

# Commercial real estate in Vietnam: overview

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A Q&A guide to corporate real estate law in Vietnam.

The Q&A gives a high level overview of the corporate real estate market; real estate investment structures, including REITs; title; tenure; sale of real estate; seller's liability; due diligence; warranties; real estate tax and mitigation, including VAT and stamp duty/transfer tax; climate change targets; restrictions on foreign ownership; real estate finance; leases; planning law; and proposals for reform.

To compare answers across multiple jurisdictions, visit the Corporate Real Estate *Country Q&A tool*.

This Q&A is part of the global guide to corporate real estate law. For a full list of jurisdictional Q&As visit [global.practicallaw.com/realestate-guide](https://global.practicallaw.com/realestate-guide).

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## The Commercial 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?

With a GDP growth rate of 6.42% *in the first half of 2022* despite a turbulent global economic situation, Vietnam affirmed its position as one of the fastest growing economies in Asia. While concerns remain over the stability of credit growth, inflation, and the impact of the COVID-19 pandemic, Vietnam's economy is still expected to grow in 2022 with a growth rate of around 7.5% as estimated by the World Bank.

According to market research reports from several real estate companies (including CBRE, Savills, and JLL) and *statistics published by the Ministry of Construction*, the Vietnam real estate market, specifically in its two biggest cities Hanoi and Ho Chi Minh City (HCMC), experienced significant recovery and development in all segments in 2021 and the first half of 2022. In particular:

- In the condominium market, new supply was dramatically affected leading to a significant increase in prices. Although there was some improvement in 2021 and the first half of 2022, supply remains limited compared to market demand.
- The office market saw a slight recovery in 2021 and a significant development in the first half of 2022. In general, supply increased but at a slow rate. Meanwhile, office demand increased, causing a corresponding increase in rent.

- In the retail market, significantly impacted by COVID-19, total supply and rents have generally remained stable. In general, as of the end of the first quarter of 2022, the retail market has *not yet seen a substantial recovery*.
- The industrial market has been the most robust market in the COVID-19 pandemic. Occupancy rates of industrial parks remained high. Rents witnessed a rapid increase (at around 9%) in the *first half of 2022*.

Regardless of the impact of COVID-19, foreign investment in real estate in Vietnam increased in the first half of 2022. Accrued foreign investment capital in the real estate sector *in this period* reached over USD3.15 billion, ranked second among industries attracting the most FDI.

However, from the third quarter of 2022, the market in Vietnam witnessed a significant downturn due to several factors. First was the US dollar appreciation, leading to the depreciation of the Vietnamese dong and rising costs of borrowing. Second, the State Bank of Vietnam adopted measures to raise interest rates and tighten credit policies for real estate to control inflation and stabilise the currency. Further, there has been stock exchange controversy relating to stock manipulation and fraud bond issuance by real estate companies, leading to arrests of real estate-related moguls. It seems that the real estate bubble has been deflating.

In 2021, the real estate market saw investments by:

- Becamex IDC Corp. and Central Retail Corporation (Vietnam) in the GO! Shopping Mall in Binh Duong province, for about USD35 million.
- Boustead Projects Land (Vietnam) into KTG & Boustead Industrial Logistics, for about USD6.9 million.

## Real Estate Investment

### Investment Structures

2. What entity types and acquisition structures do investors typically use for real estate investment in your jurisdiction?

### Common Entity Types

In Vietnam, real estate business must be conducted by an enterprise or a co-operative, except for small-scale or irregular transactions for a real estate sale, transfer, lease-out, and lease-purchase of organisations, households, and individuals (Article 10, Law on Real Estate Business 2014 (as amended by Article 75.2(a), Law on Investment 2020)).

Common business forms used for real estate business in Vietnam by foreign investors include a 100% wholly foreign owned company. This can be a single or multiple member limited liability company or a joint stock company.

Foreign investors also commonly set up a joint venture company (JVC) with one or more Vietnamese parties. The Vietnamese party normally contributes its rights to use the land plot that the JVC intends to develop. It can be a multiple-member limited liability company or a joint stock company.

**Single-member limited liability company.** A local or foreign entity or individual sets up a subsidiary company in Vietnam and becomes the sole owner/shareholder. It has one member and cannot issue shares.

It must have a president and a general director/director (or a members' council and a general director/director, if the owner is a company) (Article 79.1, Law on Enterprises 2020).

**Multi-member limited liability company.** If one of the members is a Vietnamese company, the company is a JVC. In particular:

- It must have at least two members and no more than 50 members (Article 46.1, Law on Enterprises 2020).
- It cannot issue shares.
- It must have a members' council, a chair of the members' council, and a general director/director (and a control board, if the company is a state-owned enterprise).

A control board supervises the business activities of the company's bodies, such as the management board and the general director, to ensure they comply with the law and the company's charter (Articles 65 and 170, Law on Enterprises 2020).

