whole (or part) of the real estate project.”*

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

Contacts



Chau Huy Quang
Managing Partner

D +84 28 3821 2382
F +84 28 3520 8206

quang.chau@rajahtannlct.com



Vu Thi Que
Partner

D +84 28 3821 2382
F +84 28 3520 8206

que.vu@rajahtannlct.com



Nguyen Dinh Nha
Partner

D +84 28 3821 2382
F +84 28 3821 2382

nha.nguyen@rajahtannlct.com



Logan Leung
Partner

D +84 28 3821 2382
F +84 28 3821 2685

logan.leung@rajahtannlct.com



Lim Wee Hann
Partner

D +84 28 3821 2382
F +84 28 3821 2673

wee.hann.lim@rajahtann.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

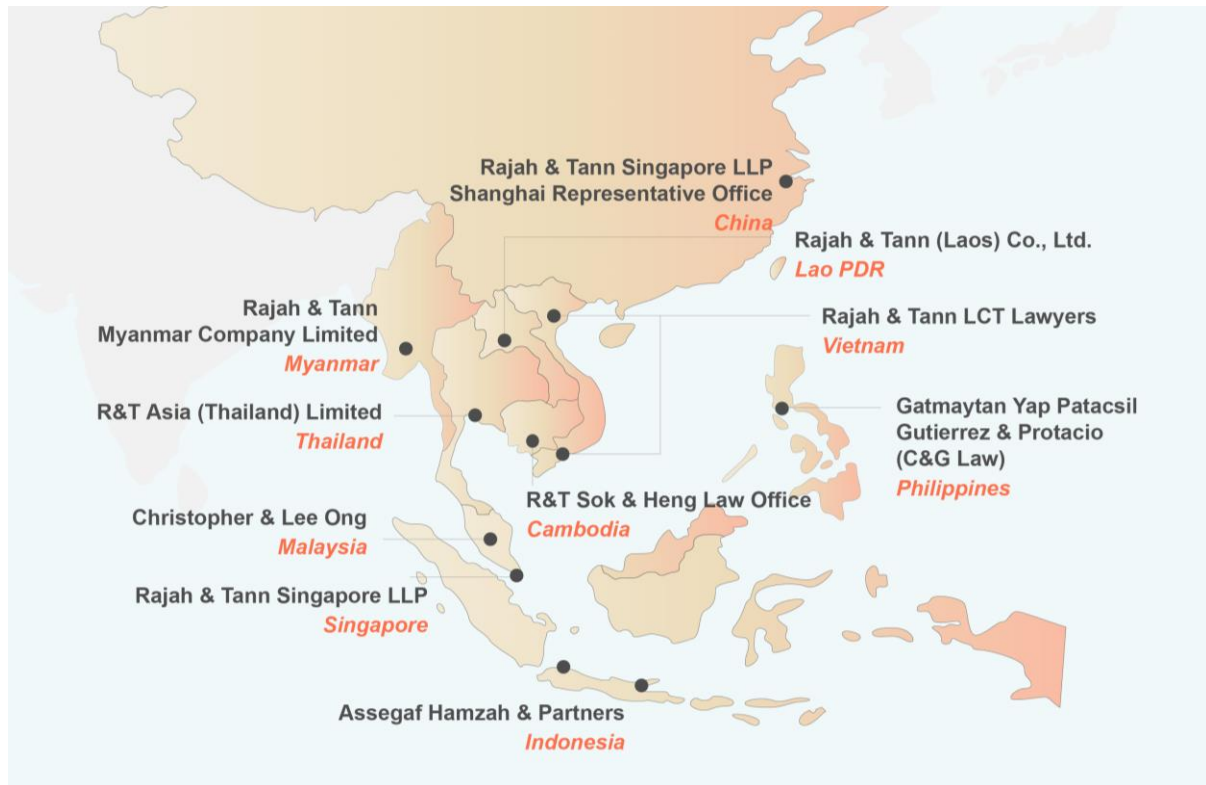
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann LCT Lawyers has a multi-faceted talent pool of lawyers with expertise in a range of practice areas who are able to provide end-to-end legal services for all transactions in Vietnam. Rajah & Tann LCT Lawyers is also able to handle cross-border transactions involving other jurisdictions, particularly those within the Indochina region.

Rajah & Tann LCT Lawyers is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann LCT Lawyers and subject to copyright protection under the laws of Vietnam and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann LCT Lawyers.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann LCT Lawyers.