Property Tenure/Ownership

Major Property Legislation

Property Law in Vietnam is governed by the:

• Constitution;
• Land Law¹;
• Housing Law;
• Planning Law;
• Construction Law;
• Law on Investment; and
• Law on Real Estate Business,
as well as numerous other implementing decrees, circulars and other legislative instruments issued under those laws. Such laws cover:

• investment, zoning, planning, building;
• real estate business;
• land use right and property titles;
• leasing; and
• taxation.

Under this legislation, the state agencies responsible for managing and monitoring land use, real estate business and construction in Vietnam include:

• The Ministry of Natural Resources and Environment (‘MONRE’);
• The Ministry of Construction (‘MOC’); and
• Provincial/City People’s Committees (‘Local PC’).

Operational Requirements for Foreign Corporations

All foreign corporations conducting business activities in Vietnam must undertake their investment in accordance with the Law on Investment. A foreign investor investing in Vietnam for the first time must have an investment project specifying, inter alia, the location of the project, the required land area and the land acquisition plan. The licensing authority evaluates the feasibility of the investment project for the issuance of an investment certificate. The first investment certificate for a foreign-invested enterprise (‘FIE’) in Vietnam is also its certificate of incorporation and business registration. An FIE must subsequently register for a tax code and seal with the relevant departments of the Local PC for its full and lawful operations. The FIE then can enter into the land lease agreement with the provincial people’s committees or infrastructure developers.

There are two methods in which a foreign corporation can participate in real estate business activities and/or acquire land use rights in Vietnam.

• establishing a wholly foreign-owned entity in Vietnam. The project entity may enter into a lease agreement directly with the state authority for the duration of the investment project, with rent being paid annually or on a lump sum basis; or
• establishing a joint venture with a Vietnamese entity that leases land from the state and subsequently contributes the value of the land use right to the joint venture.

Real estate business is a conditional business in Vietnam. An enterprise undertaking real estate business activities must have chartered capital (akin to equity) of at least VND 6 billion (approximately USD 290,000). In addition, the investors’ ownership capital must account for at least:

• 20% of their total invested capital for the projects in new urban areas or industrial parks;
• 15% for residential projects of under 20 ha; and
• 20% for residential projects of over 20 ha.

The current laws on real estate business mandate that those organizations and individuals permitted to provide real estate brokerage business services and real estate trading floors must have internationally recognized licenses. Individuals who wish to register a real estate brokerage and obtain the relevant practicing certificate must satisfy certain conditions and successfully complete a trading course in real estate brokerage (for a real estate broker’s certificate) and property assessment (for a real estate valuer’s certificate). Real estate brokers and real estate valuer’s certificates issued in foreign countries will be recognized in Vietnam.

Existing investors may now assign or transfer new urban area development projects, residential projects and projects for development of industrial zones to other investors, subject to prescribed conditions and approval from competent authorities. Some conditions for assignment of the projects include:

• projects not belonging to subjects recovered under the law;
• projects having been duly approved;

¹A new Land Law was passed on 29 November 2013, and will take effect as from 1 July 2014 (‘Land Law 2013’), replacing the existing Land Law 2003.
• the investors having legitimate land use rights, either in the form of a land lease or a land allocation; and
• compensation and site clearance having been completed for the whole project or for the relevant phase of the project.

Foreign Investment Incentives

• Newly established enterprises from:
  - investment projects in areas with specially difficult socio-economic conditions, economic zones and in hi-tech zones;
  - investment projects in high-technology, scientific research and technological development sectors;
  - investment projects in the development of especially important infrastructure facilities of the state and the production of software products;
  - investment projects in the cultivation of high technologies and hi-tech enterprises;
  - high-risk investment in the development of high technologies in the list of prioritized high technologies;
  - hi-tech enterprises and agricultural enterprises that apply high technologies;
  - investment projects in production which satisfy certain criteria in relation to capital, total revenue, and labor; and
  - the sectors of education and training, occupational training, healthcare, culture, sport and the environment,

shall be exempted from corporate income tax (‘CIT’) for a maximum period of four years and shall be entitled to a 50% reduction of the amount of CIT payable for a maximum period of nine subsequent years from the first year in which the enterprise has taxable income.2

• The newly established enterprises from investment projects in areas with difficult socio-economic conditions and in industrial zones shall be exempted from CIT for a maximum period of two years and shall be entitled to a 50% reduction of the amount of CIT payable for a maximum period of four subsequent years from the first year in which the enterprise has taxable income.

