

Commercial real estate in Vietnam: overview

Dr Vinh Quoc Nguyen, Partner
Tilleke & Gibbins

global.practicallaw.com/2-547-2526

THE CORPORATE REAL ESTATE MARKET

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

A strong GDP growth rate of 6.8% in 2017 helped Vietnam affirm its position as one of the fastest growing economies in Asia. While concerns remain over the stability of credit growth and imminent inflation, Vietnam's economy is still expected to grow in 2018.

The real estate market in Vietnam also experienced a year of growth. In particular:

- **Condominium market:** market sentiment in Vietnam's two biggest cities remained positive, with 23,000 and 32,905 units sold in Hanoi and Ho Chi Minh City, respectively. In 2018, the market is expected to focus more on the mid-range segment, which will make up nearly 53% of newly launched units.
- **Office market:** in Hanoi, the average rent increased in 2017 for the first time in five years in both Grade A and Grade B, while Ho Chi Minh City rents continued to show a slight increase. In 2018, the banking/insurance, manufacturing, and IT sectors are expected to drive demand, with co-working spaces showing particularly notable growth.
- **Retail market:** seven new projects in Ho Chi Minh City and two in Hanoi helped bring about the market entry of new foreign retailers as well as the expansion of current players. Landlords are using flexible leasing strategies to lure tenants, especially at non-central business district locations where there is more competition.

In 2017, M&A transactions in Vietnam's real estate sector had a total value of US\$1.5 billion, with prominent deals including a US\$40 million acquisition in rapidly growing District 4 by CapitaLand, and VinaLand's divestment of its entire stake, valued at over US\$40 million, in the Vina Square Project.

REAL ESTATE INVESTMENT

2. What structures do investors typically use for real estate investment in your jurisdiction and what are the main advantages and disadvantages of each (for example, flexibility and tax transparency)?

Common structures

Common business forms in real estate business in Vietnam for foreign investors include the following:

A 100% wholly foreign owned company (WFOC). This form of business includes the formation of one of the following:

- A single-member limited liability company.
- A multiple-member limited liability company.

- A joint stock company.

A joint venture company (JVC) with one or more Vietnamese partners. Under this form of business, the Vietnamese partner(s) normally contributes its equity stake via the rights to use a plot of the land where the JVC intends to develop. This form of business includes the formation of either:

- A multiple-member limited liability company.
- A joint stock company.

A single-member limited liability company. This is where a local or foreign entity or individual sets up its subsidiary company in Vietnam and becomes the sole owner/shareholder of the subsidiary. The main characteristics of this company include:

- It has one member.
- It cannot issue shares.
- If the owner is a company, its management structure takes the form of either:
 - President, General Director/Director, and Controller(s); or
 - Members' Council, General Director/Director, and Controller(s).
- If the owner is an individual, its management structure takes the form of a President and a General Director/Director.

A multi-member limited liability company. This is formed between a foreign entity or individual and at least one partner (either Vietnamese or foreign). If the partner is a Vietnamese company, then the company becomes a JVC. The main characteristics of this company include:

- Its total members cannot exceed 50.
- It cannot issue shares.
- Its management structure takes the form of a:
 - Members' Council;
 - Chairman of Members' Council;
 - General Director/Director; and
 - Control Board, if there are more than ten members. The powers and duties of the Control Board are set out under the company's charter (that is, the articles of association).

A joint stock company. This can be formed by a foreign entity or individual and at least two partners (either Vietnamese or foreign). If any of the partners is a Vietnamese company, then the company becomes a JVC. The main characteristics of this company include:

- It must have a minimum of three shareholders, but no maximum.
- Its charter capital is divided into shares, which must be made up of ordinary shares (optionally, preferred shares can also be issued).

- It can issue securities (including bonds).
- It must conduct a general shareholders' meeting.
- Its management structure includes the following:
 - General Meeting of Shareholders;
 - Board of Management (cannot be fewer than three or more than 11);
 - Chairman of the Board;
 - General Director/Director; and
 - Control Board (if there are more than 11 individual shareholders or if the corporate shareholders in aggregate hold more than 50% of the shares), which is made up of three to five board members. The Control Board supervises the business activities of the functional bodies of the company, such as the Board of Management and the General Director, to ensure these bodies act in compliance with the law and the company's charter.

