

Client Alert

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Stricter Fines for Real Estate Business Violations

In a bid to tighten up administrative control over Vietnam's rambunctious real estate market, the Government recently issued Decree No. 139/2017/ND-CP dated 27 November 2017 ("**Decree 139**"). Decree 139 provides new sanctions for administrative violations in construction and real estate related sectors. Decree 139 will take effect from **15 January 2018** and replaces the following:

- Decree 121/2013/ND-CP on sanctions for administrative violations in construction and real estate related sectors; and
- Decree 180/2007/ND-CP providing violations pertaining to urban construction regulations.

Decree 139 introduces some new categories of real estate violations and stricter sanctions. Specifically, the decree includes suspensions of project operations for up to 12 months for certain serious violations and significantly increases the monetary penalties for each violation.

We set out some of the key sanctions under Decree 139 in relation to real estate and residential housing activities below.

1. Sanctions for Violations of Rules on Residential Pre-sales

Pre-sale activities are strictly governed by regulations under the Real Estate Business Law and Residential Housing Law. Residential developers have mixed records when it comes to compliance with some of these regulations, especially safeguards that govern issues such as:

- Completion of construction of technical infrastructure facilities corresponding to the schedule of the project and completion of the project's foundation (for apartment and mixed use projects);
- Use of pre-sale proceeds for the correct purpose;
- Maximum pre-sale pricing, e.g. maximum 50% (for foreign invested developers) or 70% (for 100% local developers) of the contract value prior to the delivery of units; and
- Bank guarantees and contracts signed by the developer and an eligible commercial bank.

Decree 139 provides specific sanctions for various breaches as follows:

- a) conducting real estate transactions with respect to properties that are i) not yet eligible for sale or ii) not within the licensed scope may result in a maximum fine of VND 300 million (approximately US\$ 13,200) and/or a possible suspension of project operations for up to 12 months;





- b) failure to inform buyers of ownership restrictions pertaining to houses and construction works may result in a possible maximum fine of VND 80 million (approximately US\$ 3,500);
- c) illegal capital raising and usage may result in a possible maximum fine of VND 300 million (approximately US\$ 13,200);
- d) collection of advanced payments that are more than the maximum amount allowed in accordance with the construction implementation schedule may result in a possible maximum fine of VND 80 million (approximately US\$ 3,250); and
- e) failure to obtain a bank guarantee may result in a possible maximum fine of VND 300 million (approximately US\$ 13,200).

Developers who violate these rules are further required to take corrective measures and also must compensate the aggrieved parties. We note that the fines are still not high enough to provide a strong disincentive to bad behavior, but multiple infractions can lead to cumulative penalties that are substantial, and many developers in the current, competitive market, do pay attention to reputational risk and the brand value of their good name.

2. Sanctions for Violations of Conducting Real Estate Business through an Authorized/Assigned Party

Decree 139 also provides strict sanctions for violations of rules on authorizing or assigning another party by way of investment/business cooperation, capital contributions, joint ventures, affiliations or any other party to sign property contracts relating to the sale, purchase, transfer or hire-purchase of properties. Decree 139 provides a maximum possible fine of VND 300 million for such violations. An additional sanction of suspension in project operations for up to 12 months may also apply.

Authorities enjoy considerable discretion in terms of how these penalties may be imposed, but even when strictly implemented, they will still face the "cat-and-mouse" tactics of many investors who will continue to try to outsmart the regulators.

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Should you have any questions, please do not hesitate to contact us.

[Please see our other Client Alert published this month](#) on prohibition of cross-border loans for commercial housing development, breaches and relevant sanctions.

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