



INVESTMENT GUIDE TO REAL ESTATE IN VIETNAM | 2023



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01

INTRODUCTION

Despite significant headwinds due to the Covid-19 pandemic, Vietnam outperformed neighboring countries in 2021 with a GDP growth of 2.58%. Vietnam is a resilient economy and enjoyed 8.02% GDP growth in 2022, the fastest growth expansion for Vietnam in 25 years. While 2023 and 2024 are expected to see more moderate growth for Vietnam with 6.3% and 6.5% GDP increases respectively there is increased attention from local and global investors including overseas real estate investors. Vietnam is expected to be a favorable destination for investment going forward.

Vietnam benefitted significantly from the United States' trade disputes with the People's Republic of China resulting in a significant number of manufacturers relocating to Vietnam to diversify manufacturing supply chains. This shift continued in 2021 and 2022 with international investors developing new facilities and industrial developers seeking out greenfield projects for increasingly sophisticated industrial estate development.

Following the pandemic, the logistics sector also presents very attractive opportunities. The increasing demand for warehousing is driving investment in Vietnam's logistics framework, with foreign-owned entities allowed to invest in warehousing projects, and with the new legislation allowing construction works (including warehouses) to set

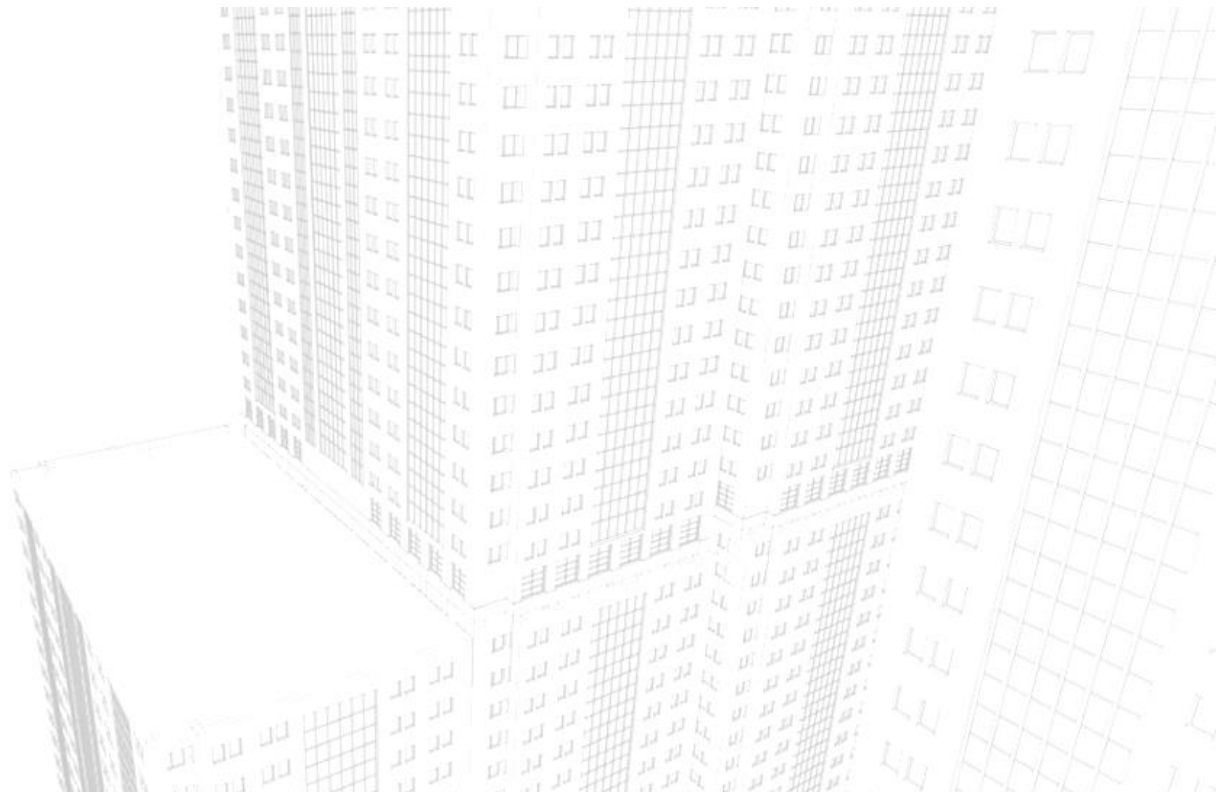
up rooftop solar power systems and directly sell power to private off-takers for self-consumption.

In the hospitality sector, there has been growth in domestic tourism and resort market. While recovery is expected to be gradual, the government is progressing development of travel infrastructure with the construction of a large international airport adjacent to Ho Chi Minh City and the proposal for a second airport in Hanoi.

In addition, the residential housing market continues to grow with the majority of investors/ buyers coming from the rapidly expanding domestic middle class and increasing interest from foreign investors in Vietnam's luxury sector.

With a booming economy, Vietnam has plenty to offer in terms of real estate investments as compared to more mature Asian markets, however like most opportunities there are also certain challenges that require navigation with legal and tax guidance. At DFDL you will find both, and our advisors will assist and guide you on the best investment path.

We hope you find the information you need in our Real Estate Investment Guide to help start you on this investment journey and we are here to advise you when you decide to move forward.



02

REAL PROPERTY RIGHTS

TYPES OF LAND RIGHTS

COMMERCIAL / INDUSTRIAL

RESIDENTIAL / CONDOMINIUMS

AGRICULTURE

LEASES

FOREIGN OWNERSHIP RESTRICTIONS



Type of Land Rights

There is no private ownership of land in Vietnam; all land belongs collectively to the people of Vietnam represented by the State. The State either allocates or leases land to land users, or recognizes land use rights in favor of land users, which grants land use right (“LUR”) to land users. Being granted such an LUR, the land user generally has the right to use an area of land for a specific purpose and for a specific length of time and, subject to the specific type of LUR being granted, to inherit, transfer, exchange, lease, create mortgage over, etc., such an LUR. Subject to the specific type of LUR being granted, the term of the LUR may be long-term or for a defined period of time. In case of an LUR having a definitive term, such term must not exceed 50 years in general for commercial projects. For some special kinds of commercial projects (for example, projects with large investment capital but slow schedule of return of capital), it is possible for the term to be longer but only up to a maximum duration of 70 years.

