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Real Estate 2026

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Law and Practice

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as in complex and high-profile litigation and arbitration matters. The real estate team closely monitors and tracks any commercial and legal developments in Vietnam's real estate market and ensures that clients receive up-to-date advice from advisers who know the law and are equipped to anticipate real estate trends. The firm's clients, ranging from public to private, are highly appreciative of this pragmatic approach to tackling issues in what is arguably one of Vietnam's most regulated sectors.

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1. General

1.1 Main Sources of Law

The main sources of real estate law include:

- the Land Law 2024 (effective on 1 August 2024);
- the Real Estate Trading Law 2023 (effective on 1 August 2024);
- the Residential Housing Law 2023 (effective on 1 August 2024); and
- applicable decrees or decisions issued by the government or the Prime Minister, and circulars from the ministries that provide guidance for implementing or clarifying various provisions of the above laws.

1.2 Main Market Trends and Deals

The real estate market is seeing increasingly dynamic transactions involving sales and purchases of existing real estate projects. However, asset transfers remain the primary mechanism for raising capital. With the new Housing Law 2023, the market is also expected to see a shift in the development of new social housing projects. Investment in industrial parks appears to be enjoying a steady capital inflow.

With the effect of the new Land Law 2024 on 1 August 2024, certain modifications have been made regarding the scope of business activities for foreign-invested companies. These companies are now permitted to acquire land-use rights and properties attached on land in industrial parks from another entity. This allows capital flows within the industrial parks and have becoming a trend in the market.

With the Government's recent administrative overhaul, aimed at streamlining authorities and reducing investment and business licensing procedures, many real estate projects that had been stalled for years due to land-related procedures and financial constraints are now being revived and brought to market. This development is expected to drive a significant uptick in real estate activity in the coming months.

1.3 Proposals for Reform

The Law on Real Estate Trading and the Law on Residential Housing are under review by the State for reformations and amendments. Among other things,

the draft Amendment to the Real Estate Trading Law proposes that any real estate project must be subject to written approval by the competent authority (either the Prime Minister or provincial People's Committee) before a project transfer agreement can be executed. If this proposal is adopted, the deal structure must be consulted to best protect the interests of either the seller or the buyer in a project transfer deal.

The draft amendments (expected to take effect in 2026) focus on removing supply bottlenecks, enhancing market transparency, and increasing the availability of affordable housing. Key provisions include tighter regulations on the sale of off-plan real estate, stricter controls on land subdivision for sale, and the further development of a comprehensive housing database – eg, building a uniform digital database for properties nationwide.

Nevertheless, it will take time to observe how the laws are applied and how they adapt to the market.

2. Sale and Purchase

2.1 Categories of Property Rights

Rights to Real Estate in Vietnam

Land-use rights (LUR)

There is no concept of private land ownership in Vietnam, as land is constitutionally considered to be under the “ownership of the people”. Instead, individuals and entities are granted LUR. Subsets of the LURs of a land user include the right to transfer (not to sell), capitalise, lease (or sublease), bequeath, exchange, gift, and pledge or mortgage such LUR, generally similar to ownership rights in other jurisdiction.

A real estate owner typically holds ownership over assets attached to the land while also possessing the relevant LURs. As such, theoretically, acquiring land in Vietnam means acquiring some or all of the rights attached to it. Entitlement to all or some of the LURs by land users may vary, depending on LUR categories, which are as follows.

- *LUR with full payment of land use fee*: Land-use rights are allocated by the State subject to full payment of the land use fee. In this case, the land

user enjoys almost full rights over the land and may exercise a broad range of rights attached to the LUR.

- *Leased LUR with one-off rental payment for the entire lease term:* Land-use rights are leased from the State pursuant to a land lease decision, with rental paid upfront for the entire term. This mechanism is commonly applied to foreign-invested enterprises and foreign individuals.
- *Leased LUR with annual rental payment:* Land-use rights are leased from the State with rent paid on an annual basis. In this case, the land user is subject to certain restrictions in exercising LURs; for example, the LUR holder is not entitled to transfer the LUR without asset ownership attached to the land.

A transferee of land-use rights will enjoy the same rights and be subject to the same obligations as the transferor in respect of such rights.

Ownership rights to assets to the land

This includes ownership rights over buildings and other structures situated on the land (if any), encompassing the rights to possess, use, and dispose of such assets. In particular, the owner may freely sell, lease, mortgage, or otherwise deal with these assets in accordance with applicable laws.

However, the scope of these rights also depends on the type of property. For example, owners of apartment units hold ownership over their individual units, while sharing land-use rights to the land on which the building is constructed with other unit owners on a co-ownership basis.

Investment rights in project development

These are rights associated with the development and implementation of real estate projects. However, such rights are subject to obtaining the requisite approvals through the prescribed regulatory procedures.

2.2 Laws Applicable to Transfer of Title

Title to real estate may include LURs and assets attached to the land. Land Law specifically deals with LUR matters, while other laws (eg, the Civil Code, Residential Housing Law, Real Estate Trading Law, Law on Investment, Law on Enterprises) deal

with matters relating to construction structure or real estate business.

Apart from Residential Housing Law and Real Estate Trading Law, which specifically deal with transfer of ownership in residential housing and building structures, respectively, there is no clear separation of real estate types – ie, industrial, offices, retail or hotels. Therefore, in general, a real estate transfer transaction may become the subject of various laws depending on the subject in question. However, due to the varied LURs, there are differences in deal structures, procedures and documents in deals transferring the real estate. As such, different laws apply in real estate transfer transactions.

It should be noted that Vietnam law follows a strict title registration system which provides that property title will not be properly recognised by law until it is registered with the competent authorities.

