

LEGAL UPDATE

April 2024

NEW LAND LAW: KEY CHANGES FOR FOREIGN INVESTORS**KEY TAKEAWAYS**

- On 18 January 2024 Vietnam enacted the new land law that will replace the existing law on 1 January 2025.
- The New Land Law largely maintains the core policies established by the current land law. However, it provides further details to these frameworks and adds some new policies to make the law more practically applicable.
- There are some changes in the new land law that impact foreign investors. Most notable changes encompass the new regimes on land lease.
- The new law recategorizes foreign-invested companies, granting local company treatment to those previously subject to land transaction restrictions. Notably, only companies with foreign ownership exceeding 50% of charter capital will be considered foreign-invested companies (and are subject to restrictions) under the new law. Nevertheless, the practical application of this change remains to be seen.
- Additionally, the new land law provides changes to the types of land users, name of the title deed and its issuing agencies, and new ADR options for disputes arising from commercial activities related to land.

OVERVIEW

On 18 January 2024, the Vietnam's National Assembly passed Law No. 31/2024/QH15 on Land ("New Land Law") which will substantially replace the current Law on Land of 2013 ("Current Land Law") on 1 January 2025.

The New Land Law largely maintains the core policies established by the Current Land Law. However, it provides further details to these frameworks and adds some new policies to make the law more practically applicable. These technical changes appear in all chapters of the new law, ranging from adding more definitions, streamlining the types of land users and their related rights and obligations, to land zoning and planning, land allocation and lease from the government and their payments, land registration, withdrawal, expropriation and compensation, and introducing a new regime for land-related commercial disputes.

This article presents key changes in the New Land Law which impact foreign investors.

NEW REGIMES ON LAND LEASE

The New Land Law delegates more power to local governments, particularly the provincial and central city People's Committees. In line with this, the New Land Law abolishes the land price frames/brackets (in Vietnamese: *khung giá đất*) provided in the Current Land Law, which the central government issues them every five year. Local governments base their land price lists (in Vietnamese: *bảng giá đất*) on these frames. Under the New Land Law, provincial People's

Committees, through their designated councils, will determine the land price list and specific land prices (in Vietnamese: *giá đất cụ thể*).

Land price frames are used in several circumstances, including:¹

- (a) Calculation of land rent when the State leases land and collects annual land rent;
- (b) Calculation of land use fees and land rent when the State recognizes land use rights in the form of land allocation with land use fee collection, land lease with one-time land rent collection for the entire lease period for households (where applicable) and individuals;
- (c) Calculation of the starting price for auctioning land use rights when the State allocates or leases land in cases where the land plot or land area has been invested in technical infrastructure according to detailed construction planning;
- (d) Calculation of land use tax; and
- (e) Calculation of income tax from land use rights transfer for households (where applicable) and individuals.

The New Land Law mandates that provincial/city People’s Committees develop and submit the first land price list for approval to the People’s Council at the same level. This list will be announced and applied from 1 January 2026. Subsequently, the provincial People’s Committee will submit a proposal annually to the People’s Council for adjusting, amending, and supplementing the land price list, as necessary. Any adjusted list will then be announced and applied from January 1 of the following year.

Specific land prices are determined and applied in certain circumstances, including:²

- (i) Calculation of land rent when the State leases land and collects a one-time rent for the entire lease period, except through auction of land use rights;
- (ii) Calculation of land use fees for organizations when the State: (i) allocates land with collection of land use fees without auctioning land use rights or without bidding to select investors to implement projects; (ii) allocates land with collection of land use fees for the winning investor or an economic organization established by the winning investor to implement a project; and (iii) recognizes land use rights or allows a change of land use purpose which require payment of land use fees;
- (iii) Determination of the starting price for auctioning land use rights when the State allocates or leases land, except for the case specified in Item (c) above;
- (iv) Calculation of land use fees and land rent when extending land use, adjusting land use term, adjusting detailed construction planning; or when allowing conversion of land use; and
- (v) Calculation of compensation when the State withdraws/recovers land.

Provincial and central city People’s Committees set “specific land prices” for companies and

¹ Article 159.1 of the New Land Law.

² *Id.*, Article 160.1.

organizations, while district-level People's Committees set them for individuals.

Determination of a land price frame and a specific land price is based on the application of one of the following methods:³

- (a) Price comparison;
- (b) Net income from land;
- (c) Surplus from land development; and
- (d) Land price adjustment coefficient method (by multiplying the land price in the land price list with the land price adjustment coefficient). The land price adjustment coefficient is determined through comparing the land price in the land price list with the market land price.

Article 158 of the New Land Law provides further details on the definitions and application circumstances for each land price determination method.

It's important to note that annual land rent remains stable for a 5-year cycle, starting from the time the local government grants the land lease. Land rent for subsequent cycles is then calculated based on the land price list in effect during the year the new rent is determined. If the new rent is higher than the previous cycle's rent, the payable amount will be adjusted, but not by more than a government-prescribed rate. This rate cannot exceed the total annual national Consumer Price Index (CPI) for the preceding 5 years.⁴

LEGAL STATUS OF FOREIGN INVESTORS

The New Land Law introduces a new definition for foreign investors acquiring land in Vietnam. Previously, under the Current Land Law (Article 5.7), any foreign-invested enterprise/company qualified as a foreign investor, regardless of the foreign ownership share. This included wholly foreign-owned companies, joint ventures, and companies with foreign share purchases.