The right of lease or assignment of an LUR depends on how the land was granted and the permitted use purpose of the land. LURs are granted by the State to a land user in the following forms:¹

- An allocation of land with or without a land use fee (“LUF”);
- A lease of land with land rental payments made on an annual or lump-sum basis (the land user may choose either annual or lump-sum payment); or
- LUR granted by the State.

Commercial / Industrial

A. Commercial Land

Regarding the form of lease of land, pursuant to the Land Law, the State may lease land and collect an annual land rental or lump-sum payment of land rental from developers implementing commercial projects. Such developers include households and individuals that use land for the implementation of public facilities for commercial purposes, economic organizations, overseas Vietnamese individuals and foreign invested enterprises that use land for the implementation of projects concerning public facilities for commercial purposes or residential houses for lease.

B. Industrial Land

Pursuant to the Land Law, a developer of an industrial zone (“IZ”) must lease land from the State by making annual payments or a lump-sum payment of land rental.

The subtenant in an IZ will be granted a certificate of LUR and have the same rights as a tenant leasing the land directly from the State on the same rental payment form (either annual or lump-sum payment).

A developer of an IZ, export processing zone (“EPZ”), or high technology zone (“HTZ”) is considered the lessee of the land it leases to develop such zones.

The developer may sub-lease the land with attached infrastructure facilities to a Foreign Invested Enterprise (“FIE”) as a subtenant to implement its investment project. Rental amounts and other sub-lease conditions are to be negotiated between the developer and the subtenant. If the land in an IZ or EPZ is leased to the developer with land rental payments made on an annual basis, the developer may sub-lease the land for annual rental payments. If the land in an IZ or EPZ is leased to the developer for an annual or lump-sum rental payments for the entire lease term, the developer may sub-lease the land with land rental made on either form of payment. The Land Law is silent on payment methods for land sub-leased in an HTZ.



CASE STUDY

A *foreign owned entity* (“FOE”) is considering the acquisition of a land plot for development of new manufacturing facilities. The FOE will require the LUR certificate to be issued in its name for both the land plot and the facilities to be constructed. The target land plot is not located within an approved industrial or business zone and is offered as a sublease from an industrial estate developer. Since the FOE is deemed foreign under the law and the target land is located outside of an approved industrial or business zone, the FOE is not eligible to obtain a land use right certificate in its name under a sublease arrangement.

Residential / Condominiums

In accordance with the Law on Land, the State may lease land and collect annual rental or a lump-sum payment from developers implementing residential housing investment projects. Economic organizations, overseas Vietnamese and FIEs are eligible to invest in such projects.

Vietnamese nationals residing overseas who are allowed to freely enter and exit Vietnam are entitled to own a residential house in the country.

The Law on Residential Housing allows foreign organizations and individuals to own residential houses in Vietnam provided that, relevant requirements are satisfied. Cases of foreign organizations and individuals eligible to own residential houses in Vietnam include:

- Foreign organizations and individuals investing in residential housing projects who are granted Investment Certificate (“IC”) / Investment Registration Certificate (“IRC”) and have residential houses constructed under a project in accordance with Vietnamese laws;
- FIEs, branches and representative offices of foreign organizations, foreign investment funds and foreign bank branches currently operating in Vietnam who are granted ICs/IRCs or other licenses to operate in Vietnam; and
- Foreign individuals who are permitted to enter Vietnam and not entitled to preferential treatment rights, or diplomatic or consular immunity.

These eligible entities may own residential houses in Vietnam, where applicable, by way of (i) investing in residential housing projects in accordance with Vietnamese law or (ii) purchasing, hire purchasing, receiving donations or inheriting commercial apartments and commercial houses in residential housing projects. For the latter, certain areas are restricted for national security reasons. The relevant provincial Department of Construction is responsible for providing details on restricted locations.

Apart from foreign organizations and individuals investing in their own residential housing projects, other eligible entities/individuals may own:

- Not more than 30% of the total number of apartments in an apartment building;
- In case there are several apartment buildings for selling, hire purchasing in a locality having the population equivalent to that of a ward-level

administrative unit, not more than 30% of the total number of apartments in each apartment building **and** not more than 30% of the total number of apartments of all such apartment buildings; or

- In case there is only one project with less than 2,500 residential houses, not more than 10% of the total number of residential houses in such project; in case such project has 2,500 residential houses, not more than 250 residential houses in such project; in case there are two or more projects with the total number of residential houses being equal to or less than 2,500, not more than 10% of the number of residential houses in each project.

Apart from foreign organizations and individuals investing in their own residential housing projects, in general other cases of eligible foreign organizations and individuals may own residential houses in Vietnam for a fixed term that can be renewed. Specifically, eligible foreign individuals may own residential houses in Vietnam for a maximum of 50 years, with an opportunity to extend subject to approval by the State. Foreign individuals married to Vietnamese citizens may own residential houses on a long term and stable basis. FIEs, branches and representative offices of foreign organizations, foreign investment funds and foreign bank branches currently operating in Vietnam may own houses in Vietnam for the duration indicated in their ICs/IRCs or other valid operating licenses.

In order to purchase a residential house or apartment in Vietnam, a foreign individual must be able to produce proper documentation evidencing the right to enter Vietnam. Expatriates also have the right to mortgage, transform, inherit, and transfer these apartments.