**Joint stock company.** If any shareholder is a Vietnamese company, the company is a JVC. In particular:

- It must have at least three shareholders but no maximum.
- Its charter capital is divided into shares, which must be made up of ordinary shares (preferred shares can also be issued).
- It can issue securities (including bonds).
- It must hold a general shareholders' meeting.
- It must have a management board (with at least three and up to 11 members), a chair of the board, and a general director/director.

It must also have a control board made up of three to five board members if there are more than 11 individual shareholders or if the corporate shareholders together hold more than 50% of the shares (Article 137.1, Law on Enterprises 2020).

## Real Estate Investment Trusts (REITs)

REITs are not yet common in Vietnam. So far, there is only one REIT in Vietnam, which is the Techcom Vietnam REIT Fund.

Entities conducting real estate business can establish REITs if at least 65% of the revenue in the financial statements of the preceding year comes from the ownership and trading of real estate (Article 4.43, Law on Securities 2019).

REITs can invest in real estate meeting certain conditions under the applicable laws (Articles 51.2(b) and 51.4, Circular 98/2020/TT-BTC) and can also invest in certain other assets including deposits at commercial banks, money market instruments, and government-issued debt instruments (Articles 51.2(a) and 24.2(a)-(e), Circular 98/2020/TT-BTC).

REITs are not allowed to conduct construction, implementation, or development activities of real estate projects (Article 50, Circular 98/2020/TT-BTC).

### Common Acquisition Methods

In Vietnam, land is owned by the people and administered by the government. Land users only have land use rights that are recognised, allocated, or leased by the government (see [Question 8](#)). A foreign investor can acquire a land use right through land allocation or land lease from the government or industrial park developers, or through a contribution of a land use right from a local party to a JVC.

Foreign and foreign-invested enterprises established in Vietnam therefore cannot directly buy a real estate asset from a Vietnamese company or individual. However, they can generally buy shares in a local company that holds real estate or undertake a real estate project transfer from another developer (with fairly heavy procedures for the project transfer).

### Sources of Finance and Investment

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?

In Vietnam, the sources of funding for a real estate project and the order of common funding forms are:

- Loans from banks.
- Bond issue (convertible and non-convertible) by the developer.
- Issuing shares to new shareholders.
- Advance payment by buyers for off-the-plan houses or apartments under sale contracts.
- Shareholders' loans.

Legally, foreign investors are treated almost the same as local investors. However, foreign investors cannot buy real property directly (see [Question 3](#)). Further, local investors may have better connections to acquire land plots in commercially advantageous places.

### Restrictions on Foreign Ownership and 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 lending, security and guarantees to buy or occupy real estate in your jurisdiction?

## Foreign Ownership of Real Estate

In Vietnam, land is owned by the people and administered by the government. Land users only have land use rights that are recognised, allocated, or leased by the government (see [Question 2](#) and [Question 8](#)).

The Law on Real Estate Business 2014 (as amended by the Law on Investment 2020) and Law on Residential Housing 2014 (as amended by specific laws in 2019 and 2020) has created more favourable conditions for foreign individuals and organisations to own houses and apartments in Vietnam. Generally, 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 buyers in Vietnam.

Foreign companies investing in the construction of houses/apartments for lease in Vietnam can own their buildings for the duration stated in their investment certificates and in the LURC (see [Question 5](#)) up to a maximum of 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 in an apartment building or a ward is subject to statutory thresholds. Further, the duration of ownership is based on the duration of the foreign company/organisation's licence (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/apartments in Vietnam can resell, lease, mortgage, contribute as equity, and exchange them.

## Foreign Lending, Security and Guarantees

Foreign lenders are not allowed to take real property as security (Articles 174.2(d), 175.1(b), 179.1(g), 179.2(dd), and 183.2(b), Land Law 2013 and Article 69.4, Law on Residential Housing 2014). These properties can only be mortgaged to licensed banks in Vietnam.

Foreign lenders can generally take other forms of security (such as a pledge of shares or a mortgage of movable assets) from a local borrower, although the enforcement process is likely to be prolonged in case of a dispute.

## Title to Real Estate

### Title Registration

5. How is title to real estate evidenced? What is the system for public registration/recordation of title? Is electronic access and electronic conveyancing available?

## How Title is Evidenced

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 the LRO, the relevant People's Committee issues to 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.

Registration is compulsory for land users. For housing and other assets attached to the land, the registration is at the request of the owners (Article 95.1, Land Law 2013).

For land that is not registered, the title cannot be confirmed.

## Public Registration/Recordation System

Title is recorded on registration with the LRO.

## Electronic Access and Conveyancing

The Prime Minister issued Decision No. 1975/QĐ-TTg on 30 October 2013 approving a project to create a national online land database. This was expected in 2020 but as of October 2022 is not yet available.

