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COUNSEL**

Business Law Practitioners



# Guide for the Purchase and Lease of Land in **VIETNAM**

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## Introduction

The structure of land ownership in Vietnam is different from the structure in most countries. In Vietnam, land belongs collectively to the people. Private ownership of land is not allowed and the State / Government holds all ownership powers as the one managing it. However, the laws of Vietnam recognize ownership deriving from holding land use rights (the “**LUR**”), which are similar to having ownership rights.

The land use right certificate (the “**LURC**”) is similar to a deed in most countries. The LURC, unlike a deed, is not a certificate of ownership of land, but a certificate of ownership of the LUR.

While the 2013 Law on Land (the “**LOL**”) allows Vietnamese citizens and domestic companies to acquire (purchase) the LUR from others, foreign investors are not allowed to do so. Foreign investors in Vietnam can obtain LURs (i) by way of capital contribution in the form of the LUR value by the local partner to a joint venture company or (ii) by way of a land lease directly from certain permitted lessors, including the State.

## Land contribution by local parties to joint ventures

Joint ventures in Vietnam have been developed in which local partners contribute their portion of capital in the form of the LUR value (in this case, the land payment must not be sourced directly from the State budget).

Under the current LOL, the Vietnamese party to a joint venture is able to make capital contributions in the form of LURs only if such land is allocated or leased by the Government with all land use fees / land rentals for the entire lease term already collected.

After the joint venture company is incorporated as a result of the issuance of the investment registration certificate and the enterprise registration certificate by the licensing authority, the LURC will be issued to and in the name of the joint venture.

## Land Lease

Instead of obtaining the LUR in the form of capital contributions from the local partner to a joint venture, a foreign investor may consider leasing the land directly from the Government after he/she establishes a foreign owned company (“**FOC**”) in Vietnam.

## Lessors permitted to lease land to FOCs

Article 153.3 of the LOL allows FOCs, which are set up by foreign investors in Vietnam, to lease land from:

- Vietnamese economic organizations, including State owned companies, private joint stock companies, and limited liability companies;
- overseas Vietnamese citizens; or
- an existing FOC which leases land from the Government and develops infrastructure facilities on the land, provided that this existing FOC has paid the land rental for the whole land lease term.

## Lease term

The lease term must be consistent with the duration of the approved project provided that it must not exceed 50 years or, in some special circumstances, 70 years.

Normally, an FOC can hold lease agreements in Vietnam until the termination of their investment project. The extension of the lease term may be allowed by the Government upon expiry if the lessee wants to continue to use the land, provided that: (i) the lessee has complied with the land regulations during its land using period; and (ii) the use of land is consistent with the approved land plan.

## Rights of foreign investors to the land leased

The LURs of foreign investors will vary depending on the payment arrangement for land rentals. Where land is leased from the Government, the LOL contemplates two payment arrangements for land rentals:

- (i) annual rental payment (the “**Annual Payment**”); and
- (ii) one-off payment of rent for the entire lease term (the “**One-off Payment**”).

Under a land lease using an Annual Payment, an FOC may: (i) mortgage the assets owned by them with credit institutions; (ii) sell assets owned by them; (iii) contribute capital using the assets owned by them attached to the leased land.

In addition to the LURs given under the Annual Payment regime, an FOC adopting the One-off Payment regime will have rights as follows:

- (i) To assign the LUR and assets owned by them attached to the land;
- (ii) To sub-lease the LUR and assets owned by them attached to the land;
- (iii) To donate the LUR to the State, to donate the LUR to a community of citizens for construction of works servicing common interests of the community, or to donate charity houses attached to the land in accordance with law;
- (iv) To mortgage the LUR and assets owned by them attached to the land with credit institutions authorized to operate in Vietnam; and
- (v) To contribute capital using the LUR and assets owned by them attached to the land in order to engage in business or production co-operation with organizations, individuals, Vietnamese residing overseas and foreign invested enterprises in accordance with law.

