

LEGAL NEWSLETTER



IN THIS LEGAL NEWSLETTER

NOTABLE PROVISIONS OF THE LAW ON REAL ESTATE BUSINESS 2023

Page 2

SOME NEW REGULATIONS ON FIRE PREVENTION AND FIGHTING OF ENTERPRISES

Page 5

SOME NEW REGULATIONS ON LAND USE LEVY, LAND RENT

Page 7

Notable Activities in August, 2024

There have witnessed a significant number of minors/juveniles coming into contact with the law for various reasons – as victims or witnesses of crimes, as defendants in criminal proceedings, or as parties in civil proceedings that encompass child protection and custody. However, Vietnam, like most countries, has a court system designed primarily for adults. Also, Viet Nam does not yet have a law on justice for minors.

“Formative Evaluation of Family and Juvenile Courts in Viet Nam” was conducted in the context of a Supreme People’s Court legislative initiative to develop a specialist law on justice for minors, published in August 2024. The Evaluation was conducted by NHQuang&Associates, commissioned by UNICEF under the framework of the EU Justice and Legal Empowerment Programme in Vietnam (EU JULE). This study evaluates the establishment and operations of F&JCs within the current legal framework through relevance, effectiveness, efficiency, and scalability/sustainability criteria.

Available at: <https://www.unicef.org/vietnam/vi/bao-cau/nghien-cuu-toa-gia-dinh-nguoi-chua-thanh-nien>

NOTABLE PROVISIONS OF THE LAW ON REAL ESTATE BUSINESS 2023

HUNG QUANG - MY NGAN

After eight years after the promulgation of the Law on Real Estate Business 66/2014/QH13 (**Law on Real Estate Business 2014**), according to the implementation assessment summary in Submission Report 150/TTr-CP dated April 26, 2023 of the Government on the Project of the Law on Real Estate Business (amended), the implementation of this law still has many shortcomings, causing difficulties and hindering business activities, transactions in the real estate market. Realizing the urgency in completing the provisions of the Law on Real Estate Business 2014, in order to remove obstacles, and difficulties from the remaining shortcomings, on November 28, 2023, the National Assembly promulgated the Law on Real Estate Business 29/2023/QH15 (**Law on Real Estate Business 2023**), effective from August 1, 2024. This article will focus on analyzing some important amendments of the Law on Real Estate Business 2023, specifically as follows:

Firstly, expanding the forms and scopes of business of entities conducting real estate business pursuant to the new provisions, in particular:

First, the Law on Real Estate Business 2023 has applied the term “foreign-invested economic organizations” instead of “foreign-invested enterprises” under the Law on Real Estate Business 2014 to ensure terminology consistency with the Law on Investment 2020.

In accordance with the Law on Real Estate Business 2023, foreign-invested economic organizations that *are subject to meet the conditions and implement the investment procedures prescribed for foreign investors* under the Law on Investment (one of the three cases stipulated in clause 1, Article 23 of the Law on Investment 2020) are **entitled to conduct real estate business in the forms and scopes of real estate business of Vietnamese people residing abroad who are not Vietnamese citizens** (clause 4, Article 10 of the Law on Real Estate Business 2023). These foreign-invested economic organizations include:

“a) Those having foreign investors hold more than 50% of the charter capital or, for economic organizations



being partnerships, having the majority of their general partners be foreign individuals;
b) Those having more than 50% of the charter capital held by the economic organizations specified at point a of this clause;
c) Those having more than 50% of the charter capital held by the foreign investors and economic organizations specified at point a of this clause” (clause 1, Article 23 of the Law on Investment 2020).

Foreign-invested economic organizations that *are not required to meet the conditions and implement the investment procedures prescribed for foreign investors under the Law on Investment as mentioned above* will be free to access and conduct real estate business in the forms and scopes of business applying to domestic organizations (clause 5, Article 10 of the Law on Real Estate 2023).

