

## Content

Title : Operation Directions for Establishment of Superficies on National Non-public Use Land **Ch**

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2. Revision by Decree No. 10050001741 by the National Property Administration, MOF on May 18, 2011  
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Content : Article 1

In order to facilitate the development and utilization of the national non-public land for processing the setting up of superficies, these Operation Directions (referred as "the Directions" hereinafter) are hereby set.

Article 2

The authority in charge of the Directions is the National Property Administration, Ministry of Finance; the implementing authority is the District Branch Office of the National Property Administration.

Article 3

Unless otherwise stipulated by law, the setting up of superficies on national non-public land may be processed according to the following:

1. The implementing authority holds open auction.
2. The authority in charge or implementing authority cooperates in line with national policies to hold open auctions for designated industries.
3. That for the necessity of policy of the central target business supervisory agency, promotion of business and public interest, and which are considered necessary to establish a project to provide superficies to certain subjects, is to be reported by the authority in charge for

approval by the Ministry of Finance before implementation.

#### Article 4

The setting of the duration of the superficies, royalty base price, or royalty and rent of the project providing superficies setting must be proposed to the review team of setting up superficies on national non-public land ("review team" hereinafter) for examination.

The review team shall consist of representatives from related agencies, and scholars and experts invited by the authority in charge; the method of review is to be set by the authority in charge.

#### Article 5

The review team shall examine the setting of the duration of the superficies, royalty base price, or royalty and rent of the project providing superficies setting according to the following rules:

1. Duration: Maximum of 70 years.

2. Royalty base price, or royalty and rent of the project providing superficies setting:

(1) 30% to 70% of the market price of the land.

(2) Where open auctions are held for designated industries or where the establishment of superficies provided under the project is used by non-profit undertakings on public welfare or charitable relief, etc. held by social, cultural, educational, charitable, or relief organizations, royalties are calculated at 20% to 70% of the market value of the land.

3. Rent:

(1) Calculated at 1% to 5% interest per annum of the declared land value, divided into two parts of adjustment with the land application price or no adjustment with the declared land value.

(2) The interest rate per annum of that which is adjusted with the declared land value must not be lower than the tax rate of the land tax at the time of the review.

The market price of the land as given in the two previous subparagraphs are to be reviewed and evaluated according to the calculation method for national property.

The royalties and land rent for the establishment of the right of superficies by open auction for designated industries are calculated and charged according to the assessment results under Article 10-1; the royalties and land rent for the establishment of the right of superficies provided under the project are calculated and charged according to the assessment results under Paragraph 1. Where there are separate expense collecting standards or favorable rental provisions in laws under the supervision of the central target business supervisory agency, those standards or provisions shall prevail.

If, after signing the contract for the establishment of the right of superficies, the person of superficies obtains the approval of the relevant business and establishment documents from the target business supervisory agency, she/he may proceed in accordance with the provisions in the preceding paragraph from the date of obtaining the approval.

In the case that the rent as given in Subparagraph 3 of Paragraph 1, Paragraph 3, or the preceding paragraph is lower than that of the land tax, rent will be collected at the price of the land tax.

#### Article 6

The implementing authority holding auction on superficies setting shall

proceed according to the following procedure:

1. Select the object of the setting up of superficies.
2. Plan for the duration of the superficies, the percentage of the royalty to the market price, and the per annum interest rate for the object in the auction and report to the authority in charge to submit to the review team for evaluating the conditions of the auction.
3. Announce publicly the auction.
4. Sign the contract for the setting up of superficies.

When the object of the auction has been approved by the Executive Yuan, Ministry of Finance, or authority in charge to be processed by auction for setting superficies, or the area reaches 5 thousand square meters and the estimated royalty base price reaches 1 billion New Taiwan Dollars, the implementing authority may commission a professional group or institution to provide a recommendation proposal on setting the duration of the object, the percentage of the royalty to the market price, and the calculation basis for the collection of the rent and set the format for the contract of setting superficies.

#### Article 7

When the implementing authority sponsors auction for the setting up of superficies, the public announcement period must be no less than one month. When posting the public announcement, the format for the contract for the setting up of superficies and commissioned management contract must be included in the attachment of the bidding information.

#### Article 8

The implementing authority, after completion of opening the bid, must notify the successful bidder to pay the royalty in full within 90 days of the second day of winning the bid and accompany the successful bidder to sign and notarize the contract for setting superficies and apply for registration of setting superficies.

