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LEGAL MAGAZINE



REAL LAW
ESTATE

INSIGHTS FROM:

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— INTRODUCTION —

by LFN Real Estate Practice Group Co-chair

Alessandro Barzaghi

Cocuzza & Associati Studio Legale Milan, Italy

Since the start of 2022, we were all wishing that life could return to what it was like pre-COVID-19. We hoped that the highly disruptive events it caused would be mere episodes during sustained periods of growth.

The outbreak of the Russian-Ukrainian war has highlighted a new, simple, fact: that disruption is a condition with which we will have to learn to live with for years to come. Additionally, COVID-19 appears to be gaining momentum again in many areas of the world, including countries where strict lockdowns are still in place.

The new widespread sentiment is that major events, including greatly unexpected ones, might happen, with little or no notice.

What consequences will this have on our lives, on business, on real estate? The real estate sector has long been considered a stable one, however certainly not so much in times of war, especially for investments in countries involved in conflicts.

Capitals coming from countries at war are frozen, and this has an impact on investments.

On a basic economic level, inflation was soaring before the war, and the trend is continuing.

Construction costs are skyrocketing. They started to do so in 2021 for reasons connected to transportation costs and shortages of raw materials and they are unlikely to stop for the foreseeable.

The residential and logistic sectors in real estate seem to be faring better than most, while office real estate

still poses the same question: will remote working remain a trend or will it be streamlined?

The Hotel Industry is also likely to be suffering, while the predictions for growth in commercial real estate is being revised in light of this new situation.

Amidst this very turbulent outlook, our contributors touch upon different topics with viewpoints from around the world, proof of the far-reaching capabilities of our group: in this issue we range from the Irish Compulsory Purchase Order to an overview of how rents are determined in the very central Galleria Vittorio Emanuele in Milan, from sustainability in real estate in the Netherlands to foreign ownership in Sri Lanka, to Administrative Penalties in Vietnam.

Until the next issue, and in hope of less interesting times, enjoy the read!

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REAL ESTATE LAW

On-line Magazine





Could the compulsory purchase of vacant properties be the answer to the housing crisis?

by Rachel Nangle

Introduction

A recent announcement from the Irish Government regarding the proposed Compulsory Purchase Order ("CPO") of vacant properties in Ireland went relatively unaddressed and unnoticed in Irish news in December 2021.

As part of the State's "Housing for All" plan, implemented by the Irish Housing Minister, Darragh O'Brien, it is suggested that a CPO Programme be engaged to "... tackle vacancy in towns and villages..." in both cities and in rural communities.

Making use of the yet to be commenced sections on CPO powers under the Land Development Agency Act 2021 ("the LDA Act"), it is envisaged that Local Authorities and State Bodies will use funding from the Housing Finance Agency to purchase up to 2,500 vacant properties by 2026. It is intended these would be used as social housing or for onward sale to the Irish homeowner.

What is a Compulsory Purchase Order

A Compulsory Purchase Order, often referred to as a "CPO", is a notice served by a State Agency, such as a Local Authority, for the compulsory purchase of a premises or part of a premises.

While we are familiar with the concept being used for the construction of motor ways, or to facilitate the expansion of the LUAS service, this is the first time the Government will attempt to implement the use of CPO's

for the purpose of obtaining property for use as residential properties, both for the social housing and to sell back to public market.

Process

After a Statutory Body decides to go forward with a CPO, the owning party will be served with a notice of the CPO. A newspaper notice will also be published and An Bord Pleanála will receive a submission for approval.

Types of CPO

A State Authority can acquire the land permanently, temporarily or, can acquire specific rights over the property / land such as easements, rights of way, or rights for service, substrata, and/or water rights.

Your Rights

While there are different procedures based on the type of CPO involved, the following rights are available to any party who has received a CPO notice:

- A right to object to the CPO
- The right to compensation based on the market value of the property
- The right to be left in the same financial position after the CPO as before the notice issued and
- A right to access Statutory Arbitration where a decision on compensation cannot be reached

Timelines apply for the right to object,

and it is important to obtain legal advice as soon as Notice of a CPO is received.