2.3 Effecting Lawful and Proper Transfer of Title

Transfer of real estate title is lawful and valid if the transaction documents are compliant with the law and the title conveyance is properly registered with the land registry authority. The title to real estate is recognised and recorded in the Certificate of Land Use Rights[1.1][LNT2.1] and Assets Attached to Land (LURC).

The transfer agreement must be executed in writing and notarised by a licensed and competent notary office (with certain exceptions) to be valid. A title transfer is deemed complete once registered and recorded by the Land Registry Office under provincial-level Departments of Agriculture and Environment (DAE) and reflected in an LURC with the transferee as the current land user and/or real estate owner.

There is no concept of title insurance in Vietnam. However, a buyer should check the validity and legal status of the real estate at the relevant sources (eg, the Land Registry Office or DAE and notary offices) before signing the transfer agreement and executing payment, since there may be encumbrances on the property (pledges, mortgages, government recovery orders, enclosures, or land-use restrictions, etc) which pre-

vent the title transfer. According to the law on notari- sation, the parties to a real estate transfer transaction are required to sign the document(s) in person, wit- nessed by a notary officer. E-signatures are not yet accepted. However, the transferor or transferee may have their representative execute such document(s) or conduct title registration by power of attorney. In general, the principal is responsible for any act by the representative in relation to the transfer transaction which complies with that described under the respon- sibilities of power of attorney.

2.4 Real Estate Due Diligence

Due to its complex nature, buyers, who are either indi- viduals or corporate entities investing in real estate projects, should conduct due diligence with the engagement of legal, technical and finance experts in respect of the land and investment property. Legal due diligence usually includes checking:

- the legal capacity of the seller/transferor;
- the legal status of the land of the real estate;
- the valid title of the property/investment project and the land on which the property/investment project stands;
- the validity of the LURs and compliance to the real estate development; and
- any encumbrances on the real properties, including zoning restrictions, title disputes, current collateral with the properties, and/or unpaid financial obli- gations by the seller/transferor and/or third-party rights to the LUR.

2.5 Typical Representations and Warranties

In real estate transactions, buyers require sellers to make representations and warranties (R&W) accord- ing to which:

- the seller is duly incorporated or has full power and capacity to transact;
- the seller owns the valid title to the land and/or project investment;
- the seller is granted the proper investment and development rights in the real estate project, including development approvals, construction licences, environmental assessments and others (if the seller is a developer);

- the real estate is not subject to encumbrances, restrictions, disputes, foreclosure, a court order enforcement, or an urban zoning order;
- the real estate of an investment project and the land are clear from any administrative penalties in accordance with the laws on land, investment, construction, planning and zoning, and tax; and
- the real estate and the land are not subject to any prohibition order from transaction made by compe- tent authority.

However, the concept of R&W is conceived in the common law system; it is not expressly regulated by civil law. A legal adviser in the field may enforce these R&W by obliging the seller to ensure R&W are true and remain so.

Depending on the agreement drafting techniques, a misrepresentation or an incorrect warranty can lead to invalidity or cancellation of the agreement, or breach by the party making the misrepresentation or having an incorrect warranty. It is the responsibility of the par- ties to include clauses on the survival period of the R&W.

There are several remedies for buyers and sellers under Vietnam contract law – eg, specific perfor- mance, penalty, performance suspension, contract cancellation, unilateral termination and/or damage compensation. These depend on what the parties agree in the document, and/or subject to the law.

Any breach of the R&W constitutes breach of a con- tract. In breach of R&W, the aggrieved party may be entitled to seek remedy and compensation for dam- ages actually incurred by them. While R&W insurance is not common in this jurisdiction, it is nevertheless gaining in popularity for sellers in most high-value M&A transactions. If certain conditions as represented by the seller are not met, the contract may even be deemed void (ie, the seller is not duly incorporated under the relevant laws).

2.6 Important Areas of Law for Investors

With respect to purchasing real estate, investors are required to closely observe the laws on land and real estate trading governing specific aspects of purchase transactions and the laws on companies and on

investment if real estate is acquired within the context of an M&A deal. If the real estate is a residential house or housing project, the investors are further required to comply with the laws on housing.

These may include laws enacted by the National Assembly, decrees or decisions issued by the government or Prime Minister, or circulars issued by ministries from time to time that provide guidance in implementing or clarifying certain provisions of the above laws. Since these are hard laws, they are binding and also govern real estate transactions.

2.7 Soil Pollution or Environmental Contamination

The Law on Environmental Protection and the Law on Investment require that an investment or development project should involve environmental impact assessments or declarations with protection measures before implementation. Vietnamese law (Article 15 of the Law on Environmental Protection 2020; and Articles 172 and 602 of the Civil Code 2015) expressly holds liable subjects causing environmental pollution that generates damage, and requires them to cease the acts of violation, apply remedial measures and make compensation, even when they are not at fault. In addition, if there is serious contamination to the land with life-threatening effects, the land may be subject to expropriation by the competent authority.

Although the party causing the contamination is held liable under the law, environmental issues are usually discovered after an acquisition, so the party most affected is the buyer – ie, the current owner/land user. Therefore, the buyer should conduct due diligence on environmental issues in acquisition transactions to assess the risks and liabilities in this regard, and should incorporate proper clauses in the transaction documents to mitigate or exclude the risk of such liability.

2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

Provincial authorities apply master plans on land use, development and urban zoning every ten years and review these on a five-year basis. For example, a master plan provides land-use purposes that define where residential housing projects or industrial projects can

be developed, and how high and how much the construction coverage is, etc. By law, this information is publicly accessible. However, in reality, it is usually not fully available and accessible because it is not centralised. A buyer should use consultancy services to access such information.

