Global Corporate Real Estate Guide - Vietnam

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# Authors

# Real Estate Law

## What is included in the term “real estate”?

The term “real estate” includes the following:

Land

Houses, construction works attached to the land

Other properties attached to the land, houses or construction works

Other properties as provided by law

## What laws govern real estate transactions?

The following laws generally govern real estate transactions:

Land Law

Real Estate Business Law

Housing Law

The Civil Code

Enterprise Law

Investment Law

Law on Energy Efficiency and Conservation

Notarization Law

Other specialized laws for special real estate transactions

## What is the land registration system?

The current Land Registration System (also known as the Immovable Property registration system) provides for the following:

The provincial People's Committee (or its authorized provincial department of natural resources and the environment) issues the Certificate of Land Use Rights and Ownership of Residential House and other Assets Attached to the Land (the “Land Use Rights Certificate”) for general organizations, religious organizations, Vietnamese individuals residing overseas, foreign-invested enterprises carrying out investment projects and foreign diplomatic organizations.

The district-level People's Committee issues the Land Use Rights Certificate for Vietnamese households, Vietnamese individuals, Vietnamese communities, or Vietnamese individuals residing overseas who are eligible to own houses attached to residential land use rights in Vietnam.

## Which authority manages the registration of titles?

The provincial or district level Land Use Rights Registration Office, which belongs to the respective Department of Natural Resources and Environment in the provincial or district authority. But this office is just for the receipt and the return of the application dossiers. The decision-making and issuance body is the same as described for the Real Property Registration system in “What is the land registration system?”.

## What rights over real property are required to be registered?

The following changes to the rights over the land use rights (and/or assets attached to the land) of the land user shall be registered:

Transfers

Inheritances

Donations/Gifts

Leases and subleases

Contributions as capital

Changes to the configuration, size, area, number or address of the land

Changes in the assets attached to the land as compared to the items already registered

Conversion of land use purpose

Change in the land use term

Mortgages

Easements in respect of adjacent parcel(s) of land

Restrictions on the rights of the land user

## What documents can landowners use to prove ownership over real property?

The document that the land owner can use to prove ownership over real property is the Land Use Rights Certificate, as well as the state decisions on leasing or allocating land. Aside from this, there are other old forms of ownership title documents as regulated by the old land law. Some title documents still remain valid, including the certificate of land use rights (red book), certificate of house ownership and residential land use rights (pink book), certificate of construction ownership (i.e., the land title templates in the 2003 Land Law). Some title documents shall be converted to the current single and unified form of ownership title, including, for example, documents on the right to use land prior to 1993 during the implementation of the land policies of Vietnam.

## Can a title search be conducted online?

Although the law provides the option of land searches via a public portal, so far not many provinces have set up a reliable online portal for title searches. The law also provides that any interested party can send a written request for information to the local Land Registration Office. However, in practice, the authorities typically only accept requests for information from parties with direct relationship with the land (e.g., the owners, prospective buyers).

## Can foreigners own real property? Are there nationality restrictions on land ownership?

In general, foreign organizations and foreign individuals cannot freely own or acquire (purchase) land use rights from a party in Vietnam. Foreigners can indirectly own real property by (a) acquiring shares or charter capital in Vietnamese joint stock companies or limited liability companies, respectively, and these entities may already own a Land Use Rights Certificate or can carry out investment projects in Vietnam and hold the Land Use Rights Certificate for such projects through land lease or land allocation from the state.

Foreigners may set up a locally-established entity (i.e., a foreign-invested entity) in Vietnam and acquire land through the following forms:

leasing land or be allocated land from the state (subject to a land-using project); or

receiving land use rights in the form of capital contribution.

100% foreign ownership is allowed (subject to Vietnam’s market access commitments and special legislations in certain sectors), and the term of land use rights ownership may be as long as 50 years, or 70 years in some circumstances (e.g., for the project development in harsh socio-economic geographical areas).

