

Real Estate

# New Suite of Real Estate Laws Passed: Law on Real Estate Business, Law on Housing and Law on Land

## Introduction

In the 15<sup>th</sup> National Assembly meeting (6<sup>th</sup> session) held on 27 November 2023, the **Law on Real Estate Business** and the **Law on Housing** were passed. Following a short postponement due to the complexity of the proposed reforms, on 18 January 2024, the **Law on Land** was also approved. These three laws introduce significant reforms to Vietnam's real estate sector, and (with the exception of some limited provisions) will take effect from 1 January 2025. It has been around 10 years since the laws on the same subject were enacted, and the new laws have been developed to resolve pending issues and adapt with the development of the current market and social practices.

- The Law on Housing No. 27/2023/QH15 ("**Law on Housing 2023**") will replace the existing Law on Housing No. 65/2014/QH13 that was enacted in 2014.
- The Law on Real Estate Business ("**Law on Real Estate Business 2023**") will replace the existing Law on Real Estate Business No. 66/2014/QH13 that was enacted in 2014.
- The Law on Land ("**Law on Land 2024**") will replace the existing Law on Land No. 45/2013/QH13 that was enacted in 2013 (amended and supplemented by Law No. 35/2018/QH14).

Given the interplay among the Law on Housing 2023, Law on Real Estate Business 2023 and the Law on Land 2024, we highlight the key changes introduced by the three laws in this Update.

## The Law on Housing 2023

The key changes introduced by the Law on Housing 2023 includes providing clarity on ownership timelines for condominiums, and allowing the development of multi-story housing projects with multiple condominiums.

### 1. Clarity on ownership timelines for condominiums

The law now makes it clearer that there will be no fixed ownership (use right) terms for condominiums. Instead, it specifies that the period for use of a condominium building will be determined based on the design documents and the actual period of use of the condominium building following the inspection by the authorities over the

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condominium building. In instances where (i) the period for use of a condominium based on design document has expired, or (ii) such period has not expired but the condominium is seriously damaged, bears risk of collapse, or becomes unsafe, the provincial People's Committee shall instruct the conduct of quality inspection and assessment in accordance with guidance of the law.

### **2. Development of multi-story residential housing with multiple condominiums**

The law introduces regulations that allow those with residential land to develop a multi-storey housing project with multiple condominiums for sale, lease-purchase or leasing. In particular, it applies to individuals who have lawful land use rights and who seek to build (i) residential housing with more than two floors and with each floor having apartments for sale, lease-purchase or a combination of sale, lease-purchase and leasing, or (ii) residential housing with more than two floors and more than 20 condominiums for lease.

The *Certificate of Land Use Right, House Ownership and Land-Attached Assets* ("**LURC**" or sometimes known as a "Pink Book") can be issued for these condominiums.

However, it remains to be seen how these new regulations will be interpreted and implemented, as the individuals to which the law applies must satisfy certain conditions on being developers of residential housing projects as stipulated in the Law on Housing 2023. However, it appears that only enterprises can be developers of such projects.

While the regulations concerning such developments are subject to further Government guidance, their introduction is a welcome development as they provide a clearer legal framework through which users of residential land can develop smaller-scale condominium building projects. The legal framework also provides safeguards to ensure compliance with the requisite construction standards when undertaking these developments. This is expected to prevent the current spontaneous development of such housing type, especially in metropolitan areas.

### **3. Foreign ownership of housing**

One of the most instrumental developments introduced by the current Law on Housing was the recognition of rights by foreigners to buy and own certain residential housing. The Law on Housing 2023 maintains this recognition but does not expand upon the types of housing that foreigners can own.

Therefore, the legal position concerning ownership of housing by foreigners between the current and upcoming Law on Housing remains substantively similar.

### **4. Arbitration as a means of resolving housing disputes**

The Law on Housing 2023 now permits commercial arbitration to be used as a means of resolving non-state-owned housing disputes, particularly, disputes concerning ownership and use rights of organisations and individuals, housing transactions, management and operation of condominium buildings and management and

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operation fee of condominium buildings. The current Law on Housing limits these housing disputes to the jurisdiction of the court only.

Despite this, it remains to be seen how an arbitral tribunal will apply this provision in light of the Civil Procedure Code, which provides that lawsuits involving rights to immovable property fall under the exclusive jurisdiction of the Vietnamese court.

### **5. Relaxation of eligibility requirements for buying social housing**

Under the current Law on Housing, as a condition to purchase social housing, interested individuals must be a permanent resident or a temporary resident of at least one year in the locality in which the social housing is located. The Law on Housing 2023 removes this requirement. It focuses instead on socioeconomic factors as a test for eligibility.