Investment Approval

Developers of residential housing development projects (including mixed-use development projects) must procure an “investment policy approval” from the Prime Minister or the provincial People’s Committee, subject to the proposed scale of the land use area and population density of such projects.

Residential development projects involving 300 hectares of land or more or with the population of 50,000 people or more² require the Prime Minister’s approval.

Financing of Residential Development Projects

The Law on Housing 2014 as amended (the “**Law on Housing**”) provides permitted sources of funds for development projects. Specifically, developers of a commercial residential housing project may mobilize capital as follows:

- Capital owned by the developer;
- Capital raised in the form of contributions, investment cooperation, business cooperation, joint ventures and affiliations of organizations, family households and individuals;
- Advance payments for the purchase, lease or hire purchase of residential houses to be formed in the future; and
- Loans borrowed from credit institutions and financial institutions currently operating in Vietnam.

Mobilized capital must be invested exclusively in the residential housing project and mobilized capital originating from buyers of residential houses must not exceed certain regulatory caps.

Pre-Sale Contracts with Buyers

Developers may enter into pre-sale contracts and receive advance payments only after the buyers of residential houses have received certain documents from the developer, including the following key documents:

- Documents evidencing the LUR;
- Project dossier;
- Designs/drawings for work previously approved by the competent authority;
- Construction permit (if required); and
- Documents on the inspection and acceptance of the completion of construction of technical infrastructure facilities corresponding to the project schedule;
- in the case of an apartment building or a mixed-use building for residential purpose to be formed in the future, the minutes of inspection and acceptance of completion of such a building’s foundation must also be provided.

In addition, the developer must also procure a bank guarantee to be issued by a qualified commercial bank, to secure financial obligations of the developer to the

customers in case it fails to hand over the houses in line with the timetable undertaken with the customers.

Assignment of Projects That Use Land

An economic organization not classified as an FIE but as a domestic economic organization (“**DEO**”) may assign LURs allocated by the State and FIEs and DEOs that receive LURs may include these in an assignment of its investment project, to the extent the assignor has been allocated land by the State with payment of LUF, or been leased land by the State with payment of rental on a lump-sum basis, or taken the assignment of LUR pursuant to the law, in which the LUF, the rental, the assignment amount being paid was not funded by the State budget. The project assignment contract should clearly indicate the value of the LUR and will also be considered a land assignment contract.

In the event that the assignor has been allocated land by the State without payment of LUF, or been leased land by the State with payment of rental on an annual basis, or allocated land by the State with payment of LUF, leased land by the State with payment of rental on a lump-sum basis, taken the assignment of LUR, in which the LUF, the rental, the assignment amount being paid was funded by the State budget, then the value of the LUR will not be included in the project assignment’s total value. This similarly applies to land allocated by the State without collection of an LUF to be used as the contribution of capital in the form of an LUR. The parties must then submit the project transfer contract and relevant LUR certificate to the competent authorities for re-issuance to the project assignee.

When a land plot used for a project is granted for a fixed term, the FIE or DEO taking over the project will only be entitled to the remaining term of use unless otherwise extended in accordance with Vietnamese law.

Agricultural Land

Pursuant to the Land Law, the State may allocate land without payment of LUF to households and individuals conducting direct agricultural production activity or within a residential community.³ Depending on the land classification, the land area to be allocated is subject to specific quotas set by the State.⁴

In addition, the State may lease land and collect an annual land rental or lump-sum payment of land rental from households and individuals conducting direct agricultural production activities, economic organizations, overseas

Vietnamese individuals, and FIEs that use land for the implementation of investment projects concerning agriculture, forestry, aquaculture or salt production.⁵

A residential community is allowed to use allocated land on a long term and stable basis.⁶ The duration of allocation of land in respect of family households and individuals directly engaged in agricultural production is fifty (50) years. If upon expiry of the land use duration, the family households and individuals directly engaged in agricultural production wish to continue using the land, they shall be allowed to continue using the land for another fifty (50) year lease term.

The duration of allocation or lease of land to domestic organizations, overseas Vietnamese, and FIE permitted to implement investment projects in Vietnam to use land for purposes of agricultural production, forestry, aquaculture or salt production shall be considered and decided on the basis of the investment project or the application for allocation or lease of land, but not exceeding fifty (50) years.

With respect to investment projects with large investment capital but a slow schedule of return of capital and investment projects in areas with difficult or especially difficult socio-economic conditions which require a longer period, the duration of allocation or lease of land shall not exceed seventy (70) years.⁷

Leases

Land rental may be paid on an annual or lump-sum basis when the land is leased from the State pursuant to a land lease agreement.

A land lease can be granted by the State to Vietnamese individuals and households, Vietnamese organizations, overseas Vietnamese, FIEs and foreign diplomatic or consular organizations.

Where land is leased to an economic organization, overseas Vietnamese national, or FIE on an annual rental payment basis, the rental rate applicable to each project is fixed for five years from the date of the State's decision on the land lease.

Upon expiry of such a period, the provincial Department of Taxation will specify the rental rate for organizations, overseas Vietnamese or FIEs. The Sub-Department of Taxation will specify the rental rate for households and individuals based on the land price list, land price adjustment coefficients, and the percentage rate defined by the provincial People's Committee.

If land lease is granted by the State for lump-sum rental payments not through an auction, the rate of the lump-sum rental shall be the land price of the land use term, as stipulated in the Government's most current decree on land prices.

Restrictions of Rights of FIEs

Pursuant to the Land Law, FIEs that lease land from the State with a lump-sum rental payment or take over land allocated by the State with payment of LUF to implement an investment project may:

1. be issued a certificate of LUR, ownership of residential houses and other properties attached to land ("**LURC**")⁸; or
2. assign, grant a lease or sub-lease, mortgage, and make capital contribution using the LUR and assets owned by the FIEs on the land for project development purposes.

