

Land Matter

Legislation

The Land Law adopted on 29 November 2013, which will take effect on 1 July 2014 ("Land Law"), covers all the land matters relating to the land, varying from the ownership, the State's power and liabilities, the land management and use regime to the land user's rights and obligations, and relevant transactions. Under the Law, there are dozens of regulations issued by the Government and various ministries and agencies.

Principal Features

All lands in Vietnam are owned by people and the State, representative of the people, has the sole authority to administer it. In the central level, the National Assembly has the ultimate power to supervise and administer over the land. However, the day-to-day management is assigned to provincial-level People's Committees. Any use of land is evidenced by a certificate of the land use rights, ownership of house and other assets attached to land. MONRE, for its part, is responsible for determining and setting up the land price bracket commonly applicable to each of categories of land to be submitted to the GoV for issuance. Pursuant to the principles of and methods for valuation of land and land price brackets, the provincial-level People's Committees will set up and submit the localities' land price tables to the People's Councils at the same level for their approval before issuing. Foreign-invested companies (including 100% foreign-owned enterprises; joint venture enterprises; Vietnamese enterprises which foreign investors purchase shares/ capital contribution portions in or merge with or acquire in accordance with the laws on investment), can obtain the land use rights through leasing with collection of annual rent or with one-off payment of land rental for the entire lease term (frequently in the case of FOCs), allocating with collection of land use fee (only applicable to projects on investment in construction of residential housing for sale or lease out or hire-purchase), acquiring it from the contributions by the local partners in

the case of JVCs, or being assigned investment capital which is value of land use rights. In all cases, a decision on leasing or allocating land from relevant state agency together with a land lease agreement signed between relevant state agency and the FIE in case of land lease, are compulsory for the certificate of the land use rights.

The value of the land use rights means monetary value of land use rights with respect to a fixed land area for a fixed duration of land use, which is generally arrived at by calculating the total value for the entire lease or allocation period, by multiplying the used area and the applicable land rental or use fee rate(s).

Land Contributions using Land use rights

According to the Land Law, capital contribution using land use rights is one of the ways to transfer land use rights from a person to another. This Law also made it clear that the entity receiving such capital contribution is granted a certificate of land use rights and that such entity, which may be a FIE, will have the rights of a common land user. But unlike the old law, the new Land Law no longer provides for the cases of termination of capital contribution using the land use rights. This makes the Land Law closer to Law on Enterprises in relation to the capital contribution using land use rights.

In the context of JVCs, it is common that local parties use land use rights to make all or part of their contributions to the charter capital of the JVCs. As earlier said, such right will last throughout the duration of the investment registration certificate.

When receiving the capital contribution using land use rights, it is particular to verify the conditions for capital contribution using the land use rights. The use of land for production and business through capital contributions using land use rights must ensure the following principles:

- (i) In accordance with the annual land use plan of the urban or rural district already approved and published;
- (ii) Cleared land, which may be used for appropriate production and business purposes, is exhausted in the area, except the projects in sectors or geographical areas where investment is encouraged;

(iii) In case the investor implements method of assignment of land use rights requiring change of the purpose of land use, the assignment shall be made only after the competent People's Committee issues written permission for changing the purpose of land use, allowing adjustment in land use term to be suitable with the use of land for production and business;

(iv) Where the land area of the production and business project has a part of land where the land user is not entitled to contribute capital using land use rights, the investor is allowed to enter into an agreement on purchase of assets attached to land from the people who are using the land, the State shall recover the land, convert the purposes of land use and lease the land to the investor in order to implement the project. Contents of the agreement on purchase of assets attached to the land must clearly reflect the fact that the property seller voluntarily returns the land to the State for revocation of land and lease of land to the property buyer.

The following conditions ensure a realization of the land contribution by the local parties to a JVC, which include the existence of a certificate of land use rights, dispute-free land, land use rights not subject to seizure for enforcement of a judgment, land use term not yet expired, the possibility of land using change so as to be suitable to the new purposes, and the permission by the authority of the local parties to do so.

Capital contribution using land use rights must be registered with the Land Registration Office directly under the provincial-level Department of Natural Resources and Environment and shall take effect at the time of being recorded in the cadastral book.

As a part of the capital contribution, the payment of the land rental or use fee is destined for the local parties' responsibility, hence not falling within the responsibilities of the JVCs or foreign parties as well.

18.4 Compensation

Allocation or lease of land, which is having land users will be only decided by the State after the competent State decided on land revocation under the Land Law and have completed the compensation, support and resettlement in accordance with the

laws for the case needing ground clearance. Pursuant to the Land Law, organizations in charge of compensation and ground clearance include land-related public service providers and Compensation, Support and Resettlement Councils.

If the FIE, which is allocated land by the State with collection of land use fees or rents land, voluntarily advances funds for compensation, support and resettlement; then, these funds will be reimbursed by the State budget by deducting from payable land use fee or rental amount. Deductible amount of these funds shall not exceed the payable land use fee or rental amount; and the balance, if any, shall be calculated to be included in investment capital of the project.

If the FIE, which is allocated land by the State with collection of land use fees or rents land and is exempt from land use fee or rental, voluntarily advances funds for compensation, support and resettlement under the plan approved by the competent State agencies; then, these funds will be calculated to be included in investment capital of the project.

Levels of funds for compensation, support and resettlement shall be determined in accordance with the plan of compensation, support and resettlement approved by competent State agencies of Vietnam.