

Vietnam Real Estate Market – Legal Notes

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March 2021

TYPES OF PROPERTIES AND APPLICABLE LAW

Property types	Key applicable law
Residential housing	<ul style="list-style-type: none">• Investment Law 2020• Land Law 2013• Residential Housing Law 2014• Real Estate Business Law 2014
Hospitality (hotel, resort)	<ul style="list-style-type: none">• Land Law 2013• Real Estate Business Law 2014• Tourism Law 2017• Investment Law 2020
Industrial property	<ul style="list-style-type: none">• Land Law 2013• Real Estate Business Law 2014• Investment Law 2020
Mixed development township	<ul style="list-style-type: none">• Land Law 2013• Real Estate Business Law 2014• Investment Law 2020

TYPES OF FOREIGN INVESTORS AND PERMITTED REAL ESTATE ACTIVITIES

Foreign investor	Permitted activities	Notes
Offshore companies	<ul style="list-style-type: none"> Lease office on subsidiary's behalf while subsidiary is not incorporated yet Lease construction works from enterprises doing real estate business to use Indirectly invest via Real Estate Investment Funds , shares in real estate companies (requires indirect investment capital account) 	
Offshore individuals	<ul style="list-style-type: none"> Indirectly invest via Real Estate Investment Funds, shares in real estate companies (requires indirect investment capital account) 	
Foreign-invested companies in Vietnam (Developer)	<ul style="list-style-type: none"> Lease houses and buildings for sub-leasing Land leased from the State – invest in construction of (i) residential houses for leasing and (ii) houses and buildings other than residential houses for sale, leasing or granting hire purchase Land allocated by the State - invest in construction of residential houses for sale, leasing or granting hire purchase Receive transfer of real estate project in whole or in part Land leased in industrial zones, industrial complexes, export processing zones, hi-tech zones or economic zones - Invest in construction of houses and buildings for trading in accordance with land use purposes 	
Foreign-invested companies in Vietnam (Buyer) with investment certificate	<ul style="list-style-type: none"> Buy residential housing in projects for staff to reside in 	<ul style="list-style-type: none"> Cannot buy residential housing in certain off-limit projects for national defence and security reasons (listed by local Department of Construction) Maximum quota: 30% - apartments, 250 units – detached housing Ownership term: Maximum 50 years, renewable
Foreign individuals allowed to enter Vietnam	<ul style="list-style-type: none"> Buy residential housing in projects for residing and leasing 	
Vietnamese residing overseas (i.e. used to have Vietnamese nationality)	<ul style="list-style-type: none"> Same as foreign-invested companies, plus Land leased from organizations, family households or individuals - invest in the construction of houses and buildings for leasing in accordance with land use purposes 	

