



## 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 4

### SPECIFIC REGULATIONS ON INDUSTRIAL PARK PROJECTS

#### Industrial park projects are subject to State land acquisition and allocation/lease

The Land Law 2013 provides regulations on cases of land use right auctions and cases without land use right auctions, causing investors and competent State agencies to have to cross-reference many other legal documents such as the Bidding Law, Investment Law, specialized laws regulating each type of project, etc., to conclude whether a project is subject to auction, bidding, or neither. To address this situation, the Land Law 2024 has specifically stipulated the cases, conditions, and procedures for applying each form of state land allocation and lease:

- Without land use right auction, without bidding to select investors to implement projects using land (Article 124);
- Via land use right auction (Article 125);
- Via bidding to select investors to implement investment projects using land (Article 126);
- Via agreement on land use rights with landowners and land use by own investors.

Among the above forms, the form of State land allocation/lease without auction/bidding is regulated in the direction of detailing cases and conditions to be met to limit the cases applying this form; and instead, the form of auction/bidding to increase budget revenue and agreement on land use rights/land use by investors to balance benefits between investors and landowners will be prioritized.

Specifically for investment projects and construction of industrial park infrastructure, the Land Law 2024 has clarified that industrial park projects implemented with private capital will be subject to land allocation and lease without auction or bidding (specifically, they fall under the case of projects being leased land with exemption from land rent due to implementation in investment incentive areas such as industrial parks<sup>1</sup>). For investors, this clear regulation is of great significance as industrial park projects with typically very large land use areas will still need the State to carry out compensation, support, and resettlement work, as it would be difficult to negotiate with a large number of people with land use rights. At the same time, not having to go through auction/bidding procedures will significantly reduce time and costs for investors to prepare and implement these procedures. For state agencies, this regulation will avoid controversy as well as avoid the need to explain and justify this issue during the appraisal process and monitoring of industrial park project implementation due to related regulations being scattered across various legal documents as is currently the case.

#### Economic organizations with foreign investment capital are allowed to receive land use right transfers in Industrial Parks<sup>2</sup>

The Land Law 2013 mentioned this right of land users but only granted it to overseas Vietnamese, while enterprises with foreign investment capital were only allowed to receive investment capital transfers in the form of land use right value, provided that the land was allocated with land use fees or leased with one-time rent payment, and the value of land use rights had been capitalized into the enterprise's capital.

Thus, until now, this is the only case where enterprises with foreign investment capital have the right to receive land use right transfers from other land users, whereas previously they could only **receive land from the State** in the form of land allocation or land lease. This exception is due to the unique nature of industrial park projects: industrial park projects are planned according to the Sector Planning (Vietnam Industrial Park Development Planning) and established according to a strict process, with the participation of many levels of management and many relevant ministries and sectors from the step of approving/deciding on investment policies. During this process, state agencies have carefully considered issues of security, national defense, planning, environment, land, etc. Additionally, each industrial park is established with its own purpose and development orientation, synchronized in technical infrastructure, and investors operating in the industrial park must commit to ensuring issues of construction, environment, fire prevention and fighting, etc., so the exercise of rights by foreign investors when receiving land use right transfers in this area will be quite tightly controlled.

However, it should be understood that the transfer and receipt of land use right transfers can only be carried out with land leased by the state in the form of one-time rent payment for the entire lease period - consistent with the rights of land users according to each form of land allocation and lease from the state.

Although not a new point, another exception applied to industrial park projects is that for the form of annual land rent payment, industrial park infrastructure business enterprises are allowed to

<sup>1</sup> Article 124.1, Article 157.1.a Land Law 2024

<sup>2</sup> Article 28 Land Law 2024

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**sublease land use rights** where the sublessee is still **granted a Land Use Right Certificate**.

With the above-mentioned specificities, it can be seen that industrial park projects are **encouraged in legal perspective** in the process of establishment and development. In particular, with the right to receive land use right transfers in industrial parks, foreign investors will have more options to access land funds and may avoid having to implement complex M&A forms with potential risks such as project transfer or capital transfer in target companies.

#### **New regulations on compensation, support, and resettlement**

With the characteristic of concentrated industrial development, industrial park projects typically require very large land areas, up to tens or hundreds of hectares, with some projects needing up to thousands of hectares of land. Therefore, compensation, support, and resettlement are always the most burdensome, complex, time-consuming, and problematic tasks in the development of industrial park projects.

The Land Law 2024 particularly has many adjustments aimed at resolving obstacles and quickly promoting compensation, resettlement, and site clearance work, and accordingly, industrial park projects are expected to benefit from these legal changes. Some adjustments are summarized as follows:

- Along with the abolition of the land price framework and the issuance of annual land price tables for each locality, **land compensation**

**prices will be closer to market prices** and are expected to increase over time and accurately reflect the market of each locality. Benefiting from this policy, compensation prices calculated based on specific land prices at the time of approving the compensation, support, and resettlement plan will provide more market-based compensation for people whose land is acquired.