In addition, there are two new eligible subjects who can enjoy social housing benefits: (i) students and (ii) enterprises, cooperatives, and cooperative unions in industrial parks.

It is also noteworthy that the current requirement on reserving 20% of the apartment areas in a social housing project for leasing has been removed by the Law on Housing 2023.

### **6. Clear permission on raising capital for residential housing projects by issuing bonds**

The Law on Housing 2023 sets out the right of investors to issue bonds as a means of raising capital to finance residential housing projects. Although the right to issue bonds is stipulated in Decree 99/2015/ND-CP, this method of raising capital was not regulated in the current Law on Housing. The Law on Housing 2023 makes this clear.

## **The Law on Real Estate Business 2023**

The Law on Real Estate Business 2023 clarifies, among others, the scope of real estate business that can be undertaken by foreign-invested enterprises. The other changes brought about by the law are set out below.

### **1. Permitted areas for foreign investment in real estate business**

The Law on Real Estate Business 2023 makes certain adjustments to the scope of real estate business that can be undertaken by foreign-invested enterprises:

- (i) investing in housing construction and construction works associated with land use rights for sale, lease, or lease purchase through real estate projects implemented in accordance with the form, purpose and land use term set out in the laws on land;

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- (ii) investing in the construction of technical infrastructure in real estate projects to transfer, lease, or sublease land use rights that already have technical infrastructure in accordance with the form, purpose, and land use term set out in the laws on land;
- (iii) leasing houses, construction works and construction floor areas in construction works for sublease; and
- (iv) receiving the transfer of all or part of a real estate project to continue investing in construction and business.

While the above types of real estate business are substantially similar to those found in the existing Law on Real Estate Business, the Law on Real Estate Business 2023 clarifies that foreign-invested enterprises that construct technical infrastructure in real estate projects can sell, lease and sub-lease **land use rights** (with constructed infrastructure) – a business that was not set out in the current law.

### **2. Change to the scope of foreign-invested enterprises in determining the type of real estate business that can be undertaken**

Instead of putting all enterprises with any percentage of foreign-invested ownership on the same par, the Law on Real Estate Business 2023 and the Law on Land 2024 now set out two categories of foreign-invested enterprises for the purposes of determining the type of real estate business they may undertake, including (i) foreign-invested enterprises that are subject to the investment conditions and requirements for foreign investors under the Law on Investment 2020 and (ii) foreign-invested enterprises that are not.

For those that fall under category (i), they are limited to the real estate business listed in **item 1 above**, whereas those in category (ii) will be treated as domestic enterprises and therefore can carry out the full scope of real estate business set out in the Law on Real Estate Business 2023. For the avoidance of doubt, category (ii) also covers foreign-invested enterprises which have 50% or less of capital owned by foreign investor(s).

This categorisation is a significant step towards harmonisation of real estate laws with Vietnam's investment laws. Crucially, it now enables greater flexibility for foreign investors (particularly those with Vietnamese joint venture partners) to structure their investments in Vietnam to receive the same treatment as domestic enterprises.

### **3. Updated information publication requirements for real estate put into business**

The Law on Real Estate Business 2023 sets out detailed information publication requirements for putting real estate into business. While these requirements already apply under existing legislation, the new law expands them significantly, and sets out a requirement to publish the information on the Government's housing and real estate market portal, in addition to its publication on the developer's own website).

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For example, in addition to the information about the developer, the law requires publication of detailed information depending on the type of projects being developed (e.g. real estate projects, off-the-plan housing and construction works, existing housing and construction works, and land use rights with existing technical infrastructure). This publication requirement will be subject to further guidance by the Government.

### **4. Revisions to regulate optional bank guarantee for off-the-plan housing projects**

Whereas the current Law on Real Estate Business requires all developers of off-the-plan residential housing to procure a bank guarantee from a commercial bank for the purposes of securing the rights of buyers, the new law now allows buyers to **waive** this requirement.

This now potentially allows developers the flexibility to price their products according to whether the buyer of off-the-plan projects wishes to have a bank guarantee in place to secure their interests.

### **5. Restriction on lease of off-the-plan housing and construction works**

The new law removes the right of investors of off-the-plan housing and construction works to lease such works which was regulated in the current Law on Real Estate Business.

