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Law on Real Estate Business No. 29/2023/QH15

Legal Update | March 2024

This Update highlights the following key points:

- ▶ Supplementing some types of real estate put on the market
- ▶ Disclosure requirements for real estate put on the market
- ▶ Capital conditions for real estate enterprises
- ▶ Expansion of real estate business forms for foreign-invested economic organizations
- ▶ Conditions for putting existing houses and construction real estate projects on the market
- ▶ Conditions for putting future-built houses and construction works on the market
- ▶ Completion of financial obligations on land before transfer of projects
- ▶ Enterprises providing real estate brokerage services

On 28 November 2023, the National Assembly issued Law on Real Estate Business No. 29/2023/QH15 (REB Law 2023), which will replace the current Law on Real Estate Business No. 66/2014/QH13, dated 25 November 2014 (REB Law 2014).

The REB Law 2023 will take effect from 1 January 2025, and is expected to significantly impact real estate business investment and operations in the Vietnamese market. In this Legal Update, we would like to highlight notable changes and major impacts.

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1. Supplementing some types of real estate put on the market

- ▶ The REB Law 2023 supplements two types of real estate put on the market, including: (i) the construction floor area (Floor Area) in the existing or future-formed construction works; and (ii) land use rights with technical infrastructure in real estate projects.
- ▶ The REB Law 2023 also clearly stipulates types of construction works put on the market, including construction works for tourism, accommodation, and mixed service functions. Although only general regulations on those construction works types are provided, this is an effort to set a clear legal framework for the development and operation of Condotel or Officetel projects.

2. Disclosure requirements for real estate put on the market

- ▶ The scope of information and documents required to be disclosed under the REB Law 2023 is expanded and more detailed than those under prevailing law. Specifically, the REB Law 2023 explicitly requires real estate developers announce all important project licenses, including decisions on investment policies, decisions on land allocation/land lease, approved detailed plan, and standard forms of contracts, etc.
- ▶ Time to disclose information: before putting real estate or real estate projects on the market.
- ▶ Information disclosure is required via two channels:
 - ▶ The housing and real estate market information system of the Ministry of Construction
 - ▶ Website of the real estate enterprises

3. Capital conditions for real estate enterprises

- ▶ Real estate enterprises that want to invest in approved real estate projects must ensure its equity at least 20% of total investment capital for the project with a land use scale of less than 20 ha, or at least 15% of the total investment capital for the project with a land use scale of 20 ha or more; and must ensure "capital raising ability" for the implementation of investment projects. For many projects, such real estate enterprise must ensure the entire sufficient equity allocated to each project in compliance with the aforesaid ratios. This regulation is considered updated according to Decree No. 02/2022/NĐ-CP dated 6 January 2022 on detailing some articles of the REB Law 2014.
- ▶ Furthermore, real estate enterprises must ensure the regulated ratios of credit balance to the amount of equity and of its outstanding corporate bonds to the amount of equity. Specific ratios, however, have not been specified in the REB Law 2023, which must wait for further instructions from the Government.

4. Expansion of real estate business forms for foreign-invested economic organizations

- ▶ The REB Law 2023 uses the term "foreign-invested economic organization" (as "*tổ chức kinh tế có vốn đầu tư nước ngoài*" in Vietnamese), as similarly as under the Law on Investment No. 61/2020/QH14 issued by the National Assembly on 17 June 2020 (Law on

Investment 2020), to replace the term "foreign-invested enterprises" (as "*doanh nghiệp có vốn đầu tư nước ngoài*" in Vietnamese) under the REB Law 2014.

- ▶ The REB Law 2023 may make it easier for foreign investors to invest in real estate in Vietnam. Accordingly, it has expanded real estate business forms of foreign-invested economic organizations. Specifically, foreign-invested economic organizations that are not subject to conditions and procedures applicable to foreign investors in accordance with Law on Investment 2020 (Requirements for Foreign Investors) are allowed to conduct real estate business as domestic organizations. In contrast, if foreign-invested economic organizations are subject to Requirements for Foreign Investors, these organizations are only permitted to conduct real estate business with limited scope, which is the same approach as under the REB Law 2014.

