

DECREE No. 66/2001/ND-CP OF SEPTEMBER 28, 2001 AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF DECREE No. 04/2000/ND-CP OF FEBRUARY 11, 2000 ON THE ENFORCEMENT OF THE LAW AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE LAND LAW

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;

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

DECREES:

Article 1.- To amend and supplement a number of articles of Decree No. 04/2000/ND-CP of February 11, 2000 on the enforcement of the Law amending and supplementing a number of articles of the Land Law (hereinafter referred to as Decree No. 04/2000/ND-CP) as follows:

1. Article 1 is amended and supplemented as follows:

“Article 1.- Scope of regulation.

This Decree prescribes the enforcement of 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 (hereinafter referred collectively to as the Land Law).”

2. Article 2 is amended and supplemented as follows:

“Article 2.- The competence to assign and lease land.

The competence to assign and lease land is prescribed as follows:

1. The competence to assign and lease land for use for the purposes other than agricultural production, forestry or salt making shall be effected according to

the provisions in Articles 23 and 80 of the Land Law as follows:

a) The Government shall decide on the land assignment in the following cases:

- Land assignment with the collection of land use levy for creation of capital for the construction of infrastructure under projects;

- Land assignment for use for defense and/or security purposes.

b) The People's Committees of the provinces and centrally-run cities shall decide on the assignment and lease of land to the following subjects:

- Organizations using land;

- Households and individuals using land in the inlying areas of cities and towns;

- Foreign diplomatic missions, consulates, and other representations with diplomatic functions in Vietnam; representations of United Nations organizations; inter-governmental agencies and organizations as well as their representations in Vietnam;

- Foreign organizations and individuals, and overseas Vietnamese that make investment in Vietnam.

c) The People's Committees of the rural districts, provincial capitals, or provincial towns shall decide on the assignment and lease of land to household and individuals, except for cases defined at Point b of this Clause.

2. The competence to assign and lease land for use for the purposes of agricultural production, forestry or salt making shall be effected according to the provisions in Article 24 of the Land Law as follows:

a) The People's Committees of the provinces and centrally-run cities shall decide on the assignment and lease of land to economic organizations using land;

b) The People's Committees of the rural districts, urban districts, provincial capitals or towns shall decide on the assignment and lease of land to households and individuals;

c) The People's Committees of communes, wards and district towns may lease land belonging to public land funds of such communes, wards and district towns.

3. In cases where the land-using organizations, households and individuals have been assigned or leased land before October 1, 2001 under decisions of

competent State agencies, which are subject to adjustment or supplementation, the competence to make adjustment and/or supplementation of the decisions on land assignment or land lease, if any, shall comply with the competence to assign and lease land prescribed in Clauses 1 and 2 of this Article."

3. To supplement the following Article 2a:

"Article 2a.- The competence to approve the land location and acreage for investment projects not financed with the State budget capital, defined in Article 19 of the Land Law

The agencies competent to approve the land location and acreage for investment projects not financed with the State budget capital, which shall serve as basis for deciding the land assignment and/or land lease shall be the State bodies competent to assign and lease land defined in Clause 2 of this Article."

4. Clauses 3 and 4 of Article 3 are amended and supplemented as follows:

"3. The People's Committees of the provinces and centrally-run cities shall grant the land use right certificates to the following subjects:

- a) Domestic organizations using land;
- b) Churches, pagodas, and religious shrines;
- c) Foreign organizations and individuals using land in Vietnam.

4. The People's Committees of the rural districts, urban districts, provincial capitals or towns shall grant the land use right certificates to the following subjects:

- a) Land-using households and individuals;
- b) Population communities using land with such works thereon as communal houses, temples, shrines, small pagodas, worship halls, ancestral worship houses or other works in service of the communities' public interests;

- c) Overseas Vietnamese allowed to buy dwelling houses associated with the right to use residential land in Vietnam."

5. Point c, Clause 2 of Article 5 is supplemented as follows:

"c) In cases where the economic organizations, households or individuals are transferred the right to use agricultural, aquacultural, forestial land and/or salt-making land, together with the change of the land

use purposes as permitted by competent State bodies, the land use duration shall be calculated according to the duration of the projects already ratified or approved by competent State agencies, but must not exceed 50 years. Particularly for households and individuals that are transferred the right to use agricultural land and/or forestial land and permitted by competent State bodies to change the use purposes of such land for residential land or special-use land, the land use duration shall be stable and long-term.

For the agricultural land acreage in excess of the limits prescribed for households as result of the land use right transfer defined in Article 22 of the Land Law, the land lease duration shall comply with the land lease contracts, but shall not exceed 20 years, for agricultural land used for growing annual crops and aquacultural land; and 50 years, for agricultural land used for growing perennial trees."

6. Article 11 is amended and supplemented as follows:

"Article 11.- Management and use of unreclaimed land and unused land.

For communes, wards and/or district towns where exist dug-soil tubs, dead-end rivers, canals, ditches, dikes, dams, traffic roads, drying yards, warehouses, workshops, cattle farms or other special-use land, which are left unused, riverside or seaside alluvium soils, unreclaimed land and/or unused land, the commune-level People's Committees shall have to manage such land areas in order to put them to use according to plannings and plans on land use.

The competence to assign and lease such land for production and/or business purposes or for building dwelling houses shall comply with the provisions in Clause 2 of this Article; the land use duration shall be determined according to investment projects, or the application for land assignment and/or lease".

7. Article 12 is amended and supplemented as follows:

"Article 12.- Rights of organizations assigned land by the State without the collection of land use levy.

