



# ICLG

The International Comparative Legal Guide to:

## Real Estate 2013

**8th Edition**

A practical cross-border insight into real estate law

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## EDITORIAL

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Welcome to the eighth edition of *The International Comparative Legal Guide to: Real Estate*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of real estate.

It is divided into two main sections:

One general chapter. This chapter looks at non-performing loans in the CEE/SEE region.

Country question and answer chapters. These provide a broad overview of common issues in real estate laws and regulations in 39 jurisdictions.

All chapters are written by leading real estate lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Lagler of Schoenherr, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk)

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# Vietnam



Gide Loyrette Nouel A.A.R.P.I.

Ha Dang Quang

## 1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in Vietnam. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

### 2005 Civil Code

The Civil Code provides the legal status and the legal standards for civil conducts, relations and transactions. It establishes that land may only be owned by “the people” rather than individually; but that individuals and organisations may hold “land use rights” (“LUR”). The 2005 Civil Code provides specific rules applicable to real estate sales, leases and other real estate related transactions.

### 2003 Land Law

The Land Law sets out mechanisms, procedures, criteria and conditions on land administration and usage. It establishes that only residents of Vietnam may hold LUR through either (i) an allocation or a lease from the State, or (ii) a sub-lease from land users with the specific right to sub-lease land, such as developers of industrial zones. Foreign-invested companies may only hold leases. It provides provisions on terms of land use, purposes of land use, rights of land users, and procedures of registration of land.

### 2006 Law on Real Estate Business

The Law on Real Estate Business details activities defined as “real estate business activities”, and further provides a separate list of activities permitted for fully Vietnamese-owned companies and foreign-invested companies in Vietnam, and rights and obligations of individuals and organisations conducting real estate business.

### 2005 Law on Residential Housing

The Law on Residential Housing contains provisions on ownership, development, management, and transactions pertaining to residential housing; and on State management of residential housing. Specific rules applicable to housing transactions including house sales and leases are also included.

- 1.2 What is the impact (if any) on real estate of local common law in Vietnam?**

Vietnam is a Civil Law system, which relies on statutory codes rather than precedents. Laws pertaining to real estate are expanded upon by decrees, circulars and provincial decisions, which are interpreted by the local authorities on a case-by-case basis. However, there is no binding interpretation and no formal jurisprudence (or common law) binding on real estate matters.

- 1.3 Are international laws relevant to real estate in Vietnam? Please ignore EU legislation enacted locally in EU countries.**

International laws are not applicable to real estate in Vietnam. The Civil Procedure Code specifies that conflicts and controversies related to real estate must be resolved by Vietnamese courts in accordance with Vietnamese law only.

## 2 Ownership

- 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

Foreign-invested companies in Vietnam are only permitted to lease LUR, up to 50 years in the general case, and for a maximum of 70 years in some limited cases.

Foreign individuals residing in Vietnam, who are non-diplomats holding a visa of one year or more and who, among other things, directly invest in Vietnam or hold a management position through an employment agreement with a company established in Vietnam, or are married to a Vietnamese citizen, are allowed to own one residential apartment within commercial residential housing development projects.

Vietnamese individuals or Vietnamese companies (with no foreign investment) may be allocated land or lease land from the State. Vietnamese individuals may be allocated land indefinitely, while most Vietnamese companies may be allocated land for the duration of an investment project.

Non-residents of Vietnam may not hold LUR.

## 3 Real Estate Rights

- 3.1 What are the types of rights over land recognised in Vietnam? Are any of them purely contractual between the parties?**

The rights of a holder of LUR will depend on the status and the classification of the relevant holder, the terms of payment of land use fees and the method of paying rent. These rights are specified in general terms in the 2003 Land Law, although specific rights pertaining to the individual holder of LUR are specified in the certificate of LUR or certificate of ownership of residential housing and other assets attached to land (an “**Ownership Certificate**” or an “**OC**”).