Objections

While there are different procedures based on the type of CPO involved, the general process below is followed.

Once a CPO notice has been served, an affected party is entitled to object, enter negotiations, and where necessary involve an arbitrator. Those which are successful and held valid are usually objections which have been made on planning or legal grounds. It is not currently known what objections will be considered valid where a vacant property is the subject of an LDA Act CPO.



Where an objection is received, a public local enquiry is held, at which, affected parties can formally put their views forward. However, if no objections are raised, An Bord Pleanála can confirm, amend, or reject the CPO without the requirement for a Public Enquiry. Any decision by An Bord Pleanála will be subject to an objection period. Once the objection period passes, the CPO will become operative. Once Operative, the only further recourse available is to challenge the CPO by way of Judicial Review. A CPO will remain operative for a three-year period. Once lapsed, a new notice must issue.

Compensation

Where a property is the subject of a CPO, the owner is entitled to compensation in the form of consideration for value. Once the CPO is Operative the relevant State Authority involved may serve a Notice to Treat on the affected parties and will then commence negotiations as to the assessment of compensation due.

Assessments for compensation fall under a non-exhaustive list of headings which can include the following:

- ▶▶ Value of land
- ▶▶ Diminution in value of retained lands
- ▶▶ Costs arising from acquisition
- ▶▶ Disturbance caused
- ▶▶ Loss of profits caused

A basic requirement is that the owner is entitled to the market value of the property and should be left in a similar position as to when the property was

acquired. In the current booming market this may not be of much comfort to the owner.

Where no agreement can be made the matter must be referred to the Property Arbitrator.

Notice of Entry

It is important to note that the amount of compensation need not be agreed for the CPO to be acted upon and the Authority can serve a Notice of Entry prior to any money having been exchanged.

Tax

It is important to also note that sale of land which results in a gain for the landowner will still be subject to Capital Gains Tax at a rate (currently) of 33%.

Will my Property be affected?

The LDA Act envisages the targeting of Vacant Properties in line with the definition of the Vacant Site Register.

In Ireland, the requirement for Local Authorities to maintain a Vacant Site Register was introduced under the Urban Regeneration and Housing Act 2015. This is a register of property located in each Local Authority's jurisdiction which are considered suitable for housing but have not yet been put forward for development. To be considered "vacant", the site must consist of residential land being more than 0.05 hectares and located in an



area where there is a need for housing. The site must also not be in use for an extended period of time or may be what is known as "Regeneration Land" which is land other than residential land where the site is having a negative impact on the existing amenities or character of the neighbourhood (i.e. vacant industrial sites). A property can be added where it is deemed vacant for 12 months or more.

Notice of Entry onto the Vacant Site Register

A Notice to the owner will be served of the Local Authorities intention to include the property on the register. The register will contain the location of the site, to include a map, its current



market value together with the name and address of the current owner.

Levy

All sites included on the register are subject to the Vacant Site Levy. The vacant site levy is currently 7% of the market value of the land. This legislation is currently under review and subject to a possible increase in the future.

Right to Appeal

An appeal can be raised to any notice received but same must be done so within 28 days. Where an appeal is unsuccessful the owner may submit a further appeal to An Bord Pleanála.

Where unsuccessful, the Vacant Site levy will apply and the property becomes at risk of a CPO.

How might this affect Irish Developers

The enactment of the CPO provisions of the LDA Act raise concerns as to what criteria will be used for the assessment of CPO's of vacant residential properties or if the standard 12 month vacancy (or such other yet to be determined time period) will be deemed the only requirement for a CPO. This could raise particular concern where a project is ongoing, and a particular block of city housing is being purchased for the eventual redevelopment or rezoning.

While the legislation is yet to commence, there will likely be confusion and disagreement as to how the provisions will apply, and it is expected to be met with resistance from developers.

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A large, stylized blue globe is the central focus. It is overlaid with a complex network of white lines and dots, suggesting global connectivity. The globe is positioned in front of a background of classical architectural columns, which are slightly blurred and in a darker tone. The text 'FAR-REACHING LEGAL SOLUTIONS' is written in large, bold, white capital letters across the lower half of the globe.