FIEs that have leased land from the State with annual rental payments may (among others):

3. be issued an LURC;
4. mortgage, contribute capital, or sell assets on the land that it owns; and
5. grant a lease of residential houses if licensed to invest in, construct and commercially operate residential housing.



TIP

The right of FIEs to use real property for rental purposes or commercial purposes is limited under Vietnamese law. For example, a property, which may be marketed as residential such as a condotel may in fact be classified under the LURC as commercial. Such classification would change the required governmental permissions to engage in the business of renting out such property.



03

ACQUISITION OF OWNERSHIP

PERFECTING OWNERSHIP

ASSET ACQUISITIONS

SHARE ACQUISITIONS

OTHER ACQUISITION RIGHTS

Under the Land Law, FIEs are not permitted to take an assignment of an LUR. DEOs and Vietnamese citizens may obtain LURs assigned from other land users. Vietnamese individuals and companies may receive a “land allocation” from the local People’s Committee, which is essentially equivalent to freehold property ownership. FIEs may also receive land through allocation upon payment of LUF, but only to implement investment projects for the construction of residential houses for sale or for sale combined with leasing.

Foreign organizations having diplomatic function are not entitled to acquire LURs through land allocation and may only acquire LURs through a land lease with the State, under which they can pay land rental on an annual or lump-sum basis.

LURs are evidenced by the LURC which identifies the registered holder of the certificate, the duration and purpose of the land use and, as the case may be, all registered mortgages and other encumbrances over the land. The LURC also includes a map of the land plot/apartment plan in question.

Under the Land Law, FIEs may obtain LURs in one of the following ways:

- Receiving an allocation of land from the State in order to implement investment projects for the construction of residential houses for sale or for sale combined with leasing.
- Leasing the land from the State in order to implement investment projects in agricultural production, forestry, aquaculture or salt production, for non-agricultural business and production, for the construction of community buildings for business purposes, and for the construction of residential houses for leasing.
- Taking over land allocated by the State or leased to Vietnamese partners as the capital contribution of such Vietnamese partners to form a joint venture company.

The provincial People’s Committees are the competent authorities to approve land leases in favor of FIEs. The Department of Natural Resources and Environment (“DONRE”) represents the provincial People’s Committee as the Vietnamese party to the land lease agreement, which must conform to the standard land lease form promulgated by the

Vietnam Government through its Ministry of Natural Resources and Environment (“MONRE”).

Perfecting Ownership

Agreements for the transfer of LURs or assets attached to land must be made in writing and notarized or certified, except for agreements in which at least one of the parties is a real estate enterprise.⁹

The registration of LURs or asset transfers must be carried out at the Land Registration Office, under the DONRE or its branches within 30 days after the date of the transfer.

After examining the registration application dossiers and determining that the conditions for transferring the LUR or assets attached to the land are satisfied, the Land Registration Office must send relevant cadastral information to the tax authority so that it can assess any related tax liabilities. After the land user or actual property owner has fulfilled such financial obligations, the Land Registration Office will certify the necessary content and issue a LURC. In the event that the new land user or owner of real property seeks to partially transfer LUR already issued with a LURC, the Land Registration Office must submit a file to the competent agency so that a new LURC may be issued to the new land user or real estate owner.

Asset Acquisitions

It is important to examine the legal documents of real property such as the LURC, IRC, construction permit, fire prevention and safety approvals, approved environmental impact assessment reports and so on during an asset acquisition due diligence process.

Under Vietnamese laws, mortgaged properties cannot be transferred without the consent of the mortgagee unless the law prescribes otherwise. As such, any potential purchaser should inspect whether the relevant LUR or real estate is mortgaged to a third party. The law requires that a mortgage of an LUR or assets attached to the land must be registered with the Land Registration Office or its branches where the land is located.

Once registered, the mortgage information regarding the LUR or real estate should be indicated on the LURC. Individuals and organizations may also try to

seek information on the mortgage from the local Land Registration Office.

Share Acquisitions

Share acquisitions may be a good way to indirectly and practically hold an LUR or real estate if the target company is the land user or real estate owner. Apart from some considerations set out above, a potential purchaser should also keep an eye on whether any liabilities/obligations may be imposed on the target company in connection with the LUR or the real estate. Such liabilities could include those towards a third-party lender if the target company has used the LUR or real estate to secure its own repayment obligations.

Other Acquisition Rights

Inheritance/Donation

Overseas Vietnamese who are entitled to own a residential house in Vietnam, domestic organizations, households, individuals, and residential community may acquire an LUR or assets attached to the land by means of inheritance or receipt of donation.¹⁰ Documents relating to the inheritance or agreements for the donation of LUR and assets attached to the land must be made in writing and notarized or certified.¹¹

Exchange

Households and individuals may acquire LURs for agricultural land by means of exchange of LUR with another household or individual within the same commune/ward/town.¹² Agreements for the exchange of LUR regarding agricultural land must be made in writing and may be notarized or certified upon the request of the parties.¹³

Capital Contribution

Domestic economic organizations and joint ventures may acquire LURs by means of receiving capital contribution using the land use right. Agreements for the capital contribution using LUR and assets attached to the land must be made in writing and notarized or certified, except for agreements in which at least one of the parties is a real estate business organization. In case the party making the capital contribution using LURs has leased the relevant land with payment of rental on annual basis, the receivers of the capital contribution using LURs will continue to

lease the land and sign the lease agreement with the local DONRE.

The land users acquiring the LUR in one of the above means will, upon submission of a complete and valid application dossier, be issued LURCs regarding the LUR in question.



TIP

Investors should be aware that the period of the LUR granted may not align with the operational term of the enterprise. From a practical perspective, if the LUR expires prior to the operational term of a particular real estate project, the enterprise would be required to apply for and obtain a renewal of the LUR to secure the use right for the remaining operational term.