Second, the Law on Real Estate Business 2023 separates two groups of subjects including (i) Vietnamese people residing abroad who are Vietnamese citizens and (ii) Vietnamese people residing abroad who are not Vietnamese citizens. This regulation is also in line with the Law on Land 2024. Specifically, the scopes and forms for conducting business of houses, construction works and land use rights with available technical infrastructure in real estate projects, transfer of real estate projects of Vietnamese people residing abroad who are Vietnamese citizens will be similar to those applied to domestic individuals (clause 2, Article 10 of the Law on Real Estate Business 2023). Vietnamese people residing abroad who are not Vietnamese citizens are entitled to conduct

business in the limited forms and scopes of business under clause 3, Article 10 of the Law on Real Estate Business 2023.

It is noticeable that the Law on Real Estate Business 2023 has *expanded the forms and scopes of business* for (i) **the group of subjects being foreign-invested economic organizations that are not required to meet the conditions and implement investment procedures for foreign investors** and (ii) **the group of Vietnamese people residing abroad who are Vietnamese citizens**. This expansion facilitates the entities with good capital capacity to participate in the real estate business market and promotes more robust development of this market in the future.

Secondly, *innovating the conditions for real estate brokerage service business*. The new regulation imposes stricter conditions on organizations, and individuals providing real estate brokerage services compared to the previous one. Specifically, there are 2 main contents as follows:

First, the Law on Real Estate Business 2023 requires organizations, and individuals providing real estate brokerage services to *establish an enterprise providing real estate services* under the Law on Real Estate Business 2023 which fully meets all of the following conditions: (i) Having regulations on real estate brokerage service operation; (ii) Having facilities and techniques that meet the operational requirements in accordance with the law (specified in Article 18 of Decree 96/2024/ND-CP); (iii) Having at least 1 individual holding real estate brokerage certificate; (iv) Before its operation, having sent the information about the enterprise to the provincial-level state management agency in charge of real estate business where it is established for posting on the housing and real estate market information system (clause 5, Article 9 and clause 1, Article 61 of the Law on Real Estate Business 2023).

Second, the Law on Real Estate Business 2023 no longer allows individuals to provide real estate brokerage freely. Individuals practicing real estate brokerage must meet the following conditions: (i) Having a real estate brokerage practice certificate; (ii) Practicing in an enterprise providing real estate trading floor service or real estate brokerage service (clause 2, Article 61 of the Law on Real Estate Business 2023).

Thirdly, *supplementing detailed regulations on the*

establishment, registration, and operating conditions of real estate trading floors. This new provision has 2 following notable contents:

First, Article 54 of the Law on Real Estate Business 2023 has supplemented details to complete the provisions on *conducting real estate trading floor service*. Organizations and individuals providing real estate trading floor service must establish enterprises conducting real estate services. The name of such enterprise must contain the phrase “*real estate trading floor*” and must not be identical or confusing with the name of other registered enterprises conducting real estate trading floor service. In addition, before operating, the investors of a real estate trading floor must send a dossier to the provincial-level state management agency in charge of the real estate business where the trading floor is headquartered to obtain the operation license.

Second, in addition to the detailed requirements on the establishment, and registration of real estate trading floors, compared to the Law on Real Estate Business 2014, Article 55 of the Law on Real Estate Business 2023 also supplements detailed provisions on the operation conditions of real estate trading floors, including the conditions for the managers, operators of real estate trading floors and conditions for real estate trading floors. In particular, a real estate trading floor must (i) be established and registered for operation under the Law on Real Estate Business 2023, (ii) promulgate, and publicize the procedure for real estate transactions through the real estate trading floor and (iii) register a fixed operation location with the facilities and techniques to ensure implementation of the real estate trading floor activities.

Fourthly, *supplementing regulations on deposits in the sale, lease-purchase of houses, and construction works formed in the future*. Accordingly, the Law on Real Estate Business 2023 for the first time recognizes “*deposit*” as a *guaranteed measure in the sale, lease-purchase of houses, construction works, and construction floor area in construction works*. Investors of real estate projects are only allowed to collect deposits “*not exceeding 5% of the sale, lease-purchase price of houses, construction works, construction floor area in construction works from the depositor for sale or lease-purchase when the houses, construction works have fully met the conditions for business launching*”. The relevant

deposit agreement must clearly stipulate the provisions on the sale or lease-purchase price of houses, construction works, and construction floor area in construction works (clause 5, Article 23 of the Law on Real Estate Business 2023).

