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LEGAL UPDATE

NEW LAW ON
REAL ESTATE BUSINESS IN VIETNAM



On 28 November 2023, the National Assembly of Vietnam officially passed the Law on Real Estate Business, replacing the Law on Real Estate Business 2014. The new Law on Real Estate Business 2023 is expected to remove some limitations as well as create a more reasonable legal framework for real estate investment and business activities in Vietnam. The Law on Real Estate Business 2023 will take effect from 01 January 2025.

This update will highlight the noteworthy changes of the Law on Real Estate Business 2023 compared to the Law on Real Estate Business 2014.

1. Clarity on more narrow scope of regulation

The new Law on Real Estate Business 2023 clearly excludes certain cases of real estate ownership transfer from its scope of regulation, which will be governed by other laws. Such cases are seemingly cases where real estate is transferred not for large scale business purpose and include:

- i. Authorities or organizations that sell housing or buildings and/or transfer land use rights (LURs) in case of bankruptcy, dissolution, split-off, or split-up; transfer ownership of housing or buildings and/or LURs in case of split-off, split-up, consolidation, or merger under regulations of law;
- ii. Authorities, organizations, or units that sell, transfer, or lease real estate which is public property under regulations of law on management and use of public property;
- iii. Organizations or individuals that sell housing or buildings or transfer LURs according to judgments or decisions issued by competent courts or arbitration awards or decisions, or decisions issued by competent authorities when settling disputes; and
- iv. Organizations or individuals that transfer, lease, or sublease LURs, except investors that transfer, lease, sublease rights to use land that already has infrastructure within real estate projects; and
- v. Leasing of social housing to workers and employees by the Vietnam General Confederation of Labor (VGCL) which acts as the supervisory authority of such social housing projects under regulations of the Housing Law.

2. Additional property types and real estate products

The new law lists out the following property types/ real estate products that can be traded on the market:

- i. Existing residential houses and houses to be formed in the future;
- ii. Existing works and works to be formed in the future, serving "educational, medical, sport, cultural, commercial office, services, tourism, accommodation, industrial" purposes and mixed-use works;
- iii. "Separate floor areas" within construction works;
- iv. Land use rights with technical infrastructure in a real estate project; and
- v. Real estate projects.

The most noteworthy items are items ii and iii, which are new additions in the new law. They appear to be added to address market practices. For "separate floor areas" within construction works to qualify for putting on the market, the following stringent conditions must be met, among others:

- Land-related financial obligations arising from the floor area, including land use fee, land rent and other relevant taxes, fees and charges (if any), towards the State which must be fulfilled by the seller or landlord or the buyer or tenant-buyer of such floor area must be clearly determined and specified in the relevant commercial agreement between the parties;
- The area to be transferred must have a dedicated function and be clearly demarcated/ separated from other areas in accordance with the construction design and planning of the project so that the owner can manage the area independently; and
- The land on which the building is built is allocated by the State with land use fee collection or leased by the State with lump sum land rent payment.

We expect that there will be technical uncertainties during the implementation of the new law concerning the conditions above. Further guidance from the Government will be needed.

3. Scope of real estate business for foreign investors clarified to be consistent with Law on Investment

The new law replaces the term “foreign-invested enterprise” (doanh nghiệp có vốn đầu tư nước ngoài in Vietnamese) with “foreign-invested economic organization” (tổ chức kinh tế có vốn đầu tư nước ngoài in Vietnamese) for consistency with the Law on Investment.

To ensure consistency with the Law on Investment, the new Law on Real Estate Business provides a more limited scope of real estate business activities for economic organizations that are required to meet conditions and conduct investment procedures applicable to foreign investors under the Law on Investment. Such activities include only:

- Investing in a real estate project for the construction of new works or infrastructure for sale, lease or sublease;
- Leasing existing real estate properties for sublease; and
- Receiving transfer of real estate project.

4. Conditions for real estate developers and investors

Under the new law, to engage in real estate business activities for profit, organizations and individuals must incorporate a company and register business line of doing real estate business (real estate business company). Exceptions to the aforementioned requirement include: (i) individuals doing “small-scale” sale or leasing transactions; or (ii) organizations or individuals doing sale of real estate properties not for business/profit-making purposes or below “small-scale”.

There is no minimum fixed charter capital requirement applicable for real estate business companies. However, real estate business companies must meet the following financial requirements:

- Maintain acceptable credit debt/bond debt to equity ratio;
- When a real estate business company conducts business through a real estate project, the owner’s equity must not be lower than 20% of total investment capital if the area of project land is under 20ha, or must not be lower than 15% if the area of project land is 20 ha or more (in case the company is developing multiple real estate projects, the owner’s equity must ensure the above percentage for each individual project).

5. Regulation of overseas Vietnamese

The new law specifies different scope of real estate business activities for overseas Vietnamese individuals, based on whether the individual still retains Vietnamese legal nationality. Overseas Vietnamese who are not Vietnamese citizens (no longer have Vietnamese nationality) are entitled to do real estate business within

the scope specified in Article 10.3 of the Law on Real Estate Business 2023 which is more limited than overseas Vietnamese that are Vietnamese citizens.

6. Transactions involving off-the-plan properties (i.e., properties to be formed in the future)

a. Deposit in off-the-plan real estate business

For regulations on deposits in off-plan real estate business, the Law on Real Estate Business 2023 has resolved the shortcomings of the Law on Real Estate Business 2014, through which the real estate project investor may receive the deposit for the housing or building or its floor area which has met relevant conditions for putting on the market as set out in this Law from the buyer or tenant-buyer provided that the received deposit shall not exceed 5% of the selling price or lease purchase price.