REITs

The concept of a trust does not exist under Vietnamese law. However, from July 2013, under new regulations on securities, investors can set up funds (which are run by a fund management company) to invest in real estate. However, this form of business has not yet attracted many investors.

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

The sources of funding for a real estate project and the order of the common funding forms in Vietnam are as follows:

- Loans from banks.
- Issuance of bonds (both convertible and non-convertible) by the developer.
- Issuance of shares to new shareholders.
- Payment by purchasers of off-the-plan houses or apartments under sale contracts.
- Shareholders' loans.

Legally speaking, foreign investors are treated almost the same as local investors. However, foreign investors are not entitled to buy real properties from individuals. Further, local investors may have better connections to acquire land plots located at commercially advantageous places.

Restrictions on foreign ownership or occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions on foreign guarantees or security for ownership or occupation and on lending for the purchase of real estate?

The new Law on Real Estate Business of 2014 and Law on Residential Housing of 2014 (both took effect on 1 July 2015) created more favourable conditions for foreign individuals and organisations to own houses and apartments in Vietnam. Generally viewed, the conditions include the following.

Foreign companies investing in the construction of houses/apartments for sale can own, sell and lease the houses/apartments to eligible purchasers in Vietnam.

Foreign companies investing in the construction of houses/apartments for lease in Vietnam can own their buildings. The duration of the building ownership, however, is the duration stated in their investment certificates and in the LURC (*see Question 6*), and is a maximum of up to 50 years (although this is renewable). To renew its building ownership, a company must first renew its investment certificate, the lease of the land and pay the land rentals. The renewal procedures are set out under the investment and land laws of Vietnam.

Foreign companies and organisations (not involved in real estate business) can own houses or apartments in commercial projects for their staff to reside in. However, the total number of houses or apartments owned by foreign companies or organisations within an apartment building or a ward is subject to statutory thresholds. Further, the duration of ownership is based on the duration of the licence of the foreign company/organisation (though the licence is generally renewable).

Foreign individuals who are allowed to enter Vietnam can own houses or apartments in commercial projects for a period of up to 50 years (renewable).

Generally, foreign individuals and entities who are entitled to own houses in Vietnam enjoy the right to resell, lease, mortgage, contribute as equity, exchange, and so on their owned houses/apartments.

TITLE TO REAL ESTATE

5. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate under Vietnamese laws include:

- Land.
- Houses and constructions attached to the land.
- Other assets attached to the land.
- Other properties specified by law.

Land and other real property attached to the land (including buildings) are registered in the same title in Vietnam and with the same register.

6. How is title to real estate evidenced? What is the name of the public register of title and the authorities responsible for managing it? Is electronic access and electronic conveyancing available?

The title is recorded on registration with the Land Registration Office (LRO) under the Department of Natural Resources and Environment of the province or city where the real property is located. On successful registration with LRO, the relevant People's Committee issues the owner a "Certificate of Land Use Rights, House Ownership and Other Assets Attached to the Land" (commonly called the Pink Book) (LURC), which serves as evidence to title to real estate.

The Prime Minister issued Decision No. 1975/QĐ-TTg on 30 October 2013 approving the project Building a National Database on Land. This online database is expected to be put into operation in 2020. However, the Ministry of Natural Resources and Environment is pushing to finish it sooner.

7. What are the main information and documents registered in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title?

The LRO holds, among other things:

- The registered owner of the property.
- The type of the land and term of title over the land.
- Any encumbrances, such as a mortgage.
- Historic transfers of the property (but this information is not publicly available).

For information on what documents must be submitted to the LRO to obtain an LURC, see *Question 17*.

Confidential information or documents cannot be protected from disclosure in the public register of title.

8. Is there a state guarantee of title? Is the authority that manages the public register liable to pay compensation for any errors it makes in relation to title registration? Is title insurance available and is it commonly used?

The state guarantees general protection to LURC holders, such as:

- Rights to enjoy their investments.
- Protection against encroachment of their property.
- That land can only be withdrawn for national or security purposes or for economic development purposes, and provided that the LURC holders are compensated (see *Planning and development controls*).

Title insurance services are not yet available in Vietnam.

