

Client Alert

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Foreign loans for financing commercial housing projects prohibited; fines up to VND300 million

Since the introduction of the Housing Law No. 65/2014/QH13 dated 25 November 2014 ("**Housing Law**"), there have been controversies as to whether foreign loans can still be used to finance commercial housing projects. This is a major concern for developers in Vietnam because foreign debt has historically been one of the most important capital sources for commercial housing development.

The issue arose from the wording of Article 69 of the Housing Law, which aimed to regulate capital sources in commercial housing development. With respect to commercial housing development loan sources, Article 69 only allows loans from credit institutions and financial institutions currently operating in Vietnam. Furthermore, Article 19.1 of Decree No. 99/2015/ND-CP issued by the Government on 20 October 2015 guiding the implementation of a number of articles of the Housing Law has provided that "*capital-raising contracts for commercial housing development must strictly be conducted through the forms set out in Article 69 of the Housing Law.*" The relevant authorities generally interpret these provisions to mean that any loans originating from outside of Vietnam to commercial housing developers have been prohibited since 1 July 2015.

We have observed, in practice, the State Bank of Vietnam ("**SBV**") has rejected developers' applications for registering foreign loans for commercial housing projects. SBV registration is a pre-condition to repatriating principal, interest and fees on foreign loans.

On 15 June 2017, the Ministry of Construction ("**MOC**") issued official dispatch No. 156/BXD-QLN dated 15 June 2017 ("**OD 156**") in response to the SBV's official dispatch No. 3933/NHNN-QLNH dated 25 March 2017 on the matter in question. In OD 156, the MOC reconfirmed the position provided in the Housing Law that foreign debt for commercial housing developments is not allowed and that loans can only be obtained from foreign credit institutions or foreign financial institutions that are operating in Vietnam. Also, OD 156 provides that loans mobilized in non-compliance with the Housing Law will be null and void.

Recently, the Government issued Decree No. 139/2017/ND-CP dated 27 November 2017 ("**Decree 139**") on sanctions for administrative violations in construction and real estate related sectors, including real estate business and housing development. Decree 139 will take effect on 15 January 2018 and replace Decree No. 121/2013/ND-CP on sanctions pertaining to administrative violations in construction and real estate related sectors and Decree No. 180/2007/ND-CP on handling violations in urban construction.





Decree 139 doubles the fine amount imposed for the act of "illegal capital raising." Obtaining a foreign loan for a commercial housing project can now be construed as "illegal capital raising." This violation will therefore be subject to a maximum fine of VND300 million.

Decree 139 also provides sanctions applicable to other real estate violations e.g., pre-sales and authorizing investment partners to conduct property transactions, among others. Decree 139 also provides additional sanctions such as the suspension of real estate operations for up to 12 months for certain serious violations. Please see our other Client Alert on Decree No. 139 published this month for further information.

Commercial housing developers should be careful to arrange financing sources for their projects which comply with the current rules in order to avoid the abovementioned newly intensified sanctions. Reform of this restriction can only be expected when Vietnam's financial and monetary authorities feel comfortable re-opening the spigot to let foreign debt flow into the residential housing sector again.

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Should you have any questions in relation to the above or would like more recommendations, please do not hesitate to contact us.

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