Depending on the investment, the encouraging and supporting policies of localities, the scale and/or importance of a project, the authorities may consider proposals from developers to change master plans to suit or facilitate such projects on a case-by-case basis. In general, the developers must carry out projects in accordance with set master plans, except for in locations where the local authority does not yet have these, in which case the developers may also provide proposals.

2.9 Condemnation, Expropriation or Compulsory Purchase

The Land Law 2024, Law on Residential Housing and Law on the Compulsory Purchase of Assets provide for foreclosure, expropriation, and compulsory purchase of assets, including real estate. In general, land and real estate could be expropriated in the following circumstances:

- for national security and defence purposes;
- for social and economic development serving national and public benefit;
- due to violation of the laws on land by land users;
- lawful termination of land use (including termination of an investment project using land);
- voluntary return;
- life-threatening events; and
- land requisition by the state for national defence or security, or in a state of war or emergency, or to prevent and combat natural disasters.

The process of expropriation may be conducted in different ways, depending on the cause of expropriation. In theory, the government will notify the purchase, expropriation or recovery in writing to the property owners or land users with reference to the causes of expropriation and its legal basis, followed by a decision on such expropriation.

In the case of a purchase, the purchase price may be agreed with the owner or decided by the authorities. If agreement cannot be reached on a fair market price through consultation between the relevant bodies, the authorities may then proceed with the purchase and settlement, although the owner has the right to appeal the decision. If the purchase is ruled unfair at a later stage, the owner may receive compensation. In the event of expropriation due to violation of laws, no compensation may be granted to the land users.

According to the master plan approved by the authorities, land can be retrieved by the authorities for economic development purposes (eg, industrial parks or infrastructure development), and the authorities will set up a compensation council to assess and apply compensation and damages to land users. In reality, land users tend not to agree with the compensation granted on account of differing views between themselves and the authorities, but land compensation can still be enforced. Nevertheless, under the provisions of the Land Law 2024, project developers may be able to acquire land use rights (LURs) directly from land users or property owners without having to go through the formal land recovery and compensation procedures. In such cases, the parties involved can take a proactive approach to privately negotiate and reach agreement on purchase price, thereby expediting the overall land acquisition process.

2.10 Taxes Applicable to a Transaction

In transferring real estate, there are two main types of deals:

- sale and purchase of real estate assets (asset deal); or
- transfer of shares in a property-owning company or “SPV” (share deal).

For each, certain mandatory conditions apply. Transactions can only be lawfully concluded if these conditions are fully satisfied.

Asset Deal

In an asset deal, the sale and purchase transaction must comply with the laws of land and real estate trading, particularly for an estate project where additional conditions must be met. Any transaction relating

to land must be in writing and notarised by the competent notary office for effectiveness unless one of the contractual parties is a real estate trading entity. Any change in the user of the land or ownership of the sold property must be registered with the Land Registry Office for recognition of the lawful title.

From a tax perspective, asset deals may include the transfer of property on land, LUR and real estate investment projects. In general, taxes and charges incurred may include VAT (on transactions relating to property attached to land), income tax, notarisational fees, an LURC issuance charge, LURC appraisal charges, stamp duty, etc. For individual transfer of real estate, personal income tax is applied at the rate of 2% of the transfer price to the individual seller; for corporate real estate owners, 20% of the income earned from the transfer incurred by corporate sellers applies, plus VAT on the sale price (currently 10%). By law, the buyer has to pay a stamp duty of 0.5% of the purchase price in title conveyancing registration. Taxes must be paid before the completion of the title registration.

Share Deal

An alternative to the asset deal is to structure the transaction as a share deal – ie, an acquisition of the SPV that owns the real estate through a share purchase. The share transfer procedure is then mostly carried out under the Law on Investment and Enterprises Law rather than the Land Law or the Residential Housing Law (if the property is residential housing). Technically, there is a difference in cases of transfer of shares in an SPV (either minority or majority or total shares) because this is not treated as an asset deal. However, careful structuring is required, particularly when the SPV solely holds a single investment project, as the licensing authority may view this as a project transfer rather than a share transfer.

If the acquisition of shares in the SPV is conducted by foreign investors or a foreign-invested entity leading to:

- the foreign ownership ratio in the SPV being more than 50% of its charter company by increasing the ratio from under 50% to above 50%, or increasing the ratio from 50% to above; or

- an increase (at any rate) in the foreign ownership ratio in the SPV if the SPV is operating in conditional businesses to foreign buyers (real estate trading is included);

then the investors must obtain approval from an investment management body (the provincial department of finance) for the transaction. If the project is located within a national defence and security zone, the approval is further subject to official opinion of provincial department of national defence and public security.

A share or equity transfer contract is prepared in writing without having to be notarised. Any change in corporate ownership is subject to registration with the Business Registration Office of the competent authority. Income tax may be incurred by the seller of the shares at 20% on taxable income for resident individuals or corporations, and sometimes at 0.01% of the share value for joint stock companies. However, this should be carefully reviewed since the tax authorities have differing views on this matter.

The distribution of transaction costs can be negotiated and agreed by the transactional parties.

2.11 Legal Restrictions on Foreign Investors

There are several requirements and restrictions for foreign investors in acquisition transactions related to real estate under Vietnamese law. Foreign investors are categorised in two groups: corporate entities and individuals. Corporate foreign investors are not permitted to acquire real estate properties directly unless the purchase is for employee accommodation or to serve their business operations. Therefore, corporate structuring is necessary for foreign corporate entities seeking to engage in the real estate trading business in Vietnam.