Tenure

9. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

In general, a land user can secure land from the state through the following two forms:

- An allocation, with or without payment of a land use fee for a definite or indefinite term.
- A lease with annual payment or a lump-sum payment for the whole of the lease term.

Foreign investors can secure land through allocation for residential land or a lease for commercial land for a maximum term of 50 years, which is renewable. However, if a foreign investor forms a JVC with a local investor(s), the local investor can contribute to the JVC the land use rights as its capital contribution.

SALE OF REAL ESTATE **Preliminary agreements**

10. What types of preliminary agreements are typically used in the sale of real estate? Are they legally binding?

Prior to the execution of the sale contract, the purchaser is normally invited to observe a model house or apartment or the actual property, when it is not a case of a corporate developer. In addition, he or she is provided with a draft of the sale contract for review.

There is no preliminary agreement between an individual purchaser and a corporate developer before the parties enter into the sale contract. However, for sale contracts between individuals, the parties normally enter into a deposit contract which is binding on the parties.

Sale contract

11. Briefly outline the typical main provisions of a corporate real estate sale contract and main real estate provisions of a typical share purchase agreement.

The main provisions of a corporate real estate sale contract include:

- Description of the property.
- Price and payment method.
- Date of delivery and obligations of the seller on late delivery.
- General rights and obligations of each party.
- Warranty.
- Events of termination and the consequences of termination.

The Vietnamese government formulates standard forms for real estate transactions such as sale or lease. However, subject to their agreement, the parties can modify the standard clauses.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition and what key areas does it cover? Which documents are typically reviewed? Which specialist advisers are usually involved and which reports do they typically produce?

Public search of a real property can be done at the LRO where the land or house is situated. The results provide, among other things, the registered owner of the property, the type and term of title over the land, and any encumbrances such as a mortgage.

Further, a foreign investor can retain lawyers to conduct legal due diligence to ascertain whether or not the project has been legally developed and/or necessary licences and permits for the building have been obtained, and so on. The lawyers review the:

- Corporate documents.
- Company's investment certificate and/or enterprise registration certificate (that is, certificate of incorporation).
- Approvals for the development of a residential project (where applicable).
- Land documents (including the decision on land lease or allocation from the People's Committee, the land lease agreement, and the LURC).
- Construction permit and documents evidencing the building is ready for use.

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover? What are the main limitations on warranties, for example are they typically qualified by disclosure?

Under Vietnamese laws on real estate and housing, companies and individuals building houses must provide a warranty for houses they

build. The warranty covers the repair or replacement of house structures, damaged equipment, defects or abnormal operation, for which the users are not at fault. The warranty period is counted from the date the developer signs the minutes on acceptance of the completion of the construction of houses and lasts for the following period:

- At least 60 months for apartment buildings.
- At least 24 months for other houses.

In practice, the sellers keep their warranty obligations under the sale contract to what is required under law (see above).

For real estate warranties for a share sale transaction, see *Question 11*.

Liability

14. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

General statutory liabilities of a seller under Vietnamese laws include:

- Notifying the purchaser of any restrictions on ownership rights to the house, if any.
- Maintaining a residential house that has been sold, pending its transfer to the purchaser.
- Transferring to the purchaser the residential house in the same conditions described in the contract and all the documents on the house.
- Strictly carrying out all procedures for purchase and sale of a residential house in accordance with legal provisions.

In addition, if the seller is a corporate developer, then it is subject to the following other liabilities:

- Complying with legal provisions on housing development.
- Ensuring completion according to the construction schedule and up to the quality of the approved project.
- Making publicly available at the project management office, its website, or the real estate trading floor (if the sale is conducted via such medium) the:
 - project's detailed planning;
 - documents in relation to the land, construction, and ownership;
 - number of houses for sale or lease;
 - location;
 - common area(s);
 - sale and lease prices;
 - mode of payment;
 - any encumbrances on the land or house(s);
- Carrying out procedures for obtaining the LURC for the purchasers.
- Providing a warranty for the house sold.

15. Briefly outline the environmental legislation and potential liability for a buyer in a purchase of real estate. Is it common to carry out environmental surveys and searches and to obtain environmental insurance? How is

environmental liability typically dealt with in the sale contract?