Despite its official name under the law, an OC actually applies to all construction projects (whether or not residential) and, since December 2009, is the official document securing LUR, as well as title to the assets on the land to which the LUR attaches (when the two converge). LUR certificates, certificates on the ownership of construction works and certificates of ownership of residential housing issued prior to 10 December 2009 remain valid nonetheless. They will be replaced with an OC, in certain cases, such as where a land user transfers its LUR or applies to amend existing certificates.

By way of example, a Vietnamese individual holding allocated LUR with fees fully paid to the State would have the right to assign LUR, contribute LUR as equity to a Vietnamese company, and to mortgage the LUR.

A foreign-invested company in Vietnam would have similar rights if it holds a LUR lease from the State with a one off payment for the entire lease term.

Contractual rights between LUR holders and other parties generally pertain to sub-leasing land, transferring LUR, mortgaging or providing guarantees, or contributing capital in the form of LUR.

### 3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?

In some cases, the owner of a building on a parcel of land may not be the LUR holder, for instance, if the LUR holder allows another party to construct a building on the land. The building owner would be entitled to an OC relating to the building, and have ownership over this building, separate to the OC held by the land owner.

## 4 System of Registration

### 4.1 Is all land in Vietnam required to be registered? What land (or rights) are unregistered?

Land users must be granted an OC which is the conclusive documentation of their rights over the land and other assets attached to the land. Land users without an OC have the right to apply for one, but will only be entitled to limited protections before it is issued, if they are indeed eligible.

Registration of LUR is made at the Land Use Rights Registration Office (“LURRO”) under the relevant Department of Natural Resources and Environment (“DONRE”) as further specified in section 5.

### 4.2 Is there a state guarantee of title? What does it guarantee?

By issuance of an OC, the State guarantees the LUR holder’s rights to the land and relevant attached assets. The State guarantees the right to use the land, and in the event LUR are recovered by a State decision, an OC will guarantee the LUR holder compensation.

### 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

All LUR must be registered with the relevant LURRO. The issuance of an OC indicates the corresponding rights of the LUR holder. Without an OC (or other equivalent documents issued by the authorities under previously applicable regulations), a land user may not exercise various rights in connection with the land, such as to use LUR as collateral, make capital contribution in the form of LUR and transfer LUR.

### 4.4 What rights in land are not required to be registered?

No right in land is exempted from the registration requirement.

### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period following first registration.

Rights over land differ depending on the terms of the payment of land use fees, on the purposes for which the land is used, and on the classification of the land users.

To enjoy rights not included in the first registration (first issuance of the OC), the LUR holder will have to apply for an amendment of the OC. If approved, the amendment will be registered, and the LUR holder will enjoy the corresponding rights per the amendment.

### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

LUR will be transferred to the new LUR holder only after the transfer contract is notarised at a notary office and a new OC is issued in the name of the new land user.

### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

Rights may only be enjoyed after registration and issuance of an OC. Thus LUR holders holding an OC will have priority over anyone else claiming LUR without such certificate.

## 5 The Registry / Registries

### 5.1 How many land registries operate in Vietnam? If more than one please specify their differing rules and requirements.

There are two main types of real estate registries operating in Vietnam:

- the provincial people’s committees are authorised to grant OCs to legal entities; and
- the district authorities under the provincial people’s committee are authorised to grant OCs for individuals and households.

These authorities authorise relevant DONREs to register LUR through the LURROs under these DONREs. Evidence of registration is an OC which is either a newly issued or an updated one.

### 5.2 Does the land registry issue a physical title document to the owners of registered real estate?

Yes, land users are issued OCs which serve as conclusive proof of LUR.

**5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?**

No, the land registry only accepts registration by direct submission of an application file in paper form at the LURRO.

The main documents to be provided to the land registry in connection with the registration of ownership of LUR include:

- a written request for the issuance of an OC;
- documents on LUR (e.g. an OC) and a contract for the sale and purchase of housing or construction works;
- documents evidencing the performance of relevant financial obligations; and
- a drawing map.