#### Article 9

For the implementing authority processing auction of setting superficies, if the successful bidder needs to apply for a mortgage to a financial institution with the superficies, the successful bidder must apply to the implementing authority within 7 days of winning the bid and pay 30% of the royalty of the winning bid amount, sign and notarize the contract for setting superficies. The rest of the royalty, whether the loan is approved or not, must be paid in full within 90 days of the second day of winning the bid.

The aforementioned mortgage should be set according to the provisions prescribed in Article 21.

#### Article 10 (Deleted)

#### Article 10-1

The establishment of the right of superficies by open auction for designated industries shall proceed according to the following procedures:

1. Select industry type: The authority in charge shall confirm the industry type through a meeting of the “improvement for use of national non-public real estates in collaboration with the competent authority of the target business” team.
2. Confirm policy needs and select auction subject: After the authority in

charge confirms with the central target business supervisory agency that the municipality or county (city) directly under its jurisdiction meets policy needs such as location, size, and limited use, the implementing authority will select the subject.

3. Formulate bidding documents: The authority in charge formulates the format of bidding documents and negotiates with the central target business supervisory agency on the format of bidding documents to reach a consensus.

4. Evaluate auction conditions: The implementing authority shall formulate proposals on the duration of the bidding, the percentage of the royalties to market value, and the annual interest rate of the land rent, and submit them to the authority in charge for submission to the review group for evaluation.

5. Auction announcement: The auction will be announced by the implementing authority, and the announcement period must not be shorter than one month. When the public announcement is made, the format of the contract for the establishment of the right of superficies shall be listed as an attachment to the bidding instructions.

6. Establish evaluation committee: The authority in charge or implementing authority shall establish an evaluation committee to conduct the evaluation. The evaluation committee shall be disbanded after the evaluation matters are completed and there are no pending matters. The evaluation committee shall have more than five members, including representatives from relevant agencies such as the authority in charge or implementing authority and the competent authority of the designated industry, and shall employ personnel with relevant professional knowledge or experience in the designated industry. The total number of experts and scholars shall not be less than one-third of the total number of members.

7. Evaluation and signature of the contract for the establishment of the right of superficies: After the authority in charge or the implementing authority convenes an evaluation meeting to complete the selection process, the implementing agency shall notify the successful bidder to pay the royalties within 90 days from the day after winning the bid, sign and notarize the contract for the establishment of the right of superficies, and apply for the registration of the establishment of the right of superficies. However, if the successful bidder needs to apply for a mortgage loan to pay royalties from a financial institution using the acquired right of superficies, the provisions of Article 9 shall be applied *mutatis mutandis*.

The implementing authority shall, in conjunction with the target business supervisory agency, regularly supervise and check the status of usage by the person of superficies for the duration of the superficies.

#### Article 11

The project providing superficies setting shall be processed according to

the following procedure:

1. Deemed necessary by the review: That for the necessity of policy of the central target business supervisory agency, promotion of business and public interest, and which are considered necessary to establish a project to provide superficies, is to have the review opinion form filled and sent to the authority in charge; where Item 2 of Subparagraph 2, Paragraph 1, Article 5 is applicable, those social, cultural, educational, charitable, and relief organizations shall be limited to non-profit corporations established in accordance with law, and shall prepare business plans in advance, indicating the source of funding, to be submitted to the central target business supervisory agency for review and approval.
2. Return mail of the initial review opinions: The authority in charge, having verified that there is no disposition plan and no need for supplemental explanation, shall reply to the initial review by mail and request the central target business supervisory agency to process in order the commissioning of professional price evaluation institution to provide estimation on the market price and set the documents as in Paragraph 5. If it is necessary to apply to the relevant authority in charge for review of the case in accordance with other laws and regulations, the implementing authority may first issue an official letter to the specific recipient to serve as a certification document agreeing to the application.
3. Commissioning of market price evaluation: The central target business supervisory agency must, according to the regulations of method of calculating national property, commission a professional price evaluation institution to conduct the estimation on the market price of the land and provide the estimation report to the authority in charge by mail.
4. Processing market price evaluation:
  - (1) The authority in charge shall send the evaluation report to the implementing authority by mail.
  - (2) The authority in charge and the implementing authority shall process the evaluation of the market price of the land according to the method of calculating national property.
  - (3) When there is an opinion of correction by the national property price evaluation team and the national property price evaluation committee, the central target business supervisory agency must order the commissioned professional price evaluation institution to comply in revising the price evaluation report.
5. Setting the format of the recommendation report and contract for setting superficies: The central target business supervisory agency sets and sends the recommendation report for the duration, royalty, and basis of calculation of the rent and format for the contract for setting superficies according to that stipulated in Article 5 to the authority in charge by mail.
6. Review by the review team: The authority in charge brings the recommended conditions set by the central target business supervisory agency to the review team for review and examination.
7. Discuss the format of the contract for setting superficies: The authority in charge discusses with the central target business supervisory agency on the format of the contract for the setting up of superficies and reach consensus.

