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## The International Comparative Legal Guide To Real Estate 2010

A practical cross-border insight  
into real estate law



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# Vietnam

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## 1 Real Estate Law

- 1.1 Please briefly describe the main laws that govern real estate in Vietnam. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

### 2005 Civil Code

Provides the legal status, legal standards for civil conducts, relations and transactions. Establishes that land may only be owned by “the people” rather than individually; but that individuals may hold land use rights (“LUR”). The 2005 Civil Code provides specific rules applicable to real estate sales, leases and other real estate related transactions.

### 2003 Land Law

Sets out mechanisms, procedures, criteria and conditions on land administration and usage. Establishes that only residents of Vietnam may hold LUR in either the form of an allocation or a lease from the State; foreign invested companies may only hold leases. Provides provisions on terms of land use, purposes of land use, and rights of land users and procedures of registration of land.

### 2006 Law on Real Estate

Defines activities defined as “real estate business activities”, and further provides a separate list of activities permitted for fully Vietnamese owned companies and foreign invested companies in Vietnam.

### Law on Residential Housing 2005

Sets up provisions on ownership, development, management, and transactions pertaining to residential housing; and on State management of residential housing. Specific rules applicable to housing transactions including housing sale and lease are also included.

- 1.2 What is the impact (if any) on real estate of local common law in Vietnam?**

Vietnam is a Civil Law system which relies on statutory codes rather than precedents. Laws pertaining to real estate are expanded upon by circulars and decrees.

- 1.3 Are international laws relevant to real estate in Vietnam? Please ignore EU legislation enacted locally in EU countries.**

International laws are not applicable to real estate in Vietnam. The

Civil Procedure Code specifies that conflicts and controversies related to real estate be resolved by Vietnamese courts.

## 2 Ownership

- 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

Land belongs to the “People” with the State as the representative owner. The State grants LUR by way of allocation or lease. Foreign invested companies in Vietnam are only permitted to lease LUR, for a maximum of 70 years. Vietnamese individuals or Vietnamese companies (with no foreign investment) may be allocated land or lease land from the State. Vietnamese individuals may be allocated land indefinitely, while most Vietnamese companies may be allocated land for the duration of an investment project.

Non-residents of Vietnam may not hold LUR.

## 3 Real Estate Rights

- 3.1 What are the types of rights over land recognised in Vietnam? Are any of them purely contractual between the parties?**

Rights over LUR depend on the classification of the holder of such LUR and the permitted rights specified in a LUR certificate.

For example a Vietnamese individual holding allocated LUR with fees fully paid to the State, would have the right of assigning LUR, contributing LUR as equity in a joint venture, and mortgaging the LUR.

A foreign invested company in Vietnam would have similar rights if it holds a LUR lease from the State with a one off payment for the entire lease term.

Contractual rights between LUR holders and other parties generally are limited to leases and to transfers of LUR.

## 4 System of Registration

- 4.1 Is all land in Vietnam required to be registered? What land (or rights) are unregistered?**

Land users must be granted LUR certificates which are the conclusive documentation of their rights over the land. At the time

of issuance of LUR certificates registration is made with local municipal bodies. Land users without LUR certificates have the right to apply for a LUR certificate, but will not be entitled to any enforcement or protection of rights until the LUR certificate is issued and registered.

#### 4.2 Is there a state guarantee of title? What does it guarantee?

Yes, land users who suffer loss due to mistake of LUR registration may file claims requesting compensation. In the event LUR are recovered by a State decision, a LUR certificate will guarantee the LUR holder compensation.

#### 4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

All LUR are compulsory registrable, the issuance of a LUR certificate indicates the corresponding rights of the LUR holder.

#### 4.4 What rights in land are not required to be registered?

All LUR are subject to prior registration of the LUR, and issuance of a LUR certificate.

#### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period following first registration.

LUR certificates, and corresponding rights, will differ depending on the terms of payment of land use fees, and on the purposes for land use. To enjoy rights not included in the first registration (first issuance of the LUR certificate), the LUR holder will have to apply for an amendment of the LUR certificate. If approved the amendment will be registered, and the LUR holder will enjoy the corresponding rights per the amendment.

#### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

LUR will be transferred to the new LUR holder only after the transfer contract is notarised at a notary office and a new LUR certificate is issued in the name of the new land user.

#### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

The holder of a LUR certificate may enjoy those rights listed and corresponding to the LUR certificate. Rights may only be enjoyed after registration and issuance of a LUR certificate. Thus LUR holders holding LUR certificates will have priority over anyone else claiming LUR without such certificate.