SOURCES OF FINANCING

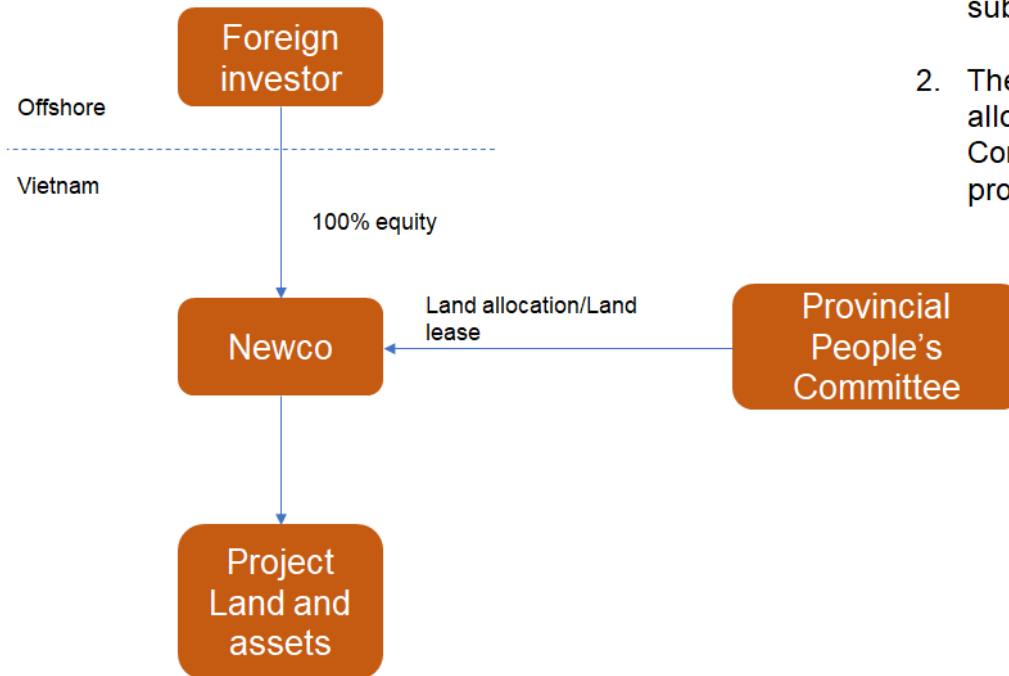
Financing source	Key legal requirements	Typical security package
Owners' equity	<ul style="list-style-type: none"> • Ensure owners' equity not lower than 20% (for projects using below 20 hectares land) or 15% (for projects using more than 20 hectares land) of total investment (thin capitalisation rule) • Capital contribution must be injected into direct investment capital account 	N/A
Local bank loans Bonds issuance	<ul style="list-style-type: none"> • Amount of loan not to violate thin capitalisation rule • Comply with bonds regulations 	<ul style="list-style-type: none"> • Mortgage over land use rights and building, real estate project • Equity mortgage • Receivable and accounts mortgage
Offshore loan	<ul style="list-style-type: none"> • Register with State Bank of Vietnam before drawdown • Amount of loan not to violate thin capitalisation rule • Not applicable for commercial residential housing project 	<ul style="list-style-type: none"> • Foreign lenders cannot receive mortgage over land use rights and building – may consider using onshore security agent but legality not confirmed • Equity mortgage • Receivable and accounts mortgage
Pre-sale proceeds	<ul style="list-style-type: none"> • Satisfy the following conditions: <ul style="list-style-type: none"> ➢ Land use rights documents, construction permit (if required) available ➢ Project dossier, design drawings approved by competent authorities ➢ Having documents on check and acceptance of completion of construction of technical infrastructure facilities ➢ Having the minutes of check and acceptance of completion of the foundations (for apartment building or mixed-use building complex with residential purpose) • Obtain local bank guarantee and Department of Construction's approval • All payments not to exceed 70% or 50% (for foreign-invested developers) contract value before handover 	N/A
Business cooperation contract, capital contribution from investors	<ul style="list-style-type: none"> • Satisfy conditions and obtain local Department of Construction's confirmation • Not to distribute profits by giving housing or land use rights in the project to investors 	Subject to agreement with investors

SOURCES OF LAND (Land use rights)

Source of land use rights	Method of acquisition	Notes
Provincial People's Committee (PC)	<ul style="list-style-type: none"> Land lease agreement with Provincial PC, land allocation decision from Provincial PC Public-private partnership agreement 	<p>Bidding/auction usually required subject to the laws</p> <p>Must prove capacity to develop project</p>
Local real estate developer	<ul style="list-style-type: none"> Equity acquisition through Special Purpose Vehicle (SPV) Asset acquisition, project transfer Sub-lease land in industrial zone, industrial cluster, processing zone, hi-tech zone, economic zone 	<p>Must conduct due diligence to verify status of the property and potential liabilities of target company/asset</p>
Local non-real estate companies	<ul style="list-style-type: none"> Capital contribution using land use rights Asset acquisition 	<p>Be conscious of land held by State-owned enterprises – land valuation and contribution must be approved by competent authorities</p>