Individual foreign investors are only permitted to buy housing real estate properties (mostly condominiums or apartments) in developed property projects, and only if the following conditions are met:

- the foreign investor holds a valid passport with immigration stamps from when they entered Vietnam;

- the property is in a commercial residential housing development project by a licensed developer; or
- the property is not in a national security and defence area.

The developer is allowed to sell its units to foreign buyers, but no more than 30% of the total units in the project. Foreign homeowners have ownership over the housing real estate for the term of 50 years, and this is renewable upon expiry for further 50 years compared to “long-term” ownership by local homeowners. Foreign owners can sell their unit to a foreign or local buyer. If selling to a local buyer, then that local buyer is entitled to restore “long-term” ownership to the unit. Foreign individual owners have the same ownership rights as a Vietnamese homeowner (sell, lease, lend, gift, mortgage, etc). However, foreign-owned companies incorporated under Vietnam law have limited ownership rights over purchased apartment units – eg, for the owner’s use only (not leasing to others).

Foreign-invested companies can develop real estate development projects (residential, commercial, industrial, hotels and offices, etc) under Vietnam law by obtaining land from the authorities or acquiring it from Vietnamese corporate landholders subject to fulfilments of mandatory conditions.

3. Real Estate Finance

3.1 Financing Acquisitions of Commercial Real Estate

An individual homebuyer may use the purchased property as collateral for obtaining a loan to finance a purchase (even a property under construction). However, as a market practice, lenders usually accept a loan at around 70% of the property value. The lending interest rate is normally the long-term interbank lending rate plus a margin of 3% to 4%.

In acquiring commercial real estate, finance is more complex because the lenders assess the loan repayment capacity of the borrower in addition to the real estate value. However, the same principle in lending is applied – ie, the borrower must have funds available of at least 30% of the real estate value and a loan for the remaining amount, subject to conditions assessed

and agreed with the creditors, which can be local or foreign-owned banks operating in Vietnam. Loans can also be structured and provided by overseas banks, parent companies, shareholders or business partners overseas. However, residential housing projects can only obtain loans from Vietnamese-licensed credit institutions, as parent company loans are no longer permitted.

In addition, the buying entity may consider several other options, such as corporate bonds by private placement, convertible loans, business co-operation, joint ventures with other entities, raising funds from business co-operation contracts, calling for equity, or collection of advances from the homebuyers of off-plan properties if the project is a residential housing development project. The borrower may also use other assets or personal guarantees as collateral.

3.2 Typical Security Created by Commercial Investors

While raising funds from credit institutions is most common, the lender usually requires the first charge over:

- the land on which the project is premised;
- the right in respect of the project development;
- off-plan properties; or
- the receivables or proceeds from the sale of the properties.

3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

In Vietnam, foreign lending is permitted subject to restrictions on the purpose, currency, security transaction, the maximum principal and the fees or expenses incurred on the foreign loan. However, residential housing projects can only secure loans from Vietnamese-licensed credit institutions. Foreign loans with a term of more than 12 months must be registered with the State Bank of Vietnam.

Furthermore, the laws on land provide that foreign directly invested enterprises, having obtained the land-use right through land allocation or lump-sum land lease from the state may only charge its land-use right and/or assets attached on land to credit institutions duly incorporated in Vietnam. Any charge of real

estate to any foreign lender is not permitted and is not recognised as having any legal authority. However, foreign lenders can hold the LUR indirectly as collateral through an agent bank in Vietnam with the proper legal structure.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Security over real estate needs to be duly executed and registered with the competent authority and usually incurs land registration and notary's fees.

3.5 Legal Requirements Before an Entity Can Give Valid Security

To grant security over a land-use right, the following are required:

- a land-use right certificate;
- the right must be free from dispute, or the dispute is settled by dispute settlement authority;
- the land-use right may not be retrained for any judgment enforcement;
- the right must still be within the land-use term (with at least seven years' land-use right remaining);
- the LUR is not subject to interim injunction; and
- no financial obligation related to LUR must be pending.

3.6 Formalities When a Borrower Is in Default

When a borrower is in default, the credit institution (lender) is required to consider loan repayment restructuring before or within ten days prior to the agreed due date, taking into consideration the financial capacity of the credit institutions and evaluation of the borrowers' debt repayment capacity. If the lender refuses to execute the debt restructuring and decides to recognise the delayed payment as an overdue debt, a notice must be served to the borrower of its repayment status concerning such overdue debt.

The collateral realisation will proceed according to the agreement between the lenders and borrowers, and after notice on the same is served to the borrower and other secured creditors within 15 days prior to realisation (if not otherwise agreed). Subject to various factors, the time needed to realise real property security varies. In the event of realisation by way of auction, there are more parties involved, which causes

the procedure to be prolonged. It also takes time to find the appropriate buyer to acquire the property at a reasonable price. Generally, the expected range of time to successfully enforce and realise on real estate security is approximately six to 12 months or more.

In order to be effective against third parties, the collateral as real estate must be registered with the Land Registry Office to take priority over unsecured obligations. In respect of other secured obligations on the same collateral, the priority order is based on the chronological order of establishment. Regular valuation of collateral is required to ensure that the property's value is sufficient to cover the loan principal and interest in the event of the borrower's default.

3.7 Subordinating Existing Debt to Newly Created Debt

Existing secured debt will be subordinated to the newly created debt if the latter is properly registered while the former is not, or if the lenders/creditors agree on the change of order of priority for repayment.

3.8 Lenders' Liability Under Environmental Laws

See 2.7 Soil Pollution or Environmental Contamination.

