

Legal Update

February 2024

On 27 November 2023, the National Assembly adopted a new Law on Housing (“**New Law**”), which supersedes the former Law on Housing 2014 (“**Current Law**”). The New Law comes into effect on 1 January 2025.

In this legal alert, we will discuss the key features of the New Law on Housing that may have an impact on the rights of land users in the private sector, particularly in relation to foreign-invested enterprises.

1. Investment projects for housing with mixed use purposes

The New Law defines housing with mixed use purposes as housing that is used for both residential and non-residential purposes that are not prohibited by the law.¹

The approved content of an investment project for housing with mixed use purposes must clearly define its residential use and other non-residential use, such as for office, commercial, service use;² and make clear whether areas with different usage can be separated from each other.³

If different functional areas can be separated, investors are required to design and build (i) separate equipment systems for each area and (ii) equipment systems for the entire mixed-use housing project to ensure requirements in operational management will be met after being put into use.⁴

2. Requirement applicable to investor of commercial housing projects

An enterprise may become an investor in commercial housing projects, provided that the enterprise satisfies the following criteria:

- (i) The enterprise is leased or allocated land from the State, due to winning a selection bid for investors in a housing project or an auction for land use rights; and
- (ii) The enterprise has obtained an approval on investment policy together with approval on investor of housing projects when they possess land use rights to the land for housing investment project, or received land use rights to the land for housing investment project through a transfer agreement.⁵

In addition to conditions applicable to investors of commercial housing projects, an enterprise also needs to meet other requirements applicable to investors of housing projects in general, including:

¹Article 2.1 of New Law

²Article 33.2(a) of New Law

³Article 33.2(b) of New Law

⁴Article 33.2(b) of New Law

⁵Article 35, Article 36 of New Law

- (i) The enterprise is duly incorporated with real estate business functions;
- (ii) The enterprise has equity according to laws on real estate business to conduct each investment project. Specifically, enterprises must have equity capital of at least 20% of total investment capital for projects with land use scale of less than 20 hectares; at least 15% of total investment capital for projects with land use scale of 20 hectares or more and must ensure the ability to mobilize capital to implement investment projects;⁶ and
- (iii) The enterprise has the ability and experience to pursue housing projects. However, the New Law does not elaborate further on the criteria to evaluate the ability and experience of an enterprise. As such, these criteria may be provided later in guiding decrees or circulars, or evaluated by competent authorities at their discretion during the licensing process.

3. Housing ownership of foreign organizations

The New Law continues to inherit provisions of the Current Law and amends, adopts several provisions related to a foreign organization's housing ownership. In general, foreign-invested enterprises may own housing within housing investment projects. The New Law makes an exhaustive list that regulates (a) types of foreign-invested enterprises entitled to housing ownership and (b) ownership conditions. Specifically:

- (i) A foreign-invested economic organization may own housing in their own housing investment projects in Vietnam; provided that they are an investor in a housing investment project;
- (ii) A foreign-invested economic organization or a branch/representative office of a foreign enterprise may own housing through a transfer or lease of housing in housing investment projects, provided that it has a valid investment registration certificate in force at the time of the transfer; and
- (iii) A foreign-invested economic organization or a branch/representative office of a foreign enterprise may own housing through transfer or lease from another foreign organizations that legally owned housing.⁷

4. Mortgage of housing investment project

An investor may mortgage all or part of their investment project for housing to be formed in the future at a financial institution operating in Vietnam, for the purpose of raising capital to implement and construct that housing investment project. The mortgage for a housing investment project must be made together with the mortgage for land use rights.⁸

To mortgage investment projects for housing to be formed in the future, there are certain conditions that the investor should pay attention to:

- (a) In case an investor mortgages all or part of their housing investment project, they must have (i) an approved project dossier or project design and (ii) a land use right certificate or decision on land lease or land allocation from the State; and
- (b) In case the investor mortgages housing to be formed in the future, they must have (i) an approved project dossier or project design, (ii) a land use right certificate or decision on land lease or land allocation from the State and (iii) the foundation of the house has been constructed.⁹

