

# Commercial Real Estate in Vietnam: Overview

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

The Q&A gives a high-level overview of real estate investment structures; restrictions on foreign ownership; title; tenure; sale of real estate; real estate tax; real estate finance; leases; and planning law.

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## Real Estate Investment

### Investment Structures

1. 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)

There is no typical REIT in Vietnam. The concept of a trust does not exist in Vietnam's Civil Code as it does in many common law jurisdictions.. However, Vietnam's Law on Securities and its implementing documents recognise real estate investment funds (REIFs). So far, there are only a few REIFs in Vietnam, for example, the Techcom Vietnam Real Estate Investment Fund.

Entities conducting real estate business can establish REIFs 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).

REIFs 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).

REIFs 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 6](#)).

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 (see above, [Common Entity Types](#)).

Foreign and foreign-invested enterprises established in Vietnam (FIEs) therefore cannot directly buy a real estate asset from a Vietnamese company or individual.

Specifically, FIEs cannot receive a direct transfer from the seller of its land use right (LUR) to the underlying land and the buildings constructed on the land in any circumstances.

For this reason, the final completion steps will involve the seller voluntarily returning the land to the state, so that the state can lease the LUR to the buyer.

However, FIEs can generally buy shares in a local company that holds real estate (share purchase) or undertake a real estate project transfer from another developer (with fairly heavy procedures for the project transfer) (asset purchase).

Share purchase is more common since there is no legal requirement for the purchaser to update the LUR, except for the amendment to the corporate licence of the land user/building owner entity to reflect ownership by the purchaser.

## Restrictions on Foreign Ownership and Occupation

2. 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

Land is owned by the people and administered by the government in Vietnam. Land users only have land use rights that are recognised, allocated, or leased by the government (see [Question 1](#) and [Question 6](#)).

The following recently amended laws have created more favourable conditions for foreign individuals and organisations to own houses and apartments in Vietnam:

- Law on Real Estate Business 2014 (as amended by the Law on Investment 2020).
- Law on Residential Housing 2014 (as amended by specific laws in 2019, 2020 and 2022).

The conditions generally 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 term stated in their investment certificates and Certificate of Land Use Rights (LURC) (see [Question 3](#)) up to a maximum of 50 years (some special projects can have a term up to 70 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 entities in an apartment building or ward is subject to statutory thresholds. Further, the duration of ownership is based on the duration of the foreign company/organisation's licence (although the licence is generally renewable).
- Foreign individuals who are allowed to enter Vietnam can own houses or apartments in commercial projects for 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; 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 the case of a dispute.

## Title to Real Estate

### Title Registration

3. 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/QD-TTg on 30 October 2013 approving a project to create a national online land database. This was expected in 2020 but as of December 2023 was not yet available.

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

There is no website address for the LRO.

Electronic signatures are currently not accepted by the LRO.

4. 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 8](#).

## 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.

5. 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 24](#)).

The LRO or its staff can be held 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, as amended by specific decrees in 2017, 2018, 2019, 2020, 2022 and 2023).

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 (as amended by Law No. 52/2019/QH14); Article 8.1, Government Decree No. 112/2020/ND-CP 18 September 2020 on disciplinary handling of cadres, public servants, and officers (as amended by Decree No. 71/2023/ND-CP)) and/or criminal liability.

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 can be liable for compensation for any loss/damages caused by such errors in accordance with the laws on state compensation liability.

Notaries can 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).

## Types of Tenure

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

## Freehold Title/Absolute Ownership

As stated in *Question 1*, 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

A land user can generally lease land from the state in return for an annual payment or a lump-sum payment for the whole of the lease term (Land Law 2013).

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 1*).

## 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, among other conditions, the individual/organisation must have Vietnamese nationality or be considered an overseas Vietnamese individual permitted to enter Vietnam, and must acquire ownership legally (Articles 7, 8 and 9, Law on Residential Housing 2014).

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 (agricultural land use rights) can be recognised for agricultural land subject to the Land Law 2013 and its guiding legislation.

## Sale of Real Estate



## Preliminary Agreements

7. 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 usually 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.

## Exchange and Completion/Closing

8. 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

A real estate sale contract is typically 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 there are no legal requirements on deposits 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 Residential 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 can vary from a few dollars to several thousand dollars (Article 4, Circular 257/2016/TT-BTC, as amended by Circular 74/2022/TT-BTC and Circular 111/2017/TT-BTC).

## Environmental Issues

9. 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 (as amended by specific laws in 2022 and 2023) and its guiding legislation provide 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.

Land users must also comply with environmental regulations under Article 170 of the Land Law 2013.

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 conduct separate environmental surveys and searches in Vietnam. However, for M&A transactions, the buyer can 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 can seek an indemnity from the seller for any damage incurred by the buyer. However, this type of indemnity is not common in Vietnam.

## **Real Estate Tax**

### **Stamp Duty/Transfer Tax**



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

### **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**

Typically, the buyer pays the registration fee 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**

11. Is tax imposed on a seller's profit or gain on a sale of real estate? Are there any exemptions? Does it apply to a transfer of shares in a company holding real estate?

### **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.

### **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.

## Value Added Tax (VAT) or Equivalent

12. Is VAT (or equivalent) payable on a sale of real estate? Who pays? Are there any exemptions?

### VAT/Equivalent

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

### Who Pays

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

13. 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 various exemptions, such as:

- Land used for incentive projects.
- Land within the set quota in areas with socio-economic difficulties

(Article 9, Law on Non-Agricultural Land Use Tax 2010).

## Real Estate Finance

### Secured Lending Involving Real Estate

14. 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 pay a deposit of between 1% and 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).

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: Creation and Perfection

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.

#### Lenders' Remedies

15. 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 can agree in their security agreement on the consequences of an event of default by the borrower. In particular, they can 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 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.

## **Real Estate Leases**

### **Negotiation of Leases**

16. 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.

## Rent Payments

17. 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.

18. 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.



19. 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 between one and 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**

20. 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 term 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 specific areas) (Article 126, Land Law).

### **Security of Occupation**

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

### **Disposal**

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

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

A tenant cannot generally 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 (Affiliate) 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.

22. 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](#).

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

23. 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 terms of 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).

## Planning and Development Controls

24. In what circumstances can local or state authorities purchase property compulsorily (expropriation/ eminent domain)? 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.

25. 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 2014.

26. 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.

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#### **RESOURCE HISTORY**

Law stated date updated following periodic maintenance.

This document has been reviewed by the author as part of its periodic maintenance to ensure it reflects the current law and market practice on 1 February 2025.

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