

THE GOVERNMENT

No. 121/2010/ND-CP

SOCIALIST REPUBLIC OF VIET NAM

Independence - Freedom – Happiness

Hanoi, December 30, 2010

DECREE

AMENDING AND SUPPLEMENTING A NUMBER OF ARTICLES OF THE
GOVERNMENT'S DECREE NO. 142/ 2004/ND-CP OF NOVEMBER 14, 2005, ON THE
COLLECTION OF LAND RENTS AND WATER SURFACE RENTS

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;
Pursuant to the November 26, 2003 Land Law;
Pursuant to the November 29, 2005 Investment Law;
Pursuant to the November 29, 2006 Law on Tax Administration;
At the proposal of the Minister of Finance,

DECREES:

Article 1. Scope of amendment and supplementation

This Decree provides for the amendments and supplementations to a number of articles of the Government's Decree No. 142/2005/ND-CP of November 14, 2005, on the collection of land rents and water surface rents (below referred to as Decree No. 142/2005/ND-CP).

Article 2. To amend and supplement a number of articles of Decree No. 142/2005/ND-CP as follows:

1. To amend Article 1 as follows:

"**Article 1.** Scope of regulation

This Decree provides for the collection of land rents and water surface rents when:

1. The State leases land, including surface land and underground sections of terrestrial construction works, under the Land Law.
2. The State leases underground land for the construction of underground works for commercial purposes under approved plans without using surface land.
3. The form of land allocation by the State is changed to the form of land lease.
4. The State leases water surface."

2. To amend Points a and c, Clause 2, Article 2 as follows:

"a/ Overseas Vietnamese and foreign organizations and individuals (including joint-venture economic organizations between domestic and foreign investors) that rent land for the implementation of investment projects on agricultural production, forestry, aquaculture or salt making; for use as ground for construction of production or business establishments; construction of public facilities for business purposes; construction of infrastructures for transfer or lease; for mining activities, production of building materials, making of pottery articles; construction of houses for sale or lease;

c/ Economic organizations, households and individuals; overseas Vietnamese and foreign organizations and individuals (including joint-venture economic organizations between domestic and foreign investors) that rent water surface or sea surface not belonging to the land categories specified in Article 13 of the Land Law for implementation of investment projects."

3. To add the following Article 5a: "Article 5a. Land rent rates

1. For cases of land lease with rent rates being paid annually, the annual rent rate is equal to 1.5% of the land price based on the use purpose of the rented land prescribed by People's Committees of provinces or centrally run cities (below referred to as provincial-level People's Committees) under the Government's regulations on methods of determining prices and price brackets for land of different categories.

In case the land price prescribed by a provincial-level People's Committee at the time of land lease does not match the land use right transfer price in the market under normal conditions, the provincial-level People's Committee shall base itself on the actual market price to decide on a specific price to suit reality.

2. For land in urban centers, trade or service centers, traffic hubs, or populous areas, which may yield special profits or be used as ground for production, business or service activities, provincial-level People's Committees shall base themselves on the local situation to decide on a land rent rate which must not exceed 2 times the land rent rate specified in Clause 1 of this Article.

3. For land in deep-lying, remote, highland or island areas, areas facing socio-economic difficulties, and areas facing exceptional socio-economic difficulties; land used for agricultural production, forestry, aquaculture or salt making; land used as ground for production or business activities under projects on domains eligible for investment promotion or special investment promotion, provincial-level People's Committees shall base themselves on the local situation to decide on a minimum land rent rate which, however, must be at least half of the land rent rate specified in Clause 1 of this Article.

4. In case of land lease by the State with lump-sum payment of land rents for the whole lease duration, the payable land rent amount is equal to the payable land use levy amount for land allocation with the collection of land use levy for land with the same use purpose and land use duration.

In case the operation duration of a project, which is eligible for land lease with lump-sum payment of land rents as specified at this Point, stated in its investment certificate (investment license) is different from the land lease duration, the project's operation duration shall be adjusted to suit the lease duration.