With regards to residential properties, foreign individuals can directly own residential properties including certain condominiums or townhouse/villas, subject to certain restrictions.  Specifically, there is a 30% ownership cap on the total number of condominium units within a single condo building, and a maximum ownership of 250 villas/townhouses within the geographical scope of an administrative ward, which is currently available for foreigners buying residential properties in Vietnam. Foreign-invested organizations, representative offices or branches of foreign organizations operating in Vietnam can only buy and own residential property in Vietnam for their staff accommodation purposes. In addition, the ownership term for foreign buyers is 50 years, which can be extended to another 50 years, or can be converted to indefinite term for foreigners married to Vietnamese citizens.

## Can the government expropriate real property?

Yes. The government can expropriate real property.

The state may expropriate land in the following circumstances:

For military or security purposes

Social-economic development projects for national and public welfare that have been approved by:

the National Assembly

the Prime Minister, or

the Provincial People’s Council

Appropriate compensation shall be paid with regards to the above cases. Compensation shall not be payable by the state with regard to the below cases:

Where the previous land user violated land regulations by delaying the implementation of a project; the state will accommodate some delay, by providing a 24-month extension on the land use term provided the land rental fee/land use fee is paid over this period of extension. However, if the project is still not completed after the extension, the state shall expropriate the land without any compensation payable to the land user

Other violations of the land regulations: failure to use land for the correct purpose, land was allocated or leased to wrong subjects, land which is sold to a third party without having the right to do so.

Land user’s dissolution, death without an heir; voluntary return of the land; expiry of the land use term; and where the land is contaminated.

## How can real estate be held?

Generally, real estate is held in any of the following manners:

Land lease

Land allocation (only for Vietnamese entities and individuals)

Recognition of land use rights (mostly in the past and for Vietnamese entities and individuals only)

Ownership right of private houses, construction and premises attached to land

## What are the usual structures used in investing in real estate?

Limited liability company

Joint stock company

Business cooperation contract

Build-operate-transfer, build-transfer-operate and build-transfer projects

Public-private partnerships

Individual (for residential purposes, with certain restrictions)

The choice of an appropriate structure will depend on the nature and use of the particular property and parties involved in the acquisition.

## How are real estate transactions usually funded?

Real estate financing is mostly arranged through credit institutions operating in Vietnam that are licensed to engage in the lending business. The assets attached to the land or the underlying land use rights can both be mortgaged depending on whether the land rental payment is made annually or on lump sum. Funds for real estate transactions are subject to limitations by several security ratios as regulated by the state bank at the time. In addition, the land regulations impose gearing ratios (D/E) for projects which have been leased or allocated land from the state, namely 80/20 for projects using a land area lower than 20 ha, and 85/15 if the land area is 20 ha or more. Foreign lenders may lend to Vietnam’s real estate projects, subject to state bank rules and registration requirements, but their security rights with respect to real property collateral are limited.

## Who usually produces the documentation in real estate transactions?

This matter is negotiable by the parties involved. Market practice tends towards the seller producing the first draft.

## Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before the real estate was bought or occupied?

Yes, in some cases.

## Does a seller or occupier retain any liabilities relating to the real estate after they have disposed of it?

Yes. Certain liabilities are applied to those who caused them, not the owner or tenant, unless otherwise agreed by the parties involved.

# Acquisition of Real Property

## What are the usual documents involved in such transactions?

Sale and purchase or transfer agreements

Investment certificates, investment registration certificates and enterprise registration certificates of the real estate investment project vehicles

Identification documents of the parties involved

Certificate for the title of the real property transacted

Marital status demonstration document of the individual party involved

Residential registration book of the individual party involved

Other documents depending on the case

Where foreign investors are involved, land use rights cannot be bought directly from Vietnamese private or state-owned land users, so tripartite agreements for the novation of a lease with the relevant provincial authority as landlord are a common solution.

## What are the warranties given by a seller to a buyer?

It is not common to have warranties given by a seller to a buyer in Vietnam. As long as the competent authority or notary public’s office has certified the sale and purchase agreement, it is verified and accepted that the sale and purchase agreement is lawful and the real property is able to be transacted. However, representations and warranties are seen in transactions involving foreign investors in the real estate M&A context, where sellers normally give representations and warranties that the property is free of all encumbrances, easements, seizure of assets and mortgages. Thus, a buyer is generally responsible for conducting any due diligence reviews with respect to the property to be acquired.

