

Vietnam

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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.**

Civil Code No. 33/2005/QH11 dated 14 June 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 Civil Code provides specific rules applicable to real estate sales, leases and other real estate related transactions.

Law on Land No. 13/2003/QH11 dated 26 November 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, and rights of land users and procedures of registration of land.

A new Law on Land No. 45/2013/QH13 (the “New Land Law”) was however adopted on 29 November 2013 by the National Assembly of Vietnam, which contains a number of provisions departing from the existing legal framework set out by the Land Law. The New Land Law is due to take effect as from 1 July 2014 and shall repeal the Land Law as from that date. In the meantime, the Land Law remains applicable. Therefore, to anticipate the application of the New Land Law, reference to this new legislation will be included hereinafter where relevant.

Law on Real Estate Business No. 63/2006/QH11 dated 29 June 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.

Law on Residential Housing No. 56/2005/QH11 dated 29 November 2005 (“Law on Residential Housing”)

The Law on Residential Housing contains provisions on ownership, development, management, transactions pertaining to residential

housing and on the 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 local authorities on a case-by-case basis. However there is no binding interpretation and no binding jurisprudence 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 Code provides that contracts related to real estate in Vietnam must comply with Vietnamese laws. In addition, the Civil Procedures Code specifies that disputes related to real estate must be exclusively 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)?**

Under the current Land Law, foreign-invested companies in Vietnam are only permitted to lease land, up to 50 years in the general case, and for a maximum of 70 years in some limited cases, while domestic Vietnamese companies and Vietnamese individuals may obtain LUR by way of allocation or lease.

The New Land Law, in an effort to provide an equal treatment between foreign-invested companies and domestic companies, allows foreign-invested companies, in the same way as for domestic Vietnamese companies, to hold LUR through either an allocation or a lease from the State. However, the duration of LUR granted under both forms is still limited to 50 years (and up to 70 years in some limited cases). The New Land Law further provides that, as regards land intended to be used for development of housing for sale or lease, the LUR may be allocated to the developer (likely to be both foreign-invested companies and domestic Vietnamese companies although the New Land Law does not expressly specify) for the

duration of the investment project. However, buyers will be entitled to stable and long term use of the purchased houses.

Only foreign individuals residing in Vietnam, who are non-diplomat, 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, for up to 50 years, 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. Under the current Land Law, Vietnamese individuals may be allocated land indefinitely, while most domestic Vietnamese companies may be allocated land for the duration of an investment project. Under the New Land Law, the duration of LUR granted to domestic Vietnamese companies is however limited to 50 years (or up to 70 years in limited cases).

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 current Land Law and the New Land Law, although specific rights pertaining to the individual holder of LUR are specified in the "certificate of LUR, ownership of residential housing and other assets attached to land" (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. In this context, the building owner would be entitled to an OC relating to the building, and have ownership over this building, which will be separate to the OC held by the LUR holder.

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 may have the right to apply for one, but will only be entitled to limited protections before it is issued, if they are indeed eligible as provided by law.

Registration of LUR is made at the Land Use Rights Registration Office ("LURRO") under the relevant province level Department of Natural Resources and Environment ("DONRE") or relevant district level divisions of natural resources and environment 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, the purposes for which the land is used and 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 people's committees are authorised to grant OCs for individuals and households.

Application files for the issuance of OCs are submitted at the LURROs under the relevant province level DONREs or under the relevant district level divisions of natural resources and environment respectively. Evidence of registration is an OC which is either newly issued or an updated one.

The provincial people's committees may authorise relevant DONREs to issue OCs on their behalf.

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?

Under the current Land Law, the land registry only accepts registration by direct submission of an application filed in paper form at the LURRO. The New Land Law allows registration both in paper and electronic form, without further specifying the cases where electronic registration is permitted. It is expected that following the entry into force of the New Land Law, the Vietnamese Government will issue detailed implementing regulations in this regard.

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

- 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 electronically by LUR holders, 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 must be provided.

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 buyers' 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 Are there signs of recovery to the real estate market in Vietnam following the recent global economic downturn? How important a role has foreign investment played in any such recovery? What were the most significant real estate transactions in Vietnam in the past year? Please include all types of investors in your answer.

