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VIETNAM INTERNATIONAL LAW FIRM

Vietnam's Land Law Overhaul: Transforming Land Acquisition for Project Development

The landscape of land acquisition in Vietnam is set to undergo a transformation with the impending implementation of the new Land Law, recently approved by the National Assembly and poised to take effect on January 1, 2025. This article explores the potential implications of these changes on the land acquisitions of developers engaged in real estate, energy, and infrastructure projects.

KEY HIGHLIGHTS

1. **Land Revocation Eligibility Projects.** The list of proposed projects eligible for the State to reclaim land from existing occupants for socio-economic development, grounded in “national and public benefit considerations” (Land Revocation Eligibility Projects), has been extended and further intricately categorized.
2. **Land acquisition via a private agreement.** If the subject land is not under control by a State agency, project development may be proposed on such land as acquired through a private agreement from current land users, as opposed to obtaining it through a land lease or allocation from the State, regardless of whether the proposed project is a Land Revocation Eligibility Project or otherwise, provided that:
 - for a commercial housing project, this private agreement scheme may apply only to residential land, and
 - for a Land Revocation Eligibility Project, application of this private agreement scheme must be approved by the provincial People’s Committee.

This scheme is new in the Land Law, awaiting further regulatory guidance from the Government to delineate its implementation and applicable procedures.

3. **Land auction.** If the subject land is clean land under the control of a State agency, land auction is mandatory to obtain such land for project development, except for cases eligible for auction exemption as outlined in Section 4.
4. **Investor selection tendering.** The Land Law does not require investor selection tendering except for (i) township development projects and (ii) projects which are subject to such tendering under other regulations governing the sector or field relevant to such respective projects (please refer to Section 2 for further details). Importantly, private infrastructure and energy projects and commercial property projects are not on the list of projects subject to such tendering requirements under the current draft of the to be issued regulation on tendering.
5. **Multiple-use-purposes land.** The new Land Law introduces a revolutionary legal framework for authorizing land use for multiple purposes, according to which the land user may be approved to add ancillary use purposes to its primary land use purpose. For instance, residential land may be approved to add commercial, service use as an ancillary use purpose.



1. Land Revocation Eligibility Projects

A Land Revocation Eligibility Project is a project considered eligible as *socio-economic development based on national and public benefit considerations* and thus its proposal is eligible for the State to reclaim land from existing occupants for national and public benefit considerations. The list of Land Revocation Eligibility Projects has existed under previous land laws for many years, but the new Land Law has extended and further intricately categorized the list.

Examples of new items added to this list are medical facilities, educational and training facilities, projects of renovation and rebuilding of apartment buildings and sea reclamation projects.

Examples of projects not considered “Land Revocation Eligibility Projects” are hotel projects, housing development projects and commercial complex development projects (to the extent that they are not township development projects).

The implications of the list of Land Revocation Eligibility Projects unfold in three ways:

- a. A proposal for a Land Revocation Eligibility Project allows the State to reclaim land from current occupants. The investor may advance the costs of compensating these occupants for resettlement according to statutory procedures to expedite the land reclamation process. Afterward, the State allocates or leases the reclaimed land to the investor for developing the specified project. Qualified resettlement and land clearance costs are offset against the land use fee or rental payable to the State.
- b. The selection of an investor for such a project may be subject to investor selection tendering requirements in certain cases, as elaborated in Section 3.
- c. It is permissible to propose a Land Revocation Eligibility Project on land acquired through a private agreement with existing land users (as opposed to land allocation or lease from the State), subject to approval from the provincial People’s Committee, as discussed in Section 2.

Land Revocation Eligibility Projects under the new Land Law include any of the following projects (aside State or

<ul style="list-style-type: none"> • Traffic works; • Irrigation works; • Water supply and drainage works; • Solid waster treatment works; • Energy and public lighting projects; • Oil and gas projects; • Mineral exploitation activities; • Township development projects; 	<ul style="list-style-type: none"> • Telecommunications, postal, and information technology, infrastructure; • Local markets and wholesale markets; • Religious and worship facilities • Scientific and technological bases; • Sea reclamation projects; 	<ul style="list-style-type: none"> • Public amusement and entertainment areas and community facilities; • Medical facilities and social service facilities; • Educational and training facilities; • Physical training and sports facilities;
<ul style="list-style-type: none"> • Non-profit projects on environmental treatment, biodiversity conservation, meteorology, hydrology, registration and quarantine of animals and plants; • Projects of apartment building renovation and rebuilding; resettlement housing construction; suburban development; 	<ul style="list-style-type: none"> • Industrial park, industrial cluster projects; High-tech Zone; high-tech agricultural zones; centralized information technology park; forestry zones applying high technology; non-tariff area in economic zones; • Projects on agricultural, forestry and aquatic product production and processing zones; 	<ul style="list-style-type: none"> • Cemeteries, cremation facilities, and ashes storage facilities; • Construction of works on the ground to serve underground works; • Other projects approved or granted with investment in-principle approvals by the Prime Minister of the National Assembly.

2. Land acquisition via a private agreement

In case that land is not under control by any State agency, project development may be proposed on such land acquired through a private agreement with the current land users, as opposed to obtaining it through a land lease or allocation from the State.

This scheme is applicable *regardless* of whether the proposed project is a Land Revocation Eligibility Project or otherwise, provided that:

- a. for a commercial housing project, this scheme may apply only to delivery of residential land, and
- b. for a Land Revocation Eligibility Project, application of this scheme must be approved by the provincial People's Committee.