The key change is that the New Land Law (Article 3.46) now defines a foreign investor as an "economic organization with foreign investment capital" ("**FIC**") **only if** it "meets the conditions and carry out the investment procedures" outlined in the Law on Investment of 2020 ("**LOI**"). Put simply, companies that must not meet the statutory conditions and carry out investment procedures are not considered FICs, even if they have foreign investment.

Article 23.1 of the LOI requires a foreign investor which invests in Vietnam in the form of setting up a wholly-foreign owned subsidiary or forming a joint-venture company with a local partner or purchasing shares in a local company in which the foreign investor holds more than 50% of the shareholding equity in the target company (i.e., the subsidiary, joint-venture company or the local company whose shareholders have sold 50% or more of their shares to the foreign investor) must carry out the investment procedures set out in this law. Put simply, a company in Vietnam having a land plot with more than 50% of its shares owned by a foreign investor(s) is considered as an FIC under the New Land Law. A company with a foreign shareholding of less than the 50% threshold

³ Article 158.5 of the New Land Law. Some of the methods have been previously introduced in the guiding legislation of the Current Land Law.

⁴ Article 153.3 of the New Land Law.

is not considered an FIC and is treated as a local company in land-related transactions.

It is important to note that an FIC faces certain restrictions in land-related transactions under the New Land Law. Those restrictions include: (i) purchasing of land plots from Vietnamese individuals; and (ii) mortgaging a land plot with an individual or general business company (other than a bank).⁵

While the New Land Law significantly changes the definition of an FIC, the practical implications for foreign-invested companies that don't qualify as FICs remain unclear. As is sometimes the case with new policies in Vietnam, local agencies may interpret the law differently. This lack of clarity could create challenges during implementation.

OTHER NOTABLE PROVISIONS

In addition to the aforementioned provisions, the New Land Law also includes the following notable changes:

- (a) **Abolition of household as a type of land users:** The New Land Law reflects the changes introduced by the 2015 Civil Code, no longer recognizing “households” as a distinct type of land user in land-related transactions.⁶ Instead, the New Land Law introduces the category of “group of land users” (in Vietnamese: *nhóm người sử dụng đất*).⁷ It is worthy of note that households are still mentioned here and there in the New Land Law to regulate future transactions of the households who were previously recognized as land users under the Current Land Law.
- (b) **New name of the title deed:** The New Land Law introduces a new name for the land title deed. Previously issued under the Current Land Law, the “Certificate of Land Use Rights, Ownership of House and Other Assets Attached to Land” (commonly known as the Pink Book) is now called the “Certificate of Land Use Rights and Ownership of Other Assets Attached to Land” (in Vietnamese: *Giấy chứng nhận quyền sử dụng đất, quyền sở hữu tài sản gắn liền với đất*) (“**New Pink Book**”).

It's important to note that land users with existing Pink Books or previous title deeds do not need to apply for a New Pink Book unless they choose to do so.⁸

- (c) **Streamlining the authorities issuing the New Pink Book:** The New Land Law streamlines the process for issuing the New Pink Book by consolidating the authorized government agencies. Under the new system, provincial and central city People's Committees will be responsible for issuing New Pink Books. Specifically, provincial-level committees will handle issuance for organizations and companies, while district-level committees will issue them to individuals and communities.⁹ This change eliminates the previous authority of boards of management for high-tech and economic zones to issue Pink Books.

⁵ Articles 28.1(b), 33.1(dd) and 34.1(b) of the New Land Law.

⁶ *Id.*, Article 4, which lists the types of land users.

⁷ *Id.*, Article 27.2.

⁸ *Id.*, Article 256.3.

⁹ *Id.*, Article 136.

- (d) **Introduction of new alternative dispute resolution bodies in resolving disputes over land with commercial purposes:** The New Land Law introduces new options for resolving disputes arising from commercial activities related to land through alternative dispute resolution (ADR) which include:
- (i) **Mediation:** Article 235.3 allows parties to utilize commercial mediation, conducted according to relevant regulations (currently Decree No. 22/2017/ND-CP of the Government dated 24 February 2017); and/or
 - (ii) **Arbitration:** In addition to resorting to court settlement, Article 236.5 allows parties to choose arbitration by the Vietnamese Commercial Arbitration system in accordance with commercial arbitration laws (with the primary legislation is the Law on Commercial Arbitration of 2010 or “LCA”).

It is worthy of note that the term "Vietnamese Commercial Arbitration" is not explicitly defined in the New Land Law or the LCA. While it likely refers to arbitral tribunals established and administered by Vietnamese arbitration centers, it's unclear if it also encompasses ad-hoc tribunals formed under the LCA even if they include mostly foreign arbitrators.

We hope our article has been helpful to you. Please feel free to contact us if you have any further inquiries.

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