Fifthly, *adjusting regulations on conditions for the transfer of the whole or part of real estate projects.* Specifically, the regulation of “*not required to have a land use rights certificate*” in clause 3, Article 40 of the Law on Real Estate Business 2023 is found more progressive than the previous provisions, creating favorable conditions for the transfer of projects. This regulation is in sync with the provisions of the Law on Land 2024 with the hope of removing bottlenecks in permitting project transfer to ensure land use efficiency. Under the new regulation assignors are only required to meet the conditions including (i) Having acquired the decision on land allocation, land lease, and permission to change the land use purpose for project implementation; (ii) Having fulfilled the project's land-related financial obligations, including land use levy, land rent and other land-related taxes, charges and fees of the project/part of the transferred project, but “*not required to have a certificate of land use rights in accordance with the law on land for the whole or part of the transferred project*”.

It is found that the Law on Real Estate Business 2023 has many amendments, and supplements compared to the Law on Real Estate Business 2014 to complete the legal framework for conducting real estate business activities and real estate service business in Viet Nam. Individuals and enterprises (especially Vietnamese people residing abroad, and foreign-invested economic organizations) should update and study the provisions of the Law on Real Estate Business 2023, as well as detailed guiding documents of this Law to approach and implement business investment activities effectively. In addition, individuals and enterprises need to pay attention to the transitional provisions in Article 83 of the Law on Real Estate Business 2023 for their real estate business activities. In particular, the enterprises conducting real estate business and real estate service business that are operating but do not fully meet the conditions of the Law on Real Estate Business 2023 are supposed to adjust and supplement the full conditions within 6 months from the effective date of the Law on Real Estate Business 2023 to continue their business in accordance with regulations. For your better understanding of the new policies and regulations of the Law on Real Estate 2023, NHQuang&Associates is willing to provide relevant answers and legal opinions.

SOME NEW REGULATIONS ON FIRE PREVENTION AND FIGHTING OF ENTERPRISES

HAI LINH

On July 10, 2024, the Ministry of Public Security issued Circular 32/2024/TT-BCA amending Circular 149/2020/TT-BCA guiding the Law on Fire Prevention, Fighting; the amended Law on Fire Prevention and Fighting; and Decree 136/2020/ND-CP guiding the Law on Fire Prevention and Fighting and the amended Law on Fire Prevention and Fighting (**Circular 149**); and Circular 08/2018/TT-BCA guiding Decree 83/2017/ND-CP regulating rescue work of the fire prevention and fighting forces (**Circular 32**). The following are some new points of Circular 32 that may affect business operations:

First, amending and supplementing the components of the documents of managing and supervising fire prevention and fighting ("fire prevention and fighting documents") for the facilities mentioned in Annex III (List of facilities managed by the Police agencies (on fire prevention and fighting)), Decree 50/2024/ND-CP providing a number of articles and measures to implement the Law on Fire Prevention and Fighting and the Law amending and supplementing a number of articles of the Law on Fire Prevention and Fighting and Decree 83/2017/ND-CP regulating rescue work of fire prevention and fighting forces (**Decree 50**) such as buildings used as enterprise headquarters and offices with 5 floors at minimum, motor vehicle sales establishments with the minimum business area of 300m². The fire prevention and fighting documents of such facilities shall be prepared by their heads. Compared to clause 1, Article 4, Circular 149, Circular 32 **amends** several documents such as (i) the decision to issue internal regulations (instead of the Internal regulations), (ii) the certificate of professional training in fire prevention and fighting, rescue work issued by the competent Police agency (instead of a copy of the certificate or the decision on issuing the certificate by the competent Police agency); **supplements** the 6-month periodic report on fire prevention and fighting inspection prepared by the heads of the facilities mentioned in Annex III, Decree 50.

