

Vietnam: Five-Month Advance Implementation of New Land Law

Asia Newsletter

5 July 2024

Author:

[Kazuhide Ohya](#)

k.ohya@nishimura.com

[Nguyen Bao Linh](#)

n.b.linh@nishimura.com

[Cao Tran Nghia](#)

c.t.nghia@nishimura.com

On 29 June 2024, the National Assembly of Vietnam decided to change the effective date of the new Land Law No. 31/2024/QH15 (“**New Land Law**”) to 1 August 2024 (save for certain clauses). This change represents an acceleration by five months compared to the original date (i.e., 1 January 2025) and is accompanied by equivalent changes to the timelines for the new law on real estate business (“**New LOREB**”) and the new law on housing (“**New LOH**”). We hope this decision leads to speedy breakthroughs for projects deadlocked by regulatory hurdles under the current Land Law No. 45/2013/QH13 (“**Current Land Law**”) and saves business sector participants suffering under the stagnation of Vietnam’s real estate sector. This Newsletter introduces several material amendments under the New Land Law, and offers a glimpse of what impacts to the business activities of private investors, especially foreign invested enterprises (“**FIEs**”) could arise from such changes.

1. Commercial housing projects may overcome deadlocks

Please see [our previous newsletter](#) for the chicken-and-egg dilemma that commercial housing development projects in Vietnam are currently confronting. Unlike our expectations, unfortunately, the New Land Law did not pave the way for commercial housing projects containing entirely non-residential lands to overcome such dilemma, as the New Land Law prohibited those projects from utilizing the method of agreement contained therein to acquire non-residential lands. Nevertheless, the Government soon will purpose a resolution to the National Assembly that gives effect to a pilot legal framework permitting the implementation of commercial housing projects through agreement on receipt of land use rights of, or having land use rights, of non-residential lands (“**Draft Resolution**”). This Draft Resolution may save those projects, mainly because it is expected to allow them to utilize a new method of agreement on receipt of land use rights (to be further explained in section 3 below) in any type of land, as provided in Article 9 of the New Land Law, as a pilot policy until 2030. If the Draft Resolution is adopted without any material change, it would be a very welcome policy and expected to promptly remove the obstacles before many residential housing projects containing entirely non-residential lands (agricultural lands, etc.). We hope that local authorities approve the projects and exercise their discretion in setting the criteria for the pilot policy in line with the intended purpose of this Draft Resolution.

2. Introduction of FIE definition

Under Article 3.46 of the New Land Law, an FIE refers to a company subject to conditions and procedures applicable to foreign investors under the Law on Investment, a definition that is the same as the one introduced

under the New LOREB. Though further explanation has yet to be issued, it is likely that only companies where foreign investors hold more than 50% of total shares, either directly or via subsidiaries (per Article 23 of the Law on Investment) are considered FIEs under the New Land Law.¹ As such, unlike the practice under the Current Land Law, it is likely that the remaining entities, including FIEs, with 50% or less foreign ownership (including their subsidiaries) will enjoy the same treatment as domestic entities under the New Land Law. In that case, it will lead to the extension of FIEs' rights in certain real estate business activities, which were exclusively available to domestic entities in the past. For instance, FIEs treated as domestic entities are entitled to receive the transfer of land use rights under the New Land Law. As a result, foreign investors may have more options in structuring their investments in Vietnam real estate projects than before.

3. Clarification of land allocation/lease process

The New Land Law has clearly delineated the cases of land allocation and land lease which were unclear and overly-general under the Current Land Law. In detail, the New Land Law organized the land allocation/lease process into four methods: (a) direct appointment (without auction or bidding), (b) auction, (c) bidding, and (d) agreement on receipt of land use rights, the last of which is a newly introduced concept. It seems to be putting into statutory form the current practice of private land acquisition (land clearance) by real estate developers through agreements with existing owners; however, the New Land Law requires the provincial People's Committee's approval for such acquisitions. As mentioned in 1. above, although this method is not available for commercial housing projects, which need to acquire non-residential lands under the terms of the New Land Law, we hope that the Draft Resolution will provide practical solutions for those projects.

