

# Land Matter

## Legislation

Land Law No. 31/2024/QH15 adopted by the National Assembly on 18 November 2024 and amended by Law No. 43/2024/QH15 dated 29 June 2024 on amendments to Land Law No.31/2024/QH15, Residential Housing Law No. 27/2023/QH15, Law on Real Estate Business No. 29/2023/QH15 and Law on Credit Institutions No. 32/2024/QH15, which took effect on 1 August 2024, except for some provisions with other effective dates (“Land Law”), covers all the land matters relating to the land, varying from the ownership, the State’s power and liabilities, the land management and use to the land user’s rights and obligations, and relevant transactions. Under the Law, there are dozens of regulations issued by the GoV and various ministries and agencies.

## Basic principles

All lands in Vietnam are owned by people and the State, representative of the people, has the sole authority to administer it. On the central level, the NA has the ultimate power to supervise over and administer the land. However, the day-to-day management is assigned to provincial-level People’s Committees. Any use of land is evidenced by a certificate of the land use rights, ownership of assets attached to land (hereinafter referred to as “LURC”) issued by the provincial-level People’s Committees to foreign-invested economic organizations.

Pursuant to the principles of and methods for valuation of land, the provincial-level People’s Committees will set up and submit the localities’ first land price brackets to the People’s Councils at the same level for their decision, publication and application from 1 January 2026. Every year, the provincial-level People’s Committee is responsible for

submitting to the People's Council of the same level for the latter's decision on adjusting and amending the land price bracket for publication and application from 1 January of the following year. In case it is necessary to adjust and amend the land price bracket during the year, the provincial-level People's Committee is responsible for submitting to the People's Council of the same level for the latter's decision.

Specific land prices are applied to the following cases:

- (i) Calculating land use fees for organizations when the State allocates land with land use fee collection without auctioning land use rights or without tendering to select investors to implement projects using land; allocates land with land use fee collection to the winning investor or economic organization established by the winning investor to implement projects using land, recognizes land use rights; allows change of land use purpose with land use fee payment;
- (ii) Calculating land rental when the State leases land and collects one-off payment of land rental for the entire lease term, except in the cases where land use rights are auctioned;
- (iii) Calculating the value of land use rights when equitizing State-owned enterprises according to the laws on equitization;
- (iv) Determining the starting price for auctioning land use rights when the State allocates or leases land, except in the cases provided by the Land Law;
- (v) Calculating land use fees and land rental when extending land use term, adjusting land use terms, adjusting detailed construction planning; allowing change of land use form;
- (vi) Calculating compensation when the State revokes land allocation.

The Chairpersons of district-level People's Committees decide on specific land prices in cases of land allocation, land lease, permission to change land use purpose, recognition of land use rights, extension of land use term, adjustment of land use term, adjustment of detailed construction planning, land revocation, determination of starting price for auction

of land use rights under the handling authority of the district-level People's Committees according to the Land Law; and the Chairpersons of the provincial-level People's Committees decide on specific land prices in the above-mentioned cases and cases of determining the value of land use rights when equitization of enterprises is subject to the handling authority of the provincial-level People's Committees according to the Land Law.

In cases of applying land prices in the land price bracket to calculate land use fees and land rentals, the authorized People's Committee must record the land price in its decision on land allocation, land lease, permission to change land use purpose, extension of land use term, adjustment of land use term, or change of land use form. In the case of determining specific land prices to calculate land use fees and land rentals, the authorized People's Committee must issue a land price decision within 180 days from the time of land valuation. The annual land rental is applied stably for a 5-year cycle from the time the State decides to lease land, allow the change of land use purpose associated with the change to the form of land lease by the State with annual land rental payment. Land rental for the next cycle is calculated based on the land price bracket of the year when the next land rental is determined. In the case where the land rental increases compared to the previous cycle, payable land rental shall be adjusted but not exceeding the rate prescribed by the Government for each period.

Foreign-invested companies (including 100% foreign-owned enterprises; joint venture enterprises; Vietnamese enterprises which foreign investors purchase shares/ capital contribution portions in or merge with or acquire in accordance with the laws on investment), can obtain the land use rights through: (a) land lease with collection of annual rental or with one-off payment of land rental for the entire lease term (frequently in the case of FOCs); land allocation with

collection of land use fee (only applicable to projects on investment in construction of residential housing for sale or lease out or hire-purchase); (c) receiving assignment of land use rights in IZs, industrial clusters, and HTZs; (d) receiving the capital contributions using land use rights by the local partners (which is a common practice in the case of JVCs); (e) receiving assignment of investment capital, which is value of land use rights; or (f) receiving land use rights according to the results of successful conciliation of land disputes recognized by authorized People's Committee; agreement in the mortgage contract to settle debt; decision of authorized State agency on settlement of land disputes, complaints and denunciations about land, judgment or decision of the Court, decision of the enforcement agency on enforcement of a judgment that has been enforced; decision or award of Vietnam Commercial Arbitration; document recognizing the results of auction of land use rights in accordance with the laws; document on division or separation of land use rights in accordance with the laws for groups of land users who share land use rights. In all cases, a decision on leasing or allocating land from relevant state agency together with a land lease agreement signed between relevant state agency and the FIE in case of land lease are taken as the basis for the issuance of a LURC.