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The Living Room of Milan: The Galleria Vittorio Emanuele II

by Giulia Comparini & Osvaldo Capitelli

The Gallery Vittorio Emanuele II has always represented one of the most iconic places in Milan. The history, the location and the sumptuousness of the building has made “the Gallery” – as it is known by the people of Milan - one of the most attractive centres for tourists and consumers from all around the world.

From a legal point of view, the Gallery triggers quite a few challenges: it is owned by the Municipality, so, it is a “public” space. The Municipality, acting as Landlord, has used the instrument of concession (deriving from administrative law) rather than the one of lease, pertinent the latter to private

properties and granting various degrees of protection to retailers / lessees.

The Gallery is composed of a number of mixed-use units, that in recent years have been at the centre of a program of valorisation approved by the Municipality of Milan. In particular, the revaluation program is focused on the concession of the units located in the Gallery to the private operators to carry out high quality commercial and restaurant activities.

In compliance with the principles of impartiality, equal treatment of economic operators and protection of competition, the concession of these properties to private companies is carried out by means of a public procedure.

In particular, the Administration first approves a resolution with which it defines the guidelines for the development of the units. Then, based on these guidelines, the Administration adopts a public call for tenders for the assignment of the concession for the use of the units.

The public call has a peculiar structure: There is a phase of pre-qualification, which aims to identify the operators admitted to the submission of offers, and a second phase in which invited operators may submit economic offers by raising the price placed at the base of the auction.

During the pre-qualification phase, the economic operators present to the Administration the individual projects. The Municipality analyses the projects, giving them a score that may vary according to the type of products on



sale and the aesthetic quality of the project. In particular, the sale of jewellery, of products of excellence made in Italy, as well as the attention to aspects such as innovation, digitalisation, sustainability, and respect for the environment, will award the project a higher score.

Once the economic operators have been admitted to the tender based on the score assigned by the Municipality, the auction phase opens. Starting from the base auction rent, the competitors will be able to offer raises. The offer that is not followed by any raise is awarded the concession.

The last phase of the procedure consists of the stipulation of the convention between the Municipality of Milan and the winning economic operator. The relationship between the Administration and the private operator – in this case in quality of landlord and tenant – will be governed by a contract that formally represents a convention-concession of public property, a public derivation of a lease agreement.

Usually, even if the public tender does

not include a draft of the contract to be stipulated, it contains the essential requirements that will characterise the relationship between landlord and tenant, as well as the main charges to be borne by the economic operator (i.e. obtaining approval of the final project from the Superintendent of Cultural Heritage, carrying out architectural restoration works, using the property to the exclusive use envisaged in the public tender).

It is easy to see how the peculiarities of the property located in the Gallery are reflected in the selection procedure of the tenant and in the type of contract that is then stipulated with the Municipality.

Many companies, especially famous luxury fashion brands and restaurants are eager to carry out their business in properties of primary importance, such as those located in the Gallery. Due to the complexity of the procedure, they turn to lawyers experienced in the specific area of retail, to obtain assistance in the preparation of the preliminary project, the submission of

the offers to the Administration and, last but not least, the negotiation of the contract.

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Sustainable investing, also in real estate, will become the norm

by Esmee C. Wolters

In the previous edition, J. Sinnige and M. Beekman informed you about the new energy requirements for office buildings in the Netherlands that will apply from 1 January 2023. These requirements show that it is necessary that sustainability is increased in the focus of the real estate sector. The trend towards more sustainable real estate and real estate investments is also visible on the regulatory level of the European Union. These trends and regulatory initiatives mark that sustainable investing will become the norm.

There is a trend in the real estate sector and finance industry towards reporting and improvements of sustainability factors. As the real estate sector is responsible for 20% of global greenhouse gas emissions and for

more than 40% of the global energy consumption, improvements in this sector are vital for reaching sustainability targets – such as the ones set out in the Paris Agreement.