4. Change in principle from lump-sum to annual rent payment

Under the Current Land Law, real estate developers (especially FIE developers) have the choice to pay land lease rents in a lump-sum and often did so to fix the project lifetime land costs and to judge the feasibility of the projects at the outset. The New Land Law, however, forces annual payment (in principle). Since the price of annual rent is regularly updated, it will become more difficult to predict a project's lifetime land costs, and it would not be a surprise if such payment method were to become more expensive than lump-sum payment cases considering the current market situation (land prices are continuously going up). Having said that, the exceptions for annual rent payments (i.e., cases where lump-sum rent payments are allowed) have been broadened to encompass more scenarios compared to the draft stage proposal, as follows:

- a) Land used for industrial zones, industrial clusters and high-tech zones;
- b) Land used for "public purposes with business purposes"; and
- c) Commercial and service land used for tourism and office business activities.

However, since the New Land Law lacks a definition or explanation about land used for "public purposes with business purposes," and does not provide a list of applicable cases, it is unclear which projects will fall into exception (b).

For the avoidance of doubt, this annual payment regulation is only applicable to land leases, not residential

¹ Although we believe the interpretation above is more consistent with the wording of the New Land Law, there is a view that the new definition of FIE in Article 3.46 of the New Land Law refers to economic organizations with foreign investors as members or shareholders (as provided in Article 3.22 of the Law on Investment).

housing projects (land allocation, not lease), i.e., lump-sum payment of land use fees is still possible. Considering that the exceptions cover most types of real estate projects in which FIEs invest, the practical impact of this amendment could be limited.

5. Slight expansion of FIEs' rights

In comparison with the Current Land Law, FIE rights are extended under the New Land Law. For instance, (a) an FIE that leases land on an annual rent basis is entitled to sell or lease the lease right in the land lease contract,² and (b) FIE are entitled to receive transfer of land use rights in industrial parks, industrial clusters, and high-tech zones.³

6. New mechanism for land price determination

Under the Current Land Law, the land price bracket defines the maximum price and the minimum price of land (collectively referred to as “**Land Price**”) for determination of financial obligations (i.e., the land use fee, land use rent, taxes, starting price for land auction, compensation in case of land recovery, etc.). It was reported that Land Prices tended to be too low compared to market prices and this led to low State revenues and a number of complaints due to low compensation prices for land recovery in the past decade.

To resolve such problems, the New Land Law abolishes the land price bracket and regulates the annual land price table, with the specific land price to be calculated *based on market principles* in accordance with the statutory criteria or information.

According to the authority's explanation about the target of such amendments, the Land Price will significantly grow to as close as possible to the market price, and the financial obligations related to the land use of the investors will also increase.

7. Dispute settlement


The Current Land Law grants the authority to resolve disputes over lands to the competent Vietnamese courts or the local People's Committees. However, the New Land Law and New LOH expressly permit the choice of commercial arbitration for settling certain disputes related to land and housing, including:

- (i) Disputes between parties arising from commercial activities related to land;
- (ii) Disputes over ownership and use rights of private houses, private residential housing transactions; and
- (iii) Disputes over the management and operation of private apartment buildings, the operation service fees, the management, and use of maintenance funds for private apartment buildings.

The resolution of such disputes related to land through arbitration is expected to allow more flexibility and options, especially for foreign investors. However, further guidance may be needed to ensure the efficient application of these new provisions in practice, since the New Land Law and New LOH did not amend Article 470 of the Civil Procedure Code, which vests Vietnamese courts with exclusive jurisdiction over any foreign-element lawsuits concerning rights related to real estate within the territory of Vietnam.

² However, this expansion is a kind of incidental effect of annual land rent payments in principle and granted not only to FIEs but also to domestic entities.

³ Under the Current Land Law, tripartite agreement among industrial zone developer, the current tenant and the new tenant was necessary in practice.



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Public Relations Section, Nishimura & Asahi newsletter@nishimura.com