

Content

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

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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 to 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 an open auction.
2. The authority in charge or implementing authority cooperates in line with national policies to hold open auctions for designated industries.
3. Where the central competent authority in charge of the relevant industry deems it a matter of policy necessity, promotion of business, and public

interest, and thus necessary to establish a project to provide superficies to designated entities, the authority in charge shall report to the Ministry of Finance for approval 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 for establishment of superficies on national non-public use lands ("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 of the project providing superficies setting:

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

(2) For public tender cases involving the establishment of superficies rights for designated industries, where they are engaged in public welfare or charitable relief activities such as social, cultural, or educational endeavors, the calculation of the superficies rights royalty shall be based on 20% to 70% of the land's market value.

(3) For cases where establishment of superficies is provided on a project basis, and the use is for non-profit undertakings conducted by social, cultural, educational, charitable, or relief organizations for public welfare or charitable relief purposes, or for non-departmental public bodies performing specific public affairs, the superficies fee shall be calculated at 20% to 70% of the market value of the land.

3. Rent:

(1) The rent is calculated at 1% to 5% interest per annum of the declared land value, and is divided into two parts, that which is adjusted with the declared land value and that which is not.

(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 levied on national land 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 Appraisal Directions for National Property.

The royalty 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 royalty 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 competent authority in charge of the relevant industry, those standards or provisions shall prevail.

If, after signing the contract for the establishment of the right of

superficies, the superficiary obtains the approval of the relevant business and establishment documents from the competent authority in charge of the relevant industry, 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 five 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 conducting tenders for the establishment of superficies rights, the implementing authority must provide a public announcement period of no less than one month. The establishment of superficies rights contract and pro bono commissioned management contract (hereinafter "commissioned management contract") formats shall be attached to the tender instructions when being announced.

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

In the case that the successful bidder needs to apply for a mortgage against the superficies from a financial institution to pay the royalty, they must apply to the implementing authority within 7 days of winning the bid, pay 30% of the royalty of the winning bid amount, and sign and notarize the contract for setting superficies. The remainder of the royalty must be paid in full within 90 days of the day following the winning of the bid, regardless of whether the mortgage is approved.

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 competent authority in charge of the relevant industry 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 reaches a consensus with the central competent authority in charge of the relevant industry on the format of bidding documents.

4. Evaluate auction conditions: The implementing authority shall formulate proposals on the duration of the bidding, the percentage of the royalty 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 team 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 no less 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 signing 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 authority shall notify the successful bidder to pay the royalty 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 royalty 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 competent authority in charge of the relevant industry, regularly supervise and check the status of usage by the superficiary for the duration of the

superficies.

Article 11

The provision of the right of superficies on a project basis shall proceed according to the following procedures:

1. Deemed necessary by review: The central competent authority in charge of the relevant industry deems it necessary for policy, operations, and public interest, to establish a project to provide superficies, and fills out a review opinion form filled and sends it to the authority in charge.

Designated entities applicable under Item 3, Subparagraph 2, Paragraph 1 of Article 5 are as follows:

(1) 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, and submit them to the central competent authority in charge of the relevant industry for review and approval.

(2) "Non-Departmental Public Body" refers to a public legal person established by law to perform specific public affairs under the authority of the central competent authority in charge of the relevant purpose.

2. Respond to the initial review opinions: The authority in charge, having verified that there is no disposition plan and no need for supplemental explanation, shall respond to the initial review by mail and request the central competent authority in charge of the relevant industry 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 designated entity to serve as a certification document agreeing to the application.

3. Commission market price evaluation: The central competent authority in charge of the relevant industry must, according to Appraisal Directions for 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. Process 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 Appraisal Directions for National Property.

(3) Where there is an opinion of correction by the national property assessment team and the appraisal committee of national property, the central competent authority in charge of the relevant industry must order the commissioned professional price evaluation institution to comply in revising the price evaluation report.