Electronic access to/searching of title information and electronic conveyancing are also not yet available.

There is no website address for the LRO.

Electronic signatures are currently not accepted by the LRO.

6. What are the main information and documents registered/recorded in the public registration/recordation system? Can confidential information or documents be protected from disclosure?

## Main Information and Documents

The LRO holds details of, among other things:

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

For information on what documents must be submitted to the LRO to obtain an LURC, see [Question 16](#).

## Confidential Information

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

Details of historic transfers of the property held by the LRO are not publicly available.

7. Is there a state guarantee of title? Are authorities that manage public title registration/recordation systems liable for title registration errors? Is title insurance available and is it commonly used?

## State Guarantee of Title and Compensation

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

- Rights to enjoy their investments.
- Protection against encroachment on 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 [Question 41](#)).

The LRO or its staff may be liable for title errors they make in accordance with the laws on disciplinary handling of public servants (Articles 96.2 and 98, Decree 43/2014/ND-CP). In particular, depending on the nature and seriousness of the violations, a public servant can be subject to reprimand, warning, demotion, or removal from office (Article 78.1, National Assembly Law No. 22/2008/QH12 13 November 2008 on Cadres and Civil Servants; Article 8.1, Government Decree No. 112/2020/ND-CP 18 September 2020 on disciplinary handling of cadres, public servants, and officers) and/or criminal liability. Further, the aggrieved party can also file an appeal or a lawsuit against a decision containing title errors issued by the licensing authority (Article 204, Land Law 2013). The licensing authority may be liable for compensation for any loss/damages caused by such errors in accordance with the laws on state compensation liability.

Notaries may be subject to monetary fines and confiscation of illegal gains for any title registration/recordation errors they make (Article 15, Government Decree No. 82/2020/ND-CP).

## Title Insurance

Title insurance services are not available in Vietnam.

However, the buyer/lessee can conduct measures to protect themselves against bad title, such as:

- Requesting the seller/lessor to show the original title certificate (such as the LURC).
- Conducting due diligence to check the legal status of the property before signing the sale contract.
- Including clauses in the sale contract relating to representation and warranty of good title to the property (for example, no collateralisation to secure any financial liabilities and no existing encumbrances or disputes relating to the real estate).

## Tenure

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

## Freehold Title/Absolute Ownership

In Vietnam, land is owned by the people and administered by the government. Land users only have land use rights which are recognised, allocated, or leased by the government. Therefore, freehold or fee simple title/absolute (full private) ownership of real estate does not in theory exist in Vietnamese law. However, for residential land, Vietnamese land users are normally granted a perpetual term with various rights of disposal.

A land lot can be co-owned or jointly owned (more exactly, there can be one or multiple land users of a plot of land). In this case, one or more LURCs will be granted in the name of all users (Article 98.2, Land Law 2013).

## Leasehold Title

Generally, under the Land Law 2013, a land user can lease land from the state in return for an annual payment or a lump-sum payment for the whole of the lease term.

Foreign investors can take a lease of 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 land use rights as its capital contribution (see [Question 2](#)).

## Condominium Ownership/Equivalent

Housing (including condominium) ownership by both local and foreign individuals and organisations is recognised by the government if it meets certain conditions under the Law on Residential Housing 2014 and its guiding legislation. For example,



being eligible to own houses in Vietnam (such as a Vietnamese individual/organisation or an overseas Vietnamese individual permitted to enter Vietnam) and legally acquiring ownership (Articles 7, 8 and 9, Law on Residential Housing).

The term of ownership for a Vietnamese buyer is perpetual. For a foreign individual, it is limited to 50 years and the duration of the licensed investment for an organisation and can be renewed.

## Other Rights

Article 159 of the Civil Code recognises easements, superficies, and usufruct over land.

Emphyteusis can be recognised for agricultural land subject to the Land Law 2013 and its guiding legislation.

## Sale of Real Estate

### Preliminary Agreements

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

Before signing the sale contract, the buyer is normally invited to view a model house or apartment or the actual property, if the buyer is not a corporate developer. They are also provided with a draft of the sale contract for review.

There is no preliminary agreement between an individual buyer and a corporate developer before the parties enter into the sale contract.

For sale contracts between individuals, the buyer normally pays a deposit to the seller.

### Sale Contract

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

## Commercial Real Estate Sale Contracts

The main provisions of a commercial 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.
- Warranties.
- Breaches, events of termination, and consequences of termination.
- Dispute settlement.

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

### **Share Purchase Agreements: Real Estate Provisions**

A typical share purchase agreement in which a foreign party is a buyer is generally based on common law agreements (including provisions on share sale price, conditions precedent, representations, warranties, indemnities, and so on).

