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Vietnam

REAL ESTATE

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Vietnam.

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VIETNAM REAL ESTATE



1. Overview

The real estate market is one of the cornerstones of Vietnam's economy. In the future, it has the potential to grow even larger and more significant. Real estate plays an important role in attracting resources and creating fixed assets for the economy. In Vietnam, the real estate market has long been a promising area for foreigners seeking long-term accommodation or business expansion.

Someone acquiring Land Use Rights ("LURs") could, technically, be considered to have acquired a piece of land in Vietnam. However, this is more complicated in practice. In this guide, we will set out some of the most important points investors should take into consideration before entering the Vietnamese real estate market.

2. What is the main legislation relating to real estate ownership?

Real estate ownership in Vietnam is mainly governed by the Civil Code 2015, the Law on Land 2013, the Law on Real Estate Trading 2014, the Law on Residential Housing 2014, the Law on Construction 2014, the Law on Enterprises 2020, and the Law on Investment 2020. The general regulations in these laws are elaborated in decrees or decisions issued by the Government or the Prime Minister and circulars from ministries. Examples include Decree No. 02/2022/ND-CP on guidelines for the Law on Real Estate Trading 2014, Decree No. 99/2015/ND-CP on guidelines for the Law on Residential Housing 2014, Decree No. 43/2014/ND-CP on guidelines for the Law on Land 2013, and Resolution 18-NQ/TW dated 16 June 2022 on the State's policies regarding land use and management, etc.

The State is now rapidly amending these regulations to align with the ongoing development of the real estate market. For instance, the Draft Law on Land and Law on Residential Housing have been published for public consultation, and will enter into force in the near future.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2021 or are there any major anticipated new laws which are expected to materially impact them in the near future?

The following regulations are worth noting:

1. The Draft Land Law (amended). This includes 16 chapters and 245 articles. Of these, 28 articles remain unchanged, 184 have been amended and supplemented, 41 have been added, and eight have been annulled.
2. The Draft Law on Housing (amended).
3. The Draft Law on Real Estate Business (amended).

These drafts will be submitted to the National Assembly in the 5th session (May 2023) and 6th session (October 2023) together with the renewal of the Land Law to ensure alignment in their implementation.

4. How is ownership of real estate proved?

A certificate of LURs, house ownership rights, and other properties attached to the land ("LURC") is the main condition for existing houses and buildings to be made available for use and trade. Besides the LURC, these land parcels, houses, and buildings must also satisfy additional conditions. These include that they are not subject to a conflict or dispute, are not being distrained for the execution of a court judgment over the LUR, and that the land use term has not expired.

5. Are there any restrictions on who can own real estate?

Yes. Foreign organisations can own houses in Vietnam. However, there are restrictions on foreign-invested companies owning LURs. In fact, foreign-invested companies and foreigners are not allowed to register

ownership over residential land.

6. What types of proprietary interests in real estate can be created?

In Vietnam, there is no specific legal term for land ownership. By law, land is under the ownership of “the people”, with the Government acting as their representative and managing every aspect of the land.

Instead, individuals and organisations have LURs and ownership rights to buildings and structures on the land. Land users have, for example, the right to transfer, lease, sub-lease, give away, and mortgage their LURs; similar to ownership rights. Therefore, in practice, acquiring LURs could – technically – be considered as acquiring a piece of land in Vietnam.

7. Is ownership of real estate and the buildings on it separate?

In theory, yes. However, there are very few circumstances in which the ownership of real estate and buildings can be registered separately.

For example, if the house owner is not a land user: Land-attached assets can only be granted LURCs if the owner has a land lease contract, capital contribution, or business cooperation document giving the land user’s approval for housing construction. For other, non-residential construction projects, if the project owner is not also the land user, they must have full paperwork proving their ownership of the project and written approval of the land user giving them permission to undertake construction.