8. To be reviewed and approved by Ministry of Finance: The authority in charge reports the duration, royalty, and basis of calculation of the rent, the circumstances as provided in Paragraph 3 of Article 5, and format for the contract and the subject to the Ministry of Finance for approval.
9. Notification of royalty payment: After receiving the approval letter from the Ministry of Finance forwarded by the authority in charge, the implementing authority must notify the specific subject to pay the royalty in full within 90 days of designated date.
10. Sign the contract for setting superficies, notarization, and register: The implementing authority, after the specific subject has paid in full the royalty, must notify the specific subject to meet to sign, notarize the contract for setting superficies and register the superficies. Shall the specific subject aforementioned require mortgage to pay the royalty, the subject must apply within 7 days of the designated date as in the previous Paragraph 9 and process with that stipulated in Article 9. If the specific subject does not pay in full the royalty, the original approval and notification are nullified. The implementing authority notifies the specific subject by mail and carbon copy provided to the authority in charge and the central target business supervisory agency. For the duration of superficies, the central target business supervisory agency must regularly supervise and check the status of usage by the person of superficies and reports the result to the implementing authority by mail.

## Article 12

The contract for the setting up of superficies must include the following:

1. The parties involved.
2. The land marking and area of the superficies setting.
3. Duration of the superficies
4. Amount of royalty, rent and payment method of the superficies.
5. First-time registration and registration of caution of the improved object of building (building hereinafter).
6. Set the purpose and restrictions on land usage.
7. The processing method of adjacent deformed land acquired through purchase.
8. The processing method for the person of superficies applying the receiving of transfer-in of floor area for the superficies.
9. The cause and method of reduction or waiver of rent.
10. The restrictions on the transfer, trust, and mortgage of the superficies and above-ground buildings.
11. Causes for processing breach of contract and termination of superficies.
12. Processing of the above-ground buildings after expiration of superficies.
13. Other.

## Article 13

Commissioned management contract must include the following:

1. The parties involved.
2. Items of commissioned management.
3. Timeframe of the commissioned management.
4. Responsibilities of the trustee.

5. The calculation, payment, deduction, and confiscation of the performance bond.
6. Waiver causes.
7. Causes for termination of contract.
8. Return of the performance bond.
9. Other.

#### Article 14

The person of superficies, when setting superficies on the national non-public land, must be restricted and prohibited from leasing or lending to others for the purpose of building.

For the superficies of an open auction, when the person of superficies leases or lends the land to others for non-building purpose, the last day of the usage duration must not be later than the last day of the superficies without violating the purpose of the set superficies.

In the case of open auctions for designated industries, when the person of superficies leases or lends the land to others for non-building purposes, it shall proceed according to the bidding documents of the original successful bidder and the relevant business establishment documents approved by the target business supervisory agency. However, this shall not apply if the person of superficies complies with the relevant laws and regulations or if the target business supervisory agency grants consent. For the project providing superficies, after acquiring approval from the central target business supervisory agency by the person of superficies while complying with the following rules, the person of superficies may lease or lend the land or above-ground buildings to others:

1. The land leased or lent is not for building purpose.
2. The area of the above-ground buildings leased or lent to others is within 10% of the total floor area. However, leasing or lending the affiliated parking equipment and parking lot facility is not calculated into the leased (lent) area. However, this shall not apply to any of the following circumstances:
  - (1) When the ancillary parking equipment and parking facilities are leased or lent and are excluded from the scope of lease (lending).
  - (2) When the scope complies with the percentage of the floor area leased (lent) as agreed in the contract for establishing superficies by the responsible central authorities for target businesses, subject to the industrial development requirements.
3. No violation of the set purpose.
4. The last day of the usage duration must not be later than the last day of the superficies.

#### Article 15

The adjacent deformed land next to the land of superficies purchased by the implementing authority must be included in the scope of the contract for setting superficies and change the object according to Article 45 of the Building Act. The rent and royalty are calculated according to the following:

1. Rent: From the ensuing month of having registered the transfer, rent is collected as per agreed in the contract for setting superficies.
2. Royalty: Collected according to the amount of acquisition multiplied by the percentage of the market price as set in Paragraph 1 of Article 5 for

the land of setting superficies. Where open auctions are held for designated industries or where superficies establishment is provided under a special project, the provisions of Paragraphs 3 and 4 of the same article shall be applied mutatis mutandis.