04

ZONING AND PLANNING PERMISSIONS

ZONING LAWS

ENVIRONMENTAL LAWS

MASTER PLANNING LAWS

FIREFIGHTING AND FIRE SAFETY

CHỦ TỊCH
HỒ - CHI - MINH

Zoning Laws

The Land Law requires that land use follow the land use plan, the land use master planning and the approved land use purposes. Furthermore, the allocation of land, land leasing or conversion of land use purposes by the State must be based on the approved annual land use plan at the district level. It must also follow land use demands as indicated in investment project documents or in applications for land allocation, land leases or conversion of land use purposes.

The LURC for each land plot sets out, among others, the purpose of the land use. Failure to comply with such purposes may lead to revocation of the relevant land plot.

If the land use purpose is not appropriate to the land plot in question, it may be changed subject to permission by the State and payment of an LUF or land rental, as the case may be.

State permission is required for the following conversion of land use purposes:

- From land for rice or crop cultivation to planting forests, aquaculture or salt production;
- From annual crop cultivation to saltwater aquaculture, salt production or aquaculture in the form of ponds, lakes or marshlands;
- From forest land designated as specialized use, protected, or for production to other purposes in the agricultural land category;
- From agricultural to non-agricultural land;
- From non-agricultural land (which is not residential land) allocated without LUF payment to non-agricultural land subject to LUF or land rental payments;
- From non-agricultural and non-residential land to residential land;
- From land designated for the construction of non-business works, public works for commercial purposes or non-agricultural production or business which is not land for commercial and services use to land for commercial and services use; and
- From land for non-business works or land for commercial and services use to land for non-agricultural production establishments.

It is crucial that a foreign investor be fully aware of the specific use of land when entering into a joint venture or cooperation agreement with a local land user that intends to use the LUR as equity contribution. The local land user will have to apply to the relevant authorities to convert the purpose of land use in the event that this does not align with the proposed project and may need to pay the LUF or land rental before entering into the land transaction.

Environmental Laws

The primary legislation governing environment protection in Vietnam is the Law on Environment Protection no. 72/2020/QH14 dated 17 November 2020 issued by the National Assembly (“**Law on Environment Protection**”) which took effect on 1 January 2022. Accordingly, during the preparation and execution of master planning, plan, projects and activities which involve the use of land, investors must consider impacts on soil, measures for environmental pollution or degradation prevention and control and soil protection.¹⁴

Depending on the risk level for adverse impacts on the environment (i.e. high risk, risk, minor risk, and no risk), an investment project (e.g. projects with land use and environmentally sensitive factors, projects with environmentally sensitive factors which require conversion of land use purpose, etc.) may be required to conduct a preliminary environmental impact assessment, environmental impact assessment, environmental registration, obtain environmental licenses or may be exempted from these obligations.¹⁵ The classification of the level of risk is based on the scale, capacity, type of production, business, service as well as environmental sensitivity factors of each investment project.¹⁶ With respect to investment projects in urban areas or populated metropolitan areas, the developer of such projects must, for example, satisfy certain environmental requirements including water supply and drainage systems, waste water collection and treatment systems, and minimum tree areas/parks.¹⁷

Master Planning Laws

The primary legislation governing the appraisal, decision or approval, announcement, implementation, assessment and adjustment of master planning under the national master planning system of Vietnam is the Law on Master Planning no. 21/2017/QH14 dated 14 November 2017 issued by the National Assembly (the “**Law on Master Planning**”). The law states that the national land use master planning shall specify the distribution and organization of land use area for the purpose of socio-economic development, national defense and security assurance, environmental protection, natural disaster management and climate resilience on the basis of land potential and land use demand by inter-regional and inter-provincial industries and sectors.¹⁸ The regional and provincial master planning will also include the lists of investment projects and the priority for implementation.¹⁹

Firefighting and Fire Safety

The primary legislation governing fire safety protection in Vietnam is the Law on Fire Prevention and Fire Fighting no. 27/2001/QH10 dated 29 June 2001 as amended by the Law no. 40/2013/QH13 dated 22 November 2013 issued by the National Assembly (as amended) and its various implementing decrees and regulations (collectively, “**Law on FFFF**”). Accordingly, during the preparation of master planning for new construction or renovation projects in urban areas, residential areas, economic zones, IZ, EPZ, HTZ and certain construction works, fire prevention and fighting designs for such projects/construction works may have to be appraised by the local fire prevention and fire-fighting police authority subject to the scale and types of such projects/construction works.²⁰



05

CONSTRUCTION

LEGAL FRAMEWORK

CONSTRUCTION LICENSING REQUIREMENTS

SPECIFIC REGULATORY REQUIREMENTS

Legal Framework

The primary legislation governing construction activities in Vietnam is the Law on Construction No. 50/2014/QH13 dated 18 June 2014 (as amended) (“**Law on Construction**”) and its various implementing decrees and regulations. The Law on Construction applies to all organizations and individuals (foreign or domestic) that conduct construction activities in Vietnam. Based on the sources of investment, construction projects are variously classified as those using public state funds, non-public state funds, public-private partnerships or private construction projects. Projects using public state funds are to be evaluated and monitored by the competent authorities in accordance with approved evaluation criteria laid out in the Law on Public Investment and the Law on Construction. For other construction projects, the competent authorities will only monitor, evaluate or assess: the objectives, conformity with relevant master planning, land use, the construction investment timetable and environmental protection regulations. For projects using public or non-public investment state funds, financial penalties for breaches of construction contracts must not exceed 12% of the total value of the breached contractual portion. The level of fines for contractual breaches regarding other construction projects must be in accordance with the Civil Code and Commercial Law of Vietnam.

Construction Licensing Requirements

Different construction permits are granted for projects in urban, non-urban areas, as well as for housing projects. Most notably, such licenses must include provisions on compliance with land use master planning, safety measures and approved construction designs.