Additional documents may be required by the LURRO with regard to a specific case, which in practice gives the LURRO some discretion in the process.

Information on ownership of registered real estate cannot be accessed automatically, but must be requested from the relevant LURRO.

**5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?**

Yes, but valid proof of loss caused by such a mistake is required.

**5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?**

Documents on real estate are not publicly accessible at the LURRO. However, by filing an application for information and paying a fee, a buyer or other enquiring party may obtain information regarding encumbrances and other rights affecting property, such as whether the property is used as security for certain transactions or whether there are potential zoning issues related to the property.

## 6 Real Estate Market

**6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Vietnam? Please briefly describe their roles and/or duties.**

**Notaries:**

Land transaction documentation must be signed and notarised by a notary.

**Tax departments:**

Taxes on land transactions must be paid at the tax departments after land transaction deeds are signed and notarised.

**LURRO:**

LURRO register the buyer's finance provider's security over the real estate by recording the contents of the security transaction on the OC after the OC is granted to the buyer, and certifying the registration of the security transaction on the application.

**Provincial people's committees/District people's committee:**

These committees issue the OC in the buyer's name.

**6.2 How and on what basis are these persons remunerated?**

**Notaries:**

A fee scheme is provided by the Government.

**Tax departments:**

No fees are applicable for the purpose of remunerating these persons. However, the fee equivalent to 0.5% of the value of the real estate transaction shall be paid for registration of LUR (see question 7.6).

**LURROs:**

A fee scheme is provided by the Ministry of Finance ("MOF"), and detailed further by the provincial people's councils.

**Provincial people's committees:**

Fixed fees are provided by the Government.

**6.3 How has the real estate market in Vietnam recovered or reacted following the global credit crunch and worldwide recession in 2008/2010? What were the most important real estate transactions in Vietnam in the past year? Please include both local and international investors in your answer.**

The real estate market in Vietnam has further deteriorated in the past year. In fact, it has been negatively affected not only by the tightened financial policy of the Government in the face of soaring inflation, and in particular the strict limitations on bank credit in the real estate sector, but also by the oversupply of available space, in particular office space. There has been a new trend in purely domestic acquisitions without the involvement of foreign investors, although the outlook of the Vietnam real estate market is generally gloomy for 2013.

The most significant transactions in the real estate market this past year are:

- Vincom and Vinpearl were merged to create Vingroup with various real estate projects located in the most dynamic cities of Vietnam such as Ha Noi, Hai Phong, Da Nang, Hoi An, Nha Trang, and Ho Chi Minh. The deal value is USD 1,316 million.
- Hanel, a local company, acquired a 70% interest of Daewoo in the Daeha joint venture operating Daeha Business Center complex, including the Daewoo hotel, in Hanoi. The value of this transaction is estimated in publicly available sources at around USD 100 million.
- CT Group became the new investor of C.T Sphinx Golf Club & Residence Project with an area of 200 hectares developed by GS Cu Chi Developments Limited Company (GSDC), a subsidiary of GS Engineering & Construction Corp, Korea by acquiring a 95% interest of GSDC with a value of around USD 24 million, and acquired Thien Loc Investment Company Limited to develop three residential blocks of 18 storeys on an area of 5,900m<sup>2</sup> in Go Vap District, Ho Chi Minh City.
- Techcombank acquired the 15-story Vincom Tower B in Ha Noi from Vingroup. The deal value has not been disclosed but the book value of this tower in the second quarter of 2011 was around USD 111 million.
- 70% interest in the Hilton Hanoi Opera was acquired by the domestic BRG Group. The deal value is USD 43 million.