3.9 Effects of a Borrower Becoming Insolvent

The effect on the security interest when the borrower is insolvent and subject to a bankruptcy case processed by a competent court is dependent on whether it is subject to the business recovery plan. If not, then the secured assets will be realised in accordance with the agreement between the parties if the secured obligations fall due. If the obligation is not due, the competent court will postpone the security agreement and repayment made by realisation of the secured property if the agreement is concluded before it is subject to a bankruptcy case.

If the secured property is subject to a business recovery plan, its realisation will be resolved by the general meetings of creditors.

3.10 Taxes on Loans

The law does not provide for any taxes on loans specifically related to real estate. However, lenders (either

foreign or Vietnamese incorporated entities) must bear the income tax incurred on the interest earned from such loans.

4. Planning and Zoning

4.1 Planning and Zoning Framework

Planning and zoning of regions (rural and urban areas) and projects must be approved by the competent authority (including the People's Committee at provincial and district level).

The design of the building must comply with the master plan (if any) and be appraised and approved. The approved design will form the basis for the competent authority (usually the competent provincial department of construction) to issue a construction permit to the developer before the project is built. Unless exempted, any building or refurbishment that does not have a valid construction permit will be deemed to be violating the laws on construction.

Parcels of real estate must be developed according to their designated use as approved by the competent authority, subject to the level of planning. The provincial People's Committee will approve planning on land use at the district level, which must comply with the planning approved by the senior authority. Any functional areas, subject to size, are required to compose the sub-zoning for development of investment projects.

Generally, laws on construction, (urban) planning and land are the most significant in matters of development and designated use of real estate.

4.2 Development Process, Challenges and Enforcement

In developing a new real estate project, project investment and investor selection approval (collectively referred to as "Investment Approvals") are usually required under Article 23 and Article 24 of the Law on Investment 2025. Depending on the scale, social and economic effects, or national security issues, such approvals may be under the authority of the National Assembly, the Vietnam government, or the People's Committee at provincial level. These issuing authori-

ties must consult with the relevant authorities on related aspects and issues in the investment project application (eg, zoning, planning, land use, environment, national defence, etc). Therefore, such opinions influence and impact investment project approval.

The application dossier for the project investment approval is provided under Article 32 of the Decree No 96/2026/ND-CP, aiming to describe the suitability of the project with master plans, land-use needs, economic, social and environmental effects, technologies to be used, market access, etc. The law sets forth the timeline for investment projects, and investor selection approval may take three to six months, although it usually takes longer.

Generally, the investor may conduct the real estate project after Investment Approvals have been granted and the procedures required on the construction – eg, design assessment approval, construction permits, etc, have been undertaken.

Foreign-invested enterprises or foreign investors who put money into Vietnam (Law on Investment) either by developing a new real estate project or completing a major refurbishment, which may also be considered as an investment project under the Law on Investment 2025, are further required to obtain an investment registration certificate under this law.

There is no mechanism for investors to appeal against rejection by the authorities of an investment project proposal or application under the Law on Investment. However, during the investment implementation stage, the investor has the right to appeal against administrative decisions or the conduct of authorities or officers under the Law on Complaints or the Law on Denouncements.

Projects using land-use rights, the purpose of which is classified in the entitlement of a land lease, are required to enter into a lease agreement with the competent authority. Most agreement types with state authorities are executed for projects of public-private partnership under the Law on Public Private Partnership and/or the Law on Tendering 2023[1..

5. Investment Vehicles

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Usually, investors may hold real estate assets by:

- acquiring the property through project transfer (asset deal);
- acquiring a property holding entity (share transfer deal); or
- obtaining an investment policy for a new real estate project.

Foreign investors may establish a new company in Vietnam to invest in real estate projects. The available types of entities include limited liability and joint stock companies. While the scope of real estate trading activities is restricted to foreign invested companies under the Real Estate Trading Law, foreign-invested companies can engage in a broader range of real estate trading activities by adopting appropriate shareholding ratios and corporate structures.

In some cases, foreign investors may enter into a joint venture with local partners who hold LURs over land parcels to set up project companies to develop real estate projects.

Investors can also hold real estate by co-operating with other entities through a Business Co-operation Contract (BCC) as provided under the Law on Investment. Although the investors may not have a direct holding in the real estate assets in the BCC, they will have influence in policymaking in the entity that owns the real estate assets, depending on the structures agreed therein.

5.2 Main Features and Tax Implications of the Constitution of Each Type of Entity

A limited liability company (LLC) is divided into two categories, single-member or multiple-member. In the former, there is only one member, while the latter may include at least two but no more than 50 members. The members of an LLC are liable to the company limited to the proportion of capital contributed.

A joint stock company (JSC) includes at least three founding shareholders and can be listed or unlisted.

If listed, the sale of its shares will be governed by the laws on securities. As with an LLC, shareholder liability to the company is proportionate to the number of shares held.

5.3 REITs

The concept of a trust does not exist in Vietnam, so there are no real estate investment trusts, or REITs, within the sector.

5.4 Minimum Capital Requirement

There is no minimum capital required to set up an entity.

However, if the entity is chosen to be the developer of a real estate project under the Law on Investment, it must have equity capital equivalent to at least 20% of the total investment capital in the real estate project below 20 hectares, and at least 15% in a project of more than 20 hectares. There must be proof of such capital capacity for the authority to approve the project.