• The normal CIT rate is 25%. The preferential rates of 10%, 15% and 20% apply to investment projects that satisfy certain conditions, such as investment in certain fields of business and/or encouraged geographical locations.

• An import duty exemption on equipment, machinery and specialized vehicles (including spare parts, accessories, etc) imported for creating the assets of the project, as well as fuel, raw materials and supplies imported for implementing the project.

• Protected intellectual property rights, technical know-how, technological processes and technical services required to implement the project will be exempt from payment of taxes relating to technology transfer or income derived from royalties.

Restrictions on Foreign Property Ownership

The state grants various types of ownership and quasi-ownership interests in respect of land in Vietnam to various persons and entities, including:

• Vietnam-domiciled companies being:
  - fully Vietnamese-owned;
  - fully foreign-owned; or
  - partly Vietnamese-owned and partly foreign-owned; and
• individuals being:
  - Vietnamese citizens and residents;
  - Vietnamese individuals residing overseas; and
  - in limited circumstances, foreign individuals residing in Vietnam.

In Vietnam, there are two broad categories of ownership, or quasi-ownership, interests that can be held in respect of real property, namely:

• ‘land use rights’ (‘LURs’), which relate to land and entitle the holder exclusively to use and deal with the land in a specified manner; and
• ‘ownership of houses and assets attached to land’ (‘building ownership’), which relates not to the land itself, but to the buildings and other structures attaching to land.

There are two main categories of LURs that may be held in Vietnam, being:

• land allocated by the state (‘allocated land’); and
• land leased by the state (‘state leased land’).

A subset of allocated land is land recognized by the state as having been stably used by persons or entities over a lengthy period (‘stable use land’).

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2Article 13, 14 of the Law on Corporate Income Tax No. 14/2008/QH12 passed by the National Assembly on 3 June 2008, as amended by Law No. 32/2013/QH13 dated 19 June 2013, on the amendments to the Law on Corporate Income Tax.
Until recently, different types of ownership or quasi-ownership interests in land as well as buildings and structures attached to land were evidenced by different kinds of certificates. A unified certificate ('unified certificate') may evidence that its holder enjoys:

- LURs in respect of the land specified in the unified certificate;
- ownership of the house/s or apartment/s specified in the unified certificate;
- ownership of the construction works specified in the unified certificate; or
- ownership of the ‘artificial forest’ (‘plantation’) specified in the unified certificate (for production purposes).

The holding of LURs in the form of allocated land is to be regarded as being the closest approximation to freehold interests available in Vietnam. LURs in the form of allocated land can be allotted for a fixed term or an indefinite term. It must, however, be remembered that holding LURs in the form of allocated land is technically not tantamount to freehold ownership, as the Constitution of Vietnam specifies that all land in Vietnam is owned by all of the people of Vietnam and is administered by the state on behalf of the people.

The holding of LURs in the form of state leased land is to be regarded as a type of quasi-ownership interest, notwithstanding that such rights are technically leasehold rights. State leased land is generally leased to the Vietnamese LUR holder for a term of between 50 and 70 years, with such lease terms renewable only at the discretion of the Department of Natural Resources and Environment or other relevant government authority. As a general rule, fully or partially foreign-owned companies are not granted LURs in the form of allocated land (except in the event that the land is to be used for residential housing projects for sale and/or lease), but are granted LURs in the form of state leased land or land subleased from the licensed infrastructure developers.

In both land rental scenarios, an FIE is issued with the unified certificate for a term of the land lease not exceeding the investment term provided in the FIE’s investment certificate, which is usually not longer than 50 years. The FIE can either directly lease the land from the provincial or municipal people’s committees, or sublease the land with the constructed infrastructures from the licensed infrastructure developers in the industrial, export processing zones.

The provincial or city people councils have the authority to annually set out the land value list applicable in their province or city. The land values are used as the base prices to determine the applicable rents in accordance with the location and grade of the land.