**6.4 Is there a trend in Vietnam towards the investment in retirement homes / nursing homes due to the increased ageing of the population?**

We do not believe there is any such general trend at the present

time. Retirement homes / nursing homes have commonly been built as state financed social projects. However, there are some new projects invested by domestic companies active in Ho Chi Minh City and Ha Noi City and one joint venture project between Vietnamese and French investors for the construction of a retirement home in the form of a resort model with medical services in Ba Ria-Vung Tau Province. The joint venture project has an estimated total investment capital of USD 32 million and is expected to complete in 2015.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

### 7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

1. A contract for the sale of real estate and LUR transfer must be signed and certified by a notary.
2. Related tax and registry fees must be paid to the competent tax authorities.
3. An OC must be issued in the name of the buyer.

### 7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

Yes. Under the Civil Code, the seller is responsible for disclosing truthfully all information regarding the property and is liable for the accuracy of such information.

### 7.3 Can the seller be liable to the buyer for misrepresentation?

Yes. The seller must compensate the buyer for any loss caused by such misrepresentation and/or failure to disclose.

### 7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

Sellers usually do give contractual warranties to the buyer. The scope of the warranties by the seller usually includes (as well as those listed in question 7.5 relating to ownership): accuracy of information regarding the property and the owner; and statements on the status of the land indicating that the property is not currently subject to potential zoning restrictions, any other transactions or under dispute of ownership.

The function of the warranties is twofold: to seek disclosure; and to apportion risk. The second objective is only achieved to the extent that the seller's credit supports the warranty in a meaningful way and is diluted by the fact that the legal remedy of damages for breach of warranties may be difficult to enforce as a practical matter in Vietnam.

In practice, for these reasons, warranties are not a substitute for due diligence and should not be relied upon. Thorough due diligence is recommended.

### 7.5 Does the seller warrant its ownership in any way? Please give details.

The seller will typically warrant: the civil capacity to sell LUR; that

the corresponding OC has been duly and validly issued to the seller; that all formalities allowing the seller to make the transaction have been completed; and that the LUR is not under any dispute of ownership or potential zoning restrictions.

### 7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

In addition to paying the sale price, the liabilities of the buyer are: payment of registration fees (equal to 0.5% of the value of real estate); acceptance of the delivery of the real estate as scheduled; and using the real estate in accordance with the permitted scope and terms of its investment project and/or the OC.

## 8 Finance and Banking

### 8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

As an initial general rule, only authorised credit institutions in Vietnam may provide loans secured by LUR in Vietnam. There is currently, since a change in banking regulations at the beginning of last year, legal uncertainty over whether this group might include branches of foreign banks operating in Vietnam.

#### With respect to corporate entities:

- Non-residents may not hold LUR in Vietnam and thus may not take out a loan secured by LUR. A foreign-invested company in Vietnam may only secure leasehold LUR if it has paid rent on the land for the entire land use term (as opposed to making payments by instalment).
- Both resident and non-resident real estate investors must have 20% or more equity for an investment in a new urban zone project or industrial zone project, or new residential projects over 20 hectares; and 15% equity for a new residential project less than 20 hectares. This means that the permitted debt to equity ratio is 80% and 85% respectively.

#### With respect to individuals:

- Vietnamese individuals may mortgage LUR or use LUR as a guarantee with licensed credit institutions, domestic organisations, and other Vietnamese individuals to borrow for business purposes.

#### With respect to overseas Vietnamese:

- Provided an overseas Vietnamese individual is entitled to purchase a house (which is determined by his/her residency status in Vietnam, *inter alia*), they may mortgage such LUR in the same way as a Vietnamese resident.

### 8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

A real estate lender's main form of protection is by executing a mortgage contract over LUR or over assets of the real estate developer and registering the mortgage with the LURRO to ensure priority of rights in case of default. The mortgagor retains ownership rights during the term of the mortgage and typically also retains possession of the asset. Pursuant to the Civil Code, the mortgagor must maintain the asset's value and is prohibited from conducting the sale of the asset.

### 8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

Vietnamese law allows the parties to contractually agree on the methods of enforcement of mortgaged property, as well as the timing for such procedures. They may stipulate, among others, the following methods of realising the security:

- sale of mortgaged assets by the bank; and
- transfer of ownership from the mortgagor to the bank *in lieu* of repayment of the loan.