The value of the land use rights means monetary value of land use rights with respect to a fixed land area of specific land type at time of determining for a fixed duration of land use, which is generally arrived at by calculating the total value of land rental or land use fee for the entire lease or allocation period, by multiplying the used land area (recorded in the LURC or the decision on land allocation or land lease by a competent State agency, the land lease contract in the case where the LURC is not yet available. In the case where the LURC or the decision on land allocation or land lease, land lease contract is not yet issued by a competent State agency, the land user shall base on the dossiers and documents

related to the land use rights to determine the used land area and land type to be taken as a basis to determine the value of land use rights) with the applicable land rental or use fee rate(s) (determined according to the land price in the Land Price Bracket issued by the provincial-level People's Committee) multiplied by land price adjustment coefficient prescribed by the provincial-level People's Committee at the time of determining the value of land use rights).

### **Capital Contributions using Land use rights**

According to the Land Law, capital contribution using land use rights is an agreement between parties on the transfer of land use rights through the contribution of land use rights to form the charter capital of an economic organization, including capital contribution to establish an economic organization or additional contribution to the charter capital of an established economic organization. This Law also made it clear that the entity receiving such capital contribution is granted a LURC.

In the context of JVCs, it is common that local parties use land use rights to make all or part of their contributions to the charter capital of the JVCs. As earlier said, such right will last throughout the duration of the investment registration certificate.

When receiving the capital contribution using land use rights, it is particular to verify the conditions for capital contribution using the land use rights. The use of land for production and business through capital contributions using land use rights must ensure the following principles:

(i) In accordance with the annual land use plan of the urban or rural district already approved and published;

(ii) Cleared land, which may be used for implementation of investment projects, is exhausted in the area, except the projects in sectors or geographical areas where investment is

encouraged;

(iii) In case the economic organization receives capital contribution using the usage rights of agriculture land to implement a non-agriculture investment project, it must have a document made according to the standard form to be sent to the provincial-level Department of Natural Resources and Environment and obtain a written approval from the provincial-level People's Committee (to be implemented within 36 months from the date of signing);

(iv) Where the land area for the implementation of investment project has a part of land where the current land user is not entitled to contribute capital using land use rights but has assets attached to the land, the investor is allowed to enter into an agreement on purchase of assets attached to land from the people who are using the land, the State shall recover the land, allocate or lease the land to the investor without any auction of land use right or any bidding for implementation of land using project, convert the purpose of land use for implementing the investment project and determine specifically land prices for calculating land use fee and land rental as prescribed. Contents of the agreement on purchase of assets attached to the land must clearly reflect the fact that the property seller voluntarily returns the land to the State for revocation of land and allocation of land to the property buyer;

(v) Where the land area for the implementation of investment project has a part of land where the current land user is not entitled to contribute capital using land use rights and has no asset attached to the land, and this part of land is among the part of land, which has been already used for capital contribution, there are 02 cases as follows:

(a) if the land meets requirements to be split into an independent project, the competent People's Committee shall decide to recover the land to allocate or lease it, for

implementation of that independent project, through an auction of land use rights to be implemented no later than 90 days from the date the State issues a decision on land recovery;

(b) if the land does not meet requirements to be split into an independent project, the provincial-level People's Committee shall base on the current land use status and local socio-economic conditions to organize review and specifically determine the project size, the investment location and decide to recover the land to allocate or lease land for implementation of the investment project without any auction of land use rights or any bidding for project using land, and must specifically determine land prices for calculating collected land use fee or land rental as prescribed.

(vi) In the case where land is used to implement an investment project in the form of capital contribution with land use rights and has different land use terms, the land use term shall be redefined according to the term of investment projects as follows:

(a) Land allocation or land lease term for organizations to use land for (i) the purposes of agricultural production, forestry, aquaculture, salt making; (ii) commercial and service purposes, non-agricultural production facility; (iii) carrying out investment projects; overseas Vietnamese, foreign-invested enterprises to implement investment projects in Vietnam shall be considered and decided on the basis of investment projects or application forms for land allocation or lease but not more than 50 years;

(b) For projects with large investment capital but slow capital recovery, investment projects in areas with difficult socio-economic conditions, areas with extremely difficult socio-economic conditions, which require a longer term, the time-limit for land allocation or land lease shall not exceed 70 years;

(c) For projects on residential housing business for sale or for sale in combination with lease or for lease purchase, the

time limit for land allocation to the investor is determined according to the term of the project. Upon the expiration of the land use term, if the land user wishes to continue using land, the State shall consider extending the land use term but not exceeding the time limit specified in this clause (vi).

In case it is not subject to investment procedures as prescribed by the laws on investment, the land use term shall be decided by the People's Committee of the level competent to allocate or lease land but must not exceed 50 years.

The following conditions ensure the basis for capital contribution using land use rights by the local parties to a JVC, which include: The existence of a LURC; Dispute-free land or the dispute has been resolved by a competent State agency, a Court judgment or decision, an Arbitration decision or award that has come into legal effect; Land use rights not subject to seizure or other measures for enforcement of a judgment in accordance with the laws on civil judgment enforcement; Land use term not yet expired; The land use rights not subject to injunction relief in accordance with the laws.

