New Land Law of Vietnam: Major Impacts on Foreign Developers

American Chamber of Commerce HCMC Business Luncheon

Dr. Vinh Quoc Nguyen
Sr. Attorney-at-Law
25 June 2014
General Overview

The new Land Law of Vietnam was ratified on 29 Nov. 2013 and will come into force on 1 July 2014. Decrees Nos. 43, 44, and 47 come into force on the same date.

Overall assessment of new Land Law:

• More detailed and liberal;

• Places local and foreign investors on an equal footing in terms of land acquisition and land prices; and

• More unpredictable in the payment of the land prices.
## Specific Issues

### 1. Land Lease and Land Allocation

<table>
<thead>
<tr>
<th>Categories</th>
<th>2003 Land Law</th>
<th>2013 Land Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local investors</td>
<td>• Land allocation; and&lt;br&gt;• Land lease with yearly payment of the rentals</td>
<td>• Land allocation; and&lt;br&gt;• Land lease either on the basis of yearly payment or upfront payment for the whole lease term</td>
</tr>
<tr>
<td>Foreign investors</td>
<td>Land lease either on the basis of yearly payment or upfront payment for the whole lease term</td>
<td>Same as local investors</td>
</tr>
</tbody>
</table>

- Land allocation is generally available for residential land only
2. Land Obtaining

Conditions for land lease or land allocation:

• The lease (or allocation) of the land has been provided for in the annual land use plan issued by the People’s Committee of district levels;

• Equity capital of the developers; and

• Deposits.
Specific Issues (cont.)

3. Land Price

• The land price for commercial projects is more unpredictable

<table>
<thead>
<tr>
<th>2003 Land Law</th>
<th>2013 Land Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Land price tables of provincial People’s Committee may be applicable</td>
<td>• Land price tables no longer applicable</td>
</tr>
<tr>
<td></td>
<td>• Land price will be determined on a case by case basis. Land valuation firms may be hired for assistance</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

• How might the new land price calculation work?
4. Land Withdrawal (akin to eminent domain)
   - More restrictions for land withdrawal for commercial projects

<table>
<thead>
<tr>
<th>2003 Land Law</th>
<th>2013 Land Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grounds for the government to withdraw a particular plot of land for “economic development purposes” are broad</td>
<td>Grounds for land withdrawal are much more restricted, subject to the following conditions:</td>
</tr>
<tr>
<td></td>
<td>• Only projects for construction of new township or improvement of urban areas; and</td>
</tr>
<tr>
<td></td>
<td>• Prior approval from the provincial People’s Council.</td>
</tr>
</tbody>
</table>
Specific Issues (cont.)

4. Land Withdrawal (cont.)

- Land withdrawal due to delay in implementing the project

<table>
<thead>
<tr>
<th>2003 Land Law</th>
<th>2013 Land Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Land which is not used for consecutive 12 months or is 24 months behind the</td>
<td>• Same conditions.</td>
</tr>
<tr>
<td>registered project development schedule is withdrawn</td>
<td>• However, in case of breach, developers are given a 24-month period for remedy</td>
</tr>
<tr>
<td></td>
<td>with additional payment of land rentals/land use fee for the delayed period.</td>
</tr>
<tr>
<td></td>
<td>After the 24-month grace period, land and assets are withdrawn without any</td>
</tr>
<tr>
<td></td>
<td>payment except for force majeure events</td>
</tr>
</tbody>
</table>
Specific Issues (cont.)

5. More Options for Residential Projects

- At the discretion of the provincial People’s Committee, the developer of a residential project may transfer plots of land in the project (without property constructed on it) to buyers upon the satisfaction of the following conditions:
  - Full payment of the land price to the local government;
  - Completion of the construction of the infrastructure; and
  - The project is not located in the central districts of the city or province.
Specific Issues (cont.)

5. More Options for Residential Projects (cont.)

• The developer of a residential project may transfer part of its project together with the land subject to the following conditions:
  
  o Land use fee/rentals have been fully paid;
  
  o The land has been issued the LURC; and
  
  o The new buyer is licensed for real estate business and entitled to obtain land in Vietnam.

• However, it is still unclear as to the procedures and documentation for the transfer.
Other Issues

6. Developers in Industrial Zones:

• Developers who pay land rentals on an annual basis may only sublease the land on the same basis (i.e., land rentals paid by tenants are on annual basis); and

• If they already subleased the land plots to the tenants on the basis of upfront payment for the entire lease term (before the effective date of the new Land Law), they must pay the remaining land rentals to the state.
7. Formal Requirements:

- Contracts on transfer, lease or sublease of land in which one party or all parties involved in the transaction is/are a real estate business company is no longer required to be notarized; and

- Transactions on land such as transfer, lease, sublease, gift, exchange, contribution as equity, and mortgage without registration may be void.
Questions & Answers
Established in Thailand in 1890, Tilleke & Gibbins has grown to become a leading regional law firm in Southeast Asia with over 120 lawyers and consultants in Bangkok, Hanoi, Ho Chi Minh City, Jakarta, Vientiane, and Yangon.

In Vietnam, we have had an ongoing presence in Ho Chi Minh City since 1992 and in Hanoi since 1994, and now have a team of more than 70 professionals, including nearly 30 lawyers and consultants, across the two offices.

Our high-caliber intellectual property practice is widely recognized as one of the best in the country, while our corporate and commercial practice has been highly ranked in commercial transactions and M&A, labor and employment, tech/media/telecom, and regulatory affairs by such surveys as Chambers Asia Pacific, The Legal 500 Asia Pacific, Asialaw Profiles, and Asian Legal Business.
Tilleke & Gibbins Consultants Limited
Suite 1206, Citilight Tower, 45 Vo Thi Sau, District 1, Ho Chi Minh City, Vietnam
+84-8-3936-2068 | vinh.n@tilleke.com or vietnam@tilleke.com

For more information, please visit:
www.tilleke.com
http://www.facebook.com/tillekeandgibbins
http://twitter.com/tillekeandgibbins