If there is no agreement between the parties, the mortgaged assets will be sold by public auction.

Unless the parties agree otherwise, as an initial step, the mortgagee (or secured party) must register a written notice with the LURRO fifteen (15) days before realising the assets.

After receipt of this notice of enforcement (an “**Enforcement Notice**”), the LURRO must:

- register the Enforcement Notice in the register for monitoring changes of the land status;
- certify the request for registration of the notice on realisation of mortgaged or guaranteed assets;
- notify in writing the realisation of the mortgaged or guaranteed assets to all the registered mortgagees or guarantees in a case where the LUR or assets attached to the land were used to secure the performance of a number of obligations; and
- return directly or by registered mail (at the request of the applicant) the other original of such request to the applicant.

If there is a dispute in relation to the enforcement of the mortgage, court intervention may be necessary (for instance, if the mortgagor refuses to hand over the property to the buyer after realisation). Court enforcement agencies will be responsible for implementing the court ruling.

The primary task of these enforcement agencies is to organise the implementation of court rulings. These enforcement agencies will force the mortgagor to perform the court ruling if it fails to comply within 15 days from the date the mortgagor receives the notice of the enforcement decision from the enforcement agencies. In practice, however, this procedure can be very slow.

### 8.4 What minimum formalities are required for real estate lending?

The minimum formalities are:

- the bank must obtain evidence from the customer that it has a feasible plan on the lawful use of funds, has the capacity to repay the loan and, if required, can provide security for the loan;
- execution of a loan contract;
- notarisation of the mortgage contract, to guarantee the authenticity and legality of the mortgage; and
- registration of the mortgage contract with the LURRO (as discussed in question 8.5).

### 8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

The lender may protect its interests against third parties by being the first to register the security interest in the LUR. For registration

of a mortgage over the LUR, either the lender or the borrower may file a registration application with the LURRO of the district, town, or provincial city or province where the asset is located. Documents attached to the application must include an original copy of the duly executed and notarised mortgage agreement or principal financing agreement (if that document contains the mortgage).

## 9 Tax

### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Yes. The transfer of LUR is subject to personal income tax or corporate income tax, depending on the nature of the seller/transferrer.

Income derived from the transfer of LUR and of property attached to land is subject:

- to personal income tax (if the transferor is an individual) at a tax rate of 25% on the gains (if the profit is deemed adequate, or 2% of the sale proceeds or of an alternative provided by the provincial people’s committee where the contract does not provide the transfer price or where the transfer price stated in the contract is less than the price provided by the relevant provincial people’s committee); and
- to corporate income tax (if the transferor is a corporation) at a tax rate of 25% on the gains.

The transferor is liable to pay the transfer tax on transfer of LUR.

### 9.2 When is the transfer tax paid?

With respect to individuals or enterprises not licensed to conduct real estate business, the tax declaration must be filed and tax payment must be made within ten (10) days of the date of signing and notarising the LUR transfer contract.

An enterprise that is licensed to conduct real estate business will file corporate income tax in accordance with its regular tax filing obligations (quarterly provisional CIT and annual finalisation). The transfer tax is deemed paid upon issuance of the receipt of tax payment by the authorities.

### 9.3 Are transfers of real estate by individuals subject to income tax?

Yes. Please see question 9.1 above.

### 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The transfer of LURs is not subject to VAT. The transfer of property or assets attached to land is subject to 10% VAT, except in the case where State-owned residential houses are sold by the State to existing tenants.

Transferees are liable to pay VAT.

### 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

There are no other taxes payable.



### 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Legal entities are subject to a 25% corporate income tax on profits whether or not the real estate transfer is structured as a company or an asset sale.

However, individuals transferring shares in a corporation which owns real estate will be subject to a 20% personal income tax on the gains.

The law is unclear but it appears that if a real estate asset sale is structured as a sale of a company holding the assets, the transfer tax referenced in question 9.1 will also be payable (particularly in practice, if the company changes its name).