Environmental issues in real estate business have so far not been an issue in Vietnam. Depending on the scale of its project, a corporate developer must formulate and submit its plan for environmental protection to the district Department of Natural Resources and Environment (DONRE) for approval, or obtain approval from the provincial DONRE for the developer's assessment report on the environmental impacts of its project. It is not common to carry out environmental surveys in Vietnam and the real estate sale contract does not normally contain any provision on environmental liability.

16. Can an owner or occupier inherit liability for other matters relating to the real estate even if they occurred before it bought or occupied it? Can a seller or occupier retain any other liability relating to the real estate after it has disposed of it?

Generally an owner or occupier does not inherit liability for matters relating to the real estate that occurred before it was bought or occupied, unless the owner/occupier agrees to inherit those liabilities from the previous owner under the sale contract.

Generally, the seller retains liabilities that are attributed to it before disposing of the property, including environmental liabilities and so on. Under statute, builders of properties must provide a warranty in relation to the properties that they build (see *Question 13*).

Completion arrangements

17. What are the typical arrangements and main documents required for completion of the sale? When does title transfer and what are the formal legal requirements to execute the sale documents, transfer the real estate and register the change of title? Is notarisation required?

The sale contract is legally binding on the parties on the execution of the contract. Depending on the types of seller (that is, a corporate developer or an individual), the title over a house is transferred to the purchaser on the handing over of the house to the purchaser or the notarisation of the sale contract, respectively. The title over a piece of land is transferred to the purchaser on registration with the LRO.

Below is an example of the required documentation to register the change in title from a corporate developer to an individual purchaser:

- An application for the LURC (in a prescribed form).
- The sale contract over the house or apartment or building. For the sale of a house or apartment sold by a corporate developer to a purchaser, the sale contract does not need to be notarised (for other sales of houses/apartments, the sale contract must be notarised).
- A copy of the project approval decision or investment certificate.
- A copy of the decision approving the 1/500-scale detailed planning of the project.
- Copies of papers on the developer's fulfilment of financial obligations.
- Copies of papers on the purchaser's fulfilment of financial obligations (if any).
- The plan of the house and land lot, which is the drawing of the complete work or the design drawing of the work plan suitable to the current status of the house or construction work.

- Copies of papers proving that the sale is conducted via a real estate trading floor (see *below*).

A real estate trading floor is run by a real estate company that provides information about the houses or apartments for sale and acts as a broker between the seller and the purchaser. The new Law on Real Estate Business and Law on Residential Housing no longer require a corporate developer to sell its newly built properties to the purchasers via a real estate trading floor.

Notarisation is not required if the seller is a corporate developer. However, if both the seller and the purchaser are individuals, notarisation is legally required.

REAL ESTATE TAX

18. Is stamp duty/transfer tax (or equivalent) payable on the purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

No stamp duty is imposed on the sale of real properties in Vietnam. However, a corporate seller is currently required to pay corporate income tax at the rate of 20% (from 1 January 2016) on the profit. If the corporate seller develops and sells state-subsidised houses or apartments which have a gross area of less than 70 square metres for low-income households, it can enjoy corporate income tax of 10%. In addition, the seller normally pays the notarisation fee, which is up to a maximum of about US\$480. The purchaser pays the registration fee of 0.5% of the price of the purchased property.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios? What is the general approach of the tax authorities in your jurisdiction to such schemes?

No common method for mitigating tax liabilities in real estate transfer is available in Vietnam. However, professional tax advisers may give detailed advice on which items can be considered as deductibles from corporate income tax, personal income tax or VAT.

20. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

The sale of real estate by a corporate entity is generally subject to VAT. The payer is the end-consumer of the property. However, the seller collects the VAT amount and pays it to the tax office on the purchaser's behalf. The rate is currently 10%.

Generally speaking, there is no exemption on VAT in selling real properties. However, the Vietnamese government allows a reduction of 50% of the VAT rate (from 10% to 5%) for state-subsidised houses/apartments.

21. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

Local governments cannot collect taxes in Vietnam.