5. Land rent rates in case of auction of rented-land use rights or bidding for projects involving the use of rented land shall be the winning bids. Specifically as follows;

a/ In case of auction of rented-land use rights or bidding for projects involving the use of rented land with lump-sum payment of land rents for the whole lease duration, the land rent rate is the winning bid. In this case, the payable land rent amount is equal to the winning bid multiplied by (x) the rented land area multiplied by (x) the lease duration (equal to the payable land use levy in cases of auction for land allocation with the collection of land use levy);

b/ In case of auction of rented-land use rights or bidding for projects involving the use of rented land with annual payment of land rents, the land rent rate is the winning bid which shall be kept unchanged for 10 years. Upon the expiration of this period, the land rent rate shall be adjusted as for case of land lease not through auction by the State with annual payment but the adjustment level for the subsequent 10-year period must not exceed 30% of the land rent rate applicable in the preceding period.

6. For architectural works built on water surface belonging to any of the land categories specified in Article 13 of the Land Law, the land rent rate complies with Clauses 1 thru 5 of this Article.

7. The rent rate of land for construction of underground works (other than underground sections of terrestrial construction works) is determined to be up to 30% of the land rent, rate for surface area with the same use purpose. The specific rent rate shall be decided by provincial-level People's Committees in conformity with reality in their localities."

4. To amend Clause 1, Article 6 as follows:

"1. Based on land prices and rent rates specified in Article 5a of this Article, provincial-level People's Committees shall provide for a rent rate (at a percentage of land prices according to use purposes of rented land) for each category of land, each grade of urban center, commune or region, type of street, land position or grade."

5. To amend Clause 3, Article 7 as follows:

"3. In case a person who is leased land by the State has paid in advance compensations and supports for resettlement and funds for the organization of ground clearance work under approved plans, the paid amount will be subtracted from the payable land rent amount under approved plans, but the subtraction level must not exceed the payable land rent amount.

The remainder of compensations and supports for resettlement and funds for organization of the ground clearance work under approved plans which is not yet cleared against the payable land rent amount (if any) will be calculated as the project's investment capital."

6. To amend Clause 1, Article 8 as follows:

"1. The land rent rate applicable to each project shall be kept unchanged for 5 years. Upon the expiration of this period, if the land price prescribed and publicized by provincial-level People's Committees fluctuates by 20% at most over the land price used for calculation of land rent rates applicable at the previous time of determining the land rent rate, provincial-level Finance Departments (in case of leasing land to economic organizations, overseas Vietnamese or foreign organizations or individuals) or district-level People's Committees (in case of leasing land to households and individuals) shall decide on the land rent rate to be applied in the subsequent period.

In case the land price prescribed and publicized by provincial-level People's Committees fluctuates by 20% or more over the land price used for calculation of land rent rates applicable at the previous time of determining land rent rates, provincial-level Finance Departments shall re-determine land prices for submission to provincial-level People's Committees for the later to make decisions on adjustment of land prices to serve as a basis for provincial-level Finance Departments (in case of leasing land to economic organizations, overseas Vietnamese or foreign organizations or individuals) or district-level People's Committees (in case of leasing land to

households and individuals) shall decide on the land rent rate applicable in the subsequent (5-year) period."

7. To amend Clause 2, Article 9 as follows:

"2. For projects which had rented land or water surface before January 1, 2006, with land rents or water surface rents being paid annually but land rent rates have not yet been adjusted, land rent rates shall be re-determined as follows:

a/ In case the investment certificate (investment license), land lease decision or land lease contract granted (signed) by a competent state agency of an investment project provides for a land rent or water surface rent rate and principles for adjustment of the rent rate, this project may continue applying the adjustment principles stated in its investment certificate (investment license), land lease decision or land lease contract;

b/ For investment projects not specified at Point a, Clause 2 of this Article, land rent rates shall be adjusted under Articles 5a, 5 and 6 of this Decree."

8. To add the following Article 12a:

"Article 12a. Determination of financial obligations of investment projects using land which are currently leased by the State to economic organizations with annual payment of land rents

1. In case economic organizations which are currently leased land by the State with annual payment of land rents are permitted by competent authorities to invest in new real estate projects (for building houses or houses for lease) or projects to build trade or service centers on land leased by the State:

a/ If they implement such projects by themselves, they must shift from the form of land lease with annual payment of land rents to land allocation with the collection of land use levy;

b/ If they are permitted by competent state agencies to enter into joint ventures or associate with other economic organizations (to form a new legal entity), the new legal entity shall be allocated land with the collection of land use levy (in case the new legal entity is entitled to land allocation with the collection of land use levy) or shift to rent land with lump-sum payment of land rents for the whole lease duration (in case the new legal entity is entitled to land rent with lump-sum payment of land rent for the whole lease duration).