5.5 Applicable Governance Requirements

When an entity/individual is investing in a real estate project, the following conditions must be satisfied:

- the entity must be duly established as a corporate under the laws of Vietnam;
- it must have the role of project developer and the name of the real estate must be published;
- it/they must not be prohibited from conducting real estate business, subject to temporary business suspension, or a termination order by a court judgment, or a competent state authority;
- the entity must have equity capital of at least 20% of the total investment capital in the real estate project below 20 hectares, and at least 15% in a project of more than 20 hectares; and
- it must have a satisfactory debt-to-equity ratio for credit and/or corporate bonds.

5.6 Annual Entity Maintenance and Accounting Compliance

Foreign-invested companies must maintain financial statements and have these audited annually for submission to the tax authorities. The cost may vary depending on the complexity of the work required.

The companies must also report periodically to the authorities on their investment activities.

6. Commercial Leases

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Entities or individuals will be granted the land either in the form of allocation or lease by the state for a specified period, always subject to the purpose of using the land. While the land-use term of a land lease is for a limited period, land allocation may either be for a limited period or for long-term use. The terms are extendable, subject to the discretion of the state.

These primary land users may use the land, undertaking construction on it and leasing it out for a limited term under a commercial lease, but may not exceed the term granted by the state.

6.2 Types of Commercial Leases

A commercial lease is not classified by type, and payment by the tenant is dependent on negotiation between the parties. However, besides basic real estate rent, tenants usually have to bear:

- utilities charges;
- management and maintenance fees; and
- insurance.

In the case of lease of a retail space, tenants may incur a “percentage rent”.

6.3 Regulation of Rents or Lease Terms

General rules on commercial leasing real estate are provided under the Civil Code 2015, the Law on Real Estate Trading 2023 and the Law on Commerce 2005. Terms on rent are freely negotiable between the parties to the lease, as long as they are not contrary to, or prohibited by, regulations under the law. Lease rent in industrial parks may be subject to certain regulations by industrial park management authority.

6.4 Typical Terms of a Lease

Typical terms are subject to the nature and purpose of the lease, provided that the terms of a commercial lease do not exceed the terms of a land allocation/

land lease granted to primary land users by the state and the investment term (if a real estate project):

- the typical length of the lease term may vary from two to five years, and some may be extended to seven years, with the rent adjusted annually; for the lease of facilities in industrial parks, the terms are usually for the full investment term;
- the maintenance and repair of the real estate occupied by the tenant will be carried out by the landlord at the expense of the tenant; and
- the rent payments must be made either monthly or half-yearly.

6.5 Rent Variation

Rent variation depends on the different real estate sectors. For instance, in commercial leasing of retail space, base rent will be adjusted on a regular basis. The frequency and rate of rent adjustment is entirely at the landlord's discretion. However, in respect of facility leases in an industrial park, base rent is paid in a lump sum for the entire lease term, with no variation applied.

6.6 Determination of New Rent

Unless the lease is a lump-sum payment, lease contracts usually have a rent review clause based on the market price at the time. Some may choose to determine the increase in rent at a particular rate in the lease contract as the lease continues. The proposed increase in rent is permissible if it is reasonable.

6.7 Payment of VAT

VAT is incurred on basic rent, currently at the rate of 10%.

6.8 Costs Payable by a Tenant at the Start of a Lease

It is entirely up to the concerned parties to negotiate any costs payable by the tenant at the start of a lease other than basic rent. However, it is common practice in this jurisdiction for the tenant to be required to pay a deposit prior to the lease taking effect, with this amount kept by the landlord during the entire lease term.

6.9 Payment of Maintenance and Repair

By law, the maintenance and repair of a privately owned property is the obligation of the owner. In the case of common areas, co-owners share that responsibility. In property leases, the property owner will have that obligation unless it is agreed to be passed to the tenants in the lease contract.

6.10 Payment of Utilities and Telecommunications

Utilities and telecommunications expenses incurred in privately used areas will be measured by separately installed gauges and independently borne by the specific user. Expenses incurred in public areas will be borne by the property owner or shared or allocated to the tenants as stipulated in the contract.

6.11 Payment of Property Taxes

Technically, landlords are responsible for paying taxes charged on the income earned from real estate leasing activities.

6.12 Insurance Issues

It is common practice for the tenant to bear the insurance premium for policies that cover all risks on the real estate and public liabilities. However, it is also common practice for the property owner to procure insurance for the building structure. The insurance will be in the name of the tenant and the landlord, and at the coverage rate requested by the landlord.

Business interruption insurance is more unusual in this market, given that tenants have suffered significant losses following the COVID-19 pandemic, and landlords have had to forego basic rent due to closure of a tenant's business.

6.13 Restrictions on the Use of Real Estate

Per general regulations, tenants are obliged to lease and use the property according to its intended purpose, function, design and other agreements under the lease contract. Tenants are required by law to preserve, maintain and repair minor effects at the leased property and will bear the cost if there is any loss or damage.

Subject to negotiations between the parties, a landlord may impose further restrictions on tenants regard-

ing the use of a property, if these restrictions are not contrary to the law, particularly in the case of land or factory leasing in industrial parks, where tenants must observe the regulations on environmental protection.

6.14 Tenant's Ability to Alter and Improve Real Estate

The tenant is permitted to alter or improve the real estate, but always subject to the consent or approval of the landlord, even if such maintenance and improvement increases the value of the property. If the leased property is depreciating, not due to any fault of the tenant, and the landlord fails to act on the notice given by the latter, the tenant may carry out alterations or improvements to the leased real estate in the absence of consent by the landlord, but is usually required to submit the alteration plan and design to the landlord for approval. In addition, the tenant must have a security bond or amount paid to the landlord, such as a deposit, for compensation of damages caused to the landlord or the building.