1. Organizations assigned land by the State without the collection of land use levy shall enjoy the rights defined in Clauses 1, 2, 4, 5, 6 and 8, Article 73 of the Land Law. For economic organizations using land defined at Point d, Clause 1, Article 7 of the

Government's Decree No. 04/2000/ND-CP of February 11, 2000, they shall also enjoy the right to mortgage and guarantee their own properties associated with the land use right to borrow capital at credit institutions licensed to operate in Vietnam.

2. For State enterprises using agricultural, forestial land, aquaculture land and/or salt-making land assigned by the State before January 1, 1999, apart from the rights defined in Clause 1 of this Article, they shall also enjoy the right to mortgage their own properties associated with the right to use such land at credit institutions licensed to operate in Vietnam to borrow capital for their production and/or business activities; contribute capital with the land use right value for production and/or business cooperation with domestic and/or foreign organizations and/or individuals for the continued use for the purposes of agricultural production, forestry, aquaculture or salt-making, as well as the expansion of processing industries and services in order to develop production."

8. Article 14 is amended and supplemented as follows:

"Article 14.- Rights of households and individuals assigned land by the State without the collection of land use levy.

Households and individuals assigned land by the State without the collection of land use levy shall enjoy the rights defined in Clauses 1, 2, 4, 5, 6 and 8, Article 73 of the Land Law, may exchange, transfer, lease, sublease, bequeath, mortgage and guarantee the land use right value according to the provisions of land legislation; in addition, they shall also have the right to contribute capital with the land use right value during the land assignment term for production and/or business cooperation with domestic organizations and individuals; in cases where they contribute capital with the land use right value for production and/or business cooperation with domestic organizations and/or individuals, thus changing the land use purposes, they must be permitted by the competent State bodies prescribed in Article 24a of the Land Law and pay charges for changing the land use purposes, but shall not have to switch to rent such land; if they fail to pay such charges, they shall have to rent such land."

9. Clause 3 of Article 16 is amended and supplemented as follows:

"3. To mortgage or guarantee their land use right

value and properties affixed to such land at credit institutions licensed to operate in Vietnam".

10. Points c and f, Clause 1 of Article 23 are amended and supplemented as follows:

"c) To propose the Government to assign land for construction of infrastructure works and implementation of the investment projects that use land fund to create capital for the construction of infrastructure;

f) To guide the elaboration of investment projects on the land plot returned to the investors according to the approved planning and propose the Government to assign land to the investors."

11. Article 26 is amended and supplemented as follows:

"Article 26.- Households and individuals that change the purposes of using agricultural, forestial, aquacultural or salt-making land.

Households and individuals, that use agricultural, forestial, aquacultural or salt-making land and are permitted by the competent State agencies defined in Article 24a of the Land Law to change the land use purposes shall not have to change to rent such land but pay charges for the change of land use purposes; if they fail to pay such charges, they shall have to rent such land.

The levels of charges for changing the use purposes from agricultural, forestial, aquacultural or salt-making land into special-use land shall comply with the provisions at Points a and b, Clause 1, Article 6 of the Government's Decree No. 38/2000/ND-CP of August 23, 2000 on the collection of land use levy for the entire land area entitled to the change of use purposes."

12. To amend and supplement Clause 2 and supplement Clause 4 of Article 27 as follows:

"Article 27.- Economic organizations that are transferred the land use right and change the land use purpose.

2. For economic organizations that are transferred the right to use agricultural, forestial, aquacultural or salt-making land with the money paid for such transfer having not originated from the State budget, when being permitted by the competent State agencies to change the use of land for special purpose, they shall not have to switch to rent such land but to pay charges for changing the land use purposes as

prescribed by law; if they fail to pay such charges, they shall have to rent such land. The land use duration shall be calculated according to the duration of the investment projects already ratified by competent State agencies, but shall not exceed 50 years.

4. Economic organizations, that are assigned land by the State without the collection of land use levy for use for the purposes of agricultural production, forestry, aquaculture or salt making, shall, when being permitted by the provincial-level People's Committees to change the land use purposes, have to comply with the following provisions:

a) For cases of building dwelling houses for sale or lease, the land use levy must be paid according to the provisions of laws;

b) For cases of conducting production and/or business activities, they shall have to rent such land and the land rent duration shall comply with the duration of the investment projects ratified by the competent State agencies, but must not exceed 50 years, except for cases where the land is used for public purposes as defined in Article 4 of Decree No. 04/2000/ND-CP."

13. Point a, Clause 3 of Article 30 is amended and supplemented as follows:

"a) To mortgage or guarantee the value of the right to use the subleased land and their own properties affixed to such subleased land at credit institutions licensed to operate in Vietnam to borrow capital for their production and/or business according to the provisions of laws."

14. The phrase "to compensate for damage" in Articles 3 and 20, and the phrase "to compensate" in Article 19 of Decree No. 04/2000/ND-CP are replaced with the word "compensation."

To add the phrase "the communes' postal-cultural points" to the phrase "cultural works" in Clause 2, Article 4 of Decree No. 04/2000/ND-CP.

Article 2.- Responsibilities of the General Land Administration

The General Land Administration shall provide guidance on dossiers and procedures for land assignment and lease; the procedures for switching the use purposes of agricultural land, from growing wet rice to aquaculture, from growing perennial trees to annual crops.

Article 3.- Responsibility of the ministries, ministerial-level agencies, agencies attached to the Government, People's Committees of various levels and land users

The ministers, the heads of ministerial-level agencies, the heads of agencies attached to the Government, the presidents of the People's Committees of various levels and the land users shall have implement this Decree.

Article 4.- Implementation effect

This Decree takes effect as from October 1, 2001. The previous regulations contrary to this Decree shall all be annulled.

On behalf of the Government
Prime Minister
PHAN VAN KHAI