

Legal Update

December 2023

DRAFT NEW LAND LAW NO.8 DATED 8 NOVEMBER 2023

To date, eight draft versions of the new land law have been released. Based on the comments from stakeholders including the government, the National Assembly representatives and other organizations, the latest draft - draft no. 8 dated 08 November 2023 ("**Draft New Land Law**") was submitted to the National Assembly for consideration. The latest Draft New Land Law continues to improve the administrative land management system and expand the rights of land users, including foreign-invested economic organizations.

We summarize here the key highlights of the latest Draft New Land Law:

1. Definition of "right to lease under land lease contracts"

While the earlier drafts introduced the "right to lease under land lease contracts" as a new "right" for land users on the land rental annual payment term, the definition of "right to lease under land lease contracts" was not provided.

The Draft New Land Law now includes a definition of "right to lease under land lease contracts" as a "right of land users on the land rental annual payment term. The land users are allowed to transfer the right to lease under land lease contracts and the transferee of the right to lease will inherit the rights and obligations of the land user according to the provisions of this Law and other relevant laws"[1].

The additional definition and clarity on what a "**right to lease under land lease contracts**" means is important for land users to differentiate between "**land use rights**" with lump sum rental payment term and "**right to lease under land lease contracts**" with annual rental payment term. A clear definition in the law will make it easier for land users, such as foreign-invested enterprises, to determine and understand their rights and obligations under the respective rental payment method.

2. Change to rights of land users leasing land on land rental annual payment terms

In previous drafts, it was stated that foreign-invested economic organizations would legally be able to mortgage and/or transfer their right to lease under their land lease contracts where land rental is paid on an annual basis.

The latest Draft New Land Law has removed the right to mortgage "right to lease under land lease contracts" from the rights of land users on the land rental annual payment term[1]. As implied in the definition of "right to lease under land lease contracts", foreign-invested economic organizations who lease land with an annual rental payment term are only entitled to transfer the right to lease under land lease contracts and are not permitted to mortgage such right.

3. Additional cases of land lease on lump sum land rental payment terms from the State

Previously, only (i) projects that utilize land for investment in agriculture, forestry, aquaculture, and salt production, and (ii) projects that utilize land in industrial parks, industrial clusters, and high-tech parks are entitled to land lease with lump sum land rental payment terms from the State.

To incentivize the development of other fields, the latest Draft New Land Law includes more types of projects which are entitled to lease land from the State based on a lump sum land rental payment terms. The additional types of projects now include the ones that utilize land in high-tech agricultural parks, centralized information technology parks, high-tech forestry parks, and worker accommodation in industrial areas; public construction for business purposes; using commercial and service land for tourism and business office activities ¹.

4. New conditions for the transfer of assets attached to land

The current Draft New Land Law provides an additional condition for the transfer of assets attached to land. To enable an asset transfer, the asset attached to land must be (i) legally constructed and (ii) registered with a competent authority and (iii) the transferor has paid compensation and ground clearance money in advance, but the amount is not yet fully deducted from the rental.

The requirement for land registration by the transferee provided in the previous drafts has been removed. The conditions applicable to the transferee for the transfer of assets attached to land/the right to lease under the land lease have been amended to:

- Having sound financial capability for implementation of investment projects;
- Having business lines in consistence with the investment projects; and
- The transfer is compliant with the conditions provided by law and land master planning ².

While the conditions applicable to transferee may continue to be updated and amended during the consultation process with the National Assembly, it remains unclear whether any of the current conditions applicable to the transferor may also be amended, particularly the conditions regarding compensation and ground clearance money. As noted in the previous alert^[2], it would be interesting to follow up on how the requirement applicable to the transferor will be finalised and addressed in the Draft New Land Law, its implementing decree and circular as the rationale for such is controversial to a certain extent.

In addition, the Draft New Land Law provides that, in case of transfer of assets attached to land being construction works, if such transfer fulfills conditions to sub-divide land, the transferor/transferee may perform procedures to sub-divide land lots and receive a land use right certificate ³.