6.15 Specific Regulations

Apart from the general rules above, specific regulations may apply, subject to the category of real estate into which the leased property falls. Residential houses subject to a lease must satisfy various requirements stipulated by the law on housing, including:

- not being subject to any encumbrances – ie, any dispute, claim or petition on the ownership;
- not being distrained from any enforcement of effective judgment or administrative order of the competent authority; or
- not being subject to any decision on land revocation, notice on clearance or destruction by the competent authority.

Industrial property is subject to compliance with regulatory requirements on construction, environmental protection, firefighting and prevention, public security and order, labour safety and hygiene, and corporate ethics.

6.16 Effect of the Tenant's Insolvency

Generally, in a contract, the landlord is entitled to terminate the lease on the insolvency of the tenant – ie, failure to fulfil its debt liability within three months of

the due date as provided by the laws on bankruptcy. At that point, and always subject to agreement between the parties:

- the deposit money (if any) will be forfeited by the tenant; and
- the landlord can take back the leased property.

The landlord would be required to return the amount of rent corresponding to the remaining lease period if the rent for the entire lease term was made in a lump-sum payment.

If the tenant is subject to a decision on the initiation of a bankruptcy process, any settlement of payables (including basic rent) incurred before would be stalled and would only be made subject to the statutory level of priority of payments after the decision on the declaration of bankruptcy by the relevant court.

6.17 Right to Occupy After Termination or Expiry of a Lease

Upon the termination or expiry of a lease, the tenant is required to reinstate the premises in the condition agreed by the parties. Any further occupation will be subject to hold-back charges pro rata to the basic rent. The landlord has the right to re-enter the property without prior notice and change the locks or to take any necessary measures to take back the real estate.

6.18 Right to Assign a Leasehold Interest

The contractual rights and obligations of commercial leases can be assigned and novated to an assignee prior to the expiry of the lease term by which the lease held by the tenant will be terminated. In the assignment of rights, written notice of the same is required to be served to the landlord. The novation requires the prior consent of the landlord. Any commercial sub-lease must have prior agreement or written consent from the landlord.

The leasehold interest in land under Vietnamese law cannot be understood as in the common law system. The land is leased out to a land user by the state, usually for a defined term, to develop an investment project, and the land-use rental is incurred by the land user (either paid annually or in a lump sum). Generally, any transfer of leasehold title in land-use right is con-

ditional on the lump-sum payment of rent being made to the state, having obtained the LURC, the land being free from dispute and not distrained by any judgment enforcement (or the dispute must have been settled by dispute settlement authority), with the LUR: a) not being distrained for any judgment enforcement; b) still within the lease term of the state (with at least seven years' land-use right remaining); c) not subject to interim injunction; and d) with no financial obligation pending. The transfer must be made in writing, notarised and registered. Otherwise, the leasehold title is not assignable.

6.19 Right to Terminate a Lease

The landlord has the right to terminate the contract due to:

- failure of payment by the tenant within three months after the due date;
- the tenant's insolvency;
- the tenant's use of the leased real estate for the wrong purpose;
- the tenant deliberately causing detrimental damage to the leased real estate;
- the tenant repairing, improving, upgrading, altering or sub-letting the leased real estate without agreement or written consent from the landlord;
- the tenant being a nuisance or failing to maintain public hygiene, security, etc, in a way that affects the other residents, and despite warnings from the local authorities;
- any other event agreed by the parties.

The tenant has the right to terminate the contract if the landlord:

- fails to repair real estate which does not meet the safety requirements for use, or which causes harm/damage to the tenant;
- increases the rent at an unreasonable rate;
- limits the tenant's right of use while limiting the rights of a third party;
- if there is any breach of representation and warranties by the landlord in respect of the real estate; or
- any other event agreed by the parties.

6.20 Registration Requirements

A lease of land-use right and property (houses or construction building) must be executed in writing following the form provided by law (if any). The lease of land-use right must be registered with the Land Registry and the tenant is entitled to be recorded on the LURC for the lease term, as provided by law.

6.21 Forced Eviction

It is not easy to evict a tenant from an estate without a court ruling or order. To do so, the landlord has to bring the case before the court and pursue litigation, which may take a significant amount of time (two to six years).

However, the landlord may engage the authorities (representatives from the People's Committees, the police, etc) to prevent the tenant from entering the property (eg, by changing the locks, re-occupying the property, disconnecting the electricity and water supply), as a result of which the tenant may have to abandon the property. However, such measures are also controversial, and in some cases may constitute a legal violation with criminal liability.

6.22 Termination by a Third Party

A lease can be terminated if the land on which the property is located is subject to land expropriation by the competent authority. See **2.9 Condemnation, Expropriation or Compulsory Purchase**.

On the other hand, a third party can hardly have rights against a commercial lease interest if it is not a party to the contract, unless the contractual parties agree otherwise, or there is a registered pledge that pre-dates the lease by which the lease can be terminated if the leased property is subject to disposal procedures following the settlement of the pledge. If the leased property is the collateral to any pledge, the lessor as the property owner is required by law to inform the lessee of the same. Otherwise, the lessor may be liable for any damages caused by the non-disclosure.

Furthermore, since an owner may own a property on land leased from a landlord, there is a possibility that the landlord may terminate the land lease agreement while the property owner is leasing its property to a third party. In this case, the land lease termination also

affects the property lease. If the land lease termination is lawful then any damages caused to the property lease will be borne by the land tenant. If the land lease termination is not lawful, however, the landlord may be responsible to the land tenant in bearing the compensation owed to the property lessee, as well as the cost of any other damages that arise as a result of the unlawful termination.