## When is the sale legally binding?

The sale (of private properties) is legally binding when the competent authority or notary public’s office certifies the sale and purchase or transfer agreement.

## When is title transferred?

Title is usually transferred at the time of re-registering the title at the competent authority (a new Land Use Rights Certificate can be issued if the buyer so wishes).

In the case of foreign investors, it would be on the issuance of a new Land Use Rights Certificate in the name of the foreign-invested entity. Technically speaking, a foreign-invested entity cannot directly receive, transfer or purchase land from a party in Vietnam, it can only be issued with its own Land Use Rights Certificate in the case of (i) receipt of contribution of capital in the form of land use rights, or (ii) the state expropriates land from the previous land user and leases/allocates it back to the foreign-invested entity.

## What are the costs usually shouldered by the parties?

The seller usually pays for the following:

Income tax on any profit made on the sale of the real estate

Real estate transaction floor fee where applicable

On the other hand, the buyer usually pays for the following:

Value-added tax

Registration fees for the change of title

# Leases

## What are the usual forms of leases?

Land lease agreement with the state

Long-term leases are typical, where the tenant leases a vacant land and develops it for a period of up to 50 or 70 years. Once the project development is completed, the tenant may sublet, transfer the space to a retail store, office, or residential or industrial tenants, depending on the type of project development and the terms of the business certificate. Land rent may be paid annually or in a lump sum. However, land use rights can be mortgaged only when the lump sum payment method is used (i.e., when all land rental for the entire lease term has been paid to the state).

Sublease of land in economic, export-processing, industrial zones

For industrial zones or hi-tech zones, the prime/land lease would be between the developer and the provincial authorities. An industrial zone or hi-tech zone infrastructure developer may sublease land with available infrastructure to tenants. These subleases are usually long-term and typically last until the remainder of the prime/land lease. In case the developer pays annual land rental to the state in the prime / land lease, the tenants will be expected to contribute yearly land rental. Otherwise, the tenant mainly pays a lump sum infrastructure usage fee (payable in instalments), in addition to other service fees, management fees or utility fees (depending on the industrial zone or hi-tech zone).

Commercial lease

The main commercial leases tend to be office or retail space leases which are contracted for a few years. The common practice for a payment term is three months’ rental and service fee paid in advance.

Residential lease

Negotiable between the parties. We note that a lease of an apartment unit for office use is not permitted under the law.

## Are lease provisions regulated or freely negotiable?

Decree No. 02/2022/ND-CP imposes a template lease agreement for all commercial leases, including the sublease of land in an industrial or hi-tech zone. That said, the templates are not overly detailed and many lease provisions remain freely negotiable, provided that the parties have full legal capacity and authority to enter into lease agreements and follow the statutory procedures.

When it comes to a land lease with the state as the landlord, lease provisions are regulated and no negotiation is allowed in the majority of cases.

## Is there a maximum term for leases? Can these be extended?

The maximum lease term of land from the state is 70 years (except diplomatic organizations, for which the maximum lease term is 99 years) and can be renewed. Except for residential projects, however, the standard maximum is 50 years.

For a private entity or individual, there is no maximum lease term for leases set by regulations, but the lease term must be within the duration of land granted to the landlord in the Land Use Rights Certificate or the operation terms stated in the business certifications of both parties.

## What are the usual lease terms?

These may vary. Commercial office or retail leases, for example, usually lasts for around five years.

## Are there instances where tenants may demand an extension of the lease?

There are no instances where a tenant may demand an extension of a private lease, unless otherwise agreed by contract.

On the other hand, a land user may request for an extension of the lease with the state, although whether the extension will be granted depends on the authorities’ discretion, taking into account various legal and socio-economic factors.

## On what grounds may a lease be terminated?

Under the Real Estate Business Law, a landlord can legally terminate the lease under the following circumstances:

The tenant fails to make rent payments on the due date for at least three months;

The tenant's use of the property is not consistent with that agreed in the lease;

The tenant intentionally causes material damage to the property; or

The tenant carries out repairs, renovations, replacements, or sublet the property without the consent of the landlord.