The addition of this regulation on deposit shows an effort to strictly control the time of receiving the deposit and the amount of the deposit of the investor.

b. Conditions for putting off-the-plan real estate on the market

Compared to the previous law, the Law on Real Estate Business 2023 has added several new conditions to put off-plan housing and buildings on the market, including:

- The housing or building is located in a real estate project that has been approved by a competent authority as prescribed by law, and the construction of housing or building for sale or lease purchase is included in the approved contents of such a project;
- Information on the real estate and real estate projects to be put on the market has been properly disclosed;
- The project investor has fulfilled financial obligations on land including the land use levy, land rent, and land-related taxes, fees, and charges to the State; and
- Having one of the types of documents on Land Use Right that is not required to have a Certificate of land use right, ownership of houses, and other assets attached to land.

c. Guarantee for sale or lease purchase of off-the-plan housing

To strictly control and avoid the appearance of “ghost projects” as well as allow the parties to flexibly choose in negotiating on guarantee, the Law on Real Estate Business 2023 has made the following changes:

- Replacing the provision “The investor shall send the copy of guarantee agreement to the buyer or lessee when the agreement on sale or lease purchase is signed” with the provision that the Investor is responsible for sending a copy of

the written commitment to issue a letter of guarantee from the bank to all buyers, The lessee purchasing housing under the project shall be approved to grant a guarantee when signing a contract for sale, lease, and purchase of housing formed in the future;

- Supplementing regulations on the buyer or tenant-buyer can choose whether there is a guarantee for the investor's financial obligations to them. If the guarantee is refused, the buyer or tenant-buyer shall agree in writing at the time of signing the Contract;
- The investor may only receive payments from the buyer or tenant-buyer under terms and conditions of the signed contract for the sale and purchase or lease purchase of off-plan housing after the investor has delivered the bank's letter of guarantee to the buyer or tenant-buyer.

7. Transactions involving land with infrastructure

This provision has been added in Article 31 of the Law on Real Estate Business 2023 to be consistent with the Law on Housing passed on 27 November 2023, specifically allowing the transfer of land use rights to individuals building their houses in areas "not located in any ward, urban district, or city of a special-class or class-I, II or III city; not put up for sale in an auction for constructing a housing investment project as prescribed by the Land Law".

8. Transfer of real estate projects

a. Conditions

The Law on Real Estate Business 2023 has added 02 additional conditions compared to the previous conditions specified in Article 49 of the Law on Real Estate Business 2014:

- In case the project is being mortgaged as collateral to serve the fulfillment of obligations as prescribed by law, procedures for collateral release must be followed;

- The transferor has been issued by a competent authority with a decision on land allocation, land lease, or land repurposing for implementing the project; and has fulfilled land-related financial obligations, including land levy, land rent, and other relevant taxes, fees, and charges (if any), towards the State in respect of the land area used for implementing the project or its part to be transferred without requiring certificate of LURs as prescribed by the Land Law.

b. Authority to approval transfer of entire or part of real estate projects

In the Law on Real Estate Business 2014, regulations on the authority to approve the transfer of entire or partial real estate project are stipulated as follows:

- The People's Committees of provinces shall consider permitting the transfer of an entire or a partial real estate project approved by the People's Committee of the province.
- The Prime Minister shall consider permitting the transfer of an entire or a partial real estate project regarding projects approved by the Prime Minister.

However, the difference between the Law on Real Estate Business 2023 and the previous Law 2014 is that in addition to the above 02 regulations, a new regulation is added in Article 41 of Law on Real Estate Business 2023, specifically the Prime Minister may authorize the provincial People's Committee to decide on the transfer of a partial of the real estate project.

c. Procedure

According to the previous regulations, in case the transferee who receives the real estate project is a foreign-invested enterprise, the transferor shall return the land to the State after the decision on permission for project transfer made by competent





agencies. However, this provision has been changed, specifically "In case the transferee of the entire or partial project is a foreign-invested economic organization after obtaining the decision to approve the transfer from a competent authority and the parties have entered into the transfer contract, land-related procedures shall be followed under regulations of the Land Law".

9. Payment in real estate business transactions

The Law on Real Estate Business 2014 has no regulations related to this issue. To complete the legal framework and strengthen the non-cash payment in real estate transactions, the Law on Real Estate Business 2023 has added regulations for payment in real estate business. Specifically, Article 48 of the Law on Real Estate Business 2023 stipulates that real estate project investors, real estate enterprises, and real estate service enterprises shall receive payments for real estate business contracts or real estate service contracts from clients through their accounts opened in Vietnamese credit institutions or foreign bank branches lawfully operating in Vietnam.

10. Using template real estate contracts

The previous Law on Real Estate Business did not have clear regulations on subjects, but the Law on Real Estate Business 2023 has clarified in Articles 19 and Article 45 that the seller, lessor, or landlord offering lease purchase of housing or building or its floor area is obliged to enter into contracts according to the provisions in template contracts and other relevant provisions on contracts in real estate business under the laws of Vietnam. The Government is expected to issue new template contracts to be used in real estate business transactions.

11. Requirements for individuals providing independent real estate brokerage services

The Law on Real Estate Business 2023 has officially abolished the provision that individuals have the right to provide independent real estate brokerage services. Instead, under the new law, individuals who want to provide real estate brokerage services are required to possess a practicing certificate for real estate brokerage and work for an enterprise providing real estate exchange services or a real estate brokerage enterprise.

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