

June 2024 | Vol. 18

MHM VIETNAM

Newsletter

Key Contacts



Ha Thi Dung
+84-24-3267-4103
dung.ha@mhm-global.com



Than Thu Thao
+84-24-3267-4111
thao.than@mhm-global.com



Nguyen Minh Anh
+84-28-3622-1644
minhanh.nguyen@mhm-global.com

NOTABLE CHANGES IN THE NEW LAND LAW AND IMPLICATIONS

The National Assembly of Vietnam passed the Land Law 2024, which will take effect from originally January 1, 2025, and may take effect earlier from August 1, 2024, as currently proposed, replacing the current Land Law 2013. The Land Law 2024 introduces significant changes to the legal framework for land management and use in Vietnam, aiming to foster sustainable socio-economic development, protect land users' rights, and modernize land valuation and allocation processes. This client alert highlights some of the key changes and their implications for investors doing business in Vietnam.

Limited cases of land lease with one-off payment of land rent

One of the major changes in the Land Law 2024 is the shift towards promoting annual payment of land rent over one-off payment for land leased from the State. The Land Law 2024 reduces the cases where one-off payment of land rent can be made to the following cases:

- Using land to implement investment projects in agriculture, forestry, aquaculture, and salt making;
- Using land in industrial parks, industrial clusters, high-tech parks, workers' accommodation in the industrial parks, land used for public purposes with business purposes; and using commercial and service land for tourism and office business activities;
- Using land for the construction of leased social housing under the provisions of the law on housing.

This means that the land users have to lease the land with annual payment of land rent in other cases (except for the cases of allocated land). This would expose the land users with annual payment of land rent to uncertainty of long-term costs as rent will be adjusted over time and the land users will not be able to transfer or mortgage land use rights which are only available for land leased with one-off payment.

Land valuation

The Land Law 2024 also revises the regulations on land valuation and pricing mechanisms, aiming to ensure that land prices reflect market conditions and foster fairness and transparency in land transactions. The Land Law 2024 abolishes the periodic issuance of land prices, which were based on artificial land price frameworks set every five years, and replaces them with annual land price lists, which are based on market value and determined by the provincial People's Committees.

The Land Law 2024 also provides more detailed guidance on the application of four land valuation methods, namely direct comparison, income-based, discounted cash flow, and coefficient, and prioritizes the direct comparison method based on actual land transactions or auctions. These revisions are likely to result in higher and more fluctuating land prices than before, and may affect the land acquisition costs, land use fees, land rent, and land compensation for investors. Investors should monitor the land price lists and the land valuation methodologies in their project locations, and conduct due diligence and market research to assess the feasibility and profitability of their projects.

Multiple-purposes for using land

Another important change in the Land Law 2024 is the introduction of a new legal framework for authorizing land use for multiple purposes, which allows land users to add ancillary use purposes to their primary land use purpose, subject to the approval of the competent State agency. For example, residential land may be approved to add commercial, service, agricultural, or non-business use as an ancillary use purpose. This change is expected to create more flexibility and efficiency for land users, as well as to encourage the development of new business models, such as agri-solar power projects or mixed-use residential and commercial projects.

New concept on foreign-invested economic organizations

Under the Land Law 2013, foreign-invested enterprises are comprised of enterprises with 100% foreign-owned capital, joint venture enterprises, and Vietnamese enterprises in which a foreign investor holds any shares or equity interests regardless of shareholding ratio.

However, the Land Law 2024 uses the term foreign-invested economic organizations which are defined as *“economic organizations that must meet the conditions and carry out investment procedures prescribed for foreign investors according to the provisions of the Investment Law to implement projects using land.”*

The Land Law 2024 does not explicitly define foreign-invested economic organizations, instead referring to the Investment Law 2020. Foreign-invested economic organizations under the Land Law 2024 likely include economic organizations subject to conditions and procedures applicable to foreign investors as stipulated under Article 23.1 of the Investment Law 2020 (e.g., a foreign-invested enterprise in which foreign investors hold more than 50% of the charter capital).

While in the recent seminar held by VCCI, the presentation of the official of the Ministry of Natural Resources and Environment (MONRE) refers to Article 3.22 of the Investment Law 2020 under which a

foreign-invested economic organization is an enterprise having foreign investors as members or shareholders, we view that the MONRE official's interpretation on foreign-invested economic organizations under the Land Law 2024 seems not make sense. This is because:

- The Land Law 2024 refers to economic organizations that must meet the conditions and carry out investment procedures applicable to foreign investors which are commonly understood as referring to foreign-invested companies under Article 23.1 of the Investment Law 2020, rather than simply referring to the concept of "foreign-invested economic organizations" defined under Article 3.22 of the Investment Law 2020;

- Consistent with the concept of foreign-invested economic organizations defined in the Land Law 2024, the new Real Estate Business Law 2023 classifies the foreign-invested economic organisations into two groups:

- (i) foreign-invested economic organisations which must meet the conditions and carry out investment procedures applicable to foreign investors under the Investment Law 2020 shall have a narrower scope of real estate business activities; and

- (ii) foreign-invested economic organisations which are not subject to the conditions or requirement on investment procedures applicable to foreign investors under the Investment Law 2020 are treated as local companies to conduct all real estate business activities regulated for local companies.