Construction Permits

Prior to commencement of construction on the project area, the employers must secure a construction permit unless the construction works in

such project are exempted from a construction permit.²¹

Licenses and Certificates for Construction Operations

Construction Operation Practicing Certificates are required for construction operations by individuals (Vietnamese citizens or foreign nationals). Organizations with valid business registration certificates are entitled to perform construction work in line with their certificates. For special activities (e.g., nuclear power plant engineering), special business registration certificates must be in place. Under Decree No. 15/2021/ND-CP dated 3 March 2021 issued by the State providing detailed regulations on management of construction investment projects, foreign contractors must apply for and secure construction operation licenses.

Specific Regulatory Requirements

In line with the Law on Construction, construction investment activities must comply with national technical regulations and applicable compliance standards.



06 TAXES

LAND RELATED TAXES AND FEES

PROPERTY / LAND USE TAXES AND FEES

TAX ON RENTAL INCOME

TAX ON CAPITAL GAINS FROM REAL ESTATE

Land Related Taxes and Fees

Taxable income from real property transfers is fixed according to the price of each transaction under review, at the effective date of the transfer or transaction execution (except for certain special cases). For both Vietnamese tax and non-tax resident individuals, personal income tax (“PIT”) at the rate of 2% applies to the real property transfer price. For organizations, corporate income tax (“CIT”) at the rate of 20% applies to the capital gain from the real property transfer.

LUR transfers are not subject to value-added tax (“VAT”). The transfer of property attached to the land is subject to 10% VAT, with the exception of transactions concerning state-owned residential assets between the state and existing tenants.

If the transferor is not an individual/organization doing business, the transferor is not required to declare, assess and pay VAT.²²

The PIT tax from income from real property of the transferor may be exempted if such transfer subject to the following:²³

- (i) Income from real property transfer as between husband and wife; as between parents and children, including foster parents and adopted children; as between parents-in-law; as between grandparents and grandchildren; and as between siblings;
- (ii) Income from transfer of residential housing and/or right to use residential land and the assets attached to the land by an individual who owns only one residential house or residential land block.

To register ownership of housing assets or land and relevant use rights, the buyer is subject to a 0.5% registration fee based on the value of the assets.

Property / Land Use Taxes and Fees

For non-agricultural land (except non-agricultural land not used for commercial purpose), the land user is subject to a non-agricultural land use tax, based on the per square meter price of the land (according to provisions issued by the provincial Peoples’ Committee) multiplied by the land area and applicable tax rate (ranging from 0.03% to 0.2% subject to specific kind of land).

The LUF for allocated land is generally based on the market value of the land, as determined by the People’s Committee of the relevant province or municipality. Every five (5) years, the People’s Committee of each province or municipality formulates and submits its own price lists of land in its locality to the People’s Council of such province for adoption, and publishes the same on the 1 January of the 1st year of such period. These lists are intended to reflect the market value of the land and to serve as the basis used by the relevant authorities in calculating tax, LUF, land rental and land compensation. The land price list may be amended:

- When the Government amends land price brackets resulting in an increase in the land price by 20% or more compared with the maximum price or a decrease in the land price by 20% or more compared with the minimum price specified in the land price list of the same land type; or
- When the common market land price increases by 20% or more compared with the maximum price or decreases by 20% or more compared with the minimum price specified in a land price list within a period of 180 days or more.

The provincial DONRE is responsible for formulating amended land price lists and submitting them to the provincial Peoples’ Committee to be put into force.

LURs may be allocated for specific purposes to households, individuals, economic organizations, FIEs, overseas Vietnamese individuals upon payment of an LUF. If such entities pay the LUF with their own funds, in general they can lease the land, give the land away, mortgage LUR to credit institutions duly

licensed to operate in Vietnam, or make capital contribution using the LUR.

On the other hand, a LUR allocation without payment of a LUF can only be made to Vietnamese individuals, households and organizations for certain purposes. There is a distinction between LURs held by Vietnamese individuals and those held by Vietnamese organizations through allocation of an LUR without payment of a LUF. Vietnamese organizations cannot mortgage, assign, exchange, give away, lease, sub-lease, provide as guarantee, or make capital contribution using their LURs in contrast to Vietnamese individuals who may do so. Importantly, Vietnamese organizations **are not allowed** to contribute LURs that they hold as equity into joint ventures with foreign investors unless the LUF has been paid in full for the entire term. In order to obtain a LUR from the State, an application must be made to DONRE. A FIE can only proceed with such an application having first obtained an IRC and an ERC.

Tax on Rental Income

Depending on whether the lessor is an organization or an individual, rental income arising from the leasing of real estate is subject to 20% corporate income tax (“**CIT**”) or 5% personal income tax (“**PIT**”). The lease is also subject to VAT. Normally in practice, the parties may agree under the agreement as to which party will bear relevant taxes (or to what extent each will bear respective liability).

An aerial night view of a city, likely Hanoi, Vietnam. The image shows a dense urban landscape with numerous buildings, some with lights on. A prominent feature is a large, multi-lane highway with a curved interchange, illuminated by streetlights. To the right, a river flows through the city, reflecting the lights from the buildings and the highway. The overall scene is a vibrant, illuminated urban environment.

07

REAL ESTATE
INVESTMENT
FUNDS

A real estate investment fund, as a form of securities investment fund, must be managed and have its activities controlled by a certified fund management company. Real estate investment funds are not permitted to engage in the construction, deployment or development of real estate projects. Vietnam law sets out the conditions on real estate investment activities by real estate investment funds as below:

- a. **Real estate permitted to be traded in accordance with the laws on real estate business.** The real estate must be in Vietnam for the purpose of leasing or for exploitation for the purpose of earning stable profit. The type of real estate must be consistent with the investment policy and objectives specified in the fund charter and the prospectus of such a fund;
- b. **Residential houses, construction works must have been completed in accordance with the laws on construction.** If the real estate is still in the construction phase, a real estate investment fund may only invest in it if the following conditions are met:
 - The real estate is not vacant as defined under the Law on Real Estate Business and Law on Land;²⁴
 - The construction project has been implemented in accordance with schedule prior to the time the fund makes its capital contribution;
 - Transaction contracts with potential customers have been signed, which guarantees that the real estate may be sold or used, leased immediately after completion; and
 - The total value of items of real estate in the construction phase must not exceed 10% of the fund's total asset value.