The real estate market in Vietnam is still considered to be at a low

following the economic downturn and recovery is unlikely to occur before 2015. However, at the beginning of the year, aiming at rescuing the real estate market, the Government issued Resolution 02 to offer a credit package of VND 30,000 billion (around USD 1.42 billion) in social housing projects. Accordingly, investors investing in social housing projects and buyers are entitled to loans with special conditions. The package has been deployed since June 2013 but until now, although the conditions have already been loosened, the package has not helped the market much, with very few loans offered to individuals and organisations. As for the private sector, investors and projects owners have launched new marketing campaigns and seek for new investors to push up the market. In response to these efforts, foreign investors, mostly from Asia, have expressed their interest in the real estate market and accordingly we have seen some transactions by both local and foreign investors (in addition to other undisclosed transactions).

The most significant recent real estate transactions include:

- Vingroup, the largest private-sector real estate operator in Vietnam, transferred its entire capital in Future Company, a subsidiary which owns Vincom Centre 'A', a high-end real-estate complex with 15 floors containing a shopping centre and a five-star luxury hotel in the central area of Ho Chi Minh City to another local company named Viet Nam Infrastructure and Property Development Group with total deal value of USD 470 million.
- Lotte Hotels & Resorts Group (the hospitality arm of Lotte Group - Korea) purchased 70% of Legend Hotel in Ho Chi Minh City from the Vietnam Opportunity Fund of VinaCapital through a transaction worth USD 62.5 million.
- Mapletree Investments, a subsidiary of Temasek Holdings Group of Singapore, completed a transaction with Japan Asia Vietnam (Japanese real estate investment fund) in relation to an office building in Ho Chi Minh City with a total value of USD 54 million.
- Malaysia-based Perdanna ParkCity bought the capital contribution of Vinaconex - Hoang Thanh (40%) to entirely possess the Hanoi Park City project. The deal value has not been disclosed.

6.4 Is there an increased trend towards investment in and redevelopment/ regeneration of student accommodation in Vietnam?

In the past year, we have not seen any increased trend towards investment in and redevelopment/regeneration of student accommodation in Vietnam. However, in 2009, the Government released a resolution on a number of mechanisms and policies to step up the development of dormitories for trainees and students of training establishments, in addition to houses for workers in industrial parks and low-income earners in urban centres. Following this resolution, the State has directly invested in, and encouraged all economic sectors to invest in, building dormitories for students of public and private educational organisations. During the period of 2009 and 2010, nearly USD 391 million of the State's budget was invested in around 194 projects. The programme is planned to continue until 2015 so as to provide the accommodation for 3.5 million students. However, although the Government has encouraged the private sector to participate in this programme, we are not aware of any projects owned or developed by the private sector in this field.

6.5 Has the real estate market in Vietnam seen an increase in renewable energy transactions during recent years? What are the principal real estate issues a buyer or investor should consider when entering into such transactions?

The renewable energy sector in Vietnam has seen few commercial projects, except for **hydropower projects** which are the most popular. The most significant recent transaction in hydropower has been the transfer of 6 hydropower projects from Hoang Anh Gia Lai Group (a big corporation in furniture and construction) to other investors. There have been a few commercial projects in wind energy; however, we are not aware of any transaction in the wind energy sector in 2013. Although we are not aware of any specific transactions for other projects, we believe that the trend of investors assigning capital from the renewable energy sector in Vietnam is becoming clearer. This is mainly due to concerns raised by both public and the Government bodies over serious issues in relation to the viability, and the impact in terms of society and environment protection, of many existing hydropower projects.

When entering into renewable energy projects, buyers and investors should carefully examine the legal status of the relevant land area, compliance with the relevant laws in relation to environmental protection and the reliability of environmental impact assessment reports of such projects. Documents evidencing compliance with construction regulations are also essential for the smooth implementation and the legality of the project.

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?

There is no concept of misrepresentation in Vietnamese law. However, the seller must compensate the buyer for any loss caused by a failure to disclose all information regarding the property.

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 include (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 transfer 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 2011, 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 non-leasehold LUR or use non-leasehold 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 is entitled to purchase a

house (which is determined by his/her residency status in Vietnam, *inter alia*), they may mortgage such house with licensed credit institutions.