CLIMATE CHANGE ISSUES

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

There is legislation requiring buildings to meet certain minimum energy efficiency criteria. In particular, construction works that have a gross floor area from 2,500 square meters and more must follow national technical regulations on energy-efficient buildings (*Circular No. 15/2013/TT-BXD dated 26 September 2013 of the Ministry of Construction of Vietnam, starting 15 November 2013*).

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

Provisions relating to the energy efficiency of buildings are not commonly included in contracts for the sale of real estate or in leases.

REAL ESTATE FINANCE

Secured lending involving real estate

24. Briefly outline the typical security package required by lenders in relation to real estate lending. How are the most common forms of security interest relating to real estate created and perfected (that is, made valid and enforceable)?

The most common form of security is a mortgage over the land and the assets attached to the land to the creditor. Another form of security is a corporate or individual guarantee.

A mortgage agreement must be made in writing and in order to be valid and effective against third parties, it must be additionally notarised and registered with the LRO. A guarantee is valid and binding on the execution of the guarantee by the parties. In registering the mortgage, the applicant (the lender or the borrower) must pay a registration fee. The fee varies among localities with a maximum amount of US\$3.50.

Under Decree No. 118/2015/ND-CP of the Government dated 12 November 2015, before developing a project, a corporate developer must deposit an amount from 1% to 3% of the total estimated investment capital of the project. The Law on Real Estate Business also requires that if a corporate developer wishes to sell off-the-plan houses or apartments, it must have obtained a bank guarantee from a Vietnam-based competent bank to guarantee the developer's timely handing over of the houses/apartments to the purchasers.

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

In granting a loan to a borrower, the lender normally requires the borrower to:

- Prove its source of repayment.
- Complete the legal requirements for the development of the project or for the mortgage as conditions precedent.
- Open an account in the lender's possession, in which all income from the sale of the houses in the project will be deposited.

In addition, the lender can grant the borrower a loan of up to 60% of the price of the land.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Lenders cannot generally incur environmental liability (see Question 75). The loan agreement may contain a general warranty from the borrower of its compliance with environmental laws of Vietnam.

27. Briefly outline the main remedies for lenders in relation to the secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

The lender and the borrower may agree in their security agreement on the consequences of an event of default by the borrower. In particular, they may agree that the lender either:

- Can directly sell the secured assets to a third party.
- Keep the secured assets as repayment of the debts.

Failing to reach such agreement, the secured assets will be sold by public auction.

In practice, the enforcement of secured assets which are real properties in Vietnam is difficult if the borrower does not co-operate. In such a case, the creditor has no choice other than initiating a lawsuit before the competent courts. Once the security is registered, the lender becomes a secured creditor and is given priority over other creditors of the borrower in case of the borrower's insolvency.

28. Briefly outline key additional issues for lenders in relation to construction and development projects.

Step-in rights are normally included in the loan and/or security agreements. However, they are not yet fully tested in practice in Vietnam. Instead, the lender can adopt the solutions of pre-approving the construction contractor and only disbursing the loan amounts if the borrower submits relevant documents to prove the borrower's payments are legitimate.

Other real estate financing techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

Real estate securitisation by way of sale of special shares, which denote that the holder has ownership over a real property, might be found in some projects in Vietnam. However, the legality of this arrangement is not tested. The arrangement of sale and leaseback is rather common for high-end villas or condos.

REAL ESTATE LEASES

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable? Which legislation applies?

Generally, contractual lease provisions are freely negotiable.

31. What are the formal legal requirements to execute a lease? Does the lease have to be executed by certain parties or as a deed? How do the formalities differ for a company, partnership and for individuals?

The lease of space in a building or houses from a corporate lessor must be made in a written agreement. In addition, in some cases, the parties prefer to notarise the lease agreement as well. The notarisation of the lease helps to prove the authenticity of the transaction in case of dispute.

Rent payments

32. How are rent levels usually reviewed and are there restrictions on this? Is stamp duty and VAT (or equivalent) payable on rent? Is a rent security deposit required and does it have to be managed in a certain way?

Rent levels are adjusted on the basis of the:

- Market conditions (such as a reduction in rent if there is excessive supply in the market).
- Exchange rate.
- Consumer price index.

VAT is payable on rent if the landlord is a corporate entity.

Length of term and security of occupation

33. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

There is no typical length of lease term in Vietnam. Tenants do not have security of occupation or a priority right to renew the lease.