5. Conditions for putting existing houses and construction works on the market

5.1. Conditions for existing houses and construction works on the market

Existing houses and construction works put on the market must have sufficient ownership certificates; documents proving that such existing houses and construction works has been accepted testing and eligible to be put into operation/use and must completely fulfill regulated financial obligations on land.

5.2. Opening for sale or lease purchase of Floor Area in existing construction works

The REB Law 2023 explicitly opens for the Floor Area in an existing construction work to be sold or leased - purchased upon certain conditions are satisfied.

5.3. Case of real estate developers that commit pending administrative violations

Under the REB Law 2023, if the real estate developers are imposed administrative violation sanctions in the field of investment, construction, land, housing, real estate business, tax, etc., they can only sign contracts for sale, lease or lease-purchase of houses, construction works upon full enforcement of relevant decisions on administrative violation sanctions.

6. Conditions for putting future-formed houses and construction works on the market

6.1. Right to lease future-formed houses and construction works

The REB Law 2023 no longer clearly states that future-formed houses and construction works could be leased. All relevant regulations on the lease of future-formed houses and construction works have been removed from the REB Law 2023, although the rights on sale (even through lease-purchase) still remain.

6.2. Investors' deposit threshold on future-formed houses and construction works

The REB Law 2023, for the first time, sets forth regulations on deposit caps that real estate developers are allowed to collect from customers. Accordingly, the deposit must not exceed 5% of the sale/lease-purchase prices of future-formed houses, construction works and Floor Area in future-formed construction works. This price must be clearly recorded in the deposit agreement.

6.3. Pre-payment threshold for purchase or lease-purchase of future-formed real estates

- ▶ The REB Law 2023 stipulates that the initial pre-payment for purchase or lease-purchase of future-formed houses, construction works, Floor Area in future-formed construction works must not exceed 30% of the contract value, which includes the aforesaid deposit (up to 5% mentioned in Section 6.2). Meanwhile, the REB Law 2014 has not included such deposit amount.
- ▶ In addition, under the REB Law 2023, the total amount of pre-payment for lease-purchase of future-formed houses, construction works, and Floor Area in future-formed construction works must not exceed 50% of the contract value, while this figure is 70% under the REB Law 2014.

6.4. Guarantee for future-formed houses becomes an optional condition

- ▶ The REB Law 2023 allows the purchasers or lessees-purchasers to choose whether or not to request guarantees for developer's financial obligations to them, while a guarantee is mandatory under the REB Law 2014.
- ▶ If guarantee request is selected, the developer must provide a guarantee letter within 10 working days from signing date of contract or another term agreed by parties. The developer can only receive payment of purchase/lease-purchase future-formed house contracts upon the purchasers/lessees-purchasers have received the guarantee letter.

7. Completion of financial obligations on land before transfer of projects

- ▶ According to the REB Law 2023, before transferring a real estate project (in whole or in part), the developer must fulfill the project's financial land obligations to the State, including land use levy, land rent and land-related taxes, fees, and charges (if any) to the State in respect of the transferred project, transferred part of the project.
- ▶ This new requirement may cause barriers for developers in transfer of projects in the real estate market.

8. Enterprises providing real estate brokerage services

- ▶ Enterprises providing real estate brokerage services (REBS) must have at least one individual holding a real estate brokerage practice certificate, instead of two individuals as required under prevailing law.
- ▶ Before providing REBS, the enterprise shall send its profiles to the real estate provincial authority where it is incorporated for posting on the house and real estate market information system.
- ▶ Individuals providing REBS must work in real estate trading floor service enterprises or enterprises providing REBS, they will be no longer able to perform REBS independently as allowed under the REB Law 2014.

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