

Vietnam: New Real Estate Business Law to take effect in 2025

The new law opens up the market while setting boundaries.

In brief

On 28 November 2023, the National Assembly of Vietnam passed the new Law No. 29/2023/QH15 on Real Estate Business ("**New Law**"), which will come into effect from 1 January 2025 to replace the current 2014 Real Estate Business Law. The New Law aims to introduce more clarity and transparency in the Vietnamese real estate market.

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Key takeaways

The New Law has expanded upon and introduced more detailed provisions on a number of matters, including the followings:

- Real estate transactions pertaining to an expanded range of property types and real estate products, including completed works or off-the-plan (i.e., works to be formed in the future)
- Clearer requirements for different types of investors in the real estate market
- Clearer requirements in the sale and purchase of land use rights (i.e., the sale of bare land areas, which under the New Law requires accompanying infrastructure)
- Eligibility and conditions to transfer a real estate project

In more detail

1. Expansion of the range of property types and real estate products

Under the New Law, the following types of properties and real estate products can be put into the market,¹ and the buyers/transferees are entitled to be issued with their own land use rights certificates (or LURCs).²

- Existing houses and houses to be formed in the future
- 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 (combining the above purposes)
- "Separate floor areas" within construction works
- Land use rights with technical infrastructure in a real estate project
- Real estate projects

¹ Article 5, New Law

² Article 13.2, New Law

It is worth noting that previous drafts of the New Law mentioned "condotels, resort villas and officetels". Instead of listing out specific categories of real estate products, the Government has opted to provide a broad legal description, presumably to anticipate other innovations in the market.

An interesting development are the new provisions regarding the sale and purchase of so-called "separate floor areas" in a constructed building. The New Law appears to legitimize certain practices in the market, including the sale of an office floor or commercial floor, or even separate areas/kiosk-type space within a floor. That said, there are strict requirements when dealing with "separate floor areas", as follows:³

- The floor area to be "sold" must have a specific function and be clearly demarcated from other areas in accordance with the construction designs and zoning of the project.
- The land use rights attached to the part of the construction works must be identifiable (e.g., land use purpose, land use term, common use or private use),
- The financial obligations to the State of the seller must be identifiable.
- The underlying land must either be (i) allocated or (ii) leased from the State with **upfront** land rental payment.

We anticipate that there will be technical challenges during the implementation of these requirements. For instance, there is no guidance on how to "divide up" the financial obligations to the State between the buyers. We expect further guidance on the implementation of the New Law on these requirements.

2. Legal requirements for investors and developers in the real estate market

Only real estate companies (with a real estate business line registered in their Enterprise Registration Certificate) can engage in real estate business activities for profit. Exceptions to this rule are provided for (i) "small-scale" sale or leasing transactions; or (ii) sale of real estate properties not for business/profit-making purposes. Individuals do not need to incorporate a real estate company if they fall into these exceptions.⁴

There is no fixed minimum charter capital requirement for the real estate company in the New Law. Nevertheless, the relevant real estate company must have adequate financial capabilities, including:⁵

- An acceptable ratio between outstanding credit balance [and/or] outstanding bond payments over charter capital
- Where the real estate company is approved to carry out a real estate project, the percentage of the charter capital of the real estate company (i.e., the developer's own capital) over total investment capital must be at least 20% if the area of land is under 20ha, or 15% if the area of land is 20 ha or more (in case multiple ongoing real estate projects are carried out by one entity, the charter capital must be sufficient to ensure the above percentage for *each* individual project)

Besides the incorporation requirements above, any seller/transferor or lessor must obtain an LURC that records both the usage rights over the land as well as the ownership of relevant construction works on the land, except for the case of off-the-plan sales (see Section 4) where only the LURC for the land is required.⁶

3. Real estate contracts

The New Law retains the current requirement that "real estate contracts" must follow statutory templates (i.e., defined as contracts between the real estate companies described in Section 2 and their counterparties).⁷

However, given the new types of real estate products and associated terminologies in Section 1 above, the New Law lists out some additional types of real estate contracts.⁸ As a result, a guiding decree should be issued to provide new contract templates for other real estate transactions, e.g., the sale of tourism real estate, "separate floor areas" or land use rights with infrastructure, which are introduced in the New Law.

³ Article 14.3, New Law

⁴ Article 9.3 and 9.4, New Law

⁵ Article 9.2, New Law

⁶ Article 14.1, New Law

⁷ Articles 3.8 and 45.2, New Law

⁸ Article 44, New Law

The more important change, however, is the new prohibition against developers authorizing a third party to sign deposit agreements prior to the sale and purchase transaction (which presumably includes other preliminary agreements with a deposit payment provision).⁹ In other words, the signature must come from the developer of the property. The 2014 Real Estate Business Law only prohibits authorizations for the signing of sale and purchase agreements.¹⁰

4. Off-the-plan transactions

With the exception of transactions pertaining to only land use rights with technical infrastructure, all of the properties and real estate products in Section 1 above may be sold before being completed (i.e., off-the-plan).¹¹ The New Law has included certain rules surrounding this activity.