Disposal

34. What restrictions typically apply to the disposal of the lease by the tenant? Can the tenant assign or sublet the lease with the landlord's consent? Can tenants share their premises with companies in the same group? What is the effect of a legal reorganisation or transfer/sale of the tenant on the lease and on a guarantee of the lease?

Generally, a tenant cannot dispose of the leased assets (such as assignment of the lease to a new tenant or a sub-lease) without prior consent from the landlord.

Tenants cannot share their business premises with companies in the same corporate group, unless the landlord allows them to do so. The parties may agree that the landlord's consent for the shared lease cannot be unreasonably withheld or delayed. Failing this, it is at the landlord's sole discretion.

35. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

Unless there are misrepresentations or undisclosed defects, the liability of the landlord or the tenant ceases at the time of assignment.

Repair and insurance

36. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of lease improvements?

The landlord is responsible for maintaining the leased premises on a periodic basis (such as for normal wear) or as agreed under the lease contract. The tenant is responsible for repairing damage caused by it. Generally, ownership of lease improvements can only be made if the landlord allows such improvement.

The landlord is usually responsible for insuring the leased premises.

Landlord's remedies and termination

37. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease and what restrictions and procedures apply? What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

General grounds for a landlord to terminate the lease include:

- A payment of the rent by the tenant that is at least three months late.
- Use of the leased premises that is not in accordance with the renting purposes.
- The tenant intentionally causing serious damage to the leased premises.
- The tenant repairing, exchanging or subleasing the leased premises to another person without prior consent from the landlord.
- The tenant causing serious impacts on environmental sanitation.

Under general contract terms, on the tenant's insolvency, the landlord can:

- Terminate the lease.
- Request the tenant to:
 - hand over the leased premises; and
 - pay the unpaid rent and damages (if any).

Under the Law on Bankruptcy of 2014 (which took effect on 1 January 2015), within ten business days from the date it receives the court's decision on the tenant's bankruptcy, the landlord can submit its title document and the lease agreement to the judgment execution agency to take back the leased premises.

38. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the

leased premises? Can the tenant terminate the lease in certain circumstances?

A tenant can only withhold rent payments if the lease agreement allows it to do so. Failing this, the tenant is still contractually obliged to pay the rent. However, it may demand the landlord to perform its contractual obligations such as repair, or terminate the lease.

General grounds for a tenant to terminate the lease include:

- The landlord's failure to repair the house when its quality has seriously deteriorated.
- An unreasonable increase in the rental price.
- The landlord restricting the tenant from peacefully and quietly enjoying the leased premises.

PLANNING AND DEVELOPMENT CONTROLS

39. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

Vietnamese land laws allow local authorities to withdraw land where:

- The state uses the land for the purposes of defence, security, national interest, public interest, or economic development.
- The land is not being used for the registered purposes or is being used inefficiently.
- The land users deliberately destroy the land.
- The land is encroached on.
- Land leased or allocated by the state for the implementation of investment projects is not used for 12 months or 24 months of delay compared to the schedule in the investment documents. In case of breach, developers are given a 24-month period for remedy with additional payment of land rentals/land use fee for the delayed period. After the 24-month grace period, land and assets are withdrawn without any compensation except for *force majeure* events.

In relation to the first category, the conditions for land withdrawal include a state body having prepared and publicised its land use plan (under which certain land plots will be withdrawn and used for national defence, security or economic development). The circumstances for land withdrawal for the purposes of national defence, security or economic development are rather broad, and include the construction of offices for state bodies, public works, industrial and economic zones, and build operate transfer (BOT) projects, among others. Land withdrawals in these cases are compensated by the state via:

- A lease of another plot of land of the same category.
- Payment of the land value on the basis of market price.

For the other categories, the land laws do not define precisely how land would be used "inefficiently" or how a land user "deliberately destroys" his or her land. If an investor has invested in the land (such as constructing a plant on the land), then the investor will be compensated for the value of that investment on the land, except where a land user deliberately destroys the land. The value of the investment on the withdrawn land is determined by a valuation committee established by the provincial People's Committee where the land is located.

40. What authorities regulate planning control and which legislation applies? Is there specific protection for

special categories of buildings such as historic buildings?