Setting the baseline for improvements is mostly done via the use of ESG data. ESG stands for environmental, social, and governance aspects of investments. Reporting on these issues has developed due to market pressure for companies to become more sustainable. Since the 1960's, companies have been more involved in sustainability and ethical investments. This has led to the development of many policies by companies on how to measure sustainability risks and the contribution of their investments towards future sustainability goals. By focusing on the environmental (such as pollution and climate risks), social (such as worker safety and diversity), and governance standards (such as succession planning and accounting standards), investors are not only basing their decisions on subjective morals or on environmental conscious

based business practices but on combining different aspects in a data-driven approach. Such data for the environmental aspect can consist of data on carbon emissions and the use of renewable energy sources. The use of ESG data by investors allows them to rank businesses on considerations of risks. This has proven to be successful, ESG factor-based investing often supports sustainable companies or projects with the same level of financial returns as a standard investment approach, while reducing risks such as regulatory risks and the associated costs. Hence the move to the use of ESG data as a baseline for sustainable investments.

In the Netherlands, there is a strong rise in the use of ESG-driven investment approaches. The logic behind this focus is that investors are becoming increasingly more aware of ESG risks and want to create portfolios that are deemed to be more sustainable while still making good financial returns. ESG due diligence is also developing into a standard procedure for investors when choosing companies to invest in. The influence of ESG aspects of investments is therefore overall becoming increasingly more important. The market keeps adding pressure on investors to look at ESG factors and take these aspects into account while investing. Real estate companies, therefore, need to have a solid ESG policy for documenting their approach towards ESG risk factors to attract investments and funding in the future.





Investors are also starting to demand general sustainability standards across the industry. Companies all create their own terminology and standards for ranking, which makes it hard to compare companies properly. Therefore, there is a need for standardised reporting which makes the ranking of companies based on sustainability possible. Via the Sustainable Finance Disclosure Regulation (SFDR), which is part of the Sustainable Finance Action Plan

developed by the European Union, a start into standardised reporting has been made. Since 10 March 2021, financial market participants and financial advisors must publicly report on the sustainability of their investments. Companies such as banks and pension funds must disclose how they deal with events and circumstances regarding sustainability that have an actual or potential negative impact on the ultimate value of their investments. These are for example the disclosure of greenhouse gas emissions or the use of non-renewable energy in their portfolio companies.

As a result of the increased use of standardised terminology and reporting, the European Union hopes to stimulate more sustainable investments and create transparency and comparability in the market. Consequently, it can be said the European Union reinforces the market shift towards the use of data-driven ESG risk management. These regulatory initiatives will stimulate sustainable investments even more.

The use of ESG data in the real estate sector offers unique insights into a portfolio and creates an opportunity to attract new investors with a higher priority for sustainability. By proactively approaching sustainability and utilising ESG data, companies will gain an advantage over those that do not yet approach investments this way, because sustainability will only continue to grow more important. Staying on top of new regulations will become an advantage in less developed international markets and will also prepare companies for regulations that will be introduced in other countries. After all, only changing lights to LED lights will not be sufficient anymore, real estate investors will also need to contextualise and communicate their efforts.

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Foreign ownership of land Sri Lanka

by Aruni Marcelline

As is the case with many countries, Sri Lanka has had various legislation from time to time restricting foreign ownership of land. The most significant of them all, is the present legislation in the form of the Land (Restrictions on Alienation) Act, No. 38 of 2014 (as amended) ("the Act").

The Act has been introduced primarily to restrict foreigners, foreign companies and entities with majority foreign shareholding from owning land.

In terms of the Act, foreigners, a company incorporated in Sri Lanka with direct or indirect foreign shareholding of more than 50% or a foreign company, are prohibited from purchasing State or private land (which includes any interest in land, land covered with water and houses or buildings standing on such land) in Sri Lanka with effect from 1 January 2013.

A purchase of land by a company incorporated in Sri Lanka with less than the said ceiling of 50% foreign shareholding is required to maintain such shareholding for a minimum period of consecutive twenty years from the date of the purchase. In the event the foreign shareholding reaches or exceeds such a ceiling, the transfer of land is considered void unless steps are taken to reduce such shareholding to the permitted limits within the time period specified in the Act.