The classification of foreign-invested economic organisations and the treatment of each group are consistent with the classification and treatment of foreign-invested economic organisations under Article 23 of the Investment Law 2020.

It would still exit a question whether a foreign-invested enterprise not falling into the cases of Article 23.1 of the Investment Law 2020 (e.g., a foreign-invested enterprise in which foreign investors hold 50% or less than 50% of the charter capital) then such foreign-invested enterprises can use the land and enjoy the LURs as local economic organizations or local companies. Legally speaking, such foreign-invested enterprises which are treated as local companies under the Investment Law 2020 should be treated as local land users (i.e., economic organisations) under the Land Law 2024. That said, we will need to further observe the application of the Land Law 2024.

Additional right of foreign-invested economic organizations to acquire LUR

Under the current Land Law 2013, foreign-invested enterprises cannot directly acquire land use rights from other parties. The Land Law 2024 proposes an exception that allows foreign-invested economic organizations to directly receive land use rights transfers in industrial parks/clusters, and high-tech parks. This accommodates the process of transferring land use rights in industrial zones to foreign-invested economic organizations. Under the current Land Law 2013, a cumbersome procedure existed: the current land user has to return the land to the industrial zone developer, and the acquirer being the foreign-invested enterprise has to sign a new land lease agreement with the industrial zone developer. The Land Law 2024 now enables land users in industrial zones to directly transfer the land use right to the acquirer

being the foreign-invested economic organization.

In addition, the Land Law 2024 also clarifies that foreign-invested organizations can receive capital contributions in the form of land use rights.

Mortgage of land use rights

The right to mortgage land use rights and/or assets attached to land is expanded in terms of mortgagees.

Under the Land Law 2013:

- Economic organizations and foreign-invested enterprises that are allocated land (with collection of land use fees) and leased land (with lump sum rent payment) by the State are allowed to mortgage land use rights and assets attached to land with credit institutions authorized to operate in Vietnam;
- Economic organizations and foreign-invested enterprises that are leased land (with annual rent payment) by the State are allowed to mortgage assets attached to land with credit institutions authorized to operate in Vietnam.

Under the Land Law 2024:

- Economic organizations (excluding foreign-invested economic organizations) in the above cases are allowed to mortgage to (i) credit institutions authorized to operate in Vietnam and (ii) other economic organizations or individuals in accordance with the laws;
- However, foreign-invested economic organizations in the above cases are only allowed to mortgage to credit institutions authorized to operate in Vietnam.

Dispute settlement

Article 470.1(a) of the Civil Procedure Code 2015 gives Vietnamese courts exclusive jurisdiction over *disputes relating to rights over real estate* in Vietnam. However, the Land Law 2024 additionally allows Vietnamese commercial arbitration to resolve disputes arising from commercial activities relating to land, which may provide more options and flexibility for foreign investors. That said, it remains unclear as what would constitute a “dispute arising from commercial activities relating to land” and which arbitration would be regarded as “Vietnamese Commercial Arbitration”.

Other changes

The Land Law 2024 also clarifies and simplifies the procedures and conditions for land allocation, lease, recovery, and auction, as well as for investor selection and land use right transfer for real estate projects. The Land Law 2024 gathers all the cases of direct land allocation or lease, land use right auction, and investor selection tendering in one place, and provides more clarity on the scope and criteria for each case. The Land Law 2024 also allows investors to acquire land via direct agreement with the existing land users, subject to the consent of the provincial People's Committee, for certain projects that are eligible for land recovery by the State. This change is expected to facilitate the land acquisition process and reduce the reliance on the State's land clearance and compensation, which have been a major cause of delays and

disputes for many projects. Investors should be aware of the applicable procedures and requirements for their projects, and seek to negotiate with the existing land users and the competent authorities to secure their land use rights.

Draft implementing guidance

Several draft decrees guiding the Land Law 2024 have been published for comments. Draft decrees focus on the implementing guidance on land prices, compensation, support, and resettlement upon land recovery, registration, and issuance of LUR certificates, and land information system.

The information provided in this newsletter is summary in nature and does not purport to be comprehensive or to render legal advice. Please contact us if you would like to obtain advice about specific situations.

Contact Us

Public Relations

mhm_info@mhm-global.com

+81-3-6212-8330

www.mhmjapan.com