Second, supplementing the components of fire prevention and fighting documents for the facilities



mentioned in Annex IV (List of facilities managed by the communal People's Committees (on fire prevention and fighting)) of Decree 50 such as buildings used as headquarters and offices of enterprises, political and social organizations with less than 5 floors and the volume of less than 1,500m³, motor vehicle sales establishments with business area of less than 300m² with the total volume of the buildings of less than 1,500m³. The fire prevention and fighting documents of such facilities shall be prepared by their heads. According to Circular 32, 3 documents have been supplemented to the fire prevention and fighting documents of these facilities, including: (i) The issued certificate or document approving fire prevention and fighting design, and the issued document approving fire prevention and fighting test results; (ii) Copy of the master plan drawing approved by competent authority showing the road system, the water sources for fire fighting, the functional arrangement of work items, and technological systems in the facilities (if any); (iii) The document on the test results of earth ground resistance for lightning protection, results of evaluating pressure system, equipment, and pipes according to legal regulations (if any).

Third, amending the regulations on updating the online database on fire prevention and fighting and connecting the incident report transmission. Accordingly, when the information infrastructure as prescribed in clause 3, Article 11, Circular 149 is available and with the instructions from the Police Department of Fire Prevention and Fighting and Rescue, the facilities addressed in Annex III, Decree 50, which are required to be equipped with automatic fire alarm and fire suppression systems or devices according to the technical standards and regulations, is obliged to perform the following:

(i) Completing the update of the online database on fire prevention and fighting according to Article 12, Circular 149: Assigning persons to fully update the

information on fire prevention and fighting and rescue at the facility as required by the Police agencies; immediately updating any changes and ensure the accuracy and timeliness of the information.

(ii) Completing the connection of incident report transmission as prescribed in Article 12, Circular 149, such as: Setting up at least 2 telephone lines to receive messages and calls about fires, incidents, and accident warning calls from the fire prevention and fighting database management and incident report transmission system; being responsible for managing the incident report transmission devices according to the information provided to the police agency.

COMMENTS AND RECOMMENDATIONS

The issuance of Circular 32 has created changes related to fire prevention and fighting of enterprises - one of the vital activities that enterprises must pay attention to during their operation to ensure safety for goods, human life, and health. Circular 32/2024/TT-BCA takes effect from August 24, 2024. Individuals and enterprises need to update and research the provisions of the Circular to ensure compliance with the laws. It should be noted that failure to comply with fire prevention and fighting regulations may result in administrative penalties; for example, enterprises shall be fined from 6 million Viet Nam dong to 10 million Viet Nam dong for any failure to prepare documents of management and monitoring of fire prevention and fighting and rescue work according to clause 2, Article 4 and clause 2, Article 31, Decree 144/2021/ND-CP providing penalties for administrative violations against regulations on security, social order and safety; prevention and control of social evils; fire prevention and fighting; rescue; prevention and fighting of domestic violence.

SOME NEW REGULATIONS ON LAND USE LEVY, LAND RENT

THUY MAI

On July 30, 2024, the Government promulgated Decree 103/2024/ND-CP on Land Use Levy and Land Rent (**Decree 103**). This Decree aims to provide details for the Law on Land 2024 regulations related to the calculation, collection, payment, and management of land use levy and land rent. At the same time, the decree is intended to resolve the issues arising from the practical implementation of the previous Law on Land 2013's provisions on collection of land use levy, land rent, and water surface rent. Decree 103 takes effect from August 1, 2024 with some notable contents as follows:

First, supplementing the policy on land use levy exemption or reduction. This policy performs as one of the bases for calculating land use levy (the details are specified in Section 2 Chapter II Decree 103) with some new points as compared with the previous regulations in Decree 45/2014/ND-CP on the collection of land use levy, specifically:

- Decree 103 supplements some typical rules on land use levy exemption or reduction, such as:
 - (i) In the cases where a governmental authority discovers that a land user receives exemptions or reductions in land use levy but fails to meet the regulatory conditions for such exemptions or reductions (if any), does not use the land for the intended purpose as stated in the land allocation decision but is not subject to land recovery under the Law on Land, or if the land user requests not to apply incentives because they no longer meet the conditions for land use levy exemption or reduction, the land user must repay the previously exempted or reduced land use levy amount to the state budget.
 - (ii) In the cases where the land user must return the previously exempted or reduced land use levy amount according to the provisions in section (i) abovementioned, the compensation, support, and resettlement costs that have been advanced (if any) can be deducted (in case of land use levy exemption) or can continue to be deducted (in case of land use levy reduction) from the land use levy



that must be repaid according to clause 2 Article 94 of the Law on Land 2024 and clause 2, clause 3 Article 16 of Decree 103. If the compensation, support, and resettlement expenses have been included in the project's investment costs, they can not be deducted from the land use levy.