#### Article 16

When the person of superficies applies for the land of the superficies as recipient of transfer-in of floor area and processes according to the following, the implementing authority may give approval:

1. The transferred in floor area will be bequeathed to the country unconditionally without any request for compensation from the person of superficies.
2. All processing fees and cost incurred (including in-lieu payment) must be paid by the person of superficies.
3. The floor area not approved for transferring in cannot be transferred to other land by the person of superficies.

#### Article 17

For the duration of superficies, the rent is collected as per the agreement in the contract for setting superficies. For the building or method of usage that has award and incentive, rent is to be calculated and collected according to the regulations for such.

#### Article 18

For the duration of superficies, any compliance with the following, the implementing authority may agree to let the person of superficies to transfer the full superficies or superficies along with the above-ground buildings to the other party:

1. Only one person is permitted to register after the transfer of superficies, superficies along with ownership of all the above-ground buildings.
2. The assignee promises to assume all rights and duties of the Contract.
3. The assignee promises to register all the above-ground buildings to the country and evacuate unconditionally after the termination of the superficies.
4. For the project providing superficies, the person of superficies must acquire the consent of the central target business supervisory agency first.

For the person who agrees to the transfer, the implementing authority must set a date and notify the assignee to process the following:

1. Accompany the implementing authority to sign and notarize the contract for setting superficies.
2. Within one month of signing the contract for setting superficies, accompany the original person of superficies to process the registration for the transfer of superficies or superficies with above-ground buildings. That with the above-ground buildings is to process registration of caution accompanied with the implementing authority.

#### Article 19

For the buildings built by the person of superficies having been registered for the first time and registration of caution while complying with the following according to Paragraph 1 of Article 3, the implementing authority may agree to let the person of superficies to transfer part of the above-ground buildings along with the corresponding part of the

superficies to a third party:

1. The original successful bidder or the assignee must sign a pro bono commissioned management contract with the auctioning agency who is to receive the rent of each person of superficies, and overdue rent collection, and pay a performance bond and notarize the commissioning contract accompanied by the implementing authority.
2. The assignee promises to assume all rights and duties of the contract herein.
3. The assignee promises to register all the above-ground buildings to the country and evacuate unconditionally after the termination of the superficies.

The performance bond amount in Paragraph 1 of the previous article is calculated at five times the annual rent of the full superficies at the time of signing the pro bono commissioned management contract. The commissioned who does not execute the matters of management of collecting rent of the superficies may have the performance bond deducted for the full due amount of the rent.

After deducting the full due amount from the performance bond, the trustee must pay the due amount within the timeframe as notified by the commissioning party. When the overdue amount reaches 2/5 of the performance bond, the commissioning party may terminate the commissioned management contract and request a punitive breach of contract fine of five times the annual rent of the full superficies at the time of terminating the payment by the trustee. The fine can be deducted from the performance bond.

For the person who agrees to the transfer according to Paragraph 1, the implementing authority must set a date and notify the assignee to process the following:

1. Accompany the implementing authority to sign the contract for setting superficies.
2. Within one month of signing the contract for setting superficies, accompany the original person of superficies to process the registration for the transfer of superficies or superficies with above-ground buildings. That with the above-ground buildings is to process registration of caution accompanied with the implementing authority.

#### Article 20

When the person of superficies applying for trust of the superficies, and above-ground buildings during the effective timeframe of the superficies complies with the following, the implementing authority may grant consent:

1. The trustee (the assignee) is a legal business whose main (subsidiary) operation is the business of trusts in accordance with the Trust Enterprise Act and permitted by the supervisory agency with the item of operating superficies trust on the business license.
2. The person of superficies is the trustor and beneficiary of the trust. The interest from the trust for Party B cannot be transferred or lien to a third party.
3. The trustee promises to assume the rights and duties of the Contract during the trust period and is willing to transfer the superficies and all the above-ground buildings.
4. The trust should include superficies along with the above-ground

buildings. In the situation where there are no above-ground buildings or the above-ground buildings are not registered, and only the superficies to be entrusted, the person of superficies promises to process the trust and registration of caution of the above-ground within 3 months of first-time registration of the ownership of the buildings.

5. The last day of the trust period cannot be after the last day of the superficies.

6. Trust terminates along with the termination of the superficies.

7. The contract for setting superficies is included into the trust.

#### Article 21

For the duration of the superficies, the implementing authority may approve the person of superficies to process mortgage on the superficies, above-ground buildings according to the following:

1. Holder of the mortgage is limited to the government-approved financial business, banks, credit cooperatives, insurance companies, credit departments of farmers' associations or credit departments of fishermen's associations.