2. In case competent state agencies recover land which is currently leased to an economic organization for allocation to another economic organization for investment in new real estate projects (for building houses or houses for lease) or projects to build trade or service centers, land shall be allocated through auction of land use rights or land lease with lump-sum payment of land rents for the whole lease duration.

3. Land use levy or land rent amounts to be paid in lump-sum for the whole lease duration in the cases specified in Clause 1 and cases in which land is allocated or leased not through auctions specified in Clause 2 of this Article shall be determined under the Government's regulations. Land prices used for calculation of land use levy and land rent amounts to be paid in lump-sum for the whole lease duration shall be decided by provincial-level People's Committees in conformity with the actual land prices in the market under normal conditions."

9. To amend Clause 2, Article 13 as follows:

"2. In case land or water surface lessees are eligible for both land or water surface rent exemption and reduction, they shall be exempt from land or water surface rent. Upon the expiration of the land or water surface rent exemption duration, they may enjoy land rent or water surface rent reduction for the remaining lease duration according to regulations. Those who are eligible for different reduction levels of land or water surface rents shall enjoy the highest reduction level."

10. To amend Clause 4. Article 14 as follows:

"4. From the date the project is completed and commissioned, specifically as follows:

a/ Three (3) years for projects in domains on the list of those eligible for investment promotion; at new production or business establishments of economic organizations which are relocated under plans or due to environment pollution;

b/ Seven (7) years for investment projects in geographical areas facing socio-economic difficulties;

c/ Eleven (11) years for investment projects in geographical areas facing exceptional socio-economic difficulties: projects in domains on the list of those eligible for special investment promotion; and projects in domains on the list of those eligible for investment promotion which are implemented in geographical areas facing socio-economic difficulties;

d/ Fifteen (15) years for projects in domains on the list of those eligible for investment promotion which are implemented in geographical areas facing exceptional socio-economic difficulties; and projects in domains on the list of those eligible for special investment promotion which are implemented in geographical areas facing socio-economic difficulties.

Lists of domains eligible for investment promotion, domains eligible for special investment promotion, geographical areas facing socio-economic difficulties, and geographical areas facing exceptional socio-economic difficulties are promulgated by the Government."

11. To amend Clauses 1 and 2, Article 18 as follows:

"1. For case in which land rents or water surface rents is paid on an annual basis:

The amount of compensations and supports for resettlement and funds for organization of the ground clearance work already paid in advance (if any) under approved plans and permitted to be cleared against the payable land rent amount shall be converted into the number of years or months for which land rent must be paid at the land rent rate applicable at the time of determining the land rent amount for the first period and determined as the number of years or months for which annual land rents have been fully paid. For the remaining land lease duration, the land rent amount to be paid annually shall be determined as follows:

a/ For normal cases

$$\begin{array}{r} \text{Amount of land or} \\ \text{water surface} \\ \text{rents to be paid} \\ \text{each year} \end{array} = \begin{array}{r} \text{Land or} \\ \text{water} \\ \text{surface} \\ \text{rent rate} \end{array} \times \begin{array}{r} \text{Area of} \\ \text{rented land} \\ \text{or water} \\ \text{surface} \end{array} - \begin{array}{r} \text{Amount of land or water} \\ \text{surface rents to be} \\ \text{reduced under Clause 1,} \\ \text{Article 15 of this Decree (if} \\ \text{any)} \end{array}$$

b/ For case eligible for reduction of land or water surface rents as prescribed in Clause 2 or 3, Article 15 of this Decree

$$\begin{array}{l} \text{Amount of land} \\ \text{or water surface} \\ \text{rents to be paid} \\ \text{each year} \end{array} = \begin{array}{l} \text{Payable amount of land or} \\ \text{water surface rents determined} \\ \text{under Point a, Clause 1 of this} \\ \text{Article} \end{array} - \begin{array}{l} \text{Amount of land or water} \\ \text{surface rents to be reduced} \\ \text{under Clause 2 or 3,} \\ \text{Article 15 of this Decree} \\ \text{(if any)} \end{array}$$

Notes :

- Amounts of compensations and supports for resettlement and funds for the organization of ground clearance work (if any) shall be converted into the number of years or months and counted in the duration of land rent payment which, however, must not be longer than the land rent payment duration.