A few notable exemptions to the above restriction are purchases of condominium apartments, purchases by companies listed in the Colombo Stock Exchange with a foreign shareholding of 50% or more with effect from 1 April 2018, land which is transferred by intestacy, gift or testamentary disposition to a next of kin (who is a foreigner) of the owner,

purchases by companies engaged in development projects identified as Strategic Development Projects in terms of the provisions of the Strategic Development Projects, Act No. 14 of 2008.

At the inception, the principal enactment of the Act also imposed restrictions on leasing land by foreigners by imposing a Land Tax which was payable at the point of execution of the instrument of lease. However, in terms of the Land (Restrictions on Alienation) Act, No. 3 of 2017 (Amendment Act), such Land Tax was removed in respect of leases by a foreigner, a company incorporated in Sri Lanka with direct or indirect shareholding of more than 50% or a foreign company with effect from 8 January 2017. However, the maximum tenure of such leases remains ninety-nine years and mortgages of such leasehold rights have also been prohibited in favour of banks, licensed under the Banking Act, No. 30 of 1988 for a period of five years from the effective date of the relevant lease agreement.

If any land is acquired in contravention of the foreign ownership restrictions imposed by the Act, such acquisitions are deemed void and any person contravening such restrictions shall be guilty of an offence.

Apart from the above legislation, foreigners should also be in compliance with foreign exchange regulations



when investing in real estate in Sri Lanka as permitted under the Act, which require such investments to be made through an Inward Investment Account opened and maintained in any foreign currency approved by the Central Bank of Sri Lanka or Sri Lanka Rupee, with a licensed commercial bank in Sri Lanka.

The Act was introduced with a view to preserve national interest considering the scarcity of land in Sri Lanka, however as to whether it discourages foreigners from investing in Sri Lanka, which is currently crucial to our economy remains an ongoing debate amongst concerned parties. Therefore, a more pragmatic approach may be to revisit the said legislation and relax certain restrictions, particularly in the areas of industrial and commercial real estate, with a view to encourage foreign direct investment.

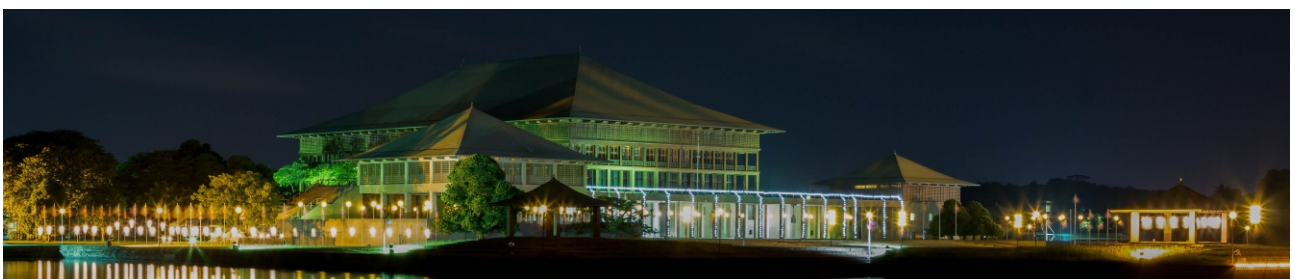
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New Decree on Administrative Penalties in Construction and Real Estate Sectors Issued

by Le Nguyen Huy Thuy & Ton That Hoang

On 28 January 2022, the Government issued Decree No. 16/2022/ND-CP ("Decree 16"), which regulates administrative penalties in the construction sector and replaces Decree No. 139/2017/ND-CP ("Decree 139"). This Article will focus on the new points of Decree 16.



Sanctioning the failure to publicise construction permits

Article 16.2 of Decree 16 imposes penalties for not publicising construction permits as follows:

- 1** A fine from VND5,000,000 to VND10,000,000 shall be imposed for the construction of individual houses;
- 2** A fine from VND10,000,000 to VND20,000,000 shall be imposed for the construction of individual houses in protected areas, historical and cultural relics or other construction works;
- 3** A fine from VND20,000,000 to VND30,000,000 shall be imposed for construction of works requiring the preparation of a feasibility study report on construction investment or works that must make economic and technical reports on construction investment.