### **6. Rules on taking deposits for off-the-plan real estate transactions**

The law introduces clear rules on the taking of deposits by developers of off-the-plan real estate, a matter that was not regulated in the current Law on Real Estate Business. In particular, a deposit shall not exceed 5% of the price when such off-the-plan real estate has satisfied the conditions for trading. In addition, the deposit agreement must clearly state the purchase or lease purchase price and the floor area of the construction works. Developers are not permitted to authorise other organisations or individuals to sign deposit, sale or lease purchase contracts for off-the-plan real estates.

For buyers, this will be a welcome development, as legislators seek to combat mishandling of deposits (or use of various advance payment schemes) by developers, as well as create uniform rules for developers to comply with in their transactions.

### **7. Requirements on completion of financial obligations prior to selling off-the-plan real estates**

The Law on Real Estate Business 2023 now require the investors of off-the-plan housing and construction works in a real estate project to complete all financial obligations to the State (i.e. land use fee, land rental, and other related taxes, fees, where applicable) prior to putting such off-the-plan real estate into trading.

### **8. Restriction on land lot division for sale**

The Law on Real Estate Business 2023 extends the restriction on the division of land lots for sale whereby lands which are (i) within wards, districts and cities of special, class I, class II and class III metropolitan areas,

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or (ii) subject to bidding of land use right for investing residential housing project under the Land on Law, shall not be allowed for division for sale. For other areas, the provincial People's Committee will determine which of those areas are permitted for division for sale, based on the practical conditions of the locality of the area. This is a stricter provision than the current law, where such division of land lots for sale was just restricted in special and class I metropolitan areas and some other areas based on landscape demand.

### **9. Changes to conditions on transfer of real estate projects**

There are certain changes to the conditions on transfer of real estate projects. Notably, transferors are required to, among others, complete financial obligations on lands of the project, but not necessarily obtain a LURC to transfer real estate projects as currently required under the existing law.

### **10. Requirement to establish enterprises to engage in business of real estate services.**

The Law on Real Estate Business 2023 no longer permits individuals to independently engage in real estate services (including real estate brokerage services, real estate trading floor, real estate consultancy and management services). Instead, they will need to establish enterprises and meet several conditions for each specific service as imposed by law.

## **The Law on Land 2024**

The Law on Land 2024 provides for conversion of rental payments for leased land from the State from lump sum payment to annual payment, easing the burden of investors to invest in Vietnam. The law also recognises the right of foreign-invested enterprises to receive land use right in the form of capital contribution. The other notable key changes introduced by the Law on Land 2024 is discussed below.

### **1. Rental payments for leased land from the State may be converted from lump sum payment to annual payment**

The Law on Land 2024 introduces procedures that would allow land users that lease land from the State to convert from a lump-sum land rental payment to an annual land rental payment. This feature was not present in the Law on Land 2013. This development is expected to lighten the financial burden of investors who may not have the upfront capital to satisfy the entirety of the land rental obligations to the State.

In contrast, under the Law on Land 2013, land users could only convert from an annual land rental payment to a lump sum land rental payment.

### **2. Restrictions on circumstances which allow lump sum rental payment**

For leased payments, while the current law allows selection between annual payment and lump sum payment, the circumstances which allow lump sum payment are now limited to (i) using land to implement investment projects in agriculture, forestry, aquaculture, and salt making, (ii) using land in industrial parks, industrial

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clusters, high-tech parks, and worker accommodation in industrial parks, land used for public purposes with business purposes, **using commercial and service land for tourism and office business activities**, and (iii) using land to build social housing for lease in accordance with housing laws. This is an effort of the legislators in maximising the land value and usage, and developers will need to assess carefully before investing into leased lands, taking into account the annual rental to ensure the financial viability of the projects.

### **3. Expansion of the rights to acquire land use rights of foreign-invested enterprises**

The Law on Land 2024 officially recognises foreign-invested enterprises' right to receive land use right in the form of capital contribution. This will provide a clear framework for foreign investors to incentivise them to set up joint ventures in Vietnam to engage in real estate business or other manufacturing projects in industrial zones, where their Vietnamese partners may contribute their land use right into the joint venture companies as capital contribution. Under the current law, this right is uncertain due to the lack of clear legal framework.

In addition, the Law on Land 2024 introduces the right to receive transfer of land use right within industrial zones, industrial clusters, and high-tech zones, a provision which is not explicitly expressed in the current law. This oversight in the Law on Land 2013 has led to the actual process of transferring the land use right for land users in industrial zones involving two steps: (i) the current land user must return the land use right to the industrial zone developer, and then (ii) the acquirer shall sign a new land lease agreement with the industrial zone developer. The new provision in the Law on Land 2024 will enable land users in industrial zones to directly transfer their land use rights without the involvement of the industrial zone developers.

