

THE GOVERNMENT

DECREE No.79/2001/ND-CP OF NOVEMBER 1, 2001 AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE GOVERNMENT'S DECREE No.17/1999/ND-CP OF MARCH 29, 1999 ON THE PROCEDURES FOR EXCHANGE, TRANSFER, LEASE, SUBLEASE AND INHERITANCE OF THE LAND USE RIGHT AS WELL AS FOR MORTGAGE OF AND CAPITAL CONTRIBUTION WITH THE LAND USE RIGHT VALUE

THE GOVERNMENT

Pursuant to the Law on Organization of the Government of September 30, 1992;

Pursuant to the July 14, 1993 Land Law; the December 2, 1998 Law Amending and Supplementing a Number of Articles of the Land Law and the June 29, 2001 Law Amending and Supplementing a Number of Articles of the Land Law;

Pursuant to the Civil Code of October 28, 1995;

At the proposal of the General Director of the General Land Administration;

DECREES:

Article 1.- To amend and supplement a number of articles of the Government's Decree No.17/1999/ND-CP of March 29, 1999 on the procedures for exchange, transfer, lease, sublease and inheritance of the land use right as well as for mortgage of and capital contribution with the land use right value (hereinafter called Decree No.17/1999/ND-CP of March 29, 1999 for short) as follows:

1. Article 1 is amended and supplemented as follows:

"Article 1.- Scope of regulation

1. This Decree prescribes the procedures for exchange, transfer, lease, sublease and inheritance of the land use right as well as for mortgage of or guarantee and capital contribution with the land use right value by economic organizations, households

and individuals.

2. The provisions of this Decree shall not apply to cases of renting public-utility land from communes, wards or townships."

2. Article 2 is amended and supplemented as follows:

"Article 2.- Authorization to exercise the land user's rights

1. The person authorized by the head of a household to exercise the land user's rights must be the household member or a person other than the household member, who has full civil act capacity as prescribed by law.

2. The person authorized by an individual shall be the latter's representative in exercising the land user's rights.

3. The person authorized by the representative of an organization shall represent such organization in exercising the land user's rights.

4. The authorization for representatives to exercise the rights stipulated in Clauses 1, 2 and 3 of this Article must be made in writing.

For households and individuals, the written authorization must be authenticated by the People's Committees of the communes, wards or townships where they reside according to the provisions of Articles 48, 49, 50, 51, 52 and 53 of the Civil Code."

3. Article 3 is amended and supplemented as follows:

"Article 3.- Papers required for exercising the land user's rights

1. A land user, when exercising his/her/its rights, must have a land use right certificate or certificate of dwelling house ownership and residential land use right in urban centers (hereafter referred collectively to as land use right certificate), issued by the competent State agency. Such a land use right certificate must be the one issued by the former General Department for Field and Land Management or the current General Land Administration.

2. A current land user having one of the following papers should proceed with the prescribed procedures for being granted the land use right certificate and

entitled to exercise the rights provided for in this Decree:

a/ The land-assignment or land lease decision issued by the competent State agency according to the provisions of the land legislation;

b/ The papers issued by the State agencies competent to assign or lease land in the process of implementation of land policies in each period of the State of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of the Republic of Southern Vietnam and the State of the Socialist Republic of Vietnam, provided that the land assignee or land lessee has been using the assigned or leased land continually since then;

c/ The provisional land use right certificate issued by the competent State agency or his/her/its name registered in the Land administration book without any dispute;

d/ The papers granted by the competent agency(ies) of the former regime to the land user that has been using the land continually since then without any dispute.

e/ The papers on inheritance, presentation or donation of dwelling house(s) associated with land with certification by the commune/ward/township People's Committee, provided that the land is not disputed;

f/ The People's Court's judgment or ruling, which has taken legal effect, or the land-dispute settling decision of the competent State agency, which has taken legal effect;

g/ The paper(s) on the hand-over of a house of gratitude;

h/ The paper(s) on land transfer or dwelling-house sale/purchase accompanied with the transfer of the land use right, provided that the land is dispute-free as examined and confirmed by the commune/ward/township People's Committee and the examination result has been certified by the People's Committee of the rural or urban district, provincial town or city.

3. Households and individuals, when transferring or bequeathing the land use right-associated properties under their ownership, must have the land use right certificates or one of the papers defined at Point 2 of this Clause.

4. For economic organizations with the land use right already legally transferred from others or with

land assigned by the State with the collection of land use levy which does not originate from the State budget, they shall be entitled to exercise the rights provided for in this Decree and shall not have to compile dossiers for renting land from the State.