Additional sanctions for not adjusting construction permits

Article 16.3 of Decree 16 clearly stipulates the sanctions for acts of failing to carry out procedures to adjust and renew construction permits as follows:

- 1** A fine from VND15,000,000 to VND20,000,000 shall be imposed for the construction of individual houses;
- 2** A fine from VND25,000,000 to VND30,000,000 shall be imposed for the construction of individual houses in protected areas, historical and cultural relics or other construction works;
- 3** A fine from VND60,000,000 to VND80,000,000 shall be imposed for construction works requiring the preparation of a feasibility study report on construction investment or works that must

make economic and technical reports on construction investment.

Fine increases for construction permit misconduct

Under Decree 139, penalties for the act of organising construction works having incorrect contents in comparison with their permits ranged from VND10,000,000 to VND50,000,000. Decree 16 divides the penalty into two groups of acts and increases the level of the sanction, specifically (i) Article 16.4 of Decree 16 sets out penalties for the act of organising the construction works having incorrect contents in comparison with their permits in the case permits are for repair, renovation or relocation of works and definite term construction permits, and (ii) Article 16.6 of Decree 16 sets out penalties for the act of organising the construction works having incorrect contents in



comparison with their permits in the case of issuance of new construction permits.

No difference between individual housing in urban and rural areas

Decree 139 only provided sanctions in case the construction of individual housing works in urban areas did not have a construction permit. Decree 16 removes the limitation and provides general sanctions for both urban and rural areas for the act of building individual houses without a construction permit.

Violations for works which are not in accordance with the land use purposes

Decree 139 did not specify how the construction of works on land for improper purposes was sanctioned. In practice, when state agencies detected acts of building houses on agricultural land, they imposed sanctions for both of the following acts: (i) arbitrarily changing the purpose of land use under Decree No. 91/2019/ND-CP on sanctioning administrative violations in the field of land ("**Decree 91**"), and (ii) the unauthorised act of construction in urban areas under Decree 139.

Decree 16 now specifies that: for works built on land which are not in accordance with the land use purposes under the land law, sanctions will be imposed in accordance with the Government's decree on sanctioning administrative violations in the field of land.

Moreover, when individuals and organisations build on land, which works are not in accordance with the land use purposes, for example,

building individual houses on agricultural land, they are only sanctioned for one act, which is changing the purpose of land use under Decree 91. Decree 16 obviates the sanction in the construction sector.

Fine increases for disobeying suspension requests

Sanctions for acts by entities that already have a record of administrative violations who continue to violate, according to Article 16.2 of Decree 16, remain the same. However, Decree 16 has added new provisions on the continuation of violations before issuing decisions on sanctioning administrative violations by increasing (i) the minimum fine from VND5,000,000 to VND100,000,000, and (ii) increasing the maximum fine from VND350,000,000 to VND500,000,000.

Change and supplementation of remedial measures

Decree 16 adds remedial measures of "carrying out procedures for adjustment or extension of construction permits" or "forcing publication of construction permits as prescribed by the laws" for the acts of not extending the term or not publicising construction permits.

Decree 16 amends the measure of "forced dismantling" to "forced demolition" of works and parts of construction works in violation. This provision is in line with Article 118 of the amended Construction Law 2020 (the "**Construction Law**") and with the reality of construction works that cannot be dismantled but must be demolished.

Additional behavior is determined as wrongful conducts

Article 16.17 of Decree 16 specifies that: In case of improper implementation of construction permits as issued but not in cases where construction permits must be adjusted in accordance with the Law on Construction, such implementation shall not be considered as wrongful construction compared with the contents of the granted construction permit.