Prior to investing in any real estate, the fund management company must prepare a 5-year exploitation and use plan for such real estate and obtain approval of the representative board of such investment fund.²⁵



08

REAL ESTATE FINANCE

PERMITTED FINANCE

MORTGAGE

OTHER SECURITY INTERESTS

FOREIGN LENDER RESTRICTIONS

RECORDING ENCUMBRANCES OVER LAND USE
RIGHTS

Permitted Finance

Investors should be aware that the type of finance available for a real estate investment will be dependent upon the form of ownership (individual versus corporate), the nationality status of the individual or corporate investor under Vietnamese law, and the equity to total investment capital ratio required for the relevant investment project. On this basis not all forms of investment as detailed within this section area are available to all real estate investment projects.

Mortgage

According to the Land Law, organizations and FIEs may only mortgages LURs (with payment of LUF or payment of rental on a lump-sum basis) to credit institutions licensed to operate in Vietnam, not to offshore lenders. From a practical perspective, it is increasingly common for both domestic and overseas banks to employ innovative ways of cooperation to mitigate such issues.

Other Security Interests

The following types of collateral are allowed as security under Vietnamese law: objects, money, valuables papers,²⁶ and property rights. As for project finance transactions, typical security packages include immovable property (LURs, property attached to the land), movable assets, contractual rights (including beneficial rights under an insurance policy), money in onshore and offshore bank accounts.

Collateral can also be property to be formed in the future – for example, residential houses to be constructed in a residential house development project. However, note that LURs to be formed in the future may not be used as collateral for securing obligations.

A (foreign or domestic) shareholder may pledge any shares in favor of a foreign lender (in lieu of LURs). However, as there are practical (although not legal) limits on foreign ownership in Vietnamese real estate companies, foreign lenders can only receive a transfer of shares up to the applicable maximum foreign

ownership cap and would need to sell the remainder to Vietnamese purchasers.

Foreign Lender Restrictions

Note that a foreign individual or organization cannot lend money secured by a mortgage over LUR in Vietnam. Escrow accounts, money in bank accounts, share/capital contribution mortgage agreements, and corporate/personal/bank guarantees are often used as alternative security arrangements.

Due to these specific constraints, it can be challenging for foreign lenders to securitize mortgages involving real property. Thus, it is a common practice that foreign investors seeking to adequately protect themselves in regard to in-country transactions involving land will use Vietnamese credit institutions as intermediaries or rely on share/capital contribution mortgages, corporate/personal/bank guarantees as security.

Recording Encumbrances Over Land Use Rights

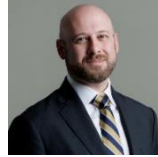
A new mortgage of LURs and assets attached to land shall be registered in one of the following forms:²⁷

- Registration of mortgage of LURs;
- Registration of mortgage of assets attached to land;
- Registration of mortgage of both LURs and assets attached to land;
- Registration of mortgage of off-the-plan assets attached to land;
- Registration of mortgage of both LURs and off-the-plan assets attached to land;
- Registration of mortgage of investment projects for construction of residential houses, investment projects for construction of buildings other than residential houses or other investment projects as per the law.

In practice, the parties to the mortgage transaction shall directly submit an application to the relevant land registration office or its branch for the registration of a mortgage. The application dossier may vary subject to the kind of asset used for the mortgage. In general, the application shall include the following key documents:²⁸

- An application form in the form and substances stipulated in Circular 08;
- Mortgage agreement (subject to the form of mortgage, the mortgage agreement may be notarized if required by laws);
- Power of attorney (if applicable); and
- Other documents (e.g., an original copy of the LURC; relevant construction permits or decision of investment project approval; site drawings of the project; housing sale and purchase contracts; etc.).

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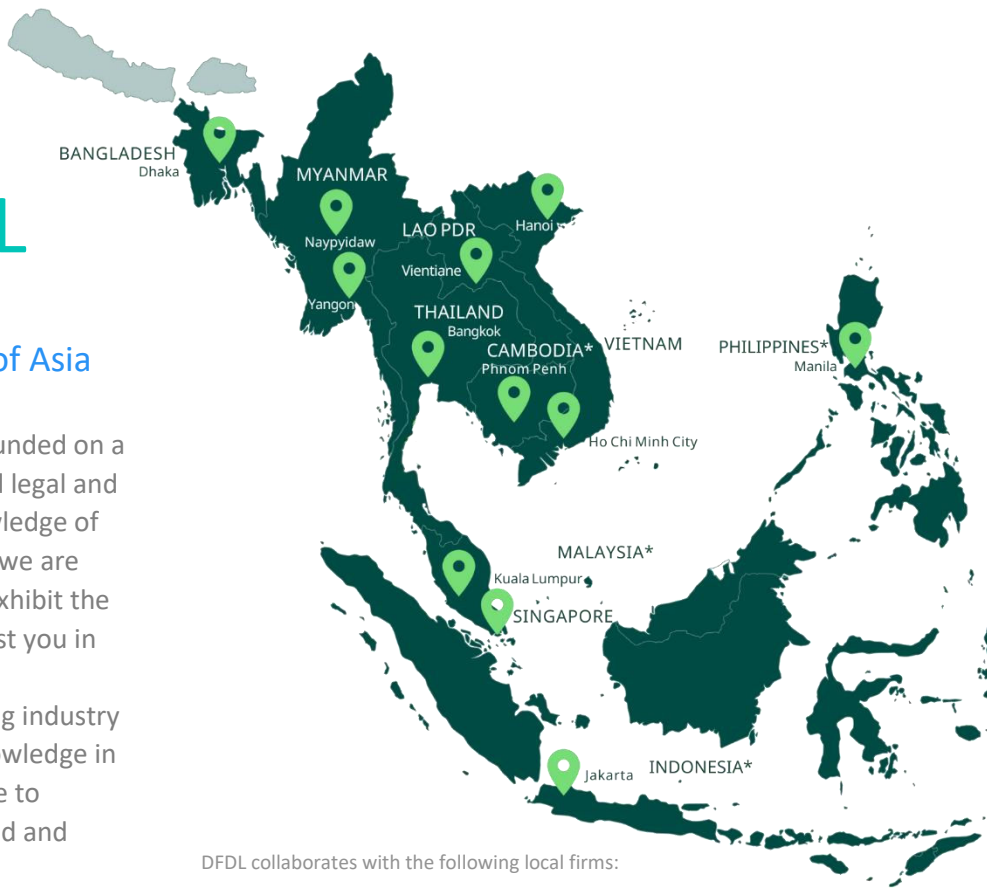