Capital contribution using land use rights must be registered with the Land Registration Office directly under the provincial-level Department of Natural Resources and Environment ("DONRE") within 30 days from the date of change and shall take effect at the time of being recorded in the cadastral book.

As a part of the capital contribution, the payment of the land rental or use fee is destined for the local parties' responsibility, but not within the responsibilities of the JVCs or foreign parties as well.

The capital contribution with land use rights shall terminate when:

(i) The time limit for capital contribution with land use rights has expired;

- (ii) A party or parties has/have a request therefor as agreed in the capital contribution contract;
- (iii) Land has been recovered under the provisions of the Land Law;
- (iv) The party contributing capital with land use rights in the business cooperation contract or the joint-venture enterprise is declared bankrupt or dissolved;
- (v) The individual participating in the capital contribution contract dies; declared dead; loses capacity for civil acts or has limited capacity for civil acts; is prohibited from operating in the field of business cooperation in which the capital contribution contract must be performed by that individual;
- (vi) Operations of the legal entity participating in the capital contribution contract are terminated and the capital contribution contract must be performed by such legal entity.

The handling of land use rights upon termination of capital contribution shall be carried out as follows:

- (i) In the case where the capital contribution term expires or the parties agree to terminate the capital contribution, the party contributing capital with land use rights may continue to use that land for the remaining term.

In the case where the land use term has expired or the party contributing capital with land use rights no longer needs to continue using land, the State shall allow the party receiving capital contribution to continue renting land if there is a need;

- (ii) In the case where the capital contribution is terminated under a decision of a competent State agency due to a violation of the laws on land, the State shall recover such land;

- (iii) If the party receiving capital contribution or the party contributing capital with land use rights is a bankrupt

organization, the land use rights used for capital contribution shall be handled according to the bankruptcy declaration decision of the People's Court.

Recipients of land use rights and assets attached to land under decisions of the People's Courts may continue to use the land for the determined purposes for the remainder of the land use term and be granted with a LURC.

If there is no recipient of the land use rights and assets attached to land, the State shall recover such land and assets;

(iv) In the case where the individual participating in the capital contribution contract dies, the land use rights used for capital contribution shall be inherited according to the provisions of civil laws;

(v) In the event an individual participating in a capital contribution contract is declared dead, has been dead or has limited capacity for civil acts, the handling shall follow provisions of the civil laws;

(vi) In the case where the joint venture enterprise is dissolved or the party contributing capital with land use rights is a dissolved organization, the land use rights used for capital contribution shall be handled according to the agreement between the parties in accordance with the provisions of the Land Law and other relevant provisions of the laws.

## **Compensation**

Allocation or lease of land, which is being used by land users, will be only decided by the State after the competent State decided on land revocation under the Land Law and have completed the compensation, support and resettlement in accordance with the laws for the case needing ground clearance. Pursuant to the Land Law, organizations in charge

of compensation and ground clearance include land-related public service providers and Compensation, Support and Resettlement Councils.

The land user is obliged to submit the issued LURC before receiving compensation and support and the organization in charge of compensation and ground clearance shall collect the issued LURC and transfer it to the Land Registration Office. The land has been recovered for socio-economic development for national and public interests such as implementation of national important projects decided on investment policies by the National Assembly; implementation of projects approved and decided by the Prime Minister; and implementation of projects approved by the provincial-level People's Council will be assigned to the investor for implementation of the investment project or to a public land service organization for management.

If the FIE, which is allocated land by the State with collection of land use fees or rents land, voluntarily advances funds for compensation, support and resettlement; then, these funds will be reimbursed by the State budget by deducting from payable land use fee or rental amount. Deductible amount of these funds shall not exceed the payable land use fee or rental amount; and the balance, if any, shall be included in investment capital of the project.

If the FIE, which is allocated land by the State with collection of land use fees or rents land and is exempt from land use fee or rental, voluntarily advances funds for compensation, support and resettlement under the plan approved by the competent State agencies; then, these funds will be included in investment capital of the project.

Levels of funds for compensation, support and resettlement shall be determined in accordance with the plan of compensation, support and resettlement approved by competent State agencies of Vietnam.

Foreign-invested economic organizations, which are allocated land by the State with collection of land use fees to implement projects on investment in construction of houses for sale or for sale combined with lease, or lease land with one-off payment of land rental for the entire lease term, will be compensated for land when the State revokes land for national defense and security purposes, socio-economic development for national and public interests when one of the following conditions is met: The existence of a LURC; The existence of a land allocation decision or land lease decision or decision allowing change of land use purpose from an authorized State agency; The existence of one of the documents on land use rights as a basis for granting a LURC; Receipt of transfer of land use rights in accordance with the laws from a person with legal land use rights but land registration procedures are not yet completed; Being allowed to use land according to the agreement in the mortgage contract to settle debts; Document recognizing the results of the land use rights auction in which the auction winner has fulfilled financial obligations according to the laws.