



## 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 2

### REAL ESTATE PROJECTS TRANSFER

The conditions and procedures for transferring real estate projects, inherited from the REB Law 2014, have several notable new points as analyzed below.

#### **Elimination of mandatory land use right certificate requirement for real estate project transfers**

The transferor is required to fulfill all financial obligations related to the land of the project, including land use fees, land rent, and various taxes, fees, and charges related to the land<sup>1</sup>. Upon the completion of transfer procedure the fulfillment of these financial obligations related to the transfer transaction are fulfilled, the transferee shall then be issued the land use right certificate. Practically, from the time that the financial obligations related to the land are fulfilled, it usually takes several months for the investor to receive the land use right certificate and to take handover of the land on-site. Therefore, the elimination of this procedural step will save both parties a considerable amount of time and cost, which is significant for investors, especially as investment laws become increasingly stringent regarding project implementation timelines.

From the State's perspective, even though the transferring investor has not yet completed the procedure to apply for the land use right certificate for the transferred land area, the fulfillment of financial obligations related to the land, including land use fees, land rent, and various taxes, fees, and charges demonstrates the financial capacity of the investor and ensures the fulfillment of the State's revenue collection duties.

This new regulation is a positive, reasonable, and practical step forward, clearly reflecting the State's efforts to simplify administrative procedures. It is

anticipated to expedite the real estate project transfer process, thereby benefiting all parties involved.

#### **Addressing procedural conflicts related to land when transferring real estate projects**

Currently, the REB Law 2014 and Decree 43/2014/ND-CP, which guides the Land Law 2013 ("**Decree 43**"), use different criteria to classify administrative land procedures in the case of real estate project transfers.

Decree 43 bases its criteria on the form of land rent and land use fee<sup>2</sup>:

- *For projects using land under the form of land allocation with payable land use fee and one-time land rent for the entire lease period*, and the payment does not originate from the state budget, the land use rights transfer procedure is carried out immediately from the transferor to the transferee;
- *For projects using land under the form of land allocation without land use fees or annual land rent*: After approval for the transfer of the real estate project, the State will revoke the land from the transferor and lease/allocate the land to the transferee within the transferred project area.

In contrast, the REB Law 2014 classifies based on the land user:

- *Foreign-invested enterprises receiving the transfer of a real estate project*: The procedure applies similarly to the case of "Projects using land with annual land rent as mentioned above;

- The REB Law 2014 does not specify procedures for other subjects, such as domestic economic organizations<sup>3</sup>.

This conflict is evident when a foreign-invested enterprise receives a real estate project transfer where the land use rights were allocated with payable land use fees or one-time land rent. In such cases, it is unclear whether the State revokes the land from the transferor and grants it to the transferee according to the REB Law 2014, or if the land use rights transfer procedure is carried out immediately from the transferor to the transferee as guided by Decree 43?

The REB Law 2023 resolves this issue by totally referring to the Land 2024 Law without providing a separate procedure in the REB Law 2013. However, the REB 2023 Law retains the previous structure, mentioning only the land procedures applicable to foreign-invested enterprises while remaining silent on similar procedures applicable to domestic enterprises or other land users.

Since it refers to the Land Law 2024, but this law has not yet specified the procedures, it is necessary to follow the Decrees guiding the Land Law 2024 to determine the applicable procedures.

#### **Changes in Policies for Exemption and Reduction of Land Rent/Land Use Fees in M&A**

Under the Land Law 2024, domestic organizations allocated land with land use fees and those paying land rent under the form of one-time payment for the entire lease period must repay any previously exempted or reduced land rent/land use fees upon transferring land use rights or contributing capital with land use rights. This obligation to repay

<sup>1</sup> Article 40.3 REB Law 2023

<sup>2</sup> Article 83.2 Decree 43/2014/ND-CP

<sup>3</sup> Article 51.3 REB Law 2023

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previously received exemptions or reductions must now be accounted for in real estate project transfer transactions. This regulation marks a significant shift in policy and applies to both domestic organizations and foreign-invested economic organizations.<sup>4</sup>

Furthermore, a more favorable regulation has been introduced for land users. Those exempt from land use fees or land rent are no longer required to complete a separate procedure to request the exemption<sup>5</sup>. Previously, land users were obligated to carry out procedures to determine the exemption amount immediately after receiving a decision on land allocation or land lease. This process involved substantial time to determine land prices, particularly in cases where a specific land price is applicable rather than the local land price table. It is only after the state agency completes this determination that the amount of land rent or land use fees eligible for exemption or reduction is finalized, allowing the land user to proceed with subsequent procedures.

#### **No exceptions for Credit Institutions transferring real estate projects to recover debts**

The REB Law 2023 does not address this issue, reflecting a perspective that this is not considered a specialized real estate business activity but merely a debt recovery activity specific to credit institutions. Therefore, this matter is governed by law on Credit Institutions and the laws on secured asset disposal. Specifically, the Credit Institutions Law 2024 provides for the right to transfer real estate projects in Article 200.

However, contrary to the expectations of many investors and real estate experts, Article 200 of the Credit Institutions Law 2024 does not specify unique conditions for this particular activity of credit institutions. Instead, it refers to the conditions for transferring real estate projects stipulated in the REB Law 2023. As a result, credit institutions transferring real estate projects to recover debt must adhere to the same stringent conditions applicable to all real estate project transfers by investors and real estate businesses, without any special exemptions or preferential treatment.

Notably, Resolution 42/2017/QH14 provided for more lenient conditions for project transfers, aiming to facilitate the disposal of secured assets for debt recovery by credit institutions. Specifically, it allowed for simpler, more streamlined requirements, such as: the project being approved; having a decision on land allocation or land lease; no disputes over land use rights; no seizure, and no land recovery decision. More stringent conditions, such as the completion of detailed planning, compensation, support and resettlement; technical infrastructure, and particularly land-related financial obligations, were waived<sup>6</sup>.

This lenient regulation received widespread support from investors and real estate experts, significantly improving the efficiency of bad debt management in the banking sector.

During the process of amending the REB Law 2023, there were numerous suggestions to extend these pilot regulations on the disposal of secured assets by credit institutions to general regulations on project transfers. The rationale was that transferring real estate projects could assist struggling investors,

and transferring projects in their existing state would enable capable investors to continue development. Thus, the legal conditions should focus on basic requirements without mandating the completion of financial obligations related to the land.

However, from a regulatory perspective, stringent conditions for transferring real estate projects help prevent the speculative trading of real estate projects. This ensures that investors conduct thorough research and preparation, including financial readiness, before committing to a project, thereby avoiding abandoned projects that waste land resources and miss opportunities for capable investors.

Nonetheless, the Credit Institutions Law includes transitional provisions. Specifically, real estate projects accepted as secured assets before August 1, 2024, will only need to meet the more lenient conditions similar to those stipulated in Resolution 42. Meanwhile, for real estate projects accepted as secured assets from August 1, 2024, the new regulations will apply<sup>7</sup>, requiring compliance with all stringent conditions applicable to all real estate project transfers.

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<sup>4</sup> Article 33.3(b) and Article 41.5 Land Law 2024

<sup>5</sup> Article 157.3 Land Law 2024

<sup>6</sup> Article 10 Resolution 42

<sup>7</sup> Article 200 Credit Institutions Law 2024



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