## Assets attached to land

An FOC may purchase assets attached to land (e.g. ready-built building / factory) provided that:

- (i) The assets attached to the leased land are legally formed in accordance with law; and
- (ii) The construction is completed in accordance with the detailed construction zoning and the investment project which were approved and adopted.

The purchasers must satisfy the following conditions:

- (i) Have financial capability to implement the investment project;
- (ii) Have lines of business appropriate to the investment project; and
- (iii) Commit no breach of the LOL in a case where the purchaser was allocated or leased land by the State to implement the previous project.

Further, the purchasers of assets are permitted to continue to lease land from the State for the remainder of the land use term in accordance with the specific land prices and must use land for correct purposes as determined in the project.

Alternatively, instead of making a purchase, an FOC may lease a premises for their business for a determined term from economic organizations, family households and individuals who are legal owners of such assets.

## Buying a property as an individual

The laws of Vietnam allow a foreign individual who satisfies the following two conditions (the “**Eligible Foreign Individual**”) to possess long term ownership of residential housing in Vietnam:

- (i) Being permitted to enter into Vietnam; and
- (ii) Not in the category entitled to preferential rights or diplomatic or consulate immunities.

Particularly, such individual must show his/her valid passport bearing an entry stamp by the immigration authority of Vietnam and that he/she is not a member of a diplomatic mission, consular post, representative offices of international organizations or family member of the same.

## Type of properties permitted to be purchased

The only type of properties which an Eligible Foreign Individual is permitted to own is residential housing (apartment / condo and landed house) within commercial residential housing development projects<sup>1</sup>, except for the zones reserved for ensuring national defense and security (the “**Permitted Commercial Property**”).

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<sup>1</sup> There are some other kinds of residential housing development projects, such as development

## Quotas for Foreign Ownership of the Permitted Commercial Property in Vietnam

Eligible Foreign Individuals may purchase and own no more than 30% of the number of apartments in a given apartment building. If any geographical area with a population equivalent to one administrative ward level has multiple apartment buildings for sale or hire purchase, then Eligible Foreign Individuals are permitted to own no more than 30% of the number of apartments in each apartment building and no more than 30% of the total number of apartments in the administrative ward.

### Term of Ownership

The Eligible Foreign Individual is allowed to own the Permitted Commercial Property for a maximum period of 50 years from the date of issuance of the certificate of land use right and ownership of the residential house and other assets attached to the land (the “**Certificate**”), and such term will be recorded in the Certificate (the “**Ownership Term**”). In case the Permitted Commercial Property is purchased by an Eligible Foreign Individual from the other foreign party, the Ownership Term will be the remaining period of the term recorded in the Certificate previously issued to the foreign party.

Three months prior to the expiration of the Ownership Term, the Eligible Foreign Individual desiring to extend the Ownership Term must submit to the provincial People’s Committee where the Permitted Commercial Property is located the application dossier including:

- (i) Application for extension of the Ownership Term and proposal for specific extension period;
- (ii) Certified true copy of the Certificate.

The provincial People’s Committee will consider extending the Ownership Term within 30 days of receipt of the application dossier. Please note that the Ownership Term is extended once for a **maximum period of another 50 years** as of the expiration of the Ownership Term. In other words, the Eligible Foreign Individual may own Permitted Commercial Property in Vietnam for a maximum period of 100 years in total.

### Lease of Permitted Commercial Property

An Eligible Foreign Individual may lease out the Permitted Commercial Property on the condition that prior to such lease, the Eligible Foreign Individual must provide notice in writing to the housing management authority where the Permitted Commercial Property is located. There is currently no specific guidance from the Ministry of Construction on the provision of such notice to the housing management authority or the types of lease in relation to the lease by an Eligible Foreign Individual. Eligible Foreign Individuals are responsible for paying taxes arising from the lease of the Permitted Commercial Property in accordance with Vietnamese Law. The Permitted Commercial Property is prohibited to be used for purposes other than residential use.

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projects of social residential housing, official residential housing and residential housing for resettlement.

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# Contact Us

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The content of this Purchasing and Leasing guide is current as at December 2021.

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