5. Set the format of the recommendation report and contract for setting superficies: The central competent authority in charge of the relevant industry 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 competent authority in charge of the relevant industry 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 competent authority in charge of the relevant industry on the format of the contract for the setting up of superficies and reach consensus.

8. Review and approval 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 shall notify the designated entity to pay the royalty in full within 90 days of designated date.

10. Sign the contract for setting superficies, notarization, and register: After the designated entity has paid the royalty in full, the implementing authority shall notify the designated entity to meet to sign, notarize the contract for setting superficies, and register the superficies.

In the case that the aforementioned designated entity requires a mortgage to pay the royalty, they must apply within 7 days of the designated date referred to in Subparagraph 9 of the preceding paragraph in accordance with the process stipulated in Article 9.

If the designated entity does not pay in full the royalty, the original approval and notification are nullified. The implementing authority shall notify the designated entity by mail as well as inform the authority in charge and the central competent authority in charge of the relevant industry.

For the duration of superficies, the central competent authority in charge of the relevant industry must regularly supervise and check the status of usage by the superficiary 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 constructional improvements ("buildings" 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 superficiary 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 superficiary, 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 superficiary 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 superficiary 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 competent authority in charge of the relevant industry.

However, this shall not apply if the superficiary complies with the relevant laws and regulations or if the competent authority in charge of the relevant industry grants consent.

For the project providing superficies, after the superficiary acquires approval from the central competent authority in charge of the relevant industry and complies with the following rules, the superficiary 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 central competent authority in charge of the relevant industry, 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

Where the land of superficies abuts private fragmental land, the implementing authority shall purchase said land in accordance with Article 45 of the Building Act and include it in the scope of the contract for setting superficies. 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.

Where the superficiary is unable to acquire the building permit and start construction due to negotiation regarding the deformed land, the implementing authority may change the rent to that of the land tax for a maximum of 6 months.

Article 16

Where the superficiary applies for the transferring in of floor area onto the land of the superficies, and processes it according to the following methods, the implementing authority may grant approval:

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

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, where the superficiary complies with all of the following, the implementing authority may agree to allow the superficiary to transfer the full superficies or the superficies along with the above-ground buildings to another 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 transferee promises to assume all rights and duties of the contract.
- 3.The transferee promises to register all the above-ground buildings to the state and evacuate unconditionally after the termination of the superficies.
- 4.For the project providing superficies, the superficiary must first acquire the consent of the central competent authority in charge of the relevant industry.

The implementing authority shall notify the aforementioned transferee by a set date 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 superficiary to process the registration for the transfer of superficies or superficies with above-ground buildings. For superficies with the above-ground buildings, the transferee shall process registration of caution accompanied by the implementing authority.

Article 19

For the buildings built by the superficiary 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 superficiary 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 transferee referred to in the preceding Article receiving full superficies must sign a commissioned management contract with the implementing authority, specifying his/her management responsibilities to collect rent due and rent arrears for the duration of superficies, pay a performance bond, and notarize the contract accompanied by the implementing authority.
2. The transferee promises to assume all rights and duties of the contract herein.
3. The transferee promises to register all the above-ground buildings to the state and evacuate unconditionally after the termination of the superficies.

The performance bond amount in Subparagraph 1 of the preceding paragraph is calculated at five times the annual rent of the full superficies at the time of signing the pro bono commissioned management contract. In the case that the trustee does not execute the matters of management of collecting rent of the superficies, the implementing authority may have the performance bond deducted for the full due amount of the rent.

After deducting the performance bond in accordance with the preceding paragraph, the trustee shall replenish the shortfall within the time limit notified by the implementing authority. If the shortfall is not replenished within the time limit and the outstanding amount reaches two-fifths of the performance bond, the implementing authority may terminate the commissioned management contract, and claim a penalty for breach of contract equivalent to five times the total annual land rental amount of the superficies for the current period at the time of termination. The implementing authority may offset this penalty against the remaining balance of the performance bond.

The implementing authority shall notify the transferee referred to in Paragraph 1 by a set date 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 superficiary to process the registration for the transfer of superficies or superficies with above-ground buildings. For superficies with the above-ground buildings, the transferee shall process registration of caution accompanied by the implementing authority.