### **Due Diligence**

11. What real estate due diligence is typically carried out before an acquisition?

A public search of a real property can be done at the LRO where the land or property is situated. The results include, 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 engage lawyers to conduct legal due diligence to determine whether, for example, a project has been developed legally and/or whether necessary licences and permits for the building have been obtained. Lawyers review the:

- Corporate documents.
- Company's investment certificate and/or enterprise registration certificate (that is, certificate of incorporation).
- Approvals to develop a residential project (where applicable).
- Land documents (including the decision on land lease or allocation from the People's Committee, the land lease, and the LURC) to verify the owner's land use rights and/or any encumbrances over the land plot.
- Construction permit and documents evidencing that the building is ready for use.
- The owner meeting any financial obligations.

## Sellers' Warranties

12. What real estate warranties are typically given by a seller to a buyer in the sale of commercial real estate? What are the main limitations on warranties, for example, qualified by knowledge and disclosure?

Under Vietnamese law on real estate and housing, companies and individuals that build houses/apartments must provide a warranty for the houses/apartments that they build. The warranty covers the repair or replacement of house structures, damaged equipment, defects, or abnormal operation for which users are not at fault. The warranty period starts from when the developer signs the minutes on accepting completion of the construction of the houses/apartments and lasts for at least 60 months for apartment buildings and at least 24 months for houses. In practice, a seller keeps their warranty obligations under the sale contract to these requirements under law.

For real estate warranties for a share sale transaction, see [Question 10](#).

## Liability

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

General statutory liabilities of a seller under Vietnamese law include:

- Notifying the buyer of any restrictions on ownership rights to a house.
- Maintaining a house that has been sold, pending its transfer to the buyer.
- Transferring to the buyer a house in the same condition described in the contract and all the documents relating to it.
- Strictly carrying out all procedures for a sale of a house in accordance with legal provisions.
- (Article 22, Law on Real Estate Business 2014.)

If the seller is a corporate developer, it is subject to the following additional liabilities:

- Complying with legal provisions on housing development.
- Ensuring completion according to the construction schedule and to the quality of the approved project.

- Making publicly available at the project management office, on its website, or at the real estate trading floor (if the sale is conducted through such a medium) the:
  - project's detailed plans;
  - documents relating to the land, construction, and ownership;
  - number of houses for sale or lease;
  - location;
  - common area(s);
  - sale and lease prices;
  - mode of payment; and
  - any encumbrances on the land or house(s).
- Carrying out procedures to obtain a LURC for the buyers.
- Providing a warranty for a house sold.
- (Article 26, Law on Housing 2014.)

## Environmental Issues

14. Briefly outline the environmental legislation and potential liability in a purchase of real estate. Is it common to carry out environmental due diligence and obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

## Environmental Legislation and Liability

The Law on Environmental Protection 2020 and its guiding legislation provides the main environmental regulations. Under Article 15.2 of the Law on Environmental Protection 2020, land users are responsible for the handling, improving, and recovery of land that they have polluted.

Further, under Article 170 of the Land Law 2013, land users must comply with environmental regulations.

Once title is transferred to the buyer, the buyer becomes the new owner of the property. Accordingly, the buyer is liable for environmental damage to the property, including conducting any environmental remedies required by competent authorities.

Separately, depending on the scale of the project, a corporate developer must either:

- Formulate and submit a plan for environmental protection to the district or provincial Department of Natural Resources and Environment (DONRE) for approval.
- Obtain approval from the Ministry of Natural Resources and Environment or the provincial DONRE for the developer's environmental impact assessment report for its project.

## Environmental Due Diligence and Insurance

Environmental issues in real estate business have generally not been an issue in Vietnam. Except for large projects, it is not yet common to carry out separate environmental surveys and searches in Vietnam. However, for M&A transactions, the buyer may do basic environmental due diligence to verify the seller's compliance with environmental regulations.

The government encourages businesses to obtain environmental liability insurance. Environmental liability insurance is compulsory for businesses that have a highly adverse impact on the environment (Article 140, Law on Environmental Protection 2020).

## Environmental Issues in the Sale Contract

A real estate sale contract does not normally contain any provision on environmental liability.

If the seller has agreed to indemnify the buyer after the sale, the buyer may seek an indemnity from the seller for any damage incurred by the buyer. However, this type of indemnity is not common in Vietnam.

15. What types of liability can a buyer inherit relating to the real estate? Can a seller retain liability relating to the real estate after the sale?

## Buyer Inheriting Liability

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.

## Seller Retaining Liability

Generally, the seller retains liabilities that are attributed to it before disposing of the property, including environmental liabilities. Under statute, builders of properties must provide a warranty for the properties they build (see [Question 12](#)).

## Exchange and Completion/Closing

16. When does the sale become legally binding? What are the main documents and formalities for exchange and completion/closing of the sale? When does title transfer? Is notarisation required?