5. The State agencies competent to grant the land use right certificates shall have to grant such certificates to people having papers prescribed at Point 2 of this Clause within 30 days as from the date of receiving the complete and valid dossiers."

4. Article 6 is amended and supplemented as follows:

"Article 6.- Dossiers on land use right exchange

A dossier on land use right exchange shall include:

1. The land use right exchange contract;
2. The land use right certificate."

5. Article 7 is amended and supplemented as follows:

"Article 7.- Order of exchanging the land use right

1. The dossier on land use right exchange shall be submitted to the People's Committee of the commune, ward or township where the to-be-exchanged land is located.

2. Within 7 days after receiving a complete and valid dossier, the commune/ward/township People's Committee shall examine it and write certification in the land use right exchange contract for eligible cases, then make book entry thereof for monitoring the land-related changes; where the exchange is not allowed, the dossier shall be returned to the applicant, who shall be notified of the reasons therefor.

In case of land use right exchange in wards or townships, after writing certification in the land use right exchange contracts for eligible cases, the ward/township People's Committees shall send the land use right exchange dossiers to the district-level land administrations.

3. Within 5 days after receiving a complete and valid dossier, the district-level land administration shall examine it and write certification in the land use right exchange contract for eligible cases, then make book entry thereof for monitoring the land-related changes; where the exchange is not allowed,

the dossier shall be returned to the applicant, who shall be notified of the reasons therefor.

Within 3 days after receiving complete and valid dossiers from the district-level land administrations, the People's Committees of urban or rural districts, provincial towns or cities shall complete the certification in the land use right exchange contracts for cases eligible for land use right exchange.

4. After getting certification from the competent People's Committee, permitting the land use right exchange, the concerned parties shall pay the land use right transfer tax and registration fee according to the provisions of law.

5. The People's Committees of urban and rural districts, provincial towns and cities shall grant the land use right certificates for cases where the exchange has been completed."

6. Article 10 is amended and supplemented as follows:

"Article 10.- Dossier on land use right transfer

A dossier on land use right transfer shall include:

1. The land use right transfer contract;
2. The land use right certificate.

In cases where land users transfer properties under their ownership together with the land use right, they must have land use right certificates or one of the papers prescribed at Point 2, Clause 3, Article 1 of this Decree;

3. The land-lot diagram (the index map of the land-lot or the map made through field measurement);

4. The land rental-payment receipt (for the leased land)."

7. Article 13 is amended and supplemented as follows:

"Article 13.- Dossier on land use right transfer

A dossier on land use right transfer shall include:

1. The land use right transfer contract;
2. The land use right certificate;
3. The index map of the to be- transferred land lot;
4. The land use levy- or land rental-payment receipt

(for the assigned or leased land)".

8. Article 14 is amended and supplemented as follows:

"Article 14.- Order of land use right transfer

1. The dossier on land use right transfer shall be submitted to the district-level land administration of the locality where the land is located.

2. Within 10 days after receiving a complete and valid dossier, the district-level land administration shall examine it and write certification in the land use right transfer contract for eligible cases as prescribed by law; where the transfer is not allowed, the dossier shall be returned to the applicant, who shall be notified of the reasons therefor.

3. Within 5 days after receiving a complete and valid dossier submitted by the district-level land administration, the People's Committee of the urban or rural district, provincial town or city shall write certification in the land use right transfer contract.

4. After getting certification from the People's Committee of the urban or rural district, provincial town or city, permitting the transfer, the district-level land administration shall notify the concerned parties thereof so that the latter pay the land use right transfer tax and registration fee as prescribed by law.

5. After the concerned parties have paid the land use right transfer tax and registration fee, the People's Committee of the urban or rural district, provincial town or city shall grant the land use right certificate to the transferee being a household or individual or request the People's Committee of the province or centrally-run city to grant the land use right certificate to the transferee being an economic organization.

6. The land use right transferee shall have to register the right to use land at the People's Committee of the commune, ward or township where the land is located."

