

Changes in the New Land Law Impacting Foreign Investors

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On June 29, 2024, the National Assembly (NA) voted to pass the Law amending and supplementing several articles of Land Law No. 31/2024/QH15, Law on Housing No. 27/2023/QH15, Law on Real Estate Business No. 29/2023/QH15, among others. The Land, Housing, and Real Estate Business Law took effect on August 1, 2024, five months earlier than planned.

This note summarizes the fundamental changes in the Land Law that impact foreign investors with real estate projects.

1. Land Use Rights for Companies with Foreign Shareholding Equal to 50% or less

Under the 2013 Land Law, foreign-invested enterprises (FIEs) included enterprises with 100% foreign investment capital, joint ventures, and Vietnamese enterprises in which foreign investors purchase shares, merge, or acquire under foreign investment laws. Thus, a Vietnamese company with any amount of foreign shareholding will be considered a FIE and subject to land use rights restrictions.

The 2024 Land Law now defines FIEs as those entities that must meet the conditions and carry out investment procedures prescribed for foreign investors according to the provisions of the Law on Investment (i.e., companies with foreign shareholding over 50%) to implement projects with land use. The 2024 Land Law defines “domestic enterprises” as the economic organizations/enterprises under the Law on Investments, except for FIEs. Accordingly, companies with foreign investment capital equal to or less than 50% will be classified as “domestic organizations” and have the same land use rights as purely domestic companies.

This change broadened the land use rights of companies with minority foreign shareholding compared to the 2013 Land Law. For instance, companies with minority foreign shareholding now can receive the transfer of land use rights not only in the industrial zones, industrial clusters, and high-tech zones but also in other locations. Moreover, such companies will also be entitled to mortgage land use rights and assets attached to land to organizations and individuals, in addition to credit institutions licensed to operate in Vietnam as previously permitted.

Furthermore, the 2023 Real Estate Business Law defines the FIEs used by the 2024 Land Law. Therefore, from August 1, 2024, companies with foreign investment capital equal to or less than 50% will be entitled to conduct the full scope of real estate business activities as purely domestic companies. Accordingly, in addition to the right to (i) invest in the construction of housing or buildings for sale, lease, or lease purchase; (ii) invest in the construction of infrastructure facilities

within real estate projects for transfer, lease, or sublease of rights to use land that already has infrastructure; (iii) lease housing, buildings, or their floor areas for sublease; (iv) Receive the transfer of entire or partial real estate projects for continuing construction and trading, FIEs with foreign investment capital equal to or less than 50% could also:

- Buy or enter into lease-purchase of housing, buildings, or their floor areas for sale, lease, or lease purchase;
- Receive the transfer of land use rights that have infrastructure within real estate projects for further transfer or lease;
- Lease land use rights with infrastructure within real estate projects for sublease.

2. Arbitration for Land-Related Commercial Disputes

The 2024 Land Law now provides that Vietnamese courts or arbitral tribunals can resolve disputes arising from commercial land-related activities. Although the 2024 Land Law does not clarify the meaning of “disputes arising from commercial activities relating to land,” “commercial activity” might be viewed as profit-seeking activity as defined under the 2005 Commercial Law. If so, arbitral tribunals will have jurisdiction over common commercial disputes over land, including office leases and real estate sales disputes. However, the parties are limited to choosing Vietnamese arbitral institutions. The parties cannot refer commercial real estate disputes to foreign arbitral institutions such as the Singapore International Arbitration Center.

3. Limitations on One-Time Land Lease Payment

Under the 2013 Land Law, investors could choose between one-time and annual rental payments for most real estate projects. The one-time land lease payment for the entire lease period (“One-Off Payment”) option is limited to specific developments per the 2024 Land Law.

The One-Off Payment is limited to the following instances:

- Land for investment projects in agriculture, forestry, aquaculture, and salt making;
- Land in industrial parks, industrial clusters, high-tech parks, and worker accommodation in industrial parks;
- Using land for “public purposes with business purposes”;
- Using commercial and service land for tourism and “office business activities”;
- Using land to build social housing for rent according to the provisions of housing law.

If the land use is eligible for the One-Off Payment, the land user may opt for either (i) a one-time payment or (ii) annual rental payments.

Additionally, the 2024 Land Law states that the investors who leased land on an annual rental payment basis from the State for developing and operating infrastructure in an industrial zone or industrial cluster can convert to a One-Off Payment for the entire land area or a portion thereof. Consequently, for the portion of land leased with annual rental payments, the investor has the right to sublease the land under yearly rental terms. For the portion of land leased with a One-Off Payment, the investor may sublease it with either a one-time payment for the entire lease term or annual payments.

4. Alternatives to Annual District-Level Land Use Planning

Under the 2013 Land Law, the *annual* district-level land use plan must approve the real estate project before an investor can acquire land by allocation or lease. Otherwise, the investor must wait for approval of next year’s plan.

The 2024 Land Law adds more grounds for land allocation and leases. Even if the annual land use plan did not approve a project, a “decision on investment policy” (“DIP”) can be used as a ground for land allocation or lease. Under Vietnamese foreign investment law, specific projects require a DIP from a relevant government body. Investment projects requiring a DIP from the Prime Minister or National Assembly include nuclear power plants, airports, port terminals, residential housing construction projects, casinos, industrial zones, and infrastructure construction in export processing zones.

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