



LEGAL NEWSLETTER

DECEMBER 2024

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Notable points in Decree no. 95/2024/ND-CP

Decree No 95/2024/ND-CP on the elaboration of some articles of the Law on Housing ("Decree 95") was issued on July 24, 2024, and takes effect from August 1, 2024. In this article, TNTP will present some notable points stipulated in Decree 95.

1. Documents proving eligibility and fulfillment of conditions for ownership of housing in Vietnam

Article 3 of Decree 95 clearly stipulates the necessary documents to prove that a subject is eligible to own a house in Vietnam, as well as documents proving that such subject is eligible to own a house in Vietnam as follows:



Notable points in Decree no. 95/2024/ND-CP

Documents proving that the organizations own housing in Vietnam:

- Domestic organizations must possess an Enterprise Registration Certificate, an Investment Registration Certificate, or documents proving organizational establishment authorized by competent legal authorities.
- Foreign organizations engaging in housing construction projects in Vietnam must have an Investment Registration Certificate as per the investment law.
- Other foreign organizations must have the Certificate of Investment or Certificate of Investment Registration or a document issued by a Vietnamese competent authority permitting its operation or establishment in Vietnam which is still valid at the time of the housing transaction.

Documents proving eligibility of individuals for ownership of housing in Vietnam:

- An individual who is a Vietnamese citizen shall have an ID card, passport, or another document proving the Vietnamese citizenship
- A person of Vietnamese origin residing overseas shall have a foreign passport or an international travel document according to immigration laws and documents proving the Vietnamese origin according to nationality laws;
- A foreign individual shall have a foreign passport and a written declaration of non-eligibility for diplomatic or consular immunity and privileges.

Documents proving fulfillment of conditions for ownership of housing, as detailed in Article 3, Clause 3:

- For domestic organizations and individuals, there must be documents proving the right to own a house through one of the following forms: investment in construction, purchase, hire-purchase, donation, inheritance, capital contribution, exchange of houses; receiving houses for resettlement; other forms as prescribed by law.
- For Vietnamese people residing abroad who are Vietnamese citizens, they must have a valid Vietnamese passport with an entry stamp into Vietnam at the time of establishing a residence.
- For Vietnamese-origin people residing abroad, they must have a valid passport with an entry stamp to Vietnam or a valid international travel document with an entry stamp to Vietnam at the time of signing the housing transaction.
- For foreign individuals, they must have a valid passport with an entry stamp into Vietnam or equivalent legal documents to enter Vietnam at the time of signing the housing transaction.

Notable points in Decree no. 95/2024/ND-CP

2. Detailed regulations on housing for resettlement

Decree 95 have one separate chapter (Chapter VI) to regulate the development, management and use of housing for resettlement purposes, specifically as follows:

Subjects eligible for housing arrangement to serve resettlement according to regulations in Clause 1, Article 35 include:

- Organizations, households and individuals with legal housing subject to clearance when the State reclaims land to implement projects for national defense and security purposes, for socio-economic development for national interests and public interests according to planning approved by competent authorities.
- Households and individuals whose residential land attached to their houses is recovered by the State and who must relocate but do not meet the conditions for compensation for residential land according to the provisions of the law on land and have no other place to live.
- Organizations, households and individuals who are owners of apartment buildings that must be demolished for renovation or reconstruction.
- Households and individuals who are renting public housing that are subject to state repossession according to regulations, except in cases of repossession due to housing appropriation.

Regarding resettlement housing, there are forms such as: Ordering to buy commercial housing to serve resettlement housing (Article 36); Buying commercial housing to serve resettlement housing (Article 37); Renting, hire-purchasing, buying housing in construction investment projects to serve resettlement (Article 38); Arranging social housing to serve resettlement (Article 39).



Notable points in Decree no. 95/2024/ND-CP

3. Regulations related to apartments

Decree 95 also has specific regulations governing apartment buildings, specifically as follows:

Apartment classification:

- According to the provisions of Article 82 of Decree 95, the classification of apartment buildings is carried out for each apartment building based on the request of the investor or apartment building owner and is carried out by socio-professional organizations with functions and expertise in the fields of construction, housing, and real estate business when the apartment building meets the criteria for classifying apartment buildings.
- According to Article 83 of Decree 95, apartment buildings are classified into 3 classes: 1, 2, 3, with each class determined according to 13 criteria specified in Appendix XII of Decree 95.