- A year of land or water surface rent payment shall be the calendar year which starts from January 1 through December 31. In case the first or last year of land or water surface lease is not composed of full 12 months, the rent amount of the first or last year shall be calculated according to the number of months.

2. For case in which land rents are paid in lump-sum for the whole land or water surface lease duration:

$$\begin{array}{l} \text{Payable} \\ \text{land rent} \\ \text{amount} \end{array} = \begin{array}{l} \text{Price of land} \\ \text{allocation} \\ \text{with the} \\ \text{collection of} \\ \text{land use levy} \\ \text{for land of} \\ \text{the same} \\ \text{category with} \\ \text{the same} \\ \text{duration} \end{array} \times \begin{array}{l} \text{Rented} \\ \text{land area} \end{array} - \begin{array}{l} \text{Land rent} \\ \text{amount} \\ \text{to be} \\ \text{reduced} \\ \text{under} \\ \text{Clause 1,} \\ \text{Article} \\ \text{15 of this} \\ \text{Decree} \\ \text{(if any)} \end{array} - \begin{array}{l} \text{Amount of} \\ \text{compensations and} \\ \text{supports for} \\ \text{resettlement and} \\ \text{funds for the} \\ \text{organization of} \\ \text{ground clearance} \\ \text{work under} \\ \text{approved plans} \\ \text{which may be} \\ \text{cleared against the} \\ \text{payable land rent} \\ \text{amount (if any)} \end{array}$$

$$\begin{array}{l} \text{Payable} \\ \text{Water} \\ \text{surface} \\ \text{rent} \\ \text{amount} \end{array} = \begin{array}{l} \text{Number of} \\ \text{years for which} \\ \text{water surface} \\ \text{rents must be} \\ \text{paid} \end{array} \times \begin{array}{l} \text{Water surface} \\ \text{rent rate} \end{array} \times \begin{array}{l} \text{Rented water} \\ \text{surface area} \end{array} - \begin{array}{l} \text{Amount of} \\ \text{water surface} \\ \text{rents to be} \\ \text{reduced under} \\ \text{Clause 1.} \\ \text{Article 15 of} \\ \text{this Decree (if} \\ \text{any)} \end{array}$$

Notes:

- The amount of compensations and supports for resettlement and funds for the organization of ground clearance work (if any) may be subtracted from the payable land rent amount to be paid in lump-sum but the subtraction level must not exceed the payable land rent amount.

- The number of years for which land or water surface rents must be paid is equal the total number of years of land water surface lease minus the number of years eligible for land or water surface rent exemption (if any)."

12. To amend Clause 1, Article 22 as follows:

"1. Land and water surface lessees who delay the remittance of land or water surface rents into the state budget shall be fined; the imposition of fines for late payment of land and water surface rents shall comply with the Law on Tax Administration and guiding documents."

Article 3. Implementation provisions

1. This Decree takes effect on March 1, 2011.

2. Handling of some matters at the effective time of this Decree:

a/ In case investors paid in advance compensations and supports for resettlement and funds for the organization of ground clearance work under approved plans according to policies on compensation, support and resettlement upon land recovery by the State applicable before October 1, 2009, the compensation and support amount shall be subtracted from the payable land rent, but the subtraction level must not exceed the payable land rent.

In case investors paid in advance compensations and supports for resettlement and funds for the organization of ground clearance work under approved plans according to the Government's Decree No. 69/2009/ND-CP of August 13, 2009, the advanced amount shall be subtracted from the payable land rent under Article 15 of the Government's Decree No. 69/ 2009/ND-CP of August 13, 2009.

b/ For case in which a land lease contract has been signed and a land rent rate to be stably applied in a period (5 years) has been determined, this land rent rate shall only be adjusted under this Decree upon the expiration of this period.

2. The following provisions are annulled:

Article 12 of the Government's Decree No. 69/2009/ND-CP of August 13, 2009, additionally providing land use plans, land prices, land recovery, compensation, supports and resettlement.

Article 4. Organization of implementation

The Ministry of Finance shall guide the implementation of this Decree.

Ministers, heads of ministerial-level agencies, heads of government-attached agencies and chairpersons of provincial-level People's Committees shall implement this Decree.

**ON BEHALF OF THE GOVERNMENT
PRIME MINISTER**

Nguyen Tan Dung