## 5 The Registry / Registries

### 5.1 How many real estate registries operate in Vietnam? If more than one please specify their differing rules and requirements.

There are two different types of real estate registries operating in Vietnam:

- The provincial people's committees are authorised to grant LUR certificates to legal entities.
- The district authorities under provincial people's committee are authorised to grant land use right certificate for individual use.

### 5.2 Does the Land Registry issue a physical title document to the owners of registered real estate? Can any transactions relating to registered real estate be completed electronically? Can information on ownership of registered real estate be accessed electronically?

Yes, land users are issued LUR certificates which serve as conclusive proof LUR. Real estate transactions cannot be completed electronically. However, in the larger municipalities, information on legal status of the land such as the current land user or transactions can be accessed electronically.

### 5.3 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Yes, but valid proof of loss caused by such a mistake is required.

### 5.4 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

Documents on real estate are not publicly accessible at the registry. However, by filing an application for information and paying a fee, a buyer may obtain information reasonably needed regarding encumbrances and other rights affecting property, such as whether the property is used as a security measure for certain transactions or whether there are potential zoning issues related to the property.

## 6 Real Estate Market

### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in Vietnam? Please briefly describe their roles and/or duties.

**Notaries:** Land transaction documentation must be signed and notarised by a notary.

**Tax departments:** Taxes on land transactions must be paid at the tax departments after land transaction deeds are signed and notarised.

**Provincial People's Committees/District authorities under Provincial People's Committees:** Issue LUR certificate in the buyers' name.

### 6.2 How and on what basis are these persons remunerated?

**Notaries:** Fee scheme is provided by the Government.

**Tax departments:** No fee applicable.

**Provincial People's Committees/District authorities under Provincial People's Committees:** Fixed fees are provided by the Government.

**6.3 What are the main observable consequences on the real estate market in Vietnam arising out of the global credit crunch and worldwide recession in 2008/9? Please include both local and international investors in your answer.**

Many foreign investors delayed implementation of their real estate projects in 2008 and the beginning of 2009. Local investors have been active, and in many cases have purchased back real estate projects from foreign investors under favourable terms. Local investors also have become active in socially beneficial real estate projects for which favourable conditions on credit facilities and incentives by the State are available.

The end of 2009 seems to indicate that foreign real estate investors are returning to Vietnam, and activity has resumed.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

**7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?**

1. A contract on real estate sale and LUR transfer must be signed and certified by a notary;
2. related tax and registry fees must be paid the competent tax authorities; and
3. a LUR certificate is issued in the name of the buyer.

**7.2 Is the seller under a duty of disclosure? What matters must be disclosed?**

Yes. The seller is responsible to disclose truthfully all information regarding property and be liable for such information.

**7.3 Can the seller be liable to the buyer for misrepresentation?**

Yes. The seller must compensate the buyer for any loss caused by such misrepresentation.

**7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?**

Sellers usually do give contractual warranties to the buyer. The scope of the warranties by the seller usually includes: accuracy of information regarding the property and the owner, and statements on the status of the land indicating that the property is not currently subject to any other transactions or under dispute of ownership.

In practice, buyers may carry out a due diligence (not required by law) in order to verify warranties and information provided by sellers.

**7.5 Does the seller warrant its ownership in any way? Please give details.**

The LUR seller will warrant: the civil capacity to sell LUR, the corresponding LUR certificate has been issued to the LUR seller, that all formalities allowing the LUR seller to make the transaction have been completed and that the LUR is not under any dispute of ownership.

**7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?**

In addition to paying the sale price, liabilities of the buyer namely are: acceptance of the delivery of the real estate as scheduled; and using the real estate in accordance with the permitted scope and terms of the project.

## 8 Finance and Banking

**8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?**

- Only authorised credit institutions in Vietnam may provide loans secured by LUR in Vietnam.
- Non-residents may not hold LUR in Vietnam and thus may not take out a loan secured by LUR. A foreign invested company in Vietnam may secure LUR it leases in Vietnam.
- In general, borrowers are required: to have valid legal and civil capacities; to use the loan for legal purposes; and must have a feasible business plan. In addition, there must be a loan agreement signed by borrowers and lenders for any borrowings.
- Real estate investors must have 20% or more equity for an investment in a new urban zone project or industrial zone project, or new residential projects over 20 hectares; and 15% equity for a new residential project less than 20 hectares. This means that the permitted debt ratio is 80% and 85% respectively.

**8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?**

A real estate lender's main form of protection is by executing a mortgage contract over LUR or over assets of the real estate developer and registering the mortgage with the relevant authorities to ensure priority of rights in case of default.