9. Article 17 is amended and supplemented as follows:

"Article 17.- Land-lease or sublease dossier

A land-lease or sublease dossier shall include:

1. The land-lease or sublease contract;
2. The land use right certificate;

3. The land-lot diagram (the index map of the land-lot or the map made through field measurement);

4. The land rental-payment receipt (for the leased land)."

10. Article 20 is amended and supplemented as follows:

"Article 20.- Land-lease or sublease dossier

A land-lease or sublease dossier shall include:

1. The land-lease or sublease contract;

2. The land use right certificate;

3. The index map of the land-lot;

4. The land use levy- or land rental-payment receipt (for the assigned or leased land)."

11. Article 24 is amended and supplemented as follows:

"Article 24.- Conditions for mortgage of the land use right value

1. Households and individuals using agricultural or silvicultural land, which is assigned by the State or acquired from the lawful land use right transfer may mortgage the land use right value and their own properties associated with that land at credit institutions licensed to operate in Vietnam in order to borrow capital for production and/or business activities.

2. For households and individuals using land leased by the State and having paid the land rentals for the whole lease term or for many years in advance, if the paid land-lease duration remains for at least 5 years or more, the land use right value that may be mortgaged shall include the damages (if any) arising upon the lease of land by the State, the land rental already paid to the State after subtracting the land rental amount payable for the period in which the land has been used, and the value of properties (if any) associated with that land.

In cases where the leased land use right value is mortgaged to borrow short-term capital and the paid land-lease duration remains for less than 5 years, the Vietnam State Bank's guidance must be complied with.

3. Households and individuals leased land by the State and paying land rentals annually may mortgage their own properties associated with that land at

credit institutions licensed to operate in Vietnam in order to borrow capital for production and business development.

4. Households and individuals using residential land may mortgage the land use right value and properties under their ownership associated with that land at economic organizations or credit institutions licensed to operate in Vietnam and with Vietnamese individuals inside the country."

12. Article 25 is amended and supplemented as follows:

"Article 25.- Dossier on mortgage of the land use right value

A dossier on mortgage of the land use right value shall include:

1. The contract for mortgage of the land use right value;

2. The land use right certificate;

3. The land-lot diagram (the index map of the land-lot or the map made through field measurement);

4. The land rental-payment receipt (for the leased land)."

13. To add Article 26a as follows:

"Article 26a.- Guarantee with the land use right value

1. Households and individuals using land and entitled to mortgage the land use right value as prescribed in Clause 11, Article 1 of this Decree shall also be entitled to the guarantee with the land use right value by credit institutions licensed to operate in Vietnam.

2. A dossier on guarantee with the land use right value shall include the contract for guarantee with the land use right value and papers prescribed at Points 2, 3 and 4, Clause 12, Article 1 of this Decree.

3. After the parties have signed the guarantee contract, the guaranteeing or guaranteed party shall have to make registration at the People's Committee of the commune, ward or township where the land is located. After completing the registration, the guaranteeing credit institution shall provide loan according to the agreement in the loan contract."

14. Article 27 is amended and supplemented as follows:

"Article 27.- Conditions for mortgage of the land use right value

Economic organizations may mortgage the land use right value at credit institutions licensed to operate in Vietnam when satisfying one of the following conditions:

1. The land is assigned by the State with the collection of land use levy;

2. The land is acquired through the lawful land use right transfer;

3. The land is leased by the State and the organization has paid the land rental for the whole lease term or for many years in advance and the paid land-lease duration remains for 5 years or more. The mortgaged land use right value in case of renting land shall include damages (if any) arising upon the lease of land by the State, the land rental already paid to the State after subtracting the land rental amount payable for the period in which the land has been used and the value of properties associated with that land.

In cases where the leased land use right value is mortgaged to borrow short-term capital and the paid lease duration remains for less than 5 years, the Vietnam State Bank's guidance must be complied with.

4. In cases where economic organizations are assigned land by the State without the collection of land use levy for agricultural production, silviculture, aquaculture or salt making or with the annual payment of land rentals, they may mortgage only their own properties associated with that land."

15. Article 28 is amended and supplemented as follows:

"Article 28.- Dossier on mortgage of the land use right value

A dossier on mortgage of the land use right value shall include:

1. The contract for mortgage of the land use right value;

2. The land use right certificate;

3. The index map of the land-lot;

4. The land rental-payment receipt (for the leased

land)."

16. To add Article 29a as follows:

"Article 29a.- Guarantee with the land use right value

1. Economic organizations entitled to mortgage the land use right value under the provisions of Clause 14, Article 1 of this Decree may also be guaranteed with the land use right value by credit institutions licensed to operate in Vietnam.

2. A dossier on guarantee with the land use right value shall include the contract for guarantee with the land use right value and papers prescribed at Points 2, 3 and 4, Clause 15, Article 1 of this Decree.

