



SPECIAL EDITION: KEY NOTES FROM THE NEW LAW ON LAND 2024

LAW BULLETIN

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— WELCOME —

WORDS FROM MANAGING PARTNER

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More rights for overseas Vietnamese

Law on Land 2024 facilitates overseas Vietnamese in comparison to Law on Land 2013 when dividing this group of Vietnamese into two separate groups by nationality, there are: (1) overseas Vietnamese (with Vietnamese citizenship), and (2) overseas persons of Vietnamese descent (without Vietnamese citizenship).

Specifically, group (1) has full rights regarding land – all the same as domestic Vietnamese citizens, and group (2) maintains the rights regarding land of “overseas Vietnamese” of Law on Land 2013 which supplements several new rights. In other words, group (2) has rights as follows:

- Receiving land use rights for “residential land” in the form of purchase, hire-purchase, receipt of inheritance, receipt of gifts being

residential housing attached to such land use rights;

- Receiving the land use rights for “residential land in projects on development of residential housing”;
- Receiving inheritance of land use rights for “residential land and other types of land” within the same land lot with residential housing under civil laws;
- Receiving gifts being residential housing attached to land use rights of heirs under civil laws.

These new rights are expected to facilitate the involvement of overseas Vietnamese in the real estate market and the growth of remittances for economic growth.

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Land expropriation for socio-economic development

Article 62 of Law on Land 2013 classifies the cases of land expropriation for socio-economic development in the national and public interests based on the classification of the decision-making bodies including:

- the National Assembly;
- the Prime Minister;
- the provincial People's Committee.

However, in practice, such regulation in Law on Land 2013 creates the challenge that there are many different interpretations by local authorities, which leads to a myriad of inappropriate cases of land expropriation and causing the law suits and claims against administrative authorities.

Based on the rule of “ensuring fairness and transparency”, under Resolution 18/NQ-TW, Law on Land 2024 provides 31 “specific” cases of land expropriation for socio-economic development in the national and public interests in Article 79 of this Law.

Additionally, this Article “foresees” that there may be cases of land expropriation for socio-economic development other than the 31 mentioned cases. Thus, this Article further provides that such cases shall be decided upon by the National Assembly through an “abridged procedure” and shall ensure the principle of “strictly necessary” of the 2013 Constitution of Vietnam.

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Clarifying overlapping provisions on auctions and bidding

Article 118 of Law on Land 2013 provides specific methods of land allocation and land lease: (i) through land auction, and (ii) without land auction. Beyond such cases, Law on Land 2013 does not provide any case of land allocation and land lease through competitive bidding.

However, Decree No. 25/2020/ND-CP dated 28 February 2020 of the Government detailing the implementation of several provisions in the Law on Bidding regarding investor selection and Decree No. 31/2021/ND-CP dated 26 March 2021 of the Government detailing and guiding the implementation of several provisions in the Law on Investment provide for cases of granting land without land auction under land laws to selected investors through competitive bidding. It creates a contradiction among the laws, including: the law on land, the

law on bidding, and the law on investment. Additionally, cases of granting land to the selected investor through competitive bidding do not match any case of granting land without land auction under Article 118 of Law on Land 2013. For a long time, this contradiction creates challenges for enterprises and local authorities to choose appropriate methods of land allocation and lease to implement projects involving land, thereby affecting project implementation.

Law on Land 2024 acknowledges and addresses such contradiction by providing three specific methods of land allocation and lease, including: (i) without land auction and competitive bidding (Article 124); (ii) through land auction (Article 125); (iii) through competitive bidding (Article 126).

➤ [Law on Land 2024](#)

Land for rent with lumpsum payment

Law on Land 2024 provides for a certain number of cases of land for rent in which a lumpsum payment may be made under Article 120 of this Law, including:

- Using land for projects of agriculture, forestry, aquaculture, and salt production;
- Using land of industrial zones, industrial groups, hi-tech zones, housing units for workers in industrial zones; using land for public purposes attached to commercial purposes; and using commercial land for business activities regarding tourism or office;
- Using land for construction of social housing units for rent under the laws on housing.

The above cases may be considered as the real estate segments facilitated by the State

due to the crucial impact on the economy (agriculture, industry, social housing) or the significant contribution on the national budget (land for business activities regarding tourism or office). Therefore, these real estate segments are listed as cases of land for rent in which lumpsum payments may be made. It helps enterprises to pre-estimate the total rental payment which shall be made for the entire life of the project to decide the business operation.

Additionally, it is more favorable for these enterprises to mobilize capital in which such enterprises are entitled to mortgage such land to get bank loans. It is noteworthy that the party who rents such land has another option in which annual payments may be made.