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

#### 2005 Civil Code

The Civil Code provides the legal status and the legal standards for civil contracts and relations, including real estate related transactions.

#### 2005 Commercial Law

The Commercial Code provides provisions on remedies and dispute resolution in commerce, including business premises.

#### 2006 Law on Real Estate Business

The Law on Real Estate Business provides provisions on real estate business activities and the rights and obligations of organisations and individuals conducting real estate business. Specific rules applicable to all real estate transactions are specified.

### 10.2 What types of business lease exist?

Business leases are freely negotiated in the market. There are no legal definitions of different types of business leases.

### 10.3 What are the typical provisions for leases of business premises in Vietnam regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

#### a) Length of term

The standard lease term is between 3-5 years.

#### b) Rent increase

A rent review is made around 3-6 months prior to the expiry of the initial term within a fixed range of around 10%.

#### c) Tenant's right to sell or sublease

A typical lease will permit assignment subject to the landlord's consent. Subletting is a business activity subject to licensing, and is therefore not usually found in a standard lease contract.

#### d) Insurance

It is usually the landlord who insures the property in the landlord's name to reinstatement value against damage or destruction. The tenant will be responsible to insure against loss, injury, damage to the premises or to parties on the premises caused by the tenant's actions.

If the property is destroyed or damaged to an extent that it cannot

be occupied by the tenant, the rent will be suspended accordingly. Suspensions of 90 days or more may serve as a basis for termination.

#### e) (i) Change of control of the tenant

Provisions are not commonly provided.

#### e) (ii) Transfer of lease provisions as result of corporate restructuring (e.g. merger)

Provisions are not commonly provided.

#### f) Repair

The landlord is responsible for the repair of the equipment and facilities it supplied unless the damage was due to the fault of the tenant.

### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

The tenant is liable for VAT of 10% of the rent.

A legal entity leasing out a premises is liable for corporate income tax at the rate of 25% of the profits derived from such premises.

If the leasing party is an individual, the leasing party will be liable to pay personal income tax at a progressive rate on the income generated from rent.

### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Business leases are usually terminated at expiry, on default, by either party, or by mutual agreement.

There is generally a clause allowing the tenant to extend or renew the lease by way of notifying the landlord prior to expiry, and a clause which provides for penalties applicable to early termination by either party or for damages applicable to early termination in case of default by either party.

### 10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?

These issues are not expressly provided under Vietnamese law. However, it is common practice that the landlord or the tenant shall cease being liable for its obligations under the lease once the sale is completed, unless liability after the transfer of interest in respect of pre-sale non-compliance is expressly included in the transfer agreement. So, liability in respect of pre-sale non-compliance can be contractual and should be adequately set out in the transfer agreement.

### 10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Not yet applicable in Vietnam.

## 11 Public Law Permits and Obligations

### 11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.

#### Zoning:

##### 2003 Construction Law

The Construction Law provides guidance on construction activities and the rights and obligations of legal entities and individual persons performing construction works and construction activities. Requirements, contents, and standards of the zoning works and responsibilities of parties in performing and in following the zoning works are also specified.

##### 2003 Land Law

The Land Law specifies provisions on principles, grounds, contents, and periodic cycles for formation of land use zoning and planning, and authority to make decisions on approval and adjustment of land use zoning and planning. It also provides provisions on terms of land use, purposes of land use, rights of land users and registration procedures of land use rights.

#### Environment:

##### 2005 Environmental Protection Law

The Environmental Protection Law contains provisions on activities, policies, solutions and resources for environmental protection. It provides rights and obligations of legal entities and individuals to protect the environment.

Real estate investors must conduct a report on the environmental impact of their project which includes solutions to minimise the negative impact and for drainage and waste treatment prior to the construction of a project.

### 11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

LURs can be recovered by a decision of people's committees at provincial or district level; and land users must follow such recovery decisions.

Land users will be notified of such decisions on LUR recovery and of the land recovery plan.

The State will implement a land clearance and compensation plan which specifies a LUR compensation scheme and supports the persons who are evicted.