Amendment of regulations on cases in which construction permits must be obtained

Article 15.12(b) of Decree 139 only stipulated that in case of illegal or unauthorised construction works, or construction works that were not in accordance with design but were under construction, an administrative violation record will be made, the construction will be stopped, and the violating individual and organisations will be given 60 days to ask for permission to continue construction. This regulation caused difficulties for regulators and violators, because there are many works that were not eligible for a construction permit but that still had to wait 60 days for procedures, which led to a continuous construction violation.

Article 81 of Decree 16 specifically stipulates that only the cases that are eligible for a grant of a construction permit or adjustment of a construction permit or adjustment of construction design that are under construction will be required to meet the time limit of 90 days, or 30 days to carry out the procedures for obtaining a permit.

Legalisation of unauthorised residential housing

Legalisation of unauthorised construction housing is a procedure for requesting the competent authorities

to issue construction permits or grant adjusted construction permits for housing after it has been sanctioned for administrative violations.

According to Article 81 of Decree 16, violations specified in Clauses 4, 6, 7 and Clause 8 of Article 16, in the following cases, are eligible for a grant of construction permits or adjustment of construction permits or adjustments to construction designs under construction:

- 1** To organise the construction works against the contents of the construction permit granted in the case of issuance of that permit to repair, renovate or relocate the work and the construction permit with a definite term
- 2** To organise the construction works against the contents of the issued construction permit, for the case of issuance of a new construction permit
- 3** To organise the construction works without a construction permit, but the works require a construction permit according to regulations
- 4** Construction works not conforming to the appraised construction design in case of construction permit exemption

If a specific case under construction falls into the above and it is eligible for a grant of a construction permit or adjustments to construction permits or adjustments to construction designs, it may be legalised by the competent authorities.

Administrative penalties regarding real estate business

As regulated under Section I, Chapter V of Decree 16, in case the Developer of a

real estate project conducts the acts as listed under Article 58 of Decree 16, such as “receiving payments from the buyer or tenant of housing to be formed in the future inconsistently with the project progress or in excess of the prescribed percentage of the contract value as regulated by law”, an administrative penalty of VND400,000,000 to VND600,000,000 shall be imposed.

According to Article 58.4(dd) of Decree 16, in case the act of raising capital by the Developer is not in accordance with the laws, a fine of VND800,000,000 to VND1,000,000,000 shall be imposed.

Administrative penalties regarding real estate brokers/dealers

Decree 16 also adds new regulations to rectify the activities of real estate brokers/dealers. According to Article 62.2 of the 2014 Real Estate Business Law (the “LoREB”), any individual wishing to conduct business of real estate brokerage services independently must have a real estate broker's practicing certificate and must register payment of taxes in accordance with the law on taxation. Failure to do so shall receive a fine from VND40,000,000 to VND60,000,000 according to Article 59.1(a) of Decree 16 (formerly, under Article 58.1 of Decree 139, this act only received a fine from VND10,000,000 to VND15,000,000).

The broker/dealer shall also receive remuneration and commissions as regulated under Articles 64 and 65 of the LoREB. If they receive any income other than from those sources, a fine from VND120,000,000 to VND160,000,000 according to Article 59.2(dd) of Decree 16, shall be imposed (under Article 58.2(dd) of Decree 139, this act only received a fine from VND30,000,000 to VND40,000,000).

Brokers/dealers have the responsibility to supply the file and information on the real estate for which the broker engages in brokerage and to be liable

for the file and information which the broker supplies. Failure to do so shall receive a fine from VND200,000,000 to VND250,000,000 according to Article 59.3 of Decree 16 (under Article 58.3 of Decree 139, this act only received a fine from VND40,000,000 to VND50,000,000).

Authorisation to apply sanction and the time-limit

The levels specified in Chapter VI of Decree 16 are for the imposition of fines for an administrative violation by an organisation. The levels of fines for administrative violations by individuals is equal to 1/2 those of organisations.

The time-limit for sanctioning administrative violations, according to Article 5.1 of Decree 16, is one year for real estate business, management of technical infrastructure works and production of construction materials; the time-limit for sanctioning administrative violations is two years for construction, management and development of houses.

Decree 16 took effect on 28 January 2022.

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