Global Corporate Real Estate Guide - Vietnam

Real Estate Law

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# 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.

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