### 11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

The Ministry of Construction and the Ministry of Natural Resources and Environment ("MONRE") are responsible for administering the land/building use and/or occupation and environmental regulations and policies. Local people's committees are responsible for implementing and managing the implementation of the land/building use and/or occupation and environmental regulations and policies within their territories.

Information related to land/building use and/or occupation and environmental regulation can be obtained by visiting the official website of, or by contacting directly, the authorities mentioned above.

### 11.4 What main permits or licences are required for building works and/or the use of real estate?

The main permits and licences are:

- LUR Certificate or Certificate on the Ownership of the Construction Works or Certificate of Ownership of Residential Housing or an OC (see question 3.1).
- Construction planning certificate.
- Construction permit.
- Certification of construction works' quality.
- Fire prevention and fire fighting condition satisfaction certificate.
- Approval of environmental impact assessment report/Registration of environmental protection undertaking.

### 11.5 Are building/use permits and licences commonly obtained in Vietnam? Can implied permission be obtained in any way (e.g. by long use)?

Yes, the most commonly obtained permits in Vietnam are construction permits.

Construction permits will not be required in a few specific cases, such as where construction works fall in the category of State secrets or in accordance with an emergency order, or works being interior repairs, renovation, or equipment installation which does not alter the external architecture, load-bearing structure, use function and safety of the construction works.

Generally there is no implied permission through long use or otherwise in Vietnam.

### 11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

- **LUR Certificate/OC:**
  - **Fees:** approximately USD 24 (USD 5 in the case of LUR without assets attached to the land) per permit for organisations, and approximately USD 5 (or USD 1.20 in the case of LUR without assets attached to the land) per permit for individuals.
  - **Timeline:** not more than 33 working days from the submission of the application file.
- **Certificate on the Ownership of the Construction Works or Certificate of Ownership of Residential Housing/OC:** these certificates have been replaced by an OC.
- **Construction planning certificate:**
  - **Fees:** not stipulated in the law and are calculated by the competent authority issuing the licence on a case-by-case basis.
  - **Timeline:** not more than 20 working days from the submission of the application file.
- **Construction permit:**
  - **Fees:** approximately USD 2.50 per house and USD 5 per project (as determined by the provincial people's council).
  - **Timeline:** 15 working days per house in urban areas, 10 working days per house in rural areas and 20 working days per project from the submission of the application file.
- **Certification of construction works' quality:** timeline and fees are not prescribed by law and will be dependent upon the company employed to certify the quality of the construction works.

- **Certificate of fire prevention and fire fighting approval:**
  - **Fees:** calculated on the investment capital of the projects and construction works but has not been further specified.
  - **Timeline:** Depending on the nature and type of the project, ranging from 5 to 15 working days from the submission of the application file.
- **Approval of environmental impact assessment report (the “EIAR”) / Registration of environmental protection undertaking:**
  - **Fees:** the fee for appraisal of EIAR of a project must be calculated under the tariff provided by the MOF, ranging from approximately USD 285 to USD 4,570, depending on the total investment capital of the project.
  - **Timeline for appraisal of the EIAR:** 45 working days from the submission of the application file for the EIAR to be appraised by the MONRE, and 60 working days, for projects with complicated environmental impacts, 30 working days from the submission of the application file for EIAR not to be appraised by the MONRE, and 45 working days for projects with complicated environmental impacts.
  - **Approval of the EIAR by MONRE:** 15 working days from the submission of the application file.

Note that, in practice, the above timelines may be longer.

#### 11.7 Are there any regulations on the protection of historic monuments in Vietnam? If any, when and how are they likely to affect the transfer of rights in real estate?

There are, under the Law on Cultural Heritage No. 28/2001/QH10 dated 29 June 2001, as amended on 29 June 2009, a number of relevant guiding provisions which include provisions on protection of historic monuments. According to these, individuals cannot own historic monuments.