5. Compensation for land recovery

The latest Draft New Land Law has provided a new principle for ascertaining compensation for land recovery.

Land users having their land recovered will be compensated with land having the same land use purposes; if compensation by land cannot be made, they will be compensated with monetary amounts in accordance with the annual land price list ⁴.

6. Land law violation

If the investor does not use the land for 12 months consecutively or is delayed in the registered schedule for 24 months, the State will recover the land without any compensation ⁵.

If the investors have not yet put land into use, they may apply for a 24-month extension and must pay the land rental proportional to the extension period to the State.

While the principle that investors who are delayed in utilization of land in accordance with the land use schedule may be not able to enjoy any extension remains unchanged, the delay period has been significantly shortened, from 48 months to 24 months. If this provision is finalised, the investor would need to pay strict attention to compliance with the land use schedule and plan registered on their Investment Registration Certificate to ensure that there is no violation and compulsory land recovery by the State.

7. Basis for determination of land price

In keeping the land price list system introduced in the previous drafts of the law, the Draft New Land Law continues to improve regulations related to the determination of land price, to ensure that the price included in the land price list is objective and reflects the market price.

¹ Article 121 of Draft New Land Law

² Article 46, Article 123 of Draft New Land Law

³ Article 46 of Draft New Land Law

⁴ Article 91.2 of Draft New Land Law

⁵ Article 81 of Draft New Land Law

Land prices will be determined by the following factors:

- Land use purpose of the land;
- Land use terms;
- Input information to determine land prices in accordance with evaluation methods;
- Other factors affecting land prices;
- Relevant legal regulations at the time of determination ⁶.

The input information to determine land price includes (i) land price recorded in the national land database; (ii) land price recorded in the notarized land use rights transfer agreement; or the winning price at auction of land use rights; (iii) land price collected through investigations and surveys in case there is no prior record or information about land price; and (iv) information on revenue, costs, and income from land use ⁷. The input information of land price is the information formed within 24 months before the time for determination of the land price ⁸.

8. Right to choose land rental payment term

In the current Land Law, organizations who have leased land with an annual land rental payment term may switch to a lump sum land rental payment terms if they are able to fulfill the required conditions such as to re-assess the land rental and pay the land rental for the remaining lease term[1].

The Draft New Land Law proposes that organizations that lease land with a lump sum land rental payment term may also choose to switch to an annual land rental payment term. The land rental already paid to the State shall be deducted from the annual land rental to be paid during the new payment scheme[2].

CONCLUSION

Having been through several amendments and versions, the Draft Land Law is still being improved and reviewed by stakeholders to bring about significant changes that are aimed at enhancing the multi-level system of land use planning, pricing, and management by the State, and at the same time, optimizing the rights and benefits of the State and land users from an overall perspective.

The latest Draft Land Law was presented with many options that remain undecided, implying that the recently added matters will continue to change during the drafting process. The National Assembly has indicated that the approval of the Draft Land Law would be postponed until the National Assembly's next session in 2024 to continue amending and refining the provisions in the Draft Land Law. As to how these issues will be resolved and interpreted for enforcement in the final text of the new land law, it remains to be seen.

⁶ Article 159.2 of Draft New Land Law

⁷ Article 159.3 of Draft New Land Law

⁸ Article 159.4 of Draft New Land Law

Contact us

Hanoi

46th Floor, Keangnam Landmark 72,
E6 Pham Hung, Me Tri, Nam Tu Liem

T +84 (24) 3946 1600

Ho Chi Minh City

10th Floor, Sun Wah Tower,
115 Nguyen Hue, Ben Nghe, District 1

T +84 (28) 3821 9266

Da Nang

Unit D3, 5th Floor, Indochina Riverside Towers,
74 Bach Dang, Hai Chau I, Hai Chau

T +84 (236) 351 9051

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2023 KPMG Limited, KPMG Tax and Advisory Limited, KPMG Law Limited, KPMG Services Company Limited, all Vietnamese one member limited liability companies and member firms of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.



Scan to visit our website: kpmg.com.vn

Email: kpmghcmc@kpmg.com.vn