## When Legally Binding

Normally, a real estate sale contract is legally binding on the parties on execution of the contract unless the parties agree otherwise. However, to sell a real property (such as an apartment), a developer (or seller) must meet certain statutory conditions for the sale, depending on the type of the property. For example, the land must be granted a LURC, free from any disputes, free from any attachments, and the land use duration must not have expired (Article 9, Law on Real Estate Business 2014).

While the law does not have any requirements on deposit in relation to real estate transactions, in practice, especially in transactions between individuals, the seller typically requests a deposit from the buyer.

## Completion/Closing Documents

The following is an example of the required documentation to register the change in title from a corporate developer to an individual buyer:

- An application for the LURC (in a prescribed form).
- The sale contract for the house/apartment or building.
- A copy of the project approval decision or investment certificate.
- A copy of the decision approving the 1/500-scale detailed plans of the project.
- Copies of documents showing that the developer has met its financial obligations and that the buyer has met its financial obligations (if any).
- A plan of the house and land lot. This is a drawing of the completed works or a design drawing of the works plan suitable for the current status of the house or construction works.
- Copies of documents showing that the sale is conducted through a real estate trading floor. This is run by a real estate company that provides information about the houses/apartments for sale and acts as a broker between the seller and buyer. The Law on Real Estate Business and Law on Residential Housing no longer require a corporate developer to sell its newly built properties to buyers through a real estate trading floor.

## When Title Transfers

If the seller is a corporate developer, title to a house/apartment transfers to the buyer on the handover of the house/apartment to the buyer or when the payment is completed in full by the buyer (Article 12, Law on Housing 2014).

If the seller is an individual, title to a house/apartment transfers to the buyer on the handover of it to the buyer or notarisation of the sale contract.

Title to a piece of land transfers to the buyer on registration with the LRO.

## Notarisation

Notarisation is not required if the seller is a corporate developer.

If both the seller and the buyer are individuals, notarisation is legally required. Depending on transaction types and values, notarisation fees may vary from several to several thousand dollars (Article 4, Circular 257/2016/TT-BTC).

## Real Estate Tax

### Stamp Duty/Transfer Tax

17. Is stamp duty/transfer tax (or equivalent) payable on a 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?

### Stamp Duty/Transfer Tax

Stamp duty/transfer tax is not imposed on a sale of real property in Vietnam. The LRO charges a registration fee of 0.5% of the price of the purchased property.

### Who Pays and Typical Tax Rates

Typically, the buyer pays the registration fee of 0.5% of the price of the purchased property, unless the parties agree otherwise.

### Exemptions

Not applicable.

### Transfer of Shares

Stamp duty/transfer tax does not apply to a transfer of shares in a company holding real estate.

### Tax on Seller's Profits/Gain

18. Is tax imposed on a seller's profit or gain on a sale of real estate? What are the rates and are there any exemptions? Does it apply to a transfer of shares in a company holding real estate and at what rate?

### **Tax on Seller's Profits/Gain**

A corporate seller must pay corporate income tax on profit or a gain from a sale of real estate.

An individual seller is subject to personal income tax on profit or a gain from a sale of real estate.

### **Typical Tax Rates**

The corporate income tax rate is 20% of the profit or gain.

The personal income tax rate is 2% of the contract price, and the contract price cannot be lower than the statutorily prescribed price (Article 29, Personal Income Tax Law (PIT Law)).

### **Exemptions**

If a corporate seller develops and sells state-subsidised houses or apartments with a gross area of less than 70 square metres for low-income households, it is subject to corporate income tax of 10% on the sale.

For an individual seller, an exemption from personal income tax applies if the transaction is between family members or the seller only owns the sold real estate (Article 4, PIT Law).

### **Transfer of Shares**

Corporate income tax and personal income tax also apply to a transfer of shares in a company holding real estate if the transfer of shares generates a profit or gain.

19. Are any methods commonly used to mitigate transfer tax liability on acquisitions of real estate, or tax on gains from the sale of real property?

Common methods to mitigate tax liability in a real estate transfer are not available in Vietnam. However, professional tax advisers may give detailed advice on which items can be deductible from corporate income tax, personal income tax, or VAT.

### **Value Added Tax (VAT) or Equivalent**



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

### **VAT/Equivalent**

A sale of real estate by a corporate entity is generally subject to VAT.

### **Who Pays and Typical Tax Rate**

The VAT payer is the end-consumer of the property. However, the seller collects the VAT amount and pays it to the tax office on the buyer's behalf. The rate is 10%.

### **Exemptions**

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

### **Municipal/Local Taxes**

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

The occupation or ownership of business premises may be subject to non-agricultural land use tax (Article 2, Law on Non-Agricultural Land Use Tax 2010). There are a number of exemptions, such as land used for incentive projects or land within the set quota in areas with socio-economic difficulties (Article 9, Law on Non-Agricultural Land Use Tax 2010).