However, if a property for sale is defined as an “historic” or “cultural” relic under Vietnamese law, the State shall have the right of first refusal to purchase.

#### 11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in Vietnam?

There are currently no official reports and/or statistics on contamination and pollution of real estate issued by State bodies. Information regarding pollution in a specific area/zone must be disclosed by the owner of a real estate project pursuant to the Law on Environmental Protection (note that no such requirement exists in relation to assets which are not developed), however, if the polluting entity is under investigation or it is imposed by competent authorities. In addition, there is no public register of contaminated land in Vietnam.

With regard to a real estate project, its owner must submit an EIAR, which includes information regarding current status, pollution levels (if any) in respect of water, soil, air and deposit components at the site, to obtain a competent authority’s approval prior to construction. Afterwards, the summary of the approved EIAR must be publicly posted up at places of project implementation. Therefore, the potential buyer may obtain the required information from the current owner or obtain the summary of an EIAR if it is posted in a public place.

#### 11.9 In what circumstances (if any) is environmental clean up ever mandatory?

Environmental clean up is a statutory administrative sanction applicable to polluters violating local pollution standards.

#### 11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Vietnam.

There are no regulatory requirements for assessing and managing the energy performance of a building in Vietnam. Entities are, however, encouraged by law (albeit without benefits for compliance or retribution for non-compliance) to:

- Make full use of natural conditions or apply appropriate architectural structure solutions in order to reduce energy for lighting, ventilation, cooling and heating.
- Use heat-insulation materials manufactured according to energy-saving standards in order to restrict the heat transmission through walls, doors and windows.
- Use equipment manufactured according to energy-saving standards for installation in buildings.
- Arrange equipment and facilities to achieve high efficiency in order to save energy.

## 12 Climate Change

#### 12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

The Law on Environmental Protection 2005 indirectly provides regulations on carbon dioxide emission management through greater environmental planning requirements of companies; however, the law is not very detailed and does not require any specific reductions of carbon dioxide emissions. The transfer of, and trading in, emissions is permitted on a case-by-case basis by the Prime Minister of the Government, and in practice is still rare.

#### 12.2 Are there any national greenhouse gas emissions reduction targets?

There are no national greenhouse gas emissions reduction targets.

#### 12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

At this time we are unaware of other regulatory measures which aim to improve the sustainability of newly constructed and existing buildings.



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Ha Dang Quang, senior associate, specialises in real estate, projects and construction law. He is a member of the Ho Chi Minh City Bar Association and holds a LLM in commercial law from the Ho Chi Minh City University of Law. Prior to joining Gide Loyrette Nouel, Quang began his career at the Ho Chi Minh City University of Law as a Lecturer in Administrative Law and practised at Russin & Vecchi as a senior lawyer. He advises a range of domestic and international clients on their real estate construction and development projects in Vietnam, with a particular focus on large-scale infrastructure, high-technology production facilities, and the hotel & leisure industry. Quang also regularly advises on corporate / M&A transactions in Vietnam, including real estate aspects. Quang's sector expertise includes hotels & leisure, banking & finance, steel, construction & engineering, manufacturing, real estate investment and ports.



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GLN was among the first international law firms licensed to set up a formal branch office in Vietnam. The team comprises nearly 20 overseas and Vietnamese lawyers operating from two offices in Hanoi and Ho Chi Minh City.

GLN Vietnam's Real Estate and Construction team regularly represents foreign investors, including project developers, project managers, construction companies and hotel management companies, across a wide range of sectors including office and residential property development, hotels and leisure, infrastructure, heavy industry and logistics. Our lawyers have expertise in advising on all aspects of real estate projects and the real estate aspects of other transactions, including feasibility studies, legal due diligence reports on land use rights, reviewing and/or drafting and negotiating purchase and sale or lease agreements, managing tendering procedures, handling approval procedures, and environmental issues. We also provide advice to address specific land-related issues, such as land pricing, the acquisition and renewal of land use rights, application for the ownership certificate of land use rights and other assets attached to land.

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