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/transferor.

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) on the gains at a tax rate of 25% (until 31 December 2013), and as from 1 January 2014 at the tax rate of 22%, and then as from 1 January 2016 at the tax rate of 20%.

The transferor is liable to pay the transfer tax on the 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 within ten (10) days of the date of signing and notarising the LUR transfer contract and tax payment must be made within thirty (30) days of the date of receipt of a tax notice.

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 (until 31 December 2013, which will then be reduced to 22% as from 1 January 2014, and 20% as from 1 January 2016) 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 either to a 20% personal income tax on the gains or to a 2% personal income tax on the sale proceeds.

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.

Civil Code

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

Commercial Law No. 36/2005/QH11 dated 14 June 2005 ("Commercial Law")

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

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% (which will be gradually reduced to 22% as from 1 January 2014, and 20% as from 1 January 2016) 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:

Law on Construction No. 16/2003/QH11 dated 26 November 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.

Land Law and New Land Law

The Land Law and the New Land Law specify 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:

Law on Protection of the Environment No. 52/2005/QH11 dated 29 November 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, 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:** 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 EAIR:** 45 working days from the submission of the application file for the EIAR to be appraised by the MONRE, and 60 working day, 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 the MONRE:** 15 working days from the submission of the application file.
- **Timeline for registration of environmental protection undertaking by the people's committees at district level:** 5 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.

However, if a property for sale is defined as a "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 Environmental Protection Law (note that no such requirement exists in relation to assets which are not developed), however, if the polluting entity is under an investigation or 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 and 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 and includes, among others, the dismantlement of construction work built in contravention of environmental protection regulations and the restoration of the original environmental state already altered by the violation.

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 Environmental Protection Law 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, emission quotas is permitted on a case-by-case basis by the Prime Minister of the Government, and in practice is still rare.

In late 2012, the Prime Minister approved the project of greenhouse gas emission management and management of carbon credit business activities to the world market, which provides the targets and measures to reduce emissions and to increase the absorptive capacity of greenhouse gases. This project shall be implemented from now to 2020.

12.2 Are there any national greenhouse gas emissions reduction targets?

There are national targets for emission reduction and the increase of absorption of greenhouse gas by 2020, which are set out in the project of greenhouse gas emission management approved by the Prime Minister. These targets aim for the reduction of greenhouse gas emission as compared to 2005 (i) in the area of energy and transportation by 8%, (ii) in the area of agriculture by 20%, and (iii) in the area of waste by 5%. The target for increasing the absorption of greenhouse gases compared to 2005 in the area of land use, change of land use and forestry is 20%.

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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Nasir PKM Abdul is Of Counsel with Gide in Vietnam. He specialises in all aspects of M&A, corporate and real estate law, with a particular focus on energy and telecommunications. He regularly advises industrial and commercial firms on various acquisition, disposition, construction, leasing, financing, zoning and environmental matters, in relation to commercial property and infrastructure projects. Nasir has extensive experience working with owners, engineers, constructors, and suppliers in drafting various construction contracts and construction-related agreements, including turnkey design/build agreements related to the construction of infrastructure projects, both within and outside of Vietnam.

Nasir also regularly advises clients in arbitration and domestic litigation cases. He is appointed by the Vietnam International Arbitration Centre to serve as one of a select number of foreign experts on their recommended List of International Arbitrators.

Prior to joining Gide, Nasir managed the Vietnam-based offices of a European firm for four years and worked for 5 years with a US firm in Paris. Nasir is fluent in English, French and Vietnamese and is qualified as a French Avocat à la Cour.

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Long Huynh, senior associate, has more than 15 years' experience in real estate, projects and construction projects. Long regularly 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, EPC projects and the hotel and leisure industry.

Long also regularly advises on corporate / M&A transactions in Vietnam, which include real estate aspects. He also has significant experience in commercial dispute resolution relating to real estate and infrastructure matters.

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Long is a recommended lawyer in the Asia Pacific Legal 500 2012 and 2013 in various practice areas.



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GIDE 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.

GIDE 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 and EPC projects, 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.