### **4. Introduction of land lease right**

For leased lands with annual rental payment, the land user will have land lease right and he can transfer or lease the lease right and assets associated with land, subject to certain requirements under law. However, there is no provision on mortgage of such lease right.

These new land lease rights now provide a legal framework for economic organisations to transfer not only the assets attached to the leased land (as per the current law) but also the right to lease the land in accordance with the land lease agreement. However, the procedure for the implementation of such rights is still subject to further guidance from the Government.

### **5. Multi-purpose land use rights**

The Law on Land 2024 introduces the possibility for land to have multiple purposes – catering for greater flexibility for land users. In particular, it now provides that the following types of land as may be permitted for multi-purpose use:

- (i) agricultural land that is used in combination with commercial purposes, services, livestock raising, and growing medicinal plants;



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- (ii) land that is used for public purposes combined with commercial and service purposes;
- (iii) land for construction of public works that is used in combination with commercial and service purposes;
- (iv) residential land that is used in combination with agricultural, commercial, service and non-business purposes for business purposes;
- (v) land with specialised water surfaces that is used for multiple purposes as prescribed in the law on land;
- (vi) religious land and belief land that is used in combination with commercial and service purposes; and
- (vii) agricultural land and certain non-agricultural land that is used for a combination of agricultural purposes, construction of postal, telecommunications, technology, information, outdoor advertising, and solar power works.

The land that is used for multiple purposes with commercial and service purposes above must be subject to an approved detailed land use plan.

### **6. Receiving the transfer of real estate project of foreign-invested business organisation**

The Law on Land 2024 sets out clearer rules for the transfer of real estate projects, whereby foreign-invested enterprises will be permitted to receive the transfer of real estate projects in accordance with the Law on Real Estate Business. In such situations,

- (i) the State will not recover the land but instead allocate or lease the land;
- (ii) the transferee will be considered for the issuance of an LURC for the land after both the transferor and transferee have fulfilled their financial obligations in accordance with the law;
- (iii) the Government will have the authority to establish regulations for calculating the land use levy and land rental, and direct the transferee of the project to assume the financial responsibilities associated with the land from the transferor.

In contrast, the current Law on Land lacks specific administrative procedures for this process, including those relating to the return of the land to the State and re-allocation of the land. This has resulted in significant delays in the transfer process, and have in certain cases resulted in a need to re-calculate land use fees.

### **7. Land recovery for socio-economic development in the national or public interest**

The Law on Land 2024 permits the State to recover land when it is deemed absolutely essential for the execution of socio-economic development projects for national and public interest. Where recovery is needed,



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for commercial housing projects and mixed-use residential, commercial and services projects, the spirit of the Law on Land 2024 remains consistent with that of the Law on Land 2013 – that recovery can only be done where the projects qualify as "urban area construction projects". However, the provisions in the Law on Land 2024 further clarify what such projects entail, namely, "*investment projects for the construction of urban areas serving a mixed function, integrating cohesive technical and social infrastructure systems alongside residential structures, aligned with the law on construction*".

This seeks to address one of the current weaknesses of the Law on Land 2013, where the purposes of which land could be recovered for urban area construction projects remained open to interpretation (thereby resulting in conflicts as to proper purposes of land recovery by the State).

### **8. Replacement of land price frames with land price list**

The Law on Land 2024 removes the land price frames and introduces a new mechanism using land price list to be set out by the authorities (proposed by provincial People's Committee, approved by People's Council) based on areas and locations. The initial land price list shall be issued from 1 January 2026 and will be reviewed annually, as opposed to a regular five-year cycle under the current law. This is expected to match the land price with market price. However, this will be subject to further guidance by the Government.

### **9. Implementation of commercial housing project via land use right agreements and existing land use rights**

The new law introduces mechanisms on using lands for economical-social development project, including, among others, commercial housing projects via land use right agreements (which only allows agreements on residential land use right) or existing land use right for residential land, combination of residential and other lands. This is expected to create a flexible environment for land users to utilise the land use rights for real estate development, and at the same time provide better management of the land use and prevent situation of dormant lands.

### **10. Transfer and purpose conversion of agricultural lands**

The new law increases the quota for receiving transfer of certain agricultural lands (including land for (i) growing annual crops, (ii) aquaculture, (iii) salt production, (iv) growing long-term crops, and forestry land) of households and individuals from up to 10 times to 15 times of the limitation for allocation of agricultural lands.