Similar to Section 3 above, developers will be prohibited from authorizing a third party to sign deposit agreements.¹² Any collected deposit must not exceed 5% of the total sale price, and the sale price must be specified in the deposit agreements. The relevant section in the 2014 Real Estate Business Law did not specify this requirement for off-the-plan transactions.

Furthermore, the requirement for a pre-sale approval from the Department of Construction is retained. However, the New Law requires this procedure to not only apply for residential properties, but also the sale of "separate floor areas" as mentioned in Section 1 above.¹³

5. Permissible scope of real estate business for foreign investors

The New Law now uses terms consistent with the 2020 Investment Law to refer to foreign-invested real estate companies, i.e., "foreign-invested economic organizations" (tổ chức kinh tế có vốn đầu tư nước ngoài in Vietnamese).

The New Law distinguishes between two types of "foreign-invested economic organizations" with different scopes of real estate business activities:¹⁴

a. Those which are subject to **the investment procedures to be undertaken by foreign investor(s) under the 2020 Investment Law**.

This category of "foreign-invested economic organizations" is subject to a much smaller scope of business. The permitted activities only include:¹⁵

- 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 (within the range of properties in Section 1 above)
- Receiving transfer of a real estate project to continue construction and operation (the prudent interpretation of this scope is to exclude projects where construction works are already completed)

b. Those that do not belong in the above category. This category of "foreign-invested economic organizations" may conduct the full range of real estate business activities similar to a domestically invested company, including the purchase of existing properties for re-sale.

6. Regulating transactions of land with infrastructure

A clear policy of the Government is to tighten up the previous loosely regulated practice of dividing and selling bare land plots (phân lô bán nền in Vietnamese). The New Law only allows the transfer (sale), lease or sublease of "land use rights with technical infrastructure within a real estate project" (for simplicity, land with infrastructure).¹⁶ In particular, the following forms of transaction are permitted:¹⁷

a. Sale of land with infrastructure to individuals who will construct residential properties

⁹ Article 17.4, New Law

¹⁰ Article 13.5, 2014 Real Estate Business Law

¹¹ Article 22, New Law

¹² Article 23.4(d) and 23.5, New Law

¹³ Article 24.4 and 24.8, New Law

¹⁴ Article 10.4 and 10.5, New Law

¹⁵ Article 10.1 and 10.3, New Law

¹⁶ Article 1.2(d), New Law

¹⁷ Article 28.1, New Law

- b. Sale of land with infrastructure to organizations to construct their own properties (residential or non-residential)
- c. Leasing or sub-leasing land to individuals and organizations for their use in accordance with the correct land use purpose and approved project objectives

With regard to category (i), the sale of land with infrastructure to individuals for residential development must be in areas designated by local People's Committees. These areas cannot be within major urban areas (special class, class I, II and III, such as Ho Chi Minh City, Hanoi, Danang, etc.), or in any land areas already planned for land auction under the Land Law.¹⁸ Before beginning sales, the developer of the infrastructure must seek pre-approval from the local authorities (e.g., Department of Construction).

In all cases, the seller or lessor of land with infrastructure must be the developer of the real estate project itself. They must have completed the relevant technical infrastructure and utilities and obtained relevant LURC(s) with regard to the land areas to be subleased, sold or transferred.¹⁹

7. Transfer of a real estate project

Similar to the 2014 Real Estate Business Law, the New Law provides that a project transfer approval is required for the full or partial transfer of a real estate project (either from the Prime Minister or provincial-level People's Committees).²⁰ However, the following types of real estate projects do not require this approval and will only follow the procedures of the Investment Law:

- a. Projects that have been granted the Investment Registration Certificate (IRC), including projects where a "foreign-invested economic organization" is established or included as the developer (see Section 3 above);
- b. Certain cases according to the 2020 Investment Law (Article 29.4):
 - In the event of land use rights auction or project tendering, the investor was appointed by virtue of being the only eligible participant/bidder.
 - The investor has been appointed **without** going through the procedure for land use rights auction or project tendering in any of the below cases:
 - The investor already has land use rights, except for land that has been expropriated by the State.
 - The investor is approved to receive transfer or capital contribution of, or to lease **agricultural** land for non-agricultural purposes.
 - The project is located within hi-tech zones or industrial parks.

In addition, the New Law has clarified certain conditions to perform a transfer of any real estate project, regardless of whether the project transfer approval is required:

- Partial transfer is only allowed if the project components, functions and use purposes can be separated, i.e., the parts can be used independently of each other.
- The seller/transferor is **no** longer required to obtain the LURC for any part of the project, because the land lease or land allocation decision(s) is sufficient.
- All mortgages must be discharged prior to the transfer.

¹⁸ Article 31.6, New Law

¹⁹ Article 29, 31.2 and 35, New Law

²⁰ Article 41, New Law

Contact Us



Yee Chung Seck
Partner
yeechung.seck
@bakermckenzie.com



Lan Phuong Nguyen
Partner
lanphuong.nguyen
@bakermckenzie.com



Phuc Thuy Hien Nguyen
Associate
thuyhien.nguyen
@bakermckenzie.com

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