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Vietnam's New Land Law: The Impact on Foreign Developers

The latest incarnation of Vietnam's Land Law was ratified by the country's National Assembly on November 29, 2013, and came into force on July 1, 2014 (the 2014 Land Law). This new law replaced the previous Land Law of 2003 (the 2003 Land Law). Following the 2014 Land Law, the Vietnam Government issued Decrees Nos. 43, 44, and 47, all of which came into force on the same date as the 2014 Land Law. The new Land Law has, however, brought with it mixed feelings for foreign developers in Vietnam.

Equal Footing for Domestic and Foreign Investors

Under the 2003 Land Law, the most common form of land acquisition by foreign investors was direct lease through the government. Foreign investors paid rent either on an annual or an upfront basis. On the other hand, local investors were allowed to acquire land via land allocation (i.e., through a land grant obtained from the government for agricultural, commercial, and residential land), under which they paid a land use fee (the legal term for payment of the land allocation by the local investors to the government) on a definite- or indefinite-term basis. In addition, local investors were also able to lease the land from the government and pay rent on a yearly basis.

The 2014 Land Law removes all of the aforementioned differences between local and foreign investors. Now, either may lease land from the government and pay rent on an annual basis or as a lump-sum payment. Both may also acquire land via land allocation. However, land allocation is now only available for residential land.

More Conditions for Land Acquisition

The 2014 Land Law sets out new harsh requirements for developers (both local and foreign), who want to lease or obtain land allocation from the government. These new requirements include the following:

- ▶ The lease (or allocation) of the land must have been provided for in the annual land use plan (the plan for using each specific piece of land such as for commercial or residential purposes within the district) issued by the district-level People's Committee. In other words, foreign developers must ensure that the land they intend to acquire has been specified in the annual land use plan.
- ▶ The developers must meet a minimum level of statutory equity capital (i.e., pocket money). For example, for a project that has a land area of less than 20 hectares, the developer's equity capital must be at least 20% of the total estimated investment capital of the project. For a project of 20 hectares or more, the equity capital must be at least 15%.
- ▶ The developers must pay deposits to the government to ensure that they will pay the land rent (or land use fees) and develop the projects in a timely manner.

Uncertainty Over Land Prices

Under the 2003 Land Law, the land price (i.e., the land rent or land use fees) for a specific piece of land could be calculated based on the table of land prices annually published by the provincial People's Committee. The 2014 Land Law, however, requires the land price to be determined on a case-by-case basis by the provincial People's Committee. The government may hire land valuation firms to determine and advise on the land price. This new land price determination method leaves much uncertainty about the land price and also the timing issue of the local government in determining the land prices.

More Restrictions on Land Withdrawal

Under the 2003 Land Law, the grounds for land withdrawal (akin to eminent domain) by the government for the development of a commercial or residential project were very broad. Developers were able to ask the government for land withdrawal from individual land users for their development of a three-star hotel or any residential project. This is no longer permissible under the 2014 Land Law. Land withdrawal for a commercial or residential project must satisfy two conditions: (i) it may only be for significant projects, such as construction of a new township; and (ii) it must have prior approval for land withdrawal from the provincial People's Council.

More Options for Residential Projects

For the first time, the 2014 Land Law allows a residential project developer to transfer part of its project (i.e., by dividing the land and transferring the divided plots of land and the assets constructed on them, if any) to another developer. The conditions for such a transfer are fairly simple: (i) the land price must be fully paid by the selling developer; and (ii) the land must have been issued a land use right certificate (akin to the title deed). Regrettably, thus far, it is still unclear as to the procedures and documentation for the transfer of part of a residential project.

Also, for the first time, the 2014 Land Law allows a residential project developer to transfer individual plots of land in a project (without any houses constructed on them). Previously, this form of transfer was strictly prohibited, for fear that if the developer failed to construct the houses in its project in a timely manner and did not follow an approved design, then the entire city would look unsightly. In response to the recent downturn of the real estate market in Vietnam, however, the 2014 Land Law allows a developer to transfer bare land to buyers, so long as the following conditions are met:

- ▶ The developer must have fully paid the land price for the project land;
- ▶ The developer has constructed the infrastructure of the project;
- ▶ The project is not located in the central districts of the city or province; and
- ▶ The provincial People's Committee where the project land is situated agrees to the transfer.

Future Outlook

There are signals showing that the real estate market in Vietnam is warming up. Nevertheless, it is too early to judge whether the new Land Law may further defrost the market through its liberal provisions on land transfer or whether it will worsen the situation with its new harsh criteria for land acquisition and pricing. The market has its own voice. 🏡