Cases of compulsory handover of maintenance funds for common property of apartment buildings as stipulated in Article 87 of Decree 95 can be listed as follows:

- The buyer, lessee of an apartment, or other area in an apartment building and the investor have paid the maintenance fee for the common property according to the provisions of the Housing Law into the same account of the investor before the effective date of the Housing Law (hereinafter referred to as the investor's common account), but after the expiration of the time limit specified in Clause 3, Article 154 of the Housing Law, the investor has not handed over this maintenance fee, the handover shall be enforced according to the provisions of Article 88 of Decree 95.
- The buyer, lessee of an apartment, or other area in an apartment building and the investor have paid the maintenance fee for the common property into a payment account that is not the same account (hereinafter referred to as the maintenance fee account), but after the expiration of the time limit specified in Clause 3, Article 154 of the Housing Law, the investor has not handed over this maintenance fee, the handover of the maintenance account shall be enforced according to the provisions of Article 89 of the Decree 95.
- If the investor has not paid or has not fully paid the maintenance fee for the common property of the apartment or other areas in the apartment building that the investor must pay into the investor's common account or the maintenance fee account, the handover of this maintenance fee shall be enforced according to the provisions of Article 90 and Article 91 of Decree 95.

In general, Decree 95 has detailed regulations on a number of issues related to documents proving the right to own a house in Vietnam as well as conditions for owning a house, housing for resettlement and apartment buildings. The above regulations help individuals and organizations with housing needs to prepare the necessary documents to carry out housing transaction procedures, and at the same time complete the provisions of the law on housing.

Regulation on land levies under Decree no. 103/2024/ND-CP

Decree No. 103/2024/ND-CP regulating land levies and land rent, issued on July 30, 2024, and effective from August 1, 2024 ("**Decree 103**"), marking an important step forward in land management and use in Vietnam. This Decree regulates in detail land levies and land rents, including issues related to calculation, collection, payment, exemption, and reduction, as well as handling of compensation, support, and resettlement, and debit land levies. This article will present the contents note in Decree 103 related to land levies.

1. Formula to calculate land levies when the State allocates land

Land levy upon land allocation by the State with land levy collection shall be calculated according to the formula in Clause 1, Article 6 of Decree 103 as follows:

Land levy = levied land area x Land price on which land levy is calculated.

Where:

The levied land area is determined as prescribed in Article 4 of Decree 103.

The land price on which the land levy is calculated is determined as prescribed in Article 5 of Decree.

Time for land levy calculation is determined as prescribed in clause 3 of Article 155 of the Land Law. In the case of resettlement land allocation, the time for land price determination and land levy calculation is the time when a competent authority issues a decision on approving the recompense, support and resettlement arrangement specified in clause 3 Article 11 of the Land Law.

In case a competent regulatory agency decides to allocate land according to the progress of an investment project, progress of land expropriation, recompense, support or resettlement, the land levy calculation and handling of budget for recompense, support and resettlement shall be done according to each land allocation decision.

In case where a multi-storey house affixed to land is allocated by the State to multiple users, the land levy shall be allocated to each user with the formula calculated according to Clause 3, Article 6 of the Decree 103.

In case of reselling social housing that is an individual house after a period of 5 years: In addition to the amounts payable according to the provisions of law, the seller must pay 50% of the land levy calculated according to the formula specified in Clause 1, Article 6, in which:

Levied land area is the land area recorded in the certificate of LURs and ownership of property affixed to land according to the provisions of point e clause 1 Article 89 of the Law on Housing.

Land price on which land levy is calculated is the land price in the Land price list.

The time for land levy calculation land use fees is implemented according to the provisions of Decree No. 100/2024/ND-CP of the Government detailing a number of articles of the Law on Housing on social housing development and management.

Regulation on land levies under Decree no. 103/2024/ND-CP

2. Cases of land use fee reduction

Decree 103 also stipulates cases of land use fee reduction in Article 19 as follows:

50% reduction in land use fees in the following cases:

- When a competent authority allocates land, repurposes land, or recognizes LURs for poor people, households, or individuals who are ethnic minorities in areas other than those specified in Point b, Clause 1, Article 18 of Decree 103.
- For the subjects specified in point a and point b clause 3 Article 124 of the Land Law that are working in border communes, islands or island districts without third-level administrative divisions in areas with disadvantaged socio-economic conditions.

30% reduction in land levy shall be given to the subjects specified in point a and point b clause 3 Article 124 of the Land Law that are working in border communes, islands or island districts without third-level administrative divisions in areas with disadvantaged socio-economic conditions.

