



Legal Update on Investment in Real Estate 2019

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- Abolishes most of distinctions between local and foreign investors
- In particular, allows foreign investor to own up to 100% of a VN company (including a real estate company) unless otherwise regulated
- Unfortunately in respect of real estate there are still some differences
 - Real estate is a “conditional” investment sector
 - This mean that even if a foreign investor owns less than 51% of a VN real estate company, it still must get approval for the transactions and show it has met all the “conditions” required by the real estate laws (“M&A approval”)
 - For residential projects, foreign developers can only mobilise up to 50% of sale price from home buyers for pre-completion presales (70% for local developers)

- BCC (not common but sometimes is the only structure possible). Foreign partner to a BCC can set up an operating office
 - Sign contracts
 - Seal
 - Open bank accounts
 - Recruit employees

This clarification allows foreign partners to BCCs to operate independently

- Security deposit in escrow to the State to guarantee implementation of projects where land is leased or allocated
 - 1-3% of total investment capital
 - Some exceptions
 - 50% refunded when land procedures done; remaining 50% when construction is completed and commissioned

- Allows foreigner investors to set up shareholding companies (JSC)
- Allows “special shares” to be issued to set out any kind of rights as agreed by the parties
- This combined with a very rigorous corporate governance regime has allowed us to structure many types of real estate transactions where certain rights cannot be otherwise established

Examples:

- Special share to reflect right to a plot of land within a larger real estate project where it is not yet possible to split the land from the rest of the project
- Special share to allow right to receive dividend and income that is different from the actual equity contributed
- Special share to allow for special voting rights

Benefits:

- Stronger than just a SHA or contractual arrangement

- Recognises rights on land remain essentially the same in respect of VN companies in which foreign investors have bought shares, or owns via a merger or an acquisition of VN companies. Previously, there was concern that foreign shareholding may change the land status.
- Recognises joint ownership of LUR. Each joint owner gets its own LUR Certificate
- Single LUR Certificate for ownership of land and assets on land (also applies to residential housing)



- Allows foreign investors to lease houses and buildings and to sublease the same (business centres, serviced apartments, dept. stores, mini-hotels)
- Right to purchase a part or an entire real estate project even if it is incomplete (allows for projects to be transferred in part or in whole). Previously allowed only for developers of large urban centres or new towns.
 - Covers both commercial and residential real estate
 - Requirements:
 - LUR certificate
 - 1/500 approved
 - Land clearance completed
 - No need for new investor to redo project file
 - New investor must be a real estate company, have financial capax, etc.
 - Structures to implement this may include sale of share of project company to new buyer (“sale of company”) or direct transfer of project and change in investor (“asset sale”)

- Allows for transfer of a part or entire residential real estate project whatever the size (includes mixed-use developments). Transferee can get separate LUR Certificate and land can be separated from main parcel if possible and if not transferee still gets separate LUR Certificate which will say it owns the relevant parcel and shares right on land with original developer.
- Allows for mortgage of residential assets to be formed in the future to banks in VN
Issue: Offshore creditors not allowed to take mortgage of LURs and assets on land but they usually take a pledge/mortgage of shares of project company and revenue/cash flow as well as other securities
- Allows for secondary transfers of residences prior to completion and prior to the LUR Certificate issued to buyers as long as developer consents
- Car park – allows developer to sell or lease car parks separate from the condos and under its separate management
- Comprehensive regime on management of condos and designation of common areas (Note: Real estate management companies will also need to get approval from the DOC to provide condo management services)

- Allows foreign individuals to buy houses and condos
 - Entry visa to VN
 - 50 years (extension of another 50. Can apply 3 mos prior to expiry of original term)
 - Can sublease but need to notify to local housing authorities first
 - Must transact through a bank in Vietnam
 - Can sell to qualified VN buyers

Issues:

- 1) Can buy only in areas/projects designated by Ministry of Public Security
- 2) Can buy only from developers and other foreigners
- 3) Quota: 30% (apts); 10% (villas). Law requires developers and DOC to keep track and post on website. Sale outside the quota is void.

HOUSING LAW (cont'd)

- Foreigners married to VN have same rights as Vietnamese owners
Issue: Unclear if home ownership has to be joint if purchased on this basis and unclear if foreigner is still subject to foreign ownership quota if he or she purchases residences in his/her own name
- Allows foreign companies to buy residential housing but only for staff use; cannot sublease. Previously not allowed.



DECREE ON CASINO BUSINESS (2017)

- “conditional” business and “strictly” regulated
- “large scale” casino operator – total investment of at least USD 2 billion
- “small scale” casino operator – total investment under USD 2 billion
- Must be combined with main business (hotels, tourism services, commercial and entertainment areas and conference centers)
- To operate a casino, operators must get **two** additional licences in addition to IRC:
 - “Certificate of Eligibility for Casino Business” (at least 50% of investment capital must be disbursed to get Certificate)
 - “Foreign Exchange Licence” required from SBV
 - Must open 1 special forex account at one bank
 - Must agree on amount of forex cash on hand to pay out and exchange unused tokens with bank and limit is set out in Forex Licence

DECREE ON CASINO BUSINESS (cont'd)

- Can run a casino business at only **ONE** facility segregated from other businesses
 - with separate entrance and exit
 - 24/7 cameras (records must be kept for 6 mos)
 - security
 - post rules and regs for entering casino entrance
- Can operate 24/7
- Number of gaming machines/gaming tables. For each USD 10 million of investment capital: 1 gaming table and 10 gaming machines
 - Total number allowed is set out in IRC or in-principle approval
 - Actual number allowed is based on disbursed capital as set out in Certificate of Eligibility for Casino Business
 - Increases only allowed for large scale casino projects and only when USD 100 million has been disbursed

DECREE ON CASINO BUSINESS (cont'd)

- Pilot programme for VN citizens to play
 - 3 years programme
 - VN citizens
 - 21 years old (no criminal records, no prohibition from family to play, etc.)
 - Salary of VND 10 million – VND 18 million/month or VND 120 million - VND 216 million/year
 - Must pay entrance fee of VND 1 million/24 hours/person or VND 25 million/month/person (money goes to State fund and not to casino operator)
 - E-card issued to track all spendings and payouts



- Circular 09 (2015) of the SBV allows private companies to purchase debts (including security) from local banks
 - Offshore buyers (no requirements on licensing but cannot take security over LUR and assets on land)
 - Local buyers (Decree 69/2016-ND-CP, Circular 53/2017/TT-BTC):
 - Must register for the business line of debt trading services
 - Minimum charter capital and/or investment capital of VND 100 billion
 - Manager (among other qualifications) must have at least five (5) years' direct working experience in the finance, banking, accounting, auditing, law, asset evaluation or debt trading sector, etc.
 - Can take security over LURC and assets on land

- Law on Asset Auction (2017)
 - Certain assets must be sold via auctions (LURs; State assets; bad debts and security on bad debts of SOEs; secured assets (i.e. mortgages of LUR); assets to enforce judgments)
 - Auction service centres under the DOJ can conduct auctions
 - **NEW:** Private asset auction companies licensed by the DOJ can also conduct auctions
 - **NEW:** Rules on auction to provide more transparency to process (auctioneers must have a practicing certificate and meet certain qualifications; deposit of at least 5% or not more than 20% of starting price required; various forms of auctions allowed (including online bids); requirements to notify public)



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