8. What are common ownership structures for ownership of commercial real estate?

In Vietnam, commercial real estate is developed and sold by real estate developers. Commercial real estate can include apartments, villas, shophouses, etc. Those who purchase commercial real estate can register their ownership over it, the land area, and/or assets attached to the land, subject to their eligibility (i.e., whether they are Vietnamese individuals, foreigners, local companies, foreign-invested companies, etc.).

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

The usual due diligence should cover critical aspects of

the land sale, including legal, technical, financial, and accounting. While there is no universally accepted market standard of legal due diligence when acquiring real estate, purchasers should at least pay attention to the following points:

- i. The legal status and title of the real estate;
- ii. The legal capacity of the sellers/transferees;
- iii. The validity of the relevant certificates and permits;
- iv. Review of the lease/sale and other relevant documentation of third parties;
- v. Legal checks on unsettled encumbrances, restrictions, disputes, or conflicts over the real estate;
- vi. Land use planning and zoning; and
- vii. Regulatory and financial obligations arising from acquiring the real estate.

10. What legal issues (if any) cannot be covered by usual legal due diligence?

The following issues cannot be covered by usual legal due diligence:

- i. Land use planning and zoning; and
- ii. The history of the land acquisition process.

11. What is the usual process for transfer of commercial real estate?

Once the conditions for transferring real estate have been satisfied, both buyer and seller could refer to the following steps to conduct the transfer process:

- i. Preparing the draft transfer agreement and relevant documents;
- ii. Notarising the transfer agreement at a notary public;
- iii. Submitting the notarised transfer agreement along with the transfer application dossier to the land registration authority;
- iv. Completing the financial obligations to the transfer by paying all relevant taxes and fees, and;
- v. If all the application dossiers are sufficient and valid, the land registration authority will issue the certificate reflecting the new owner of the LURs for the real estate.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Legally speaking, no. A real estate transfer must be in the form of an asset transfer because real estate is a type of asset. A share transfer does not involve or create a direct ownership over real estate.

13. On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?

Clause 2, Article 133 of the Law on Housing 2014 stipulates the right to continue renting a house if ownership of that house is transferred with tenants in situ. In this case, the new owner of the house is responsible for continuing the obligations of the previous lease contract, unless otherwise agreed by the parties.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

- **Common rights, interests, and burdens** include LURs; ownership rights to buildings and structures on the land; rights to transfer, lease, sub-lease, give away, or mortgage LURs; obtaining the LURC; entitlement to compensation from land acquisition; entitlement to file a complaint and commence proceedings following any violation of LURs; and the right to mortgage, contribute to, or sell property attached to the land and lease commercial houses on it.

- How are these protected?

- These are protected through the following legal instruments:
 - The relevant regulations to guide and set principles in the Law on Land 2013, the Law on Real Estate Trading 2014, the Law on Residential Housing 2014, etc.
 - Sanctions for illegal acts infringing these rights: Decree No. 91/2019/ND-CP on the administrative sanctions relating to land, Decree No. 04/2022 on amendments to decrees on penalties for administrative violations, the Criminal Code 2015 (amended in 2017), etc.
- Remedial action could include petitioning a court or other competent State authority to order the person infringing property rights to return the property, to cease the illegal act hindering the performance of ownership or other rights with respect to property, and to

request compensation for loss and damage [1].

Footnotes:

1. Article 164.2 of the Civil Code 2015

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised

Yes, this is recognised in Article 98 of the Law on Land 2013.