**8.3 What minimum formalities are required for real estate lending?**

The minimum formalities are:

- submission of documentation by borrowers proving: legal capacity; the feasibility of the project; the legal status of the project; and security measures taken by the borrowers;
- execution of a loan contract;
- execution of a mortgage contract at a notary; and
- registration of the mortgage contract.

#### 8.4 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

- The lender may protect its interests by being the first to register the security interest in the LUR.
- Contractually agreeing on a cross default clause to act on the security in case such security is also taken by other creditors.

### 9 Tax

#### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Yes. The transfer of LUR is subject to a transfer tax rate of 2% (agricultural, forestry, aquaculture land and land use for salt production) to 4% (residential land, land used for construction and other purposes).

The transferor is liable to pay the transfer tax on transfer of LUR.

#### 9.2 When is the transfer tax paid?

The tax declaration must be filed within fifteen (15) days of the date of signing and notarising the LUR transfer contract. The tax on transfer of LUR must be paid within thirty (30) days of the receipt of the request for tax payment issued by the competent tax authority.

#### 9.3 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

- Transfer of LUR is not subject to VAT but transfer of properties attached to land is subject to 10% VAT, except in cases where State owned residential houses are sold by the State to existing tenants.
- Transferees are liable to pay VAT.

#### 9.4 What tax or taxes (if any) are payable by the seller on the disposal of a property?

Income derived from the transfer of LUR and of property attached to land is subject:

- to personal income tax (if the transferor is an individual) at a tax rate of 25% of the profit or 2% of the transfer price; and
- to corporate income tax (if the transferor is a legal entity) at a tax rate of 25% of profit.

#### 9.5 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Legal entities are subject to a 25% corporate income tax on profits in case of the sale of the property and in case of a sale of shares of a company.

However, individuals selling shares in a corporation will be subject to a 20% personal income tax on the profits or 0.1% of the transaction costs, as opposed to the tax on sale of real estate mentioned in question 9.4.

### 10 Leases of Business Premises

#### 10.1 Please briefly describe the main laws that regulate leases of business premises.

##### Civil Code 2005

Provides the legal status, legal standards for civil contracts and relations including real estate related transactions.

##### Law on Real Estate Business 2006

Provides provisions on real estate business activities and the rights, obligations of organisations and individuals conducting real estate activities. Specific rules applicable to all real estate transactions are clearly specified.

#### 10.2 What types of business lease exist?

Business leases are freely negotiated in the market.

#### 10.3 What are the typical provisions for leases of business premises in Vietnam regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

##### (a) Length of term

The standard lease term in practice is between 3-5 years.

##### (b) Rent increase

Rent review is on an annual basis within a fixed range of around 20%.

##### (c) Tenant's right to sell or sublease

A typical lease will permit assigning provided the landlord's consent is obtained. Subletting is a business activity subject to licensing, and is not found in a standard lease contract.

##### (d) Insurance

It is usually the Landlord who insures the property in the landlord's name to reinstatement value, against damage or destruction. The tenant will be responsible to insure against loss, injury, damage to the premises or to parties on the premises caused by the tenant's actions.

If the property is destroyed or damaged to an extent that it cannot be occupied by the tenant, the rent will be suspended accordingly. Suspension of around 90 days or more may serve as a basis for termination.

##### (e) (i) Change of control of the tenant

Provisions are not commonly provided.

##### e) (ii) Transfer of lease as a result of a corporate restructuring (e.g., merger)

Provisions as result of corporate restructuring are not commonly provided.

##### (f) Repair

The landlord is responsible for repair of equipment and facilities it supplied unless damage occurs due to the tenant's default.

#### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

The tenant is liable for value added tax of 10% of the rent.

A legal entity leasing out a premises is liable for corporate income tax at the rate of 25%.

If the leasing party is an individual, the leasing party will be liable to pay personal income tax at a progressive rate on the income generated from rent.

**10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?**

Business leases are usually terminated at expiry, on default, by either party, or by mutual agreement.

There is generally a clause allowing the tenant to extend or renew the lease by way of notifying the landlord prior to expiry, and a clause which provides for penalties applicable to early termination by either party or for damages applicable to early termination in case of default by either party.

**10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non compliance?**

The landlord may cease being liable for its obligations under the lease once the sale is completed, if the sale agreement details the transfer of obligations to the new owner. Similarly, the lessee may cease being liable upon the sale of the leased property, if stipulated in the lease contract.

The landlord may be responsible after the transfer of interest in respect of pre-sale non compliance if such pre-sale is not accepted in the contract by the buyer.

**10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the “environmental footprint” of a building. Please briefly describe any “green obligations” commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).**

Not yet applicable in Vietnam.