The provision on private agreement for project development is a new inclusion in the Land Law, awaiting further regulatory guidance from the Government to delineate its implementation and applicable procedures. However, because foreign owned enterprises are not eligible to directly acquire land from existing users other than land in industrial parks and high-tech parks or via a capital contribution of land use rights, it appears that the above scheme of private agreement for project development is not available to foreign owned enterprises unless the acquisition is made in the form of a capital contribution of land use rights in cases where such contribution is permitted under the Land Law.

3. Investor selection tendering requirement applies to limited cases

Investor selection tendering (Tendering) refers to the tendering organized by the pertinent local State agency to select investor for a proposed project. The relevant State agency then allocates or leases the subject land to the selected investor for the project.

Under the new Land Law, land allocation or lease for project development through Tendering is mandatory only for the following projects:

- a. Township development projects decided to present to investors via Tendering by the provincial People's Council; and
- b. Land Revocation Eligibility Projects falling under a category that requires Tendering as per the regulations applicable to the respective sector or field.

Regarding limb (b), in late November 2023, the Ministry of Planning and Investment released a draft decree on Tendering to implement the new Law on Tendering for evaluation. This proposed regulation consolidates and provides guidance on the list of projects subject to Tendering under regulations governing specific sectors or fields (**Tendering Required Projects**). Tendering applies to those projects if:

- a. They are Land Revocation Eligibility Projects or involve the use of land currently under the control of a State agency, and
- b. They are ineligible for land auction under applicable laws.

As per the above proposed regulation, *Tendering Required Projects* encompass international football betting, domestic solid waste treatment, specialized aviation services at airports, and joint ventures with state-owned enterprises involving changes in land use purposes. Additionally, education and training facilities, sports facilities, horse racing or greyhound racing ventures, and apartment building renovation or rebuilding projects also fall under such category of *Tendering Required Projects* if at least two potential investors express interest in participation. The proposed regulation outlines specific procedures and timelines for relevant State agencies to publish requests for potential investors to express interest in such projects.

There may be a confusion regarding how the above provisions of the draft regulation interacts with the permission for private agreement for acquisition of land under the new Land Law. Taking the example of a proposed education institution project, if the draft regulation is issued in its current form, it is unclear whether the investor may seek approval of the provincial People's Committee to enter into a private agreement with the existing land users to acquire land use rights for the education institution project pursuant to the Land Law without triggering the obligation of the relevant State agency to publish invitations for expression of interests for determination of whether Tendering is required.

Under the new Land Law, within 36 months from the decision recognizing successful bidding results or otherwise as specified in the contract, the People's Committee must complete land resettlement and clearance for the winning bidder to be leased or allocated the land. The successful bidder must promptly provide the required capital for these activities. If, after six months of receiving the request for provision of capital for such activities, the investor fails to advance sufficient capital, the relevant State agency may cancel the bid results as per the contract.

4. Land auction requirement applies to State controlled land with certain exceptions

A land auction is the process where the local State agency auctions land for project development. The successful bidder pays a land use fee or rent to secure the allocation or lease of the land as determined in the bid. If the subject land is clean land under the control of a State agency, land auction is mandatory to obtain such land for project development, *unless* exempt as discussed in Section 5 or subject to mandatory Tendering as discussed in Section 3.

The land offered for auction must be clean land, meaning it has been reclaimed from existing occupants with compensation for land resettlement having been disbursed, and it must have connections to road infrastructures.

Accordingly, the new Land Law provides more clarity on cases subject to land auction and those not. In comparison, the old Land Law provided a vague and broad list of cases subject to land auction, which included commercial housing development, infrastructure development, use of commercial land, and use of industrial land, etc.

5. Auction Exemption Cases

Regardless of any other requirement, the following land allocation or lease cases are NOT subject to land auction or Tendering:

- a. The proposed project is eligible for exemption from land use fee or land rental.
- b. The proposed project utilizes state capital and is a Land Revocation Eligibility Project.
- c. The proposed project is a PPP Land Revocation Eligibility Project.
- d. The proposed land use is for mandatory relocation for environmental pollution considerations.
- e. The proposed land use is for mining activities.
- f. The proposed land use is for relocation under a resettlement and land clearance plan pursuant to the land laws.
- g. The proposed project is an Land Revocation Eligibility Project, with only one investor meeting the necessary criteria and the project falling under a category that mandates determining the number of investors expressing interest according to tendering laws or other regulations governing its sector or field (please refer to the discussion on Tendering Required Projects in Section 3).
- h. The proposed project has undergone two unsuccessful land auctions. In such cases, it is permissible to grant land allocation or lease without another auction, provided that the process is initiated within 12 months following the second unsuccessful auction.
- i. A foreign owned enterprise acquires a real estate development project pursuant to the laws on real estate business.

6. New scheme introduced for multiple-use-purposes land

The new Land Law introduces a revolutionary legal framework for authorizing land use for multiple purposes, according to which the land user may be approved to add ancillary use purposes to its major land use purpose in a scheme to maximize the use values of land. In particular:

	Primary use purpose	Ancillary purposes which may be added
1	Agricultural land	Commercial, service, livestock raising, and cultivating herbal plants
2	Public use land	Commercial, service
3	Public work land	Commercial, service
4	Residential land	Agricultural, commercial, service
5	Specialized water surface land	Multiple uses pursuant to specific provisions in the Land Law
6	Religious and worship land	Commercial, service
7	Agricultural land and non-agricultural land	Construction of postal, telecommunications, technology, information, outdoor advertising, and electricity infrastructure works

The land user must submit a modified land use proposal to the competent State agency for approval of the above ancillary uses. This new scheme is subject to further detailed regulatory guidance of the Government.

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