TYPICAL DEAL STRUCTURES

Option 1

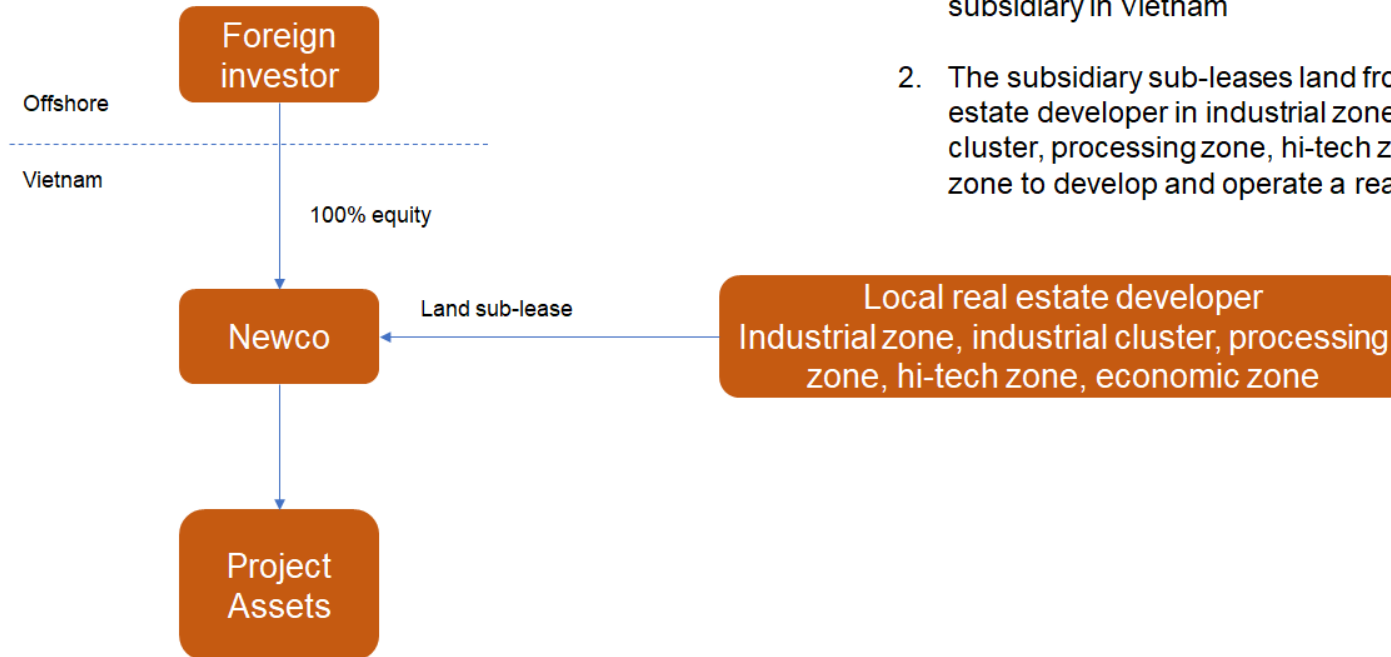


1. A foreign investor sets up a wholly-owned (100%) subsidiary in Vietnam
2. The subsidiary leases land or receives land allocation from the local provincial People's Committee to develop and operate real estate project

TYPICAL DEAL STRUCTURES

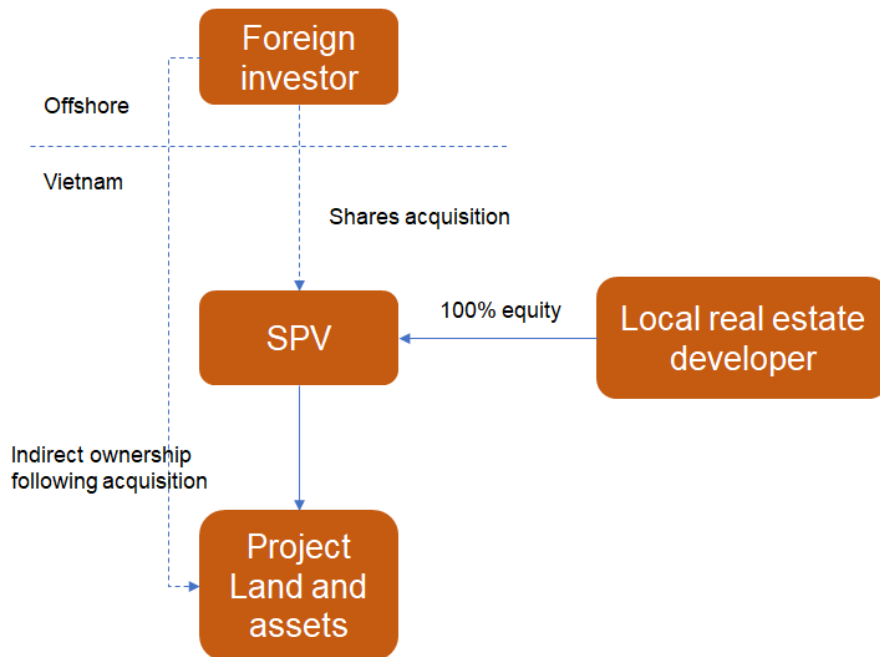
Option 2

1. A foreign investor sets up a wholly-owned (100%) subsidiary in Vietnam
2. The subsidiary sub-leases land from a local real estate developer in industrial zone, industrial cluster, processing zone, hi-tech zone, economic zone to develop and operate a real estate project