It should also be noted that interests in the land or the buildings or assets attached to the land can be held in the form of leases from various different kinds of lessors not being the state. The LUR of a foreign investor varies depending on the payment arrangements of the land rental. The Land Law 2013 contemplates two payment arrangements of land rentals:

- annual rental payment ('annual payment');
- one-off payment of rental for the entire lease term ('one-off payment').

Under a land lease for the annual payment, the FIE has the following rights:

- use the assets on the land as secured assets under security arrangements (including mortgages, guarantees) in favor of credit institutions licensed to operate in Vietnam, and use the assets on land as a capital contribution in a company;
- assign or transfer the assets on land under the FIE’s ownership to Vietnamese and foreign entities upon satisfaction of certain statutory requirements;
- lease a residential house or apartment on land, provided that the FIE has been licensed to develop and lease residential real estate in Vietnam.

While an FIE only has limited rights over the assets on the land under the annual payment regime, an FIE adopting the one-off payment regime can enjoy a broader scope of rights in relation to LUR and assets on the land, as follows:

- use the LURs and assets attached to the land as secured assets under a security interest arrangement (mortgage or guarantee) in favor of licensed credit institutions in Vietnam during the term of the land lease;
- assign the right to use the leased land and the assets owned by them, attached to the land, during the term of the land lease;
- sublease the LUR and the assets owned by them, attached to the land, during the term of the land lease; and
- make capital contributions using the LUR and the assets owned by them, attached to the land, to engage in business or production cooperation during the term of the land lease.

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3Article 55.3 of Land Law 2013.
4Article 183.2 of Land Law 2013.
5These requirements include, inter alia, the assignor having completed construction of the assets attached to the land in accordance with the registered investment project; and the assignee having lines of business which are in compliance with the registered investment project of the assignor.
6Article 183.3 of Land Law 2013.
An FIE that has been granted an investment certificate in relation to a specific residential urban development project is allowed to assign the LUR, with respect to independent houses and/or villas, to eligible house owners, provided that such FIE has completed the construction of the infrastructure and satisfied all of the criteria to assign the LUR in accordance with the approved real estate development project. In such case, the LUR assignees will be granted the certificate over the LUR and the assets on land (if any), i.e., the unified certificate. In addition, a master real estate developer in a residential urban development project with completed infrastructure may transfer the LURs in relation to subconstruction works in the approved project to another corporate entity for the later entity to continue the subproject developments.

An FIE can sublease land from the licensed infrastructure developers in the industrial zones, high-technology zones and economic zones under either the annual payment or the one-off payment method for the entire term of the land lease, subject to the approval of the relevant state management authorities (‘SMAs’). While the rights of an FIE over the subleased land under the annual payment method are limited to the use of only assets attached to land as the collateral and capital contribution into another entity during the sublease term in accordance with the approval of the SMAs, the FIE adopting a one-off payment of land rentals can enjoy broadened rights and benefits in relation to not only the assets on the land, but also the land use right. Any assignment of the LUR during the sublease term in an industrial zone, high-technology zone and economic zone must be subject to the approval of the relevant SMA and the developer. Upon the approval of the relevant SMA, the assignor shall terminate the existing land sublease agreement, and the assignee shall enter into a new land sublease agreement with the developers for the remaining term of the land sublease. If the assignor has paid in full the land rentals for the entire land sublease term, the assignee will not need to pay any further land rental.

In build-operate-transfer (‘BOT’) projects and public private projects (‘PPPs’) in the infrastructure sector, the state shall allocate or sell the land to a BOT enterprise or a PPP enterprise. BOT/PPP enterprises shall be exempted from land use fees with respect to the allocated land or land rental, in relation to the leased land for the entire project duration. It remains unclear under the Land Law 2013 whether a BOT/PPP enterprise is permitted to mortgage the land use right in favor of the foreign lender.

It is important to note that land users for the land acquired for public purposes by way of land allocation by the state in certain specified circumstances will not be issued with a unified certificate. This is a major legal impediment that needs to be addressed to facilitate external debt funding from financiers for the development of public service projects in Vietnam if no certificate over the LUR will be given to the foreign investors and FIES.

Pursuant to Article 66.1 of Decree 88, land users have not been able, since 1 January 2008 onwards, to exercise their land rights or otherwise to grant a mortgage over the relevant LURs, unless they possess an LUR certificate.