## 11 Zoning and Environmental Issues

**11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws. Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.**

**Zoning:**

**Construction Law 2003**

Provides guidance on construction activities, rights and obligations of legal entities and individual persons performing construction works and construction activities. Requirements, contents, and standards of the zoning works and responsibilities of parties in performing and in following the zoning works are also specified.

**Land Law 2003**

Specifies provisions on terms of land use, purposes of land use, rights of land users and registration procedures of land use rights.

**Environment:**

**Environmental Protection Law 2005**

Contains provisions on activities, policies, solutions and resources for environmental protection. Provides rights and obligations of legal entities and individual persons with regards to protection of the environment.

Real estate investors must conduct a report on the environmental impact of their project and provide solutions to minimise the negative impact and for drainage and waste treatment prior to licensing of a project.

**Land recovery by the State:**

Land use rights can be recovered by a decision of the National Assembly, of the Prime Minister, of municipal authorities and other assigned agencies; and land users must follow such recovery decisions.

Land users will be notified of such decisions on Land use rights recovery and of the land recovery plan.

The State will implement a land clearance and compensation plan which specifies a Land use rights compensation scheme and supports the evictees.

**11.2 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?**

The Ministry of Construction and the Ministry of Natural Resources and Environment are responsible to administer the land/building use and/or occupation and environmental regulations and policies. Local people’s committees are responsible to implement and manage the implementation of the land/building use and/or occupation and environmental regulations and policies within their territories.

Information related to land/building use and/or occupation and environmental regulation can be obtained by visiting the official website of, or by contacting directly, the authorities mentioned above.

**11.3 What main permits or licences are required for building works and/or the use of real estate?**

- LUR Certificate.
- Certificate on the Ownership of the Construction Works or Certificate of Ownership of Residential Housing.
- Construction planning certificate.
- Construction permit.
- Certification of construction works’ quality.
- Fire prevention and fire fighting condition satisfaction certificate.

**11.4 Are building/use permits and licences commonly obtained in Vietnam? Can implied permission be obtained in any way (e.g. by long use)?**

Yes, building/construction permits are commonly obtained in Vietnam.

Permits will not be required in few specific cases, namely when construction works fall in the category of State secrets or in accordance to an emergency order.

Generally there is no implied permission in other cases.

**11.5 What is the appropriate cost of building/use permits and the time involved in obtaining them?**

The government fee for a construction permit is about US\$ 3 for a house and US\$ 6 for other projects.

The timeline is fifteen (15) working days for houses and twenty (20) working days for other project from submission of the valid application file.

**11.6 In what circumstances (if any) is environmental clean up ever mandatory?**

Environmental clean up is a statutory administrative sanction applicable to polluters violating local pollution standards.

**11.7 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in Vietnam.**

Entities are required to:

- Make full use of natural conditions or apply appropriate

architectural structure solutions in order to reduce energy for lighting, ventilation, cooling and warming.

- Use heat-insulation materials manufactured according to the energy-saving standards in order to restrict the heat transmission through walls, doors and windows.
- Use equipment manufactured according to the energy-saving standards for installation in buildings.
- Arrange equipment and facilities to achieve high efficiency in order to save energy.

**12 General****12.1 Are there any current proposals for significant reform of real estate law in Vietnam? Please give details.**

No there are not.

**12.2 Date at which law is stated.**

November 10th, 2009.

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Ly Thanh Hien is highly experienced in the fields of real estate, project finance, foreign direct investment and corporate law with a focus on Vietnamese real estate projects. She acted as a senior in-house legal counsel for a leading player in the real estate sector for several years prior to joining GLN Vietnam's real estate team. Hien holds a LL.B in economic law from *Vietnam National University* in Hanoi.



Founded in Paris in 1920, Gide Loyrette Nouel (GLN) is a leading international law firm with more than 700 lawyers, including 110 partners. With 24 offices worldwide, GLN provides specialist quality services in the most complex areas of national and international business and finance law.

GLN was among the first international law firms licensed to set up a formal branch office in Vietnam. The team comprises 30 western and Vietnamese lawyers operating from its two offices in Hanoi and Ho Chi Minh City. GLN Vietnam forms an integral part of the Firm's Asia practice, with offices in Beijing, Shanghai and Hong Kong and activities extending across China, Japan, South Korea and South-East Asia.

GLN Vietnam has some of the best real estate capabilities in the market. The experienced team is able to assist clients in a wide range of sub-practices such as acquisitions, construction, leasing, development, financing and refinancing, taxation and public-private partnerships. This broad background allows GLN Vietnam to provide clients with full and integrated service expertise on complex and international transactions.