During the term of the commissioned management contract, if the trustee's

registered subject of superficies, along with all above-ground buildings, has been transferred to another party, and a full five years have elapsed since the completion of the registration of transfer and the registration of caution for the above-ground buildings, the trustee may apply to the implementing authority to terminate the commissioned management contract. Upon the trustee's payment of management of contract performance fee equivalent to the total annual land rental for the superficies applicable at the time of application, and after confirming that the trustee is not in breach of contract, the implementing authority may agree to the termination. The performance bond may be used to offset the aforementioned management of contract performance fee.

Article 20

Where the superficiary applies for trust of the superficies and above-ground buildings within the duration of the superficies, and complies with all of the following, the implementing authority may grant consent:

1. The trustee (the transferee) is a legal business whose main (subsidiary) operation is the business of trusts in accordance with the Trust Enterprise Act and permitted by the competent authority with the item of operating superficies trust on the business license.
2. The superficiary is the trustor and beneficiary of the trust. The interest from the trust for the superficiary cannot be transferred or encumbered 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. Where there are no above-ground buildings or the above-ground buildings are not registered, and only the superficies are to be entrusted, the superficiary 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 in the trust.

Article 21

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

1. The mortgagee is limited to government-approved financial businesses, banks, credit cooperatives, insurance companies, credit departments of farmers' associations, or credit departments of fishermen's associations.
2. The mortgage must include both the superficies and the above-ground buildings. Where there are no above-ground buildings or the above-ground buildings are not registered, the superficiary promises to process the mortgage registration within 3 months from the day following the date of the first-time registration of the building ownership. 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 mortgagee must provide written affidavit to waive all rights of the above-ground mortgage whether the debt has been paid and process cancellation registration.

Article 22

Should any of the following occur within the duration of the superficies, 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 superficiary 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 superficiary 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 competent authority in charge of the relevant industry 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 superficiary directly transfers the superficies, or part or all of the above-ground buildings to a third party, or processes trust or mortgage without the approval of the implementing authority.

6. The superficiary does not process notarization, supplemental notarization, or notarized correction in accordance with the contract for setting superficies or the commissioned management contract.

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

8. The superficiary did not acquire the construction license and start construction within 3 years of the original successful bidder 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 implementing authority summons the superficiary 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 implementing authority in writing by the time limit of the need to execute debt collection, the implementing 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 superficiary to transfer the above-ground building to the state without compensation and evacuate unconditionally within one month of the end or termination of the contract for setting superficies.

For causes not attributable to the superficiary in the termination of the

contract for setting superficies according to Subparagraph 9 of Paragraph 1 of the previous Article, the implementing authority shall calculate and compensate the superficiary the remaining value of the superficies and 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, the following cases should be processed separately:

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

(2) For buildings which have not acquired a usage license and are registered for the first time upon completion, the implementing authority will commission a price evaluation institution to assess the dollar amount. Where superficies rights are revoked due to zone expropriation, urban land consolidation, or allocation by government agencies, the handling and compensation for the superficies and such above-ground buildings shall be processed as otherwise stipulated in laws and regulations.

Where the superficiary completes the transfer referred to in Paragraph 1 within the time limit, no compensation for utilization shall be charged. In the case that the superficiary fails to comply within the time limit, the implementing authority shall collect compensation calculated from the second day of the expiration of the superficies to the day all above-ground buildings are transferred 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 must be notarized according to the Directions. The notarization must clearly state that the superficiary shall pay the necessary fees according to the contract, including rent, fine for breach of contract, and compensation for usage, or that the trustee shall pay the necessary fees according to the commissioned management contract, including the performance bond and fine for breach of contract. Failure to comply shall be subject to compulsory enforcement.

Where any changes are made after the notarization, the implementing authority must record the events in the "Note of changes" and set a date with the notary public to supplement and amend the notarization. The cost of the notarization shall be paid by the superficiary and 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 shall be set by the authority in charge.