➤ [Law on Land 2024](#)





Right to rent under land lease contract

The practice in Vietnam illustrates that the regulations regarding land for rent with annual payments under Law on Land 2013 causes several disadvantages regarding the land use rights market. To address the above concerns, Law on Land 2024 provides a new right of “right to rent under land lease contract” for investors who make annual rental payments. This new right makes the transactions of land use rights more flexible, thereby promoting the land use rights market, and thus, the state budget income will increase through the transfer of taxes and fees transactions regarding this right.

According to Clause 37 Article 3 of Law on Land 2024: *“right to rent under land lease contract” means the land user’s rights established when the State leases out with annual land rent payments. The land user is entitled to convey his/her rights to lease in the*

land lease contract; the conveyee is entitled to inherit the land user’s rights and obligations according to this Law and other relevant laws”.

However, according to Article 34, Article 37, Article 41 and Article 46 Law on Land 2024, the transaction of “right to rent under land lease contract” is only valid if:

- The land user made advance payment of land compensation, support, and resettlement which had not been fully deducted from the rental payment;
- The land user shall not transfer, lease, sublease, bequeath, or donate the “right to rent under land lease contract” without properties attached to the relevant land, except the land user who is an individual sub-lessor.

[▶ Law on Land 2024](#)

More options to mortgage land use rights

Law on Land 2013 does not mention any mortgagee (other than credit institutions) of land use rights of economic organizations, though the Civil Code 2015 and other laws do not prohibit it.

It raises a problem of concern for such mortgagees, because many notary organizations do not accept notarization of mortgage contracts. Furthermore, many land registry offices only receive the land documents of credit institutions.

Additionally, the capital flows into the real estate market in Vietnam has significantly depended on commercial bank loans. The promotion of capital sources other than traditional loans from credit institutions will help enterprises more flexibly in preparing

their financial plan. The bond issuance market thereby becomes more sustainable.

On this basis, Law on Land 2024 affirms that mortgagees of land use rights of domestic economic organizations shall include not only credit institutions, but also individuals and other domestic economic organizations. This affirmation is consistent with the Civil Code 2015 and other related laws.

It is noteworthy that Law on Land 2024 continues to reject the branches of foreign banks as mortgagees, because the drafting committee argues that it remains to be a legal and national security risk on this issue, and thus, further research and policy experimentation should be conducted.

▶ [Law on Land 2024](#)





Land for underground works

Law on Land 2024 addressing the shortcomings and encouraging the development of underground works, as follows:

- Issuing a certificate “for ground’s surface areas” for construction of works assisting the operation, utilization and use of underground works, and “for underground works below that surface” (Article 216.6);
- The user of ground’s surface for underground works is entitled to transfer, lease or sublease underground space, after such space is determined by the State under laws (Article 216.2);
- The construction of works on the ground’s surface assisting the operation, utilization, and use of underground works is considered a case allowing land expropriation for socio-economic development in the national and public interests (Article 79.30);
- Registration for changes if there are “changes in land use rights of a ground’s surface” for construction of works assisting the operation, utilization and use of underground works and “changes in ownership of underground works” (Article 133.1);
- Policy of exemption from and reduction of land use and land rent fees for cases of using a ground’s surface for construction of works assisting the operation, utilization and use of underground works (Article 157.1(dd));
- Distinguishing the ground’s surface for construction of works assisting the operation, utilization and use of underground works for “commercial purposes” (Article 216.5).

➤ [Law on Land 2024](#)

Land disputes may be settled in domestic Arbitration

The Civil Procedure Code 2015 provides in Article 470 that Vietnam's courts have exclusive jurisdiction over civil cases including foreign elements related to the rights over real estate on the territory of Vietnam. In practice, there are many interpretations of this regulation, including:

- Only excluding the jurisdiction of the foreign courts;
- Only excluding the jurisdiction of the foreign courts and foreign arbitration;
- Excluding the jurisdiction of the foreign courts and all types of arbitration (domestic and foreign arbitration).

In the explanation report No. 631/BC-KHXX dated 31 December 2014 and issued by the Institute of Judging Science of the Supreme People's Court, the Supreme Court stated that

there shall be no exclusion of the jurisdiction of Vietnam's arbitration over the exclusive jurisdiction of Vietnam's courts. However, due to the lack of express regulation, the arbitral institutions in Vietnam have struggled with the problem of whether to receive cases related to land including foreign elements or not. Therefore, this affirmation in Law on Land 2024 provides a clear basis for the arbitral institutions in Vietnam to receive cases arising from commercial activities related to land and including foreign elements, where the involvement of foreign investors becomes increasingly visible in Vietnam's real estate market. It is expected to contribute significantly to Vietnam's arbitration which has growth potential.

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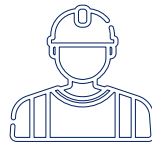
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