3. The to-be-guaranteed party shall submit the guarantee dossier to the provincial/municipal Land Administration or Land Administration and Housing Service (hereafter referred collectively to as provincial/municipal Land Administration) of the locality where the land exists.

4. Within 7 days after receiving complete and valid dossiers, the provincial/municipal Land Administration shall examine them and write certification in the guarantee contracts for eligible cases; for cases not eligible for guarantee, the dossiers shall be returned to concerned organizations which shall be notified of the reasons therefor.

5. After the parties have signed the guarantee contract, the guaranteed or the guarantor shall have to make registration at the provincial/municipal Land Administration of the locality where the land exists. When completing the registration, the guarantor- credit institution shall provide loan according to the agreement in the loan contract."

17.- Article 30 is amended and supplemented as follows:

"Article 30.- Mortgage and guarantee clearance

1. When the mortgagor or guaranteed party has fulfilled the debt-repayment obligation towards the mortgagee or the guarantor, the latter shall write off the mortgage or guarantee registration according to the contents of the mortgage or guarantee contract.

2. The mortgagor or guaranteed party shall send the mortgage or guarantee contract for the clearance of mortgage or guarantee registration according to the

following stipulations:

a/ If the mortgagor or guaranteed party is a household or an individual, the contract shall be sent to the commune/ward/township People's Committee, where the mortgage has been registered;

b/ If the mortgagor or guaranteed party is an economic organization, the contract shall be sent to the provincial/municipal Land Administration."

18. Article 31 is amended and supplemented as follows:

"Article 31.- Handling of the mortgaged or guaranteed land use right value for debt retrieval

1. When the mortgagor or the party guaranteed with the land use right value fails to fulfill or improperly fulfill the debt-repayment obligation under the mortgage or guarantee contract, the mortgaged or guaranteed land use right shall be handled according to the agreement in the contract; where it cannot be handled according to the agreement in the contract, the mortgagee or guarantor shall have the right to transfer the already mortgaged or guaranteed land use right to other person(s) for debt recovery (except for the mortgaged or guaranteed land of households or individual farmers) or request the competent State agency to auction or initiate a lawsuit as prescribed by law.

2. After completing the handling of the already mortgaged or guaranteed land use right for debt retrieval, the mortgagor or guaranteed party shall come to the State agency prescribed at Point 2, Clause 17, Article 1 of this Decree to write off the mortgage or guarantee registration.

3. The persons receiving land use right under the provisions of this Article shall be granted land use right certificates."

Article 2.- Organization of implementation

1. Application of the procedures for transfer of land use right and properties associated with land to a number of other cases:

a/ The procedures for sublease of land or mortgage of land use right and properties associated with land use right by overseas Vietnamese as well as foreign organizations and individuals renting land in Vietnam under the Law on Foreign Investment in Vietnam shall also comply with the provisions of Decree No.17/1999/ND-CP of March 29, 1999 and this Decree.

For joint-venture enterprises to which the Vietnamese parties contribute capital with the land use right value as prescribed in Article 92 of the Government's Decree No.24/2000/ND-CP of July 31, 2000 on the implementation of the Law on Foreign Investment in Vietnam, when mortgaging the land use right value and properties associated with that land, they shall comply with the following stipulations:

- There must be a mortgage dossier including the papers prescribed at Points 1, 2 and 3, Clause 15, Article 1 of this Decree and the contract for capital contribution with the land use right value;

- The order of mortgaging shall comply with the provisions of Article 29 of Decree No.17/1999/ND-CP of March 29, 1999 and Clauses 17 and 18, Article 1 of this Decree.

b/ The procedures for transfer and inheritance of, mortgage, guarantee and capital contribution with the land-associated properties under ownership of economic organizations, households or individuals shall also comply with the provisions of Decree No.17/1999/ND-CP of March 29, 1999 and this Decree.

2. To annul the provisions on the forms of land use right exchange contract, land use right transfer contract, land lease and sublease contracts, land use right mortgage contract as well as forms of declaration on capital contribution with the land use right value and declaration on the completion of capital contribution with the land use right value, issued together with Decree No.17/1999/ND-CP of March 29, 1999.

The General Land Administration shall promulgate new forms of contracts for the exercise of the land users' rights.

Article 3.- Implementation effect

This Decree takes effect 15 days after its signing. All the earlier regulations contrary to this Decree are hereby annulled.

The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, the presidents of the People's Committees of the provinces and centrally-run cities shall, within the ambit of their respective tasks and powers, have to organize the implementation of this Decree.

On behalf of the Government
Prime Minister
PHAN VAN KHAI