TYPICAL DEAL STRUCTURES

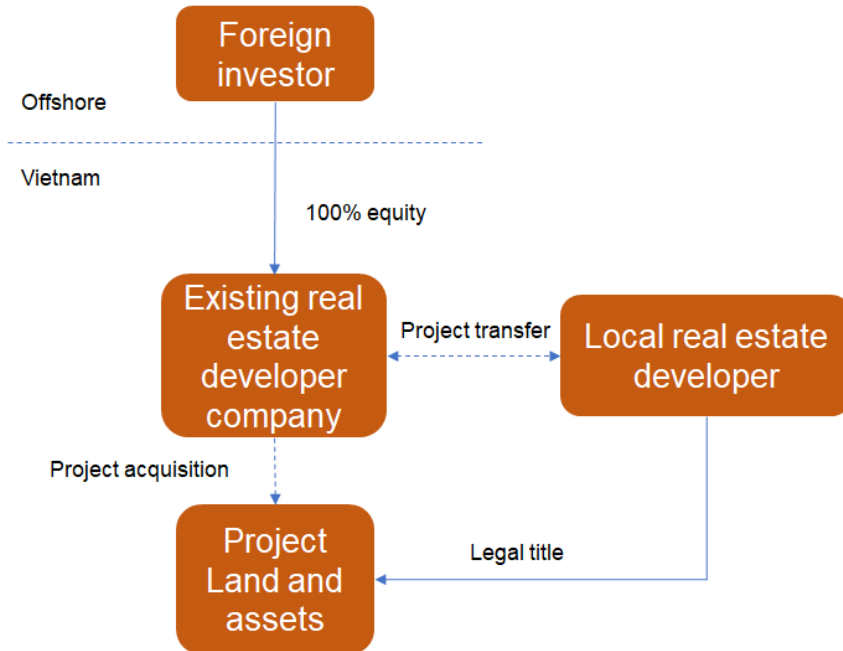
Option 3



1. A local real estate developer already has legal rights to develop a project and legal title to the land use rights
2. The local developer transfers project development rights and land use rights to a newly-incorporated SPV (to avoid liabilities of the developer)
3. A foreign investor acquires shares in the SPV, thereby having indirect control over the project and land use rights

TYPICAL DEAL STRUCTURES

Option 5



1. A local real estate developer already has legal rights to develop a project and legal title to the land use rights
2. A foreign investor already has an existing subsidiary in Vietnam with the necessary capital and expertise to develop real estate projects
3. The subsidiary acquires the project development rights together with land use rights from the local developer, after obtaining approval from local provincial People's Committee

IMPORTANT LEGAL DOCUMENTS FOR FOREIGN INVESTORS

Documents	Importance	Applicable Law
In-principle approval	<ul style="list-style-type: none"> • Pre-requisite approval for issuing investment registration certificate • Pre-approval for land allocation, land lease, conversion of land use purpose • Pre-approval for types of project requiring in-principle approval 	2020 Investment Law 2020 PPP Investment Law
Investment registration certificate	<ul style="list-style-type: none"> • Confirmation of project development rights for foreign-invested companies 	2020 Investment Law
Enterprise registration certificate	<ul style="list-style-type: none"> • Certificate of incorporation, conferring legal status to the subsidiary 	2020 Enterprise Law
M&A approval/Project transfer approval	<ul style="list-style-type: none"> • Condition precedent for equity/shares acquisition where required by law • Condition precedent for real estate project acquisition 	2020 Investment Law 2014 Real Estate Business Law
Indirect/Direct investment capital account opening documents	<ul style="list-style-type: none"> • Required special accounts to inject capital, drawdown foreign loans, conduct M&A and remit profits 	2005 Foreign Exchange Ordinance
Land use rights certificate	<ul style="list-style-type: none"> • Confirming legal title to the land use rights and assets on the land 	2013 Land Law
Master plan approval	<ul style="list-style-type: none"> • Confirmation that the proposed project conforms to the local planning • Condition precedent to commencing construction 	2017 Planning Law 2014 Construction Law
Construction permit	<ul style="list-style-type: none"> • Permit to commence construction of the project 	2014 Construction Law
Pre-sale permit	<ul style="list-style-type: none"> • Pre-requisite approval to sell off-the-plan property to raise capital 	2014 Real Estate Business Law
Merger filing	<ul style="list-style-type: none"> • Condition precedent to M&A transactions meeting thresholds set out by competition laws 	2018 Competition Law