The land levy on homestead land within homestead land allocation limits (including land allocation, land repurposing, issuance of certificate for the current land user) shall be reduced for people with meritorious services to the revolution that are eligible for land levy reduction according to the provisions of law on people with meritorious services.

The land levy reduction shall comply with investment laws and relevant laws in case of using land for execution of a cemetery infrastructure investment project serving conveyance of rights to use land affixed to infrastructure, or construction of an ashes storage facility according to the provisions of point a clause 1 Article 157 of the Land Law:

- 50% reduction in land levy shall be given in case the project is invested in an area with severely disadvantaged socio-economic conditions.
- 30% reduction in land levy shall be given in case the project is invested in an area with disadvantaged socio-economic conditions.
- 20% reduction in land levy shall be given in case the project is not developed in any of the areas specified in point a and point b of Article 19.

The list of areas with difficult socio-economic conditions and areas with extremely difficult socio-economic conditions shall comply with the provisions of law on investment.

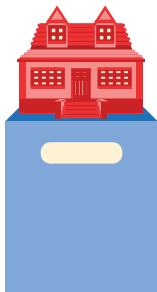
Regulation on land levies under Decree no. 103/2024/ND-CP

3. Exemption from land levies

Article 18 of Decree 103 stipulates cases of land levies exemption as follows:

The land levy shall be exempted when a competent authority allocates land, permits land repurposing or recognizes LURs (issues Certificate) within the homestead land limits to a land user in the following cases:

- The land user uses land for implementing housing and homestead land policies applicable to war invalids or sick soldiers who are unable to work, or families of martyrs who no longer have the main labor force.
- The poor, households or individuals are ethnic minorities living in areas with severely disadvantaged socio-economic conditions, borders, and islands.
- Homestead land for displaced people/refugees when the State expropriates land due to a threat to human life.
- Homestead land is allocated to households or individuals who have to relocate when the State expropriates land affixed to housing but are not eligible for homestead land-related recompense and have no other accommodation in the third-level administrative division to which the expropriated land belongs.
- The land area on which a cemetery infrastructure investment project serving the conveyance of rights to use land affixed to infrastructure or construction of an ashes storage facility is developed is arranged by the project developer to social policy beneficiaries according to the provisions of law on construction, management and use of cemeteries and cremation facilities.



Regulation on land levies under Decree no. 103/2024/ND-CP

The Government and the Prime Minister shall provide for exemption of land levy within homestead land allocation limit upon issuance of the first Certificate after converting non-homestead land into homestead land due to household division. Such exemption shall only be granted to households of ethnic minorities, poor households in divisions with extremely disadvantaged socio-economic conditions, ethnic and mountainous areas on the List of divisions with extremely disadvantaged socio-economic conditions.

The land levy on homestead land within homestead land allocation limits (including land allocation, land repurposing, issuance of certificate for the current land user) shall be exempted for households and people with meritorious services that are eligible for exemption from land levy according to the provisions of law on people with meritorious services.

Levies on land for execution of investment projects to build social housing, housing for the people's armed forces, renovation and rebuilding for apartment buildings in accordance with the provisions of housing law shall be exempted.

The land levy exemption in the other cases specified in clause 2 Article 157 of the Land Law shall be proposed by the Ministries, central authorities and the first-level People's Committees and submitted to the Ministry on Finance which will consolidate and propose it to the Government for issuing regulations after receiving the consent of the Standing Committee of National Assembly.

Decree No. 103/2024/ND-CP is not only a technical legal document but also an important step in the process of perfecting the land legal system in Vietnam. The provisions in the Decree have clarified the mechanism for calculating land use fees as well as cases of reduction and exemption of land use fees, contributing to protecting the interests of the State and ensuring legitimate rights for users land.

Jurisdiction to resolve international sales contract dispute at Vietnamese court

An international sales contract is a sales agreement involving foreign elements. Hence, determining the competent authority to resolve disputes in such contracts is more complex than domestic sales contract disputes. The jurisdiction to resolve these disputes is based on two primary sources of law: international treaties to which Vietnam is a signatory and national laws. Jurisdiction is determined in the following order: international treaties to which Vietnam is a signatory take precedence, and Vietnamese law applies if no international treaty is applicable.