Planning in Vietnam includes planning in land use and planning in construction within an urban area:

- **Planning in land use:** this is conducted by the Ministry of Natural Resources and Environment (www.monre.gov.vn) and the Department of Natural Resources and Environment at the provincial and district levels in accordance with the Land Law of 2013 and its guiding legislation.
- **Planning in construction in an urban area:** this is conducted by the Ministry of Construction (www.xaydung.gov.vn/en/english) and the People's Committees at the provincial and district levels in accordance with the Law on Urban Planning of 2009.
- **Planning for residential housing development.** This is conducted by the provincial People's Committee. Each year, a provincial People's Committee must formulate and approve a plan for residential housing development in its province, which details the plans for development of commercial, relocation, state-subsidised, official residential, and individual houses. This plan is introduced under the Law on Residential Housing.

41. What planning consents are required for building works and the use of a building?

A construction permit is generally required, except for special cases such as construction works for national security and minor repair. A developer is required to obtain this permit before commencing construction of its building.

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

The authority which issues construction permits for foreign developers is the Department of Construction of the province where the project is located.

Under the Law on Construction of 2014 (which took effect on 1 January 2015), the legal deadline for the issuance of a construction permit is within 30 calendar days from the date of submission of a valid application to the licensing body. However, in practice, the process can last for months.

Third party rights and appeals

Vietnamese laws do not specifically allow a third party to object to the issuance of a construction permit. However, the administrative laws allow citizens to report law-violating acts of a state official including unlawfully issuing a construction permit. In that case, if a third party has firm evidence to support this allegation, he or she may report the official's violation and, as a result, the construction permit may be withdrawn. Public inquiries are not generally available in Vietnam.

The administrative laws of Vietnam provide a general route for any person to report a law violation of a state official or agency. If a licensing body rejects the issuance of a construction permit on unlawful grounds, then the applicant can appeal this decision on that basis.

REFORM

43. Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

The Ministry of Construction has published a draft law amending some articles of the Law on Construction, the Law on Residential Housing, the Law on Real Estate Business and the Law on Urban Planning for public comments. The goal of this draft law is to amend various matters including the form of management of construction investment projects, conditions on investment and construction of residential housing, and regulations on direct contracting.

ONLINE RESOURCES

Website maintained by the Ministry of Justice of Vietnam

W www.moj.gov.vn/vbpq/en/pages/vbpq.aspx

Description. This legal database provides some of the pieces of legislation that are used for the preparation of this Q&A. This is a free website maintained by the Ministry of Justice of Vietnam. The translated legislation in this website is for reference only.

Practical Law Contributor profile



Dr Vinh Quoc Nguyen, Partner

Tilleke & Gibbins

T +84 28 3936 2068

F +84 28 3936 2066

E vinh.n@tilleke.com

W www.tilleke.com

Professional qualifications. LLB, Hanoi University of Law; LLM, Nagoya University; Doctor of Judicial Science; Meiji Gakuin University; Practising Certificate from the Ministry of Justice of Vietnam

Areas of practice. Banking and finance; commercial transactions and M&A; real estate; labour and employment.

Recent transactions

- Assisting a multinational chemical manufacturing company in negotiating and signing a new land lease contract and advising on the capital structure to make upfront payment of the land rental.
- Acting for a US-based hotel chain, performing due diligence on the legal aspects of a project in central Vietnam and advising on the legal aspects of the hotel management agreements, and investment and land laws of Vietnam.
- Advising a foreign-owned investment company in Vietnam on a ten-figure US\$ mixed-use real estate project, including regulatory, corporate structuring, and transactional advice as well as participating in negotiations with potential investors.
- Advising a local real estate developer in a mixed-use residence and resort in their project development and sale of shares.

Languages. Vietnamese, English, Japanese.

Professional associations/memberships. Ho Chi Minh City Bar Association, Vietnam International Arbitration Center

Publications

- *Multilaw Global Real Estate Guide (Vietnam chapter).*
- *Practical Law Doing Business in... Global Guide (Vietnam chapter).*
- *Practical Law Insurance and Reinsurance Global Guide (Vietnam chapter).*
- *Practical Law Energy and Natural Resources (Electricity) Global Guide (Vietnam chapter).*