6.23 Remedies/Damages for Breach

In the event of a tenant breach and termination of a lease, the landlord can claim for actual damages incurred directly from such breach, a penalty (at 8% of the obligation breached), and late-payment interest for the breach of payment obligation (at less than 20% per annum). Alternatively, landlords usually hold a security deposit in cash, equivalent to one-to-three months' rent, or may place a lien on and dispose of the property on the premises. It is recommended that landlords seek specific advice for the best approach on the application of the above remedial measures prior to executing the lease contract.

7. Construction

7.1 Common Structures Used to Price Construction Projects

Construction project pricing may include:

- a lump-sum price;
- a fixed price;
- a fixed price with adjustments;
- a time-based price; and
- a price with combined methods.

7.2 Assigning Responsibility for the Design and Construction of a Project

Construction usually involves:

- the project's developer;
- the building contractor;
- the supply contractor of building products and materials or assembling equipment etc; and
- the advisory contractor in survey, design, project management, monitoring, piloting, assessing, etc.

The (main) contractors and/or construction management board (if established by the developer for project management) are directly responsible and liable for the scope of works undertaken in terms of quality and safety before the laws and the developers. Any secondary contractor will be liable before its main contracts. Assigning contractors' responsibilities wholly or partially must be agreed and/or approved by the owner in formal and written documents, otherwise such assignment is invalid and ineffective. The assignment of responsibility must not be contrary to, and must always comply with, the laws on construction management in quality, progress, quantity, occupational safety and environmental control.

7.3 Management of Construction Risk

Risks in construction are usually passed to (main) contractors under contract between the parties through penalty and indemnification. Nevertheless, mandatory insurance against risks in construction investment activities must be procured, including construction and public liability policies.

7.4 Management of Schedule-Related Risk

It is provided under the laws of construction that the construction schedule of the project must be properly monitored by the developer, monitoring department, main contractors or any related parties. A delay at any stage must not affect the overall investment schedule.

The principal of the construction contract is entitled to suspend the performance of the contract and to unilaterally terminate the contract if the contractor is causing continuous delays to the schedule agreed by the parties (unless the parties agree otherwise). Penalties and damages are available for the breach in construction schedule, either for the contractual parties or third parties, being the developer or the owner if agreed by the parties.

Furthermore, the developer is required to submit a request for amendment to the general investment schedule.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

In order to guarantee the performance of contractors, the owner may require contractors to comply with

additional forms of security such as a deposit, escrow or any form of guarantee, which may include parent or bank guarantees. The specific guarantee must be agreed in detail between the developer and the main contractors, and duly delivered to the developer before the construction contracts come into effect.

The security to guarantee a performance is valued within a range of 2% to 10% of the contract value. Higher risks will come with higher rates, but the value is capped at 30% of the contract value and must be approved by the competent body (Article 16 of Decree 37/2015/ND-CP).

7.6 Liens or Encumbrances in the Event of Non-Payment

The project developer or owner of the building may provide proof of the ability to make payment to the (main) contractors with whom they have the contractual construction relationship as a preventative measure against non-payment by the developer.

Guarantees of payment capacity may be satisfied by laws involving the following measures:

- approved plan on capital distribution;
- letters of guarantee by banking or credit institutions;
- letters of credit; or
- loan agreements.

Payment guarantees must be available prior to the execution of the construction contract to ensure that the developer complies with the payment schedule agreed with the contractor in the construction agreement. Laws prohibit the developer from entering into a construction agreement without payment guarantees available as prescribed, unless the construction is for emergency purposes.

Alternatively, while this is neither prescribed nor prohibited by law, the developer may agree with the contractor to hold a lien over the building in the event of non-payment by the developer (or the owner of the property). However, this is uncommon construction practice in Vietnam, as are other encumbrances, such as a pledge over the building.

7.7 Requirements Before Use or Inhabitation

Before any building or project commences, the developer must obtain a certificate of occupancy issued by the competent authority.

8. Tax

8.1 VAT and Sales Tax

Goods and services used for production, trading or consumption in Vietnam are subject to VAT. In respect of the transfer of real estate, VAT is incurred by the purchaser of the property at a rate of 10% of the transfer price of the real estate (excluding the land value announced by government authorities).

8.2 Mitigation of Tax Liability

For a sale or transfer of real estate by corporate seller/transferor (asset deal), VAT (10%) and corporate income tax (CIT) are applied. CIT is 20% of the capital gain from the property. However, if structured in selling shares of a JSC (share deal), then taxes may be 0.01% of the transferred shares (even when transferring 100% of the shares of that entity). Therefore, the “share transfer deal” approach is commonly used in acquisition transactions of real estate development projects.

8.3 Municipal Taxes

Business-licence tax (or licensing fee) is applied to every business based on its registered capital. The tax is a small amount (around USD135/year). However, in addition, the entity (as a property owner) has to pay land tax based on the land price and land area.

8.4 Income Tax Withholding for Foreign Investors

Foreign investors as corporates are not permitted to directly obtain possession of real estate in Vietnam. Any investment in real estate must be made through an entity established under Vietnamese law. Foreign individuals are only permitted to purchase commercial residential houses from a real estate developer. Corporates bear the corporate income tax on the taxable income earned from the rent or sale of real estate at a rate of 22%. Individuals bear the PIT at a rate of 5% of taxable income from renting properties, and 2% of the sale or transfer price from the sale of real property.

8.5 Tax Benefits

Individuals owning real estate may be entitled to tax exemption from the income earned from the transfer of residential houses, land-use rights and assets attached to land if those are the only residential houses/land, or the transactional parties have relative relationships provided by law. Corporates investing in certain projects may also be entitled to tax exemption or a tax rate reduction for a certain time.

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