- Decree 103 provides additional cases eligible for land use levy exemption, for example:
 - (i) Implementation of land and housing policies for ill and injured veterans without the ability to work, or for families of martyrs without any primary income earner;
 - (ii) Residential land for people subject to relocate when the Government expropriates land due to potential threats to human life;
 - (iii) The land area of a cemetery infrastructure investment project used for the transfer of the land use right attached to infrastructure, to build a facility to store ashes that the investors arrange for the cremation of social policy beneficiaries under provisions of the law on construction, management, and use of cemeteries and crematoria.
- Decree 103 supplements many individuals who are eligible for land use levy reduction, typically cadres, civil servants, government employees, teachers, medical staff, etc. currently working at border communes, islands, or island districts without commune-level administrative units belonging to areas with difficult or extremely difficult socio-economic conditions.

Second, amending and supplementing the policy for land rent exemption or reduction. The policy for land rent exemption or reduction is one of the bases for calculating land rent (the relevant details are stipulated in Section 2 Chapter III Decree 103) and has some new points compared to the previous provisions in Decree 46/2014/ND-CP on collection of land rent, water surface rent, specifically:

- Decree 103 supplements some rules on land rent exemption or reduction, such as:
 - (i)** No application of land rent exemption or reduction under the laws on investment incentives to investment projects in manufacturing, commerce, and service sectors that are subject to special excise duty under the Law on Special Consumption Tax, except for projects that manufacture automobiles, aircraft, and cruise ships;
 - (ii)** Rules for handling cases where the one-time payment granted for the entire duration of a government land lease has been exempted or reduced according to the law, but then the land use right is transferred or used for capital contributions, or the investment project is transferred in attachment with the transfer of land use right, etc.
- Decree 103 eliminates the subjects exempted from land rent for the entire lease term as previously prescribed, for example:
 - (i)** Investment projects in sectors with special investment incentives that are permitted to invest in areas with extreme socio-economic disadvantages;
 - (ii)** Land for implementing protective forest planting and sea encroachment forest planting projects;
 - (iii)** Land for building scientific research institutes owned by science and technology firms;
 - (iv)** Land for building shared infrastructure in industrial parks, industrial clusters, and export processing zones.
- Decree 103 supplements and stipulates the specific cases eligible for annual land rent reduction, typically:
 - (i)** 80% reduction of annual land rent in the entire land lease term for the land used to build other auxiliary facilities directly supporting train operations, passenger pick-up and drop-off, and loading and unloading cargos for railway; for the land used to build facilities for aviation and non-aviation services according to regulations;
 - (ii)** 50% reduction of land rent in cases where land is used to implement an investment project under public-private partnership in a sector or area subject to the List of sectors and occupations eligible for investment incentives; business sectors and occupations eligible for special investment incentives; areas with difficult socio-economic conditions and areas with extremely difficult socio-economic conditions under provisions of the law on investments, except for cases where land is used to implement transportation infrastructure projects under public-private partnership.

COMMENTS AND RECOMMENDATIONS:

It can be seen that the provisions enacted in Decree 103 are clearer and more specific as compared to previous policies, which makes it easier for land users and government agencies to follow and implement the new regulations on land use levy, and land rent in the Law on Land 2024. Particularly, Decree 103 has provisions for reforming administrative procedures (reducing a few procedures in the exemption of land use levy or land rent). Aside from the abovementioned contents, businesses should note the transitional contents while simultaneously updating and researching other provisions of Decree 103 to potentially utilize them in business operations, ensuring full rights and benefits under the law.

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