If the mortgage of a housing investment project and/or housing to be formed in the future does not comply with the New Law, such mortgage shall be rendered void.¹⁰

⁶Article 9.2(c) of Law on Real Estate Business 2014

⁷Article 17, Article 18 of New Law

⁸Article 183.1 of New Law

⁹Article 184.1 of New Law

¹⁰Article 184.2 of New Law

5. Limitation on apartment ownership

At present, the Current Law provides that all apartments have a limited ownership period, depending on the construction level or conclusion of quality examination by the competent authority. At the expiry of the ownership period, the competent authority will inspect the condition of the apartment. Depending on the conclusion of the investigation, the owner may be allowed to continue maintaining the apartment or forced to demolish and renovate it.¹¹

In the New Law, the ownership period of an apartment is determined based on the design dossier and the actual ownership period stated by the competent authority.¹² If the condition of the apartment deteriorates before the expiry of ownership limitations, the competent authority will inspect the condition of the apartment and decide whether the owner is required to demolish it.¹³

Despite various opinions from stakeholders that the ownership limitation should be removed, the National Assembly Standing Committee decided to retain this provision in the Current Law. According to the discussions of the Standing Committee, ownership of the apartment is limited, but long-term land use rights are not. If the apartment is demolished, the housing or building will lose its value, but the land use rights will not, and the owner of a demolished apartment is still entitled to compensation according to Land Law.¹⁴

6. Stricter regulations applicable to “mini apartments”

“Mini apartments” are usually housing with several floors owned by an individual, and they either lease or transfer the rooms inside this house to other persons at a cheaper price compared to apartments owned by organizations. Recognizing the vulnerability of the transferee or lessee of these housings, the New Law has imposed several conditions on individuals that operate “mini apartments”.

Specifically, a “mini apartment” is defined as one of the following cases:

- (a) Housing with more than 2 floors and each floor has sub-divided accommodation for transfer or lease;
- (b) Housing with more than 2 floors and which have a total of more than 20 sub-divided accommodation for lease.¹⁵

An individual must fulfill the conditions to become an investor in a housing project if they construct the following type of housing above.

Furthermore, the investment and construction of these “mini apartments” must also:

- (i) Meet the construction qualifications for housing with several floors and accommodations prescribed by the Ministry of Construction;
- (ii) Meet the qualifications for firefighting and fire prevention design applicable to multi-floor housing for individuals; and
- (iii) Meet the conditions applicable to traffic roads to ensure firefighting and fire prevention activities can be carried out.¹⁶

Vietnam has amended several related laws in recent years, such as the Civil Code, Law on Investment, Law on Real Estate Business, and the upcoming Land Law. The provisions of the current Law on Housing may not be compatible with these related laws, leading to difficulties in its implementation. As such, the New Law is introduced to ensure consistency with other applicable laws and regulations, and facilitate a clear and safe business environment for real estate projects.

¹¹Article 99 of Current Law

¹²Article 99 of Current Law

¹³Article 58.1 of New Law

¹⁴thanhvien.vn/thong-qua-luat-nha-o-khong-quy-dinh-thoi-han-so-huu-chung-cu

¹⁵Article 57.1 of New Law

¹⁶Article 57.3 of New Law

Considering that the number of investment projects for housing with mixed-use is increasing and the ongoing debates about applicable laws to them, the new Law on Housing is expected to give investors a solid legal basis to continue or establish their investment projects.

While it is understandable that regulations related to “mini apartment” of individuals are strict to protect the rights and interests of consumers, the current condition applicable to individuals operating “mini apartment” is conflicting itself given that only an enterprise may become an investor in a housing project. One may argue that current regulations may hinder the “mini apartment” business, but it remains to be seen whether future guiding decrees and circulars will address or clarify this issue.

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