A tenant can legally terminate the lease under the following circumstances:

The landlord fails to repair the property when the property is not safe for use or causes damage to the tenant;

The landlord increases rent unreasonably; or

The right to use the property is restricted by a third party’s interest.

## Must rents be paid in local currency?

Yes. Foreign exchange control regulations in Vietnam require that all transactions between two Vietnam-based entities must be denominated in Vietnam dong (VND). This applies to a lease agreement.

## Is rent paid on a monthly basis? Is it required to be paid in advance?

Rent can be paid monthly, quarterly, yearly or in lump sum, or as agreed by the parties. The common practice is that payment should be made in advance for every payment term.

## How is rent reviewed? Are there limits to the increase in rent?

Review of rent is subject to negotiation. Rent is usually reviewed yearly by a maximum increase/decrease percentage compared to the previous rent. There are no strict legal limits to the increase in rent except for land leased directly from the state.

## What are the basic obligations of landlords and tenants?

The following is usually required of landlords:

Ensure uninterrupted usage of the property by the tenant

Handover the property in accordance with the contract

Repair and maintain the structure of the property

The following is usually required of tenants:

Pay rent on time

Pay an interest-free security deposit to the landlord

Comply with laws and regulations, and maintain valid proper business licenses

Keep the property in good order

Inform the landlord if repairs are needed and give the landlord access to the property to carry out repairs

Give the landlord access (often by appointment) for inspections and landlord’s work

Be responsible for neglect, or damages caused to the property by the tenant’s staff, contractors, visitors, etc.

## What provisions or restrictions typically apply to the transfer of the lease by the tenant? May a tenant sublet the leased premises?

The transfer of the lease by the tenant is subject to negotiations between the parties. The tenant may negotiate the right to transfer the lease agreement to its affiliates without consent.

In all cases, the consent of the landlord is required either in the agreement or for every specific case.

## What happens in the event of destruction of the leased premises?

If the premises is substantially damaged or destroyed by force majeure, the lease is often terminated. Rent generally ceases during this period of time.

If the premises are damaged or destroyed due to causes attributed to the tenant, then the tenant is liable for repairs or replacement.

## Who is usually responsible for insuring the leased premises?

The landlord is usually responsible for procuring mandatory insurances for the entire building. Fire insurance is mandatory under Vietnamese law. The tenant may be required to purchase certain insurances (e.g., public liability insurance, business interruption).

## Will the lease survive if the owner sells the leased premises?

Yes. This is provided in the Real Estate Law 2014 (Article 28.5)

## Will the lease survive if the leased premises are foreclosed?

If the owner goes into bankruptcy or foreclosure, normally it would not impact leaseholds unless otherwise provided in the relevant leases.

# Planning and Environmental Issues

## Who has authority over land development and environmental regulation?

Central and local governments have authority over land development and environmental regulations. Several ministries and local departments are also involved (e.g., Ministry/Department of Natural Resources & Environment, Ministry/Department of Construction).

## What environmental laws affect the use and occupation of real estate?

The Law on Environmental Protection and its guiding legal documents, as well as the Law on Energy Efficiency and Conservation, the Construction Law, the Housing Law and other legal documents govern the use and occupation of real estate.

## What main permits or licenses are required for building or occupying real estate?

Investment certificate (this document also serves as the business registration certificate for foreign-invested projects) with the proper lines of business and operation terms

Project approval documents

Lease with the state or a competent landlord

Land Use Rights Certificate (with registration of building ownership)

Fire safety approvals

Construction permits

## Can an environmental cleanup be required?

This is usually the responsibility of those who caused the damages if environmental contamination is discovered. However, the tenants leasing the land from the state must also engage surveyors to check for unexplored ordinance when developing new land, even in industrial zones. The Environmental Law also contains provisions that may impose responsibilities on land users to remediate contamination caused by prior users.

## Are there minimum energy performance requirements for buildings?

Yes – these are regulated under the Law on Energy Efficiency and Conservation and its implementing documents.

## Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

Yes – these are regulated under the Construction Law, the Law on Energy Efficiency and Conservation, the Environmental Law and the Fire Fighting and Fire Prevention Law and their implementing rules.

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