

Some highlights of the Real Estate Business Law 2023

On 28 November 2023, the National Assembly passed Law on Real Estate Business No.29/2023/QH15 ("LREB 2023"). The LREB 2023 shall take effect on 1 January 2025 and replace Law on Real Estate Business No. 66/2014/QH13 as amended by Law No. 61/2020/QH14 ("LREB 2014").

The LREB 2023 has a number of new notable regulations for investors of real estate projects as follows:

I. Conditions for investors (Article 9.2):

The LREB 2023 specifies 3 conditions that real estate project investors are required to meet, among them, 2 noteworthy conditions are: (i) equity conditions, and (ii) conditions for ensuring the ratio of the outstanding credit debt, outstanding bond debt to the equity.

II. Forms of real estate business conducted by investors (Article 10):

The highlight is that the LREB 2023 has officially legislated the form of real estate business for the construction floor area in construction projects (such as the areas of commercial floor, office, etc. in building works' blocks); and defines the form of trading in land use rights in real estate projects as trading in the rights to use land that already had technical infrastructure in real estate projects.

The LREB 2023 also distinguishes foreign-invested enterprises that must meet the conditions and carry out investment procedures as provided for foreign investors according to the provisions of the Investment Law[1] from those not required to do so according to the provisions of the Investment Law which will be treated similarly to domestic enterprises.

III. Real estate business activities:

1. Types of real estate and real estate projects to be put into business (Article 5)

The LREB 2023 has officially recognized two additional types of real estate products: (i) building works with functions serving the purposes of education, healthcare, sports, culture, offices, commerce, services, tourism, accommodation and industry and building works with mixed service functions; and (ii) the construction floor area in the above-mentioned projects.

For the type of real estate product that is land use rights, the LREB 2023 consistently defines it as the rights to use land that already had technical infrastructure in real estate projects, including: (i) land divided into plots for sale to individuals who build their own homes; and (ii) land with technical infrastructure for secondary investors to build homes and building works.

2. Publishing information about real estate and real estate projects to be put into business (Article 6)

The LREB 2023 provides in detail the information that investors must disclose for each type of real estate product, and requires publishing model contracts to be used in real estate business activities.

The time to disclose information for the first time is before putting real estate or real estate projects into business. Investors must update publicly available information when there is any change. The method of disclosure is on the website of the enterprise doing real estate business. In addition, the LREB 2023 adds a mandatory method of information disclosure on the residential housing and real estate market information system established and managed by the competent State agencies.

3. Entities allowed to purchase, rent, or hire-purchase homes and building works (Article 15)

The LREB 2023 distinguishes Vietnamese people residing abroad who are Vietnamese citizens from Vietnamese people residing abroad who are not Vietnamese citizens. Accordingly, those who are not Vietnamese citizens

- for residential housing, must be allowed to enter Vietnam in order to have the right to purchase homes;
- for building works and the construction floor area in building works, are only allowed to purchase, rent, or hire-purchase to use them according to the functions of the building works.

Foreign-invested enterprises not required to meet the conditions and carry out investment procedures as required for foreign investors under