Article 98.2 of the Law on Land 2013 states that: *“Where one parcel of land is subject to the mutual land use right of a number of people and there are joint owners of the residential house and other assets attached to the land, then the single land certificate **must specify the full names of people having the mutual land use right and joint owners of the residential house and other assets attached to the land**, and each person shall be issued with one certificate; if the users or owners so request, a mutual certificate shall be issued and granted to the representative”.*

Article 98.4 of the Law on Land 2013 goes on to state that: *“Where the land use right, or the land use right and ownership of the residential house and other assets attached to land, or the ownership of the residential house and other assets attached to land is the mutual asset of both husband and wife, then the single land certificate **must state the full name of the husband and the full name of the wife**, except where the husband and wife agree to state the name of either of them”.*

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Yes. Information about the latest land user and owner of the house and other land-related assets is shown on the LURC. The presentation can be found:

1. In the item “Adjustment content and legal basis” on the back page of the LURC if the new owner does not need a new certificate.
2. In the item “Land user, house, and other land-related assets owner” on the front page of the LURC if the new owner wishes to have a new certificate.

17. What are the main taxes associated

with commercial real estate ownership and transfer of commercial real estate?

Value Added Tax (VAT), corporate or personal income tax, land use fees, and land use taxes.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

- Some common terms of commercial leases include:

- Information of the parties
- Information of the leasing property
- The value of the property
- The deadline for and method of payment
- The rights and obligations of the contracting parties
- The commitments of the contracting parties
- The effective date of the agreement

- Regulatory controls on the terms of leases?: Yes, the terms of a lease must comply with the provisions in Section 7 "Lease of goods" of Chapter VI "Some other specific commercial activities" in the Law on Commerce 2005 as well as Article 121 of the Law on Residential Housing 2014 [1].

Footnotes:

1. Law on Commerce 2015

19. How are use, planning and zoning restrictions on real estate regulated?

- Foreign individuals can own houses but not land [1].
- Foreign organisations can only own houses to accommodate their employees. They cannot lease or use it as an office or for any other purpose.
- If Vietnamese individuals, Vietnamese organisations, overseas Vietnamese, foreign individuals, or foreign organisations investing in Vietnam lease land from the Government, the lessee cannot contribute land as equity.

Footnotes:

1. Article 5 of the Law on Land 2013

20. Who can be liable for environmental contamination on real estate?

Any individual or organisation who commits environmental violations on real estate can be held liable [1].

Footnotes:

1. For an example of environmental contamination on real estate, see Article 15 of Decree No. 91/2019/ND-CP

21. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

Yes. Subject to National Technical Regulation on Energy Efficient Buildings No. QCVN 09:2017/BXD, enclosed with Circular No. 15/2017/TT-BXD, there are mandatory technical requirements when designing, building, or renovating works with a total floor area from 2500 m² or more of the following types or mixtures of works:

1. Offices;
2. Hotels;
3. Hospitals;
4. Schools;
5. Trades and services;
6. Apartments.

22. Is expropriation of real estate possible?

Yes, the Vietnamese Government can expropriate land under the regulations and procedures prescribed by Vietnamese law. The Government can decide to expropriate land in a range of circumstances. These include expropriation for national security and defence, expropriation due to violations of Vietnamese laws on land, expropriation as a result of the voluntary return of land by the land user, etc.

23. Is it possible to create mortgages over real estate and how are these protected and enforced?

Yes, real estate in Vietnam can be mortgaged. However, it is important to note that foreigners cannot take out a mortgage over real estate in Vietnam. Mortgages will be protected and enforced by courts and competent authorities through a court litigation process.

24. Are there material registration costs associated with the creation of mortgages over real estate?

Yes, these are at the discretion of local authorities. Normally, the legitimate fee of VND 80,000 (equivalent to USD 3.5) would be applied for each case.

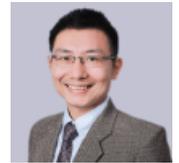
25. Is it possible to create a trust structure for mortgage security over real estate?

Vietnam does not yet have a concept of 'trust' defined in law. However, in practice, the trust structure for mortgage security over real estate has been commercially arranged between foreign lenders (i.e. foreign banks or foreign entities), local banks in Vietnam, and borrowers. In this structure, the local bank will receive the mortgage security over the real estate from the borrower. If there is a mortgage security enforcement event, the proceeds of the enforcement will be used to repay the borrower's foreign loan to the foreign lender.

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