The newly amended Housing Law permits foreign organizations and individuals within certain categories to purchase and own residential houses in Vietnam. A foreign individual shall be permitted to own one apartment in a residential apartment building for a maximum period of 50 years and must, inter alia, be currently living in Vietnam. Foreign individuals must also have permission from the competent state body of Vietnam to reside in Vietnam for a period of at least one year.

Enterprises with foreign-owned capital shall be permitted to own numerous apartments in a residential apartment building for people working at such enterprise for a period corresponding to the duration stipulated in its issued investment certificate, including any extended duration.

Foreign Exchange Controls

Vietnam has historically imposed exchange control mechanisms designed to limit foreign currency outflows, generally requiring the use of the Vietnamese dong (‘VND’) for domestic transactions and for channeling the flow of foreign currencies into the banking system. The use of gold is also regulated. Vietnam’s foreign exchange control policy is administered primarily by the State Bank of Vietnam.

The buying and selling of foreign currency must be conducted through a licensed commercial bank permitted to undertake foreign exchange business activities. The State Bank of Vietnam does not guarantee the exchange of VND to foreign currency. Most projects have to self-balance their foreign exchange requirements.

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FIEs are generally allowed to repatriate profits from business operations and are allowed to make outward remittances of foreign currency for the purchase of raw materials and supplies, as well as the provision of services, licensed technology transfers, payments of principal and interest on offshore loans registered with the State Bank of Vietnam, salaries and payments of other legally owed sums of money and assets. Upon termination or dissolution of a business enterprise, foreign investors may repatriate their capital. Remittances must be made through certain registered accounts opened at authorized banks licensed to operate in Vietnam.

Vietnam maintains a managed floating exchange rate regime, under which the rate of exchange of US dollars to Vietnamese dong is adjusted according to market forces, subject to parameters set by the State Bank of Vietnam.

Under the current managed floating exchange rate regime, the State Bank of Vietnam sets the official US dollar to Vietnamese dong exchange rate daily by averaging rates from the previous day’s interbank foreign exchange transactions.

**Taxes on Possession and Operation of Real Estate**

Under the regulations of taxes on housing and land, as the FIEs have to pay land rental, the tax on land does not apply to FIEs. In Vietnam, there is no tax levied on the ownership of a house.

**Taxes on Acquisition and Transfer of Real Estate**

Income from real property transfers shall comprise income from the transfer of a right to use or lease land and income from subleasing land by enterprises that conduct real property business, as stipulated in Land Law 2013 regardless of whether the land has infrastructure, buildings or engineering works located on it.

The amount of CIT payable in any tax assessment period for activities relating to the assignment of real property shall be equal to assessable income from such activities multiplied by the tax rate of 25%.

Income from an assignment of real property must be calculated separately to declare and pay tax, and the incentive tax rates and incentives on the exemption and reduction of tax shall not apply. Losses from activities of real property assignments shall not be deductible against other income relating to production and business activities, but these losses may be carried forward to taxable income from real property assignment activities in subsequent years. Losses may be carried forward for a maximum period of five consecutive years as from the year following the year in which the loss arose.

**Stamp Duty**

All property documents and transactions, and all property instruments including contracts for sale and purchase, mortgages and leases, must be notarized by a licensed public notary officer. The notarization fee is determined in accordance with the value of the transaction, but the maximum fee is VND 10 million (approximately USD 480) per transaction.

In addition, stamp duties are imposed on the transfer of land and/or property. Conveyance stamp duty is levied on the value of actual sales that are not lower than the standard price provided by the local authorities. The stamp duty on the transfer of a land use right and property is 0.5% of the value of the sales.

**Capital Gains Tax**

Capital gains are treated as ordinary income and are subject to personal income tax or corporate income tax. The income of an enterprise from a capital assignment refers to the income receivable from an assignment of a part of or the enterprise’s entire capital already invested in it to one or more other organizations or individuals (including the sale of the entire enterprise). The CIT rate applicable to income from a capital assignment and from transfers of securities is 25% of the profit.

\[\text{Income from capital assignment} \times 0.25\]

5In the following exceptional cases, a contract for a residential house is not required to be notarized:

(a) an individual leases a residential house for less than six (6) months;
(b) the seller or lessor of a residential house is an organization that is registered to conduct residential housing business;
(c) the contract is for the ‘hire-purchase’ of a residential house under social housing; or
(d) a residential house is being donated by an organization.
Value Added Tax/Goods and Services Tax
A broad based consumption tax called the value added tax is levied at 10% on a wide range of goods and services.