- Land users can not only be compensated with land of the same use purpose but also with **land of different use purposes from the acquired land or with housing** if the locality has land fund conditions. Land users, when desired, will be **compensated in cash** without having to wait until the compensation land fund is exhausted.
- In cases where people whose land is acquired, property owners do not accept compensation and support money, this amount will be deposited in commercial banks with non-term interest rates, and **this interest will be paid to the people whose land is acquired, property owners**<sup>3</sup>.
- The conditions for **technical infrastructure and social infrastructure of resettlement areas** are clearly and strictly regulated in the direction of ensuring better conditions for resettled people instead of general regulations as currently. Accordingly, the minimum technical infrastructure must meet new rural or corresponding urban standards for the area, in which roads ensure connection with surrounding areas, lighting and domestic electricity, water supply and drainage systems, communication,

environmental treatment; social infrastructure must ensure access to health, education, cultural, sports, market, commercial, service, entertainment, and cemetery services<sup>4</sup>.

The Land Law 2024 also adds provisions on **the location of resettlement projects and resettlement areas** in order of priority: same commune, same district if not possible in the same commune, different district if not possible in the same district; and finally prioritizing locations with favorable positions to form resettlement areas.

- Regarding the process of implementing compensation, resettlement, and land acquisition, the Land Law 2024 has **legalized regulations on the timing of issuing Land Acquisition Decisions** after the approval of compensation, support, and resettlement plans; for cases requiring resettlement arrangements, land acquisition decisions can only be issued after residential land and housing for resettlement have been completed for people whose land is acquired. At the same time, there are provisions for some cases where land can be acquired if agreed by the person whose land is acquired and who has received compensation money to arrange their own accommodation or has been temporarily resettled<sup>5</sup>.

All of the above adjustments in the Land Law 2024 demonstrate the State's efforts to remove obstacles and quickly promote site clearance for project implementation and will be of utmost importance in the implementation of industrial park projects. However, due to many new policies and regulations being issued, it will take time to see the actual implementation effectiveness.

<sup>3</sup> Article 94.3 Land Law 2024

<sup>4</sup> Article 110 Land Law 2024

<sup>5</sup> Article 91.6, Article 87.5 Land Law 2024

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#### Housing for workers

While the Housing Law 2014 considered housing for workers in industrial parks as a type of social housing and designed a common policy for all types of social housing, including worker housing, the Housing Law 2023 has designed this content as a separate section in social housing development policy, referred to by the specific term "Worker accommodation in industrial parks"<sup>6</sup>.

Accordingly, worker housing **must meet specific requirements**, including area, synchronization of technical infrastructure systems, social infrastructure, ensuring environmental issues, while being separate from the production area in the industrial park and ensuring security and safety for the residential area. When these requirements are met in practice, the living standards of workers in industrial parks will certainly be improved, thereby attracting labor sources from local areas as well as surrounding areas to work in industrial parks. Notably, workers using this type of worker housing **can only rent or sublease** without the option to buy or rent-to-buy - a form that helps workers significantly reduce their financial burden but conversely pushes this burden onto the investors developing worker housing projects.

For investors, although they cannot quickly recover capital from building worker housing through rent or rent-to-buy forms, the Housing Law 2023 has added **new incentives alongside traditional incentives** on land use fees, land rent, and taxes. Specifically, the cost of investing in technical infrastructure and social infrastructure is included in the investment cost of industrial park infrastructure, while the cost of investing in construction or the cost of renting houses for workers to sublease is considered as a

deductible expense when determining taxable corporate income<sup>7</sup>.

Additionally, industrial park infrastructure business enterprises are required to **determine the demand for worker housing rentals**, while also **preparing and submitting plans as well as investing in infrastructure construction** for worker housing associated with that industrial park. Conversely, industrial park infrastructure business enterprises can transfer land funds to manufacturing enterprises in the industrial park **in the form of land lease** - a form of receiving land use rights that is very clearly and specifically regulated, aimed at reducing the financial burden for construction investors if annual land rent is paid, whereas previously, the Land Law 2013 did not specify this form, leading to industrial park infrastructure business enterprises being in a state of confusion and perplexity when wanting to transfer the right to develop social housing projects for workers, especially for enterprises with foreign investment capital.

This is both an opportunity to develop sustainable industrial parks and a heavier responsibility for industrial park infrastructure business enterprises.

<sup>6</sup> Section 3 Chapter VI and Article 2.8 Housing Law 2023

<sup>7</sup> Article 98 Housing Law 2023





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