For paddy land, the new law allows enterprises and individuals who do not directly engage in agricultural production to receive transfer of such land. If the received portion exceeds the prescribed limitation, the individual must establish an entity and have an approved land use plan, except in case of inheritance. This will give chances to enterprises and individuals who do not engage in agricultural production but have the capacity (e.g. financial, technology) to access lands, to invest in agriculture for further development.

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In addition, (i) agricultural land in residential area, (ii) agricultural land in the same lot having residential land, or (iii) other non-agriculture land which are not residential land can be converted into residential land for households or individuals based on approved district-level land planning. The Government is expected to issue guidance on such conversion.

### **11. Arbitration as a means of resolving land disputes**

Similar to the Law on Housing 2023, the Law on Land 2024 now expressly allows land-related disputes to be resolved through commercial arbitration. The People's Committees at all levels will provide essential information to serve as basis for resolving land disputes when requested by the arbitrators.

However, as mentioned in **Item 4** under "The Law on Housing 2023" heading, it remains to be seen how the arbitral tribunals will interpret and apply these provisions, particularly where the disputes concern the determination of the parties' rights over land.

## **Concluding Words**

The new Suite of Real Estate Laws presents the efforts of legislators to harmonise and unify major legislations on the real estate sectors in Vietnam, addresses the gaps in the current laws, introduces a more streamlined system with regards to the transfer and use of lands in Vietnam, as well as helps to create a momentum to develop the real estate business.

Should you require further information or any advice on the above, please feel free to reach out to the contact listed below.

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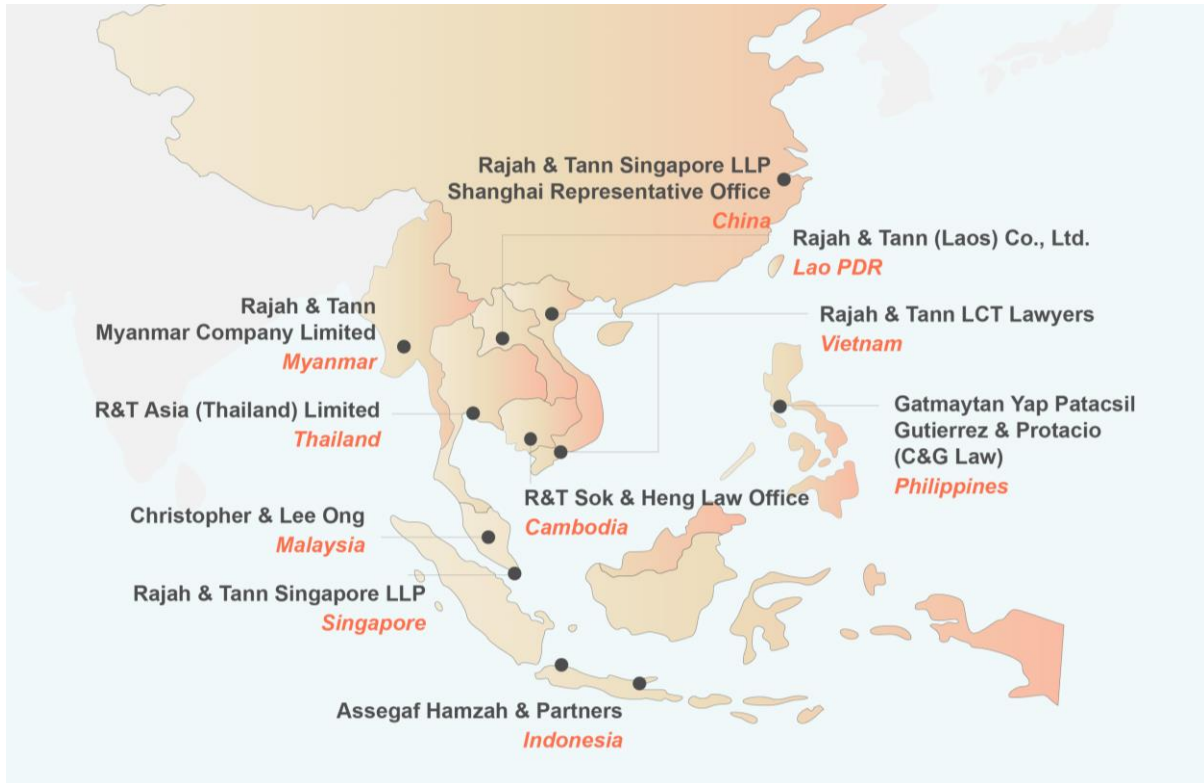
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