

Technical Update

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THE NEW LAND LAW:

WHAT TO EXPECT? A NEED-TO-KNOW SUMMARY OF THE 7 IMPORTANT CHANGES

The new Land Law has been a greatly anticipated piece of legislation, particularly in light of current market conditions in the real estate sector. The new Land Law, together with Law on Housing and Law on Real Estate Business, represent the close attention and efforts of the State in this sector and are expected to reduce the legal procedures, clarify the overlap between related laws, and alleviate the difficulties of developers and the real estate industry. In this article we examine the 7 important changes brought about by the new Land Law, including a commentary and our views as to the potential impact that this may have on the real estate market and sector.

1. Land Valuation Methodology

The five-year land price (under the current Land Law) to be provided by the Government is replaced by an annual land price list in Section 2 of Chapter XI. The land price list is developed in each area by the Provincial People's Committee and approved by the Provincial People's Council. The annual land price list will take effect as of 1 January 2025 and the first land price list will be applicable as of 1 January 2026. The land price list will be the basis for determining the starting land price in the case of an auction of land use rights, and land use fees when the State allocates land to the selected investor(s) through bidding procedures. This amendment is viewed as being a welcomed change in the new Land Law as the updated land price list annually is expected to ensure that current market conditions or prices are reflected more accurately.

However, it is noted that the revised land valuation methodology may also be a double-edged sword in this case. Namely, the Government may have to implement an effective monitoring or review system to ensure that land prices reflect current market prices. If land prices are too high, then the developer's investment costs for land acquisition will increase, which is likely to be passed on to the consumer, leading to an overall increase in real estate prices.

2. Combined Land Classifications and Usage

Article 218 of the new Land Law outlines 7 types of land that can be used in combination with other purposes, including residential land used in combination with agricultural, commercial, service, and commercialized public service functions.

To use land in combination for commerce and service purposes, there are certain criteria to be met, such as (i) land users must prepare and submit a land use plan to the competent authority for approval; (ii) comply with other statutory requirements such as the retention of essential conditions for returning to the primary land use purpose; (iii) compliance with environmental protection regulations; and (iv) settlement of all financial obligations.

The new Land Law states that guidance from the Government will be needed. Therefore, it remains to be seen how the guiding Decrees and Circulars will address the implementation of this provision. We may need to adopt a wait and see approach as to how such combined land classification and usage will be fully implemented perhaps in detailed regulations or Decrees / Circulars that may be released or announced by the Government at a later stage.

3. Conversion of Land Rental Payment Terms From Lump-Sum to Annual Payment

The new Land Law at Article 120.2 outlines specific cases whereby State land leases are paid with a lump-sum payment. Other than that, land users leasing from the State will pay an annual land rental. This encourages a shift from lump-sum to annual payments. The flexibility between lump sum payments and annual payments under the new Land Law may assist to significantly reduce investor financial burden namely from a Capital Expenditure (CAPEX) to an Operating Expenditure (OPEX) model.

At the same time, these amendments are seen as not just being beneficial to investors or developers but viewed as a State effort to boost State revenue, as annual land rent adjustments will occur every 5 years (not fixed for the whole rental term like in the case of the lump-sum land rental payment method) based on the State's land price list for THAT year (i.e. the 5th, 10th or 15th year and so on respectively). The adjustment rate prescribed by the Government for the new period must not exceed the total annual national consumer price index (CPI) of the previous 5-year period.

4. Bidding Structure

The New Law provides a shift in lease and land allocation method to a structure of bidding for investors and/or auctions, which is also seen as an important development. Particularly, some salient points in relation to this bidding structure and criteria include:

(1) *Cases of land lease and land allocation subject to auction of land use rights¹:*

- (i) Investment projects which use land from land banks under the State's administration (which include, among others, unused land, land for public interest purposes, etc); and
- (ii) Allocation of residential land to individuals.

(2) *Cases of land lease and land allocation subject to bidding for investors include²:*

- (i) Investment projects to build urban areas with mixed service functions, synchronizing technical and social infrastructure systems with housing; rural residential projects for which the Provincial People's Council decides on land allocation or land lease through bidding; and
- (ii) Other investment projects using land entitled to land recovery for socio-economic purposes under Article 79 which are required to allocate or lease land through bidding for investors.

This is likely to lead to an increase in the competitiveness of the market and facilitate a fair process. Developers may also expect more flexibility in doing their business with the option to choose their rental payment method (as noted above, on a lump sum basis or an annual basis).

5. Definition of “Economic Organizations With Foreign Capital”

The New Law provides a new definition for the term “foreign-invested economic organizations” (“FIEO”), which replaces the concept of “foreign-invested enterprise” (“FIE”) under the current Land Law. Specifically, under the new Land Law, an FIEO is defined as economic organizations subject to investment procedures applicable to foreign investors according to the Law on Investment (“LOI”) to implement projects using land.

Despite aiming to clarify the FIE concept, the wording of the FIEO definition still raises some uncertainty about the inclusion of specific economic organizations. The current LOI only provides 3 groups of economic organizations that are subject to investment procedures applicable for foreign investors when setting up, acquiring shares/stocks in other economic organization, or making investment under a business cooperation contract under Article 23.1. It remains unclear whether these groups must follow such procedures for projects using land. If Article 23.1 LOI is used to interpret the New Law's FIEO, it is worth noting that certain restrictions applicable to FIEs under the current Law may extend to the second-layer of invested enterprises of foreign investors (i.e., 2 layers down Ultimate Parent to Parent to Operating Company).

6. Site Clearance

The State encourages private investors to independently conduct site clearance for their projects. Particularly, under Article 127, projects not falling under the purview of Article 79 (which designates 31 types of public and nationally significant socio-economic projects) are not subject to the State's land reclamation. Additionally, it is noted that under Article 127.1.c, non-State funded investors of projects under the scope and purview of Article 79 may opt for conducting independent site clearance instead of going through the State's land reclamation, which is compulsory under the current Land Law.

¹ Article 125 of New Law

² Article 126 of New Law

This new site clearance allows flexibility for investors in commercial housing projects (typically not covered by Article 79) to proactively negotiate with existing land users for acquiring relevant land use rights. Notably, in commercial housing projects, negotiations can be limited to acquiring residential land only, excluding areas designated for other purposes.

The New Law also introduces detailed regulations to facilitate the site clearance process when existing land users lack the appropriate land use right certificates or when their land use terms expire before the investor completes all land-related procedures. These regulations aim to address practical challenges and empower real estate investors to create land funds for their projects.

7. Social housing

Social housing is briefly addressed in the new Land Law, in Article 119.1 and Article 120.2 which state that social housing projects are entitled to land allocation with fees or land lease with lump sum rental payment from the State. Furthermore, under Article 157, social housing projects may also enjoy a land use fee reduction or exemption.

The detailed regulations regarding Social Housing are contained in Chapter VI of the Law on Housing which specifies, among others: (i) forms of social housing development; (ii) standards for social housing construction; and (iii) principles for determination of the price or rental of social housing. Article 80 of the Law on Housing states that foreign-invested enterprises are allowed to develop social housing projects through (i) capital investment and (ii) business cooperation with domestic businesses.

8. Conclusion

In conclusion, the new Land Law is a welcomed piece of legislation and whilst the law will only come into force on 1 January 2025, the implementation of the new Land Law through various supporting Decrees and Circulars is the next key area of focus that industry stakeholders will monitor closely.

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

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