### **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 are no specific targets to reduce greenhouse gas emissions from buildings in Vietnam.

There is legislation requiring buildings to meet certain minimum energy efficiency criteria. In particular, construction works with a gross floor area of at least 2,500 square metres must follow national technical regulations on energy-efficient buildings (Circular No. 15/2017/TT-BXD 28 December 2017 of the Ministry of Construction, effective 1 June 2018).

There are no requirements to produce energy performance certificates for buildings in Vietnam.

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 commercial real estate lending. How are the most common forms of security interest relating to real estate created and perfected? Is there a mortgage tax/registration fee?

### Typical Security Package

The most common form of security is a mortgage over the land and assets attached to it.

Another form of security is a corporate or individual guarantee.

Before developing a project, a corporate developer must deposit 1% to 3% of the total estimated investment capital of the project (Article 26, Government Decree No. 31/2021/ND-CP 26 March 2021).

The deposit is paid into the investment registration authority's account at a commercial bank established under Vietnamese law selected by the investor (Article 26.8, Government Decree No. 31/2021/ND-CP).

Further, to sell off-the-plan houses/apartments, a corporate developer must obtain a bank guarantee from a Vietnam-based bank to guarantee the developer's timely handing over of the houses/apartments to the buyers (Law on Real Estate Business 2014).

### **Common Forms of Security**

A mortgage agreement must be made in writing. To be valid and effective against third parties, it must also be notarised and registered with the LRO.

A guarantee is valid and binding on the execution of the guarantee by the parties.

### **Mortgage Tax/Registration Fees**

There is no mortgage tax. To register a mortgage, the applicant (the lender or the borrower) must pay a registration fee which varies among localities, up to a maximum of USD3.50.

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

When 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 under the lender's control, in which all income from the sale of houses/apartments in the project is deposited.

In addition, the lender can limit the amount of the loan to 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?

### **Lender Liability**

If a lender becomes the land user, it can incur environmental liability for polluting acts (see [Question 14](#)).

## Lender Protection

Typically, the loan agreement may contain a general warranty from the borrower for its compliance with Vietnamese environmental law, as a lender protection against potential environmental liability during the term of the loan.

## Lenders' Remedies

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

## Lenders' 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 can directly sell the secured asset to a third party or keep the secured asset as repayment of the debt.

If there is no such agreement, the secured assets must be sold by public auction.

There are no specific Vietnamese regulations on a formal court-directed process to sell the property by public auction in this case. The principal regulations applicable to public auction are found in the Law on Asset Auctions 2016 and its guiding legislation.

In practice, enforcing security over real property in Vietnam is difficult if the borrower does not co-operate. In this case, the creditor must bring a lawsuit in a competent court.

## Effect of the Borrower's Insolvency

Once the security interest is registered, the lender becomes a secured creditor and has priority over other creditors of the borrower in case of the borrower's insolvency.

Under the Law on Bankruptcy of 2014, within five working days from the acceptance of a bankruptcy case, the court can decide to suspend any enforcement proceedings, except if the secured asset is at risk of being damaged or considerably devalued.

If the court decides to suspend enforcement proceedings, the lender still has priority as a secured creditor.

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 insist on:

- Pre-approving the construction contractor.
- 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 a sale of special shares, denoting that the holder has ownership over a real property, might occur in some projects in Vietnam. However, the legality of this arrangement is not tested. Sale and leasebacks are rather common for high-end villas or condominiums.

## Real Estate Leases

### Negotiation and Execution of Leases

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

Generally, contractual lease provisions are freely negotiable.

Commercial leases are subject to the Law on Real Estate Business 2014 and its guiding legislation.

31. Are there formal legal requirements to create and execute a lease? How are leases executed by a company, a partnership, and individuals?

## Formalities for Leases

A lease of premises in a building or a house from a commercial real estate landlord must be made in writing (Article 17.2, Law on Real Estate Business 2014 and Article 121, Law on Housing 2014).

For a lease signed with a real estate landlord (for example, an office lease), notarisation of the lease is generally up to the parties. In some cases, the parties prefer to also notarise the lease, as it helps to prove the authenticity of the transaction in case of dispute.

A land lease from the state or an industrial/economic zone developer/manager must be registered with the LRO for a LURC (Article 99, Land Law).

## Execution Requirements

A lease is considered duly executed if it is signed by authorised persons (such as the legal representatives or authorised representatives) of the parties. In practice, if a party is a corporate entity, its company seal is typically used.

## Rent Payments

32. At what intervals is rent usually paid in a business lease? How are rent levels usually determined and reviewed?

## Rent Payment Intervals

Rent payment in a business lease is typically made on a biannual or annual basis and in advance, because a business lease is often a long-term lease.