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10
COUNTRIES



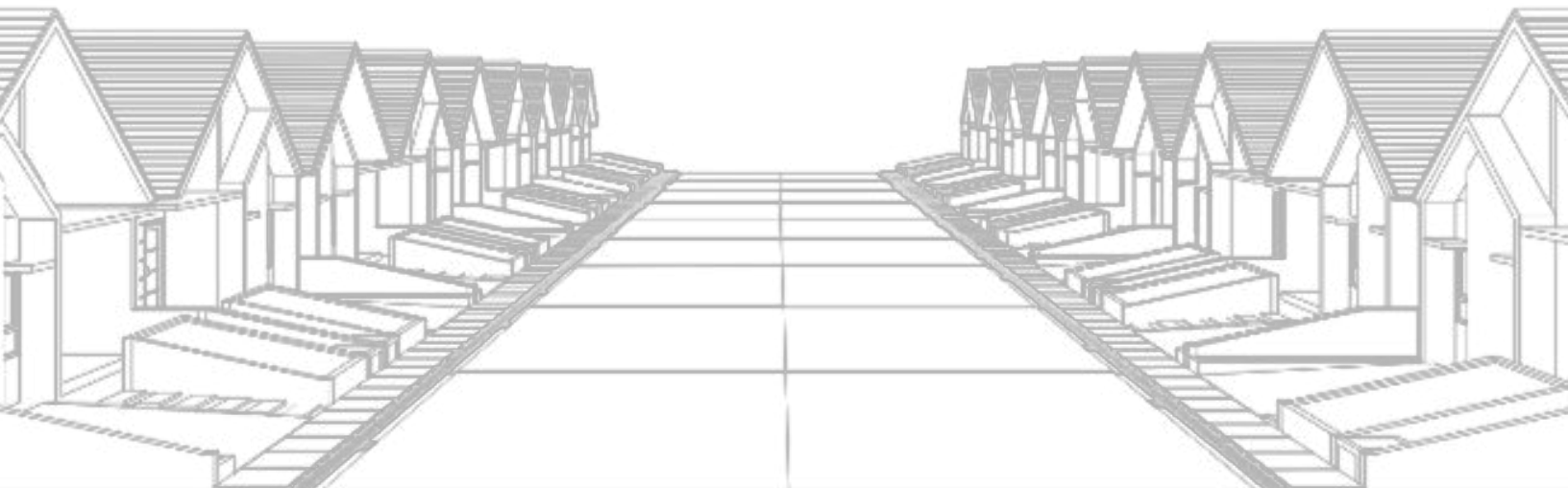
12
OFFICES



150+
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24
NATIONALITIES



ENDNOTES

1 See Article 17 of the Land Law No. 45/2013/QH13

2 Article 31.1(g) of Law on Investment 2020 as amended

3 Article 54 of the Land Law

4 Article 129 of the Land Law

5 Article 56 of the Land Law

6 Article 125.2 of the Land Law

7 Article 126.3 of the Land Law

8 This is the exact and full name of the certificate as provided in the Law on Land; in practice, this certificate does not necessarily record all of LUR, ownership of residential houses and other properties attached to land, and there are several cases in which this certificate only records one or two of these things.

9 Article 167.3 of the Law on Land

10 Article 169.1 (c), (d), (dd) of the Land Law

11 Article 167.3(a) and (c) of the Land Law

12 Articles 169.1(a) and 179.1 of the Land Law

13 Article 167.3(b) of the Land Law

14 Article 15.1 of the Law on Environment Protection

15 Articles 29, 30, 39, 49 of the Law on Environment Protection

16 Article 28 of the Law on Environment Protection

17 Article 57 of Law on Environment Protection

18 Article 24.1 of the Law on Master Planning

19 Articles 26.2(g) and 27.2 (o) of Law on Master Planning

20 Articles 15.1 and 15.4 of the Law on FPF, Annex V of Decree 136/2020/ND-CP dated 24 November 2020 of the Government providing detailed regulations and implementation of Law on FPF and the amended Law on FPF

21 Article 89.2 of Law on Construction

22 See Circular 219/2013/TT-BTC dated 31 December 2013 guiding the implementation of Law on VAT and Decree 209/2013/ND-CP guiding Law on VAT

23 Article 4 of Law on PIT

24 Article 51.4(b) of Circular 98/2020/TT-BTC dated 16 Nov 2020

25 Article 52.1 of Circular 98/2020/TT-BTC

26 See Article 6.6 of Circular no. 08/2018/TT-BTP dated 20 June 2018 of the Ministry of Justice

27 Article 4 of Circular 07/2019/TT-BTP dated 25 November 2019 of the Ministry of Justice providing detailed guidelines on registration mortgage registration of land use rights and assets attached to land ("Circular 07")

28 Articles 39 to 41 of Circular 07

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