1. Jurisdiction to resolve international sales contract disputes according to international treaties to which Vietnam is a signatory

According to international treaties to which Vietnam is a signatory, specifically the Mutual Legal and Judicial Assistance Treaty signed by Vietnam, the jurisdiction of Vietnamese courts to resolve international sales contract disputes can be determined based on several criteria:

Court of the place of contract conclusion or contract execution: If the dispute is about a contract that was concluded or is to be performed on the territory of the contracting party, the court of that party has the authority to resolve the dispute (Article 18 of the Treaty on Mutual Legal Assistance in Civil and Criminal Matters between the Socialist Republic of Vietnam and the People's Republic of China, effective in 1999).

Court of the Plaintiff's Permanent Residence or Headquartered: For disputes related to contracts, the court where the plaintiff permanently resides or has its headquartered has jurisdiction if there are objects of disputes or assets of the defendant located in that territory (Article 36 of the Treaty on Mutual Legal and Judicial Assistance in Civil and Criminal Matters between the Socialist Republic of Vietnam and the Russian Federation, effective in 2012).



Jurisdiction to resolve international sales contract dispute at Vietnamese court

Court of the Defendant's Permanent Residence, or Residence or Headquartered: For disputes related to contracts, the jurisdiction belongs to the court where the defendant permanently resides or has its headquarterd (Article 36 of Treaty on Mutual Legal and Judicial Assistance in Civil and Criminal Matters between the Socialist Republic of Vietnam and the Russian Federation, effective in 2012) or the court where the defendant resides or has its headquarterd (Clause 3 Article 28 of the Treaty on Mutual Legal Assistance in Civil and Criminal Matters Between The Socialist Republic of Vietnam and Democratic People's Republic of Korea, effective in 2004).

2. Jurisdiction to resolve international sales contract disputes according to Vietnamese Law

Under Vietnamese law, the jurisdiction of Vietnamese courts over international commercial disputes, including International sales contract disputes, is determined in two stages: (i) determining the general jurisdiction of Vietnamese courts over the dispute and (ii) determining the specific Vietnamese court with jurisdiction over the dispute.

2.1. Jurisdiction of Vietnamese courts over international sales contract disputes

According to Clause 1 Article 469 of the Civil Procedure Code 2015, Vietnamese courts have general jurisdiction to resolve International sales contract disputes in the following cases:

The defendant is an individual who resides, works or lives for a long term in Vietnam. Besides the common International sales contract contracts between businesses, it is also quite common for International sales contracts to be signed between individuals and businesses. Vietnamese courts will have jurisdiction over International sales contract disputes if the defendant is a foreigner or a Vietnamese who resides, works or lives for a long term in Vietnam in Vietnam.

The defendant is an agency or organization which is headquarterd in Vietnam or has a branch or a representative office in Vietnam, in cases related to the operation of the branch or representative office in Vietnam of such agency/organization. Disputes are under the jurisdiction of Vietnamese courts if the defendant is a business in either of these situations: (i) The business has its headquarters in Vietnam; or (ii) The foreign business has a branch or representative office in Vietnam.

The defendant has properties in Vietnam. Proceedings at the location of the defendant's properties facilitate the enforcement of judgments.

Cases related to International sales contracts which are established, changed or terminated in Vietnam, objects of which are properties in Vietnam or the contract is performed in Vietnam. This regulation can be interpreted in two ways: (i) Vietnamese courts have jurisdiction if all stages of the International sales contract's establishment, modification, or termination occur in Vietnam; or (ii) Vietnamese courts will have jurisdiction if any one of these stages occurs in Vietnam.

Jurisdiction to resolve international sales contract dispute at Vietnamese court

Cases related to International sales contracts which are established, changed, or terminated outside of Vietnam's territory but involve rights and obligations of Vietnamese agencies, organizations, and individuals or agencies, organizations, and individuals that are headquartered or reside in Vietnam.

Moreover, Point c Clause 1 Article 470 of the Civil Procedure Code 2015 recognizes the parties' agreement to choose a competent court. Specifically, Vietnamese courts have specific jurisdiction to resolve International sales contract disputes if the parties have agreed to choose to settle according to Vietnamese law or International treaties to which Vietnam is a signatory and the parties agreed to choose Vietnamese Courts.

2.2. Specific Vietnamese courts with jurisdiction over international sales contract disputes

For International sales contract disputes under the jurisdiction of Vietnamese courts, the specific court with jurisdiction is determined as follows:

According to Points b Clause 1 Article 35, Clause 3 Article 35, and Point a Clause 1, Article 37 of the Civil Procedure Code 2015, International sales contract disputes involving at least one party or properties in foreign countries or which must be judicially entrusted to representative agencies of Vietnam overseas or to foreign courts, competent agencies will be settled by the People's Courts of provinces.

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