Tax Depreciation
The Vietnam government considers depreciation to be a cost and expense that is deductible for the purpose of determining taxable income.

Enterprises must register with the tax office directly managing them the method of depreciation for fixed assets that they are choosing to apply before applying that method. Each year, enterprises shall make their own decision on the level of such depreciation in accordance with the current regulations of the Ministry of Finance on the depreciation of fixed assets, including where they adopt the accelerated method. In the course of their operations, enterprises may change the level of depreciation so long as it remains within the stipulated levels, but enterprises may not make any such change after lodging their declaration on finalization of CIT for that year.

Corporate Taxation
A resident corporation is subject to a corporate income tax on taxable income at a flat rate of 25%.

Personal Taxation
Under the tax system, personal income tax is levied on the aggregate income of an individual during the calendar year on both regular and irregular income. All individuals are required to declare their taxable income for the annual finalization of income tax.

Real Estate Investment Trusts
Real estate investment funds (REIFs) have been officially permitted in Vietnam since 15 September 2012, when Decree No. 58/2012/ND-CP of the Government, providing for the implementation of the Amended Law on Securities, came into force. A REIF must maintain 65% or more of its total asset value in real estate. The remaining portion of the asset value can be invested into valuable papers, securities and government bonds. In addition, REIFs are not allowed to directly develop any real estate development projects, provide any financing or guarantee for any real estate project.

Tax Treaties: Avoidance of Double Taxation
The following jurisdictions have entered into a tax treaty with Vietnam:

Australia       Laos
Algeria         Luxemburg
Austria         Malaysia
Bangladesh      Mongolia
Belarus         Morocco
Belgium         Myanmar
Bulgaria        North Korea
Burma           Norway
Canada          Oman
China           Pakistan
Cuba            Philippines
Czech           Poland
Denmark         Qatar
Egypt           Republic of Seychelles
England         Romania
Finland         Russia
France          Singapore
Germany         Slovakia
Holland         South Korea
Hong Kong       Spain
Hungary         Sri Lanka
Iceland         Sweden
India           Switzerland
Indonesia       Taiwan
Ireland         Thailand
Israel          Ukraine
Italy           United Arab Emirates
Japan           Uzbekistan
Kuwait          Venezuela
### Common Terms of Lease for Tenancy Agreements

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<th>Unit of Measurement</th>
<th>Square Meters</th>
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**Rental Payments**

- **Rents**: USD/sqm/month on gross or net area
- **Typical lease term**: 2–3 years
- **Frequency of rent payable (in advance)**: Quarterly
- **Typical rent deposit (expressed as x months rent)**: 3 months gross rent
- **Security of Tenure**: Only for the duration of the tenancy, no guarantee beyond the original lease term
- **Does tenant have statutory rights to renewal**: No
- **Basis of rent increases or rent review**: Open market rental value OR fixed increment agreed at the outset of the lease
- **Frequency of rent increases or rent review**: At lease renewal or every 2–3 years

**Service Charges, Operating Costs, Repairs & Insurance**

- **Responsibility for utilities**: Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption is included in the management charges
- **Car parking**: Allocation is based on one parking lot per 300sqm, it is held under a separate monthly lease for an additional rent
- **Responsibility for internal repairs**: Tenant
- **Responsibility for repairs of common parts (reception, lifts, stairs, etc)**: Landlord responsible but costs charged back to tenant via service charge
- **Responsibility for external/structural repairs**: Landlord responsible but costs charged back to tenant via service charge
- **Responsibility for building insurance**: Landlord

**Disposal of Leases**

- **Tenant subleasing & assignment rights**: Generally prohibited unless to a subsidiary company of the tenant (subject to landlord approval)
- **Tenant early termination rights**: Only by break clause usually subject to penalty
- **Tenant’s building reinstatement responsibilities at lease end**: Reinstated to original condition

Source: JLL