2. Mortgage must include both the superficies and the above-ground buildings. In the situation where there are no above-ground buildings or the above-ground buildings are not registered, Party B promises to process the mortgage registration. As for the original setting, after processing the change in registration of mortgage, the superficies can be set for mortgage alone.

3. The date of guaranteed debt and date of repayment of debt as in the mortgage contract must not be after the date of termination of the superficies.

4. The mortgage holder must provide written affidavit to waive all rights of the above-ground mortgage whether the debt has been paid and process annulment registration.

#### Article 22

During the superficies, shall one of the following occur, the implementing authority may terminate the contract for setting superficies:

1. When the successful bidder uses the mortgage loan to pay for the royalty but has not paid the royalty in full within 90 days of the second day of winning the bid.

2. The person of superficies or the authorized third party does not comply with the purpose of usage, urban planning, or regional planning, and other laws and regulation in using the land or violates the set purpose.

3. The person of superficies leases or lends the land to a third party for building.

4. The area of the above-ground buildings leased or lent to others for the project providing superficies is leased or lent to the third party without the approval of the central target business supervisory agency or the total area of the leased or lent above-ground buildings exceeds 10% of the total floor area. However, this shall not apply to agreements otherwise stated in the contract for establishing superficies.

5. The person of superficies directly transfers the superficies, or part or all of the above-ground buildings to a third party, processes trust or mortgage without the approval of the implementing authority.

6. The person of superficies does not process notarization, notarization

on supplement or correction according to the contract for setting superficies, commissioned management contract.

7. The person of superficies owes rent to the amount of two years' rent.

8. The person of superficies did not acquire construction license and start the construction within 3 years of signing the contract for setting superficies of the national non-public land. However, that which is otherwise agreed in the contract for setting superficies is not within the limit.

9. The occurrence of causes for termination by other laws and regulations or agreed in the contract for setting superficies.

Where a mortgage is created against the superficies or a part or all of the above-ground buildings, and the execution authority summons the person of superficies to make contractual performance or improvements within a time limit, the mortgagee shall be notified of the circumstances of the summons, and where the mortgagee notifies the execution authority in writing by the time limit of the need to execute debt collection, the execution authority may terminate the contractual matter of superficies setup after the mortgagee completes the debt collection.

### Article 23

After the termination of the superficies, the implementing authority must notify the person of superficies to transfer the above-ground building to the country without compensation and evacuate unconditionally within one month of the end or termination of the contract for setting superficies.

For the causes not attributable to the person of superficies in the termination of the contract for setting superficies as according to Subparagraph 9 of Paragraph 1 of the previous Article, the implementing authority calculates and compensates the person of superficies the remaining value of the superficies, above-ground buildings (including that which has not acquired usage license and first-time registration of the finished building).

1. Superficies: The royalty of the superficies contract multiplied by the ratio of the remaining months to the total number of months of the superficies.

2. Above-ground buildings: The remaining value of each building's rebuilding cost minus depreciation. However, with the following conditions, process according to the following:

(1) That which has passed the limit of useful life may be calculated based on the present value of the period provided by the taxation agency.

(2) For that which has not acquired usage license and first-time registration of the finished building, the implementing authority will commission a price evaluation institution to assess the dollar amount.

Processing or compensation for the superficies and the above-ground buildings of the superficies that is expired due to government agency sponsoring sectional conscription, urban land rezoning or appropriation will be according to laws and regulations otherwise stipulated.

The person of superficies who has completed the processing as prescribed in the first item will not be collected the compensation. For no action past due date, the implementing authority should collect compensation calculated from the second day of the expiration of the superficies to the day all the above-ground buildings are finished processing at the rate of

10% per annum of the current declared land value of the land.

#### Article 24

The contract for setting superficies and the commissioned management contract to be notarized according to the Directions must be included in the notarization which clearly states the requests that the person of superficies must pay rent, breach of contract fine, compensation for usage, other necessary fees, or that the trustee must pay the performance bond, breach of contract fine according to the commissioned management contract. If the party does not fulfil the responsibility, the party will be subject to compulsory disposition.

Shall there be any changes after the notarization, the implementing authority must record the events in the 'Record of changes' and set a date with the notary public to supplement and amend the notarization. The cost of the notarization is to be paid by the person of superficies, trustee.

#### Article 25

The format for the review opinion report of the project providing superficies, the auction information on the superficies, contract for setting superficies, and the commissioned management contract is to be set by the authority in charge.

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Data Source : Ministry of Finance, R.O.C. Laws and Regulations Retrieving System