## Rent Review

For land leased between private parties, the laws of Vietnam do not provide specific regulations on the review of rent at certain intervals. In practice, rent review is subject to the agreement between the landlord and the tenant.

For land leased from a local government with an annual rent payment, the rent is reviewed every five years (Article 14.1, Government Decree No. 46/2014/ND-CP of 15 May 2014 on collection of land rent and water surface rent).

Rent levels are adjusted based on the:

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

33. Is stamp duty and VAT (or equivalent) payable on rent?

There is no stamp duty payable on rent.

VAT at a rate of 10% is payable on rent if the landlord is a corporate entity.

34. Is a rent security deposit or other security usually required by the landlord?

It is common in Vietnam for the landlord to require the tenant to pay a rent security deposit, to secure against the tenant's failure to comply with rent payment obligations or any damage caused by the tenant to the real estate.

There is no limit on the amount of a rent security deposit. In practice, an amount equal to one to six times the monthly rent is typically required for a rent security deposit.

On the parties' agreement, a landlord can request other forms of security such as a bank guarantee but this is not common in Vietnam.

## **Length of Term and Security of Occupation**

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

## **Length of Lease Term**

The law does not provide any legal restriction on the duration of a lease, which is subject to agreement between the contracting parties. However, the conditions for the lease (such as the landlord's ownership of the real estate) must be met during the duration of the lease.

The maximum lease term for land leased from the government varies depending on the land use purposes, type of land, and so on, with a maximum term of 50 to 70 years (in special areas) (Article 126, Land Law).

### **Security of Occupation**

Tenants do not have security of occupation or a priority right to renew the lease.

### **Disposal**

36. What restrictions typically apply to the disposal of the lease by the tenant?

### **Assignment and Subletting of the Lease**

Generally, a tenant cannot dispose of the leased premises (such as an assignment of the lease to a new tenant or a sub-lease) without prior consent from the landlord. A provision to this effect is typically included in commercial leases.

### **Group Sharing**

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 a group shared lease cannot be unreasonably withheld or delayed. Failing this, it is at the landlord's sole discretion.

### **Legal Reorganisation or Transfer/Sale of the Tenant**

Typically, if there is a legal reorganisation, change of effective control, or transfer/sale of the tenant, the succeeding entity is the successor to the lease or the guarantee of the lease unless the parties agree otherwise. Change of control clauses applicable to the tenant are not very common in commercial leases. However, for sophisticated landlords, these clauses may be included in the lease.

To minimise disputes, circumstances in which the tenant can assign/transfer its obligations to other parties should be set out in the lease.



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

### **Landlord's Retained Liability**

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

### **Tenant's Retained Liability**

See above, *Landlord's Retained Liability*.

### **Repair and Insurance**

38. 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 improvements carried out to the premises during the lease?

### **Repair**

The landlord is normally responsible for maintaining the leased premises on a periodic basis (such as for normal wear) or as agreed under the lease. The tenant is responsible for repairing damage caused by the tenant.

There are no regulations under law as to which specific parts of the building are subject to the landlord's responsibility, or as to whether the landlord's repair costs would be passed on to the tenant where applicable. These matters depend on the agreement between the parties.

### **Insurance**

The landlord is usually responsible for insuring the leased premises. The typically required insurance for the landlord is fire and explosion insurance for the building. It is uncommon in Vietnam for a landlord's insurance costs to be passed onto the tenant.

### **Ownership of Lease Improvements**

Generally, ownership of lease improvements can only occur if the landlord allows the improvements.

### **Landlord's Remedies and Tenant's Insolvency**

39. 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? What is the effect of the tenant's insolvency?

## Landlord's Remedies and Grounds for Termination

If the tenant breaches the lease, typically, the landlord can:

- Request compensation for actual damage.
- Apply a penalty if it is included in the lease.
- Forfeit the security deposit if it is included in the lease.
- Terminate the lease early.

General grounds for a landlord to terminate the lease include:

- A payment of rent by the tenant 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 subletting the leased premises without the landlord's prior consent.
- The tenant causing a serious impact on environmental sanitation.

To terminate the lease, the landlord must notify the tenant at least one month before the termination, unless otherwise agreed. In addition, unless the lease provides otherwise, the landlord can only unilaterally/early terminate the lease if the tenant commits any of the following acts:

- Fails to pay the rent after three months from the deadline as stated in the agreement without the landlord's approval.
- Uses the building for improper purposes.
- Intentionally causes serious damage to the leased building.
- Repairs, renovates, upgrades, exchanges, or sublets the building without any agreement or the landlord's approval in writing.

(Article 30.1, Law on Real Estate Business 2014.)

## Effect of the Tenant's Insolvency

On the tenant's insolvency, the landlord can:

- Terminate the lease.
- Request the tenant to hand over the leased premises and pay any unpaid rent and damages.

