



MAJOR CHANGES IN NEW LAWS RELATED TO REAL ESTATE

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As of August 1, 2024, the three most pivotal legal documents within Vietnam's real estate legal framework, namely the Land Law 2024, the Real Estate Business Law 2023 ("**REB Law 2023**"), and the Housing Law 2023, will come into effect. Together with certain related provisions in the Credit Institutions Law 2024, these laws are set to significantly impact the real estate market in Vietnam.

The Saigon Times is pleased to present a series of analytical articles on the most noteworthy new regulations in these four legal documents. The series will focus on six main topics.

- (i) **Methods for determining land rent and land use fees;**
- (ii) Conditions and procedures for transferring real estate projects;
- (iii) Specific regulations on commercial housing projects;
- (iv) Specific regulations on industrial park projects;
- (v) Implementation of projects in the form of subdividing land lots for sale; and
- (vi) Expansion of business scope for enterprises with foreign investment.

PART 1

REFORMED MECHANISM FOR CALCULATION AND APPLICATION OF LAND USE FEES AND LAND RENT

Land rent will predominantly be paid annually, with limited opportunities to switch to a one-time payment scheme

Following the policy of “Primarily implementing the annual land rent” as stated in Resolution No. 18-NQ/TW, Article 120 of the Land Law 2024 enumerates the limited cases where one-time land lease payments are permitted. For all other cases, annual land rent will apply. This represents a significant shift from the Land Law 2013, which allowed land users the option to choose between one-time or annual land rent under all circumstances.

Specially, one-time land lease payments are applicable only in the following four cases:¹

- Land used for agriculture, forestry, aquaculture and salt production projects;
- Land used for industrial parks, industrial clusters, high-tech parks, and worker accommodation in industrial parks;
- Land used for public and business purposes; commercial, service land used for tourism and office business activities;
- Land used for the construction of rental social housing as per housing law regulations.

Notably, the case of “Land used for public and business purposes; commercial, service land used for tourism and office business activities” has

garnered considerable attention and feedback from investors and legal experts. Initially, this case was not included in the draft law as one-time land lease payments, aligning with the spirit of Resolution 18. However, after multiple rounds of consultation and feedback, it became one of the key issues to be reviewed before the final draft was submitted to the National Assembly. This regulation is particularly significant for Condotel (condominium hotel) and Officetel (office apartments) developments on leased land, allowing investors to make a one-time land rent payment and fully exercise their land use rights.

Additionally, the Land Law 2024 only allows the conversion to annual land rent from one-time land rent and not vice versa. In contrast, the Land Law 2013 allowed land users paying annually to switch to one-time payments during the land use period². However, for industrial zone and cluster land, conversion from annual to one-time land rent is allowed without requiring conversion of the entire project area.

Foreign investors typically prefer one-time land rent to lock in lease costs upfront, avoiding land price volatility and inflation, and enjoying more comprehensive rights compared to annual land rent. Conversely, domestic investors, often with less financial capacity, opt for annual land rent to reduce financial burdens during the early stage of project development, despite more limited land use rights. However, annual land rent exposes investors to potential increases in land lease costs, which are

expected to rise, especially as the Land Law 2024 removes the land price framework while the annual land price table adjustment is applicable as mentioned below. This could pressure investors holding large areas of land without sufficient financial capacity to develop projects, leading to the need for transfer to financially capable investors unwilling to invest time in project initiation.

Elimination of the Land Price Framework

The new law eliminates the land price framework, previously set for different land types and regions and remained stable for five years unless market prices changed by 20%. Local land price tables, which could not exceed regional price frameworks, also remained stable for five years³. The Land Law 2024 instead mandates annual adjustments to local land price tables, aligning them more closely with market prices and ensuring continuous updates.

This change means landowners whose land is acquired may receive higher compensation, potentially expediting the compensation and site clearance process - one of the most complex and time-consuming issues in real estate development. Conversely, the State rental price is expected to rise significantly, and although the Land Law 2024 ensures the stability of land rent within a 5-year cycle, with adjustments not exceeding the cumulative annual Consumer Price Index (CPI) of the previous 5 years⁴, real estate investors must prepare for substantial increases in land rental costs over the project lifecycle.

¹ Article 120, Land Law 2024

² Article 172, Land Law 2013

³ Article 113 and 114, Land Law 2013

⁴ Article 153, Land Law 2024

PART 1

REFORMED MECHANISM FOR CALCULATION AND APPLICATION OF LAND USE FEES AND LAND RENT

Changes in Land Price Calculation Methods

Land valuation methods are clearly and specifically legislated, *with four remaining methods*: comparison, surplus, income, and the land price adjustment coefficient (the deduction method has been eliminated)⁵.

Notably, the surplus method, initially excluded in early drafts of the Land Law 2024, was reinstated following widespread feedback from experts and investors. This method has been applied to nearly 90% of real estate projects since 2014, playing a key role in valuing potential land.

Immediately after the National Assembly's issuance of the Land Law 2024 on January 18, 2024, Decree 12/2024/ND-CP was promptly issued on February 5, 2024, amending and supplementing certain provisions of Decree 44/2014/ND-CP on land valuation, incorporating the land valuation methods mentioned in the Land Law 2024. This swift action by the Government underscores the urgency in adjusting land valuation methods and implementing specific criteria for these methods.

Leasehold Rights - New Rights for Annual Land Rent Investors

"Leasehold rights in land lease contracts" is a novel term, defined as the rights of the land user arising when the State leases land in form of annual land rent. Land users are entitled to transfer the leasehold rights, and transferees inherit land user's rights and obligations⁶. This broad definition has led

to misunderstandings and controversies about the extent of the rights for annual land rent payers that can be inherited upon transfer.

However, Article 46 of the Land Law 2024 clarifies that leasehold rights in land lease contracts must be associated with assets on the land. Land users only acquire these rights if they meet all conditions for transferring land-attached assets (completed construction according to the plan, registered land use, etc.), along with a new condition of having prepaid compensation, support, and resettlement costs not yet deducted from lease payments.

Thus, land users do not have leasehold rights in land lease contracts until they complete construction on the land and register property ownership. Moreover, in case the prepaid compensation, support, and resettlement costs are fully deducted, the investors no longer possess these rights.

This new regulation addresses situations where real estate projects on annually leased land, with prepaid compensation, support, and resettlement costs gradually deducted, are transferred by investors before the deductions are fully made. The Land Law 2013 lacked provisions for handling such prepaid amounts. Under the new regulation, investors acquiring land-attached assets continue to benefit from the deduction during the remaining period that has not been deducted, and the state does not refund prepaid amounts to the initial investors.

This is an important consideration for investors during real estate project M&A processes. It is

crucial to negotiate the value of the leasehold rights within the total transaction value and to include the lease-related rights and responsibilities in contract drafting and signing. Additionally, the Land Law 2024 recognizes leasing, mortgaging, and capital contributions of leasehold rights associated with land-attached assets in land lease contracts, significantly enhancing the value of land use rights and assets in various transactions.

⁵ Article 128.5, Land Law 2024

⁶ Article 3.37, Land Law 2024



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