Under the Law on Bankruptcy 2014, 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 to the judgment execution agency to take back the leased premises.

The tenant's insolvency imposes a stay on the enforcement proceedings against the tenant for unpaid rent and other amounts (Article 49.2, Law on Enforcement of Civil Judgments).

The landlord will be considered an unsecured creditor in the insolvency proceedings if the judgment has come into effect and there is no decision to attach the tenant's assets to secure the enforcement. Otherwise, the landlord will be considered a secured creditor in the insolvency proceedings (Article 72, Law on Bankruptcy 2014).

40. 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?

## Tenant Withholding Rent

A tenant can only withhold rent payments if the lease 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.

## Tenant Terminating the Lease

General grounds for a tenant to terminate the lease include:

- The landlord's failure to repair the leased premises 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.

(Article 30.2, Law on Real Estate Business 2014.)

## Planning and Development Controls

41. In what circumstances can local or state authorities purchase business premises compulsorily (expropriation)? Is the purchase price or compensation based on market value?

## Compulsory Purchase/Expropriation

Vietnamese land law allows 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 its 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 investment projects is not used for 12 months or there is 24 months of delay compared to the schedule in the investment documents. In case of breach, developers are given a 24-month period to remedy the breach with an additional payment of land rentals/land use fee for the delayed period. After then, land and assets are withdrawn without any compensation except for *force majeure* events.

In relation to the first bullet point above, the conditions for land withdrawal include a state body preparing and publicising its land use plan (under which certain land plots will be withdrawn and used for national defence, security, or economic development). The circumstances for such land withdrawal are rather broad, and include constructing offices for state bodies, public works, industrial and economic zones, and build operate transfer (BOT) projects. Land withdrawals in these cases are compensated by the state through:

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

For the other categories, the land laws do not define precisely how land is used "inefficiently" or how a land user "deliberately destroys" their land (Land Law 2013).

## Compensation

See above, [Compulsory Purchase/Expropriation](#).

If an investor has invested in the land (such as constructing a plant on the land), the investor is compensated for the value of that investment, except if a land user deliberately destroys the land.

The value of the investment in the withdrawn land is determined by a valuation committee established by the provincial People's Committee where the land is located.

42. What authorities regulate planning control and which legislation applies?

Planning in Vietnam includes:

- Land use planning by the *Ministry of Natural Resources and Environment* and the Department of Natural Resources and Environment at the provincial and district levels, under the Land Law 2013 and its guiding legislation.
- Construction planning in an urban area. This is done by the *Ministry of Construction* and the People's Committees at the provincial and district levels, under the Law on Urban Planning 2009.
- Residential housing development planning. Each year, a provincial People's Committee must formulate and approve a plan for residential housing development in its province. This details plans to develop commercial, relocation, state-subsidised, official residential, and individual housing. This plan is introduced under the Law on Residential Housing.

43. 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 must obtain this permit before commencing construction of the building.

44. 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.

The legal deadline to issue a construction permit is 20 calendar days from the date of submission of a valid application to the licensing body (Article 102.1(e), Law on Construction 2014 as amended in 2020). However, in practice, the process can last for months.

### **Third Party Rights and Appeals**

Vietnamese law does not specifically allow a third party to object to the issue 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 this case, if a third party has firm evidence to support this allegation, they can report the official's violation and the construction permit may be withdrawn. Public inquiries are not generally available in Vietnam.

The administrative laws provide a general route for any person to report a legal violation by a state official or agency. If a licensing body refuses to issue a construction permit on unlawful grounds, the applicant can appeal this decision on that basis.

## Recent Developments and Reform

45. Have there been any key recent developments in the real estate sector? Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

The government issued Decree No. 02/2022/ND-CP on 6 January 2022 which replaces Decree No. 76/2015/ND-CP on guidelines for the Law on Real Estate Business. The new decree took effect on 1 March 2022 with the key changes as follows:

- Real estate companies must publicly disclose information such as corporate information, contact information, project information, and so on.
- The sale, transfer, lease, lease-purchase, and sublease of real estate and transfer of real estate projects must be made in the contract forms prescribed under the decree.
- For a transfer of all or part of a real estate project, the decree specifies the conditions to determine whether such a project will be transferred.

The government has also asked the Ministry of Natural Resources and Environment to draft a new law to amend the Land Law of 2013. On 1 November 2022, the Government submitted a draft of the amended Land Law to the National Assembly. The draft is expected to be passed by the National Assembly *by the end of 2023*.

There are also proposals to amend the Law on Real Estate Business and Law on Housing. Drafts are open for public consultation and are expected to be submitted to the National Assembly for adoption next year.

The key proposed changes relate to land registration procedures and land pricing, types of land for public auction, scope of business of foreign investors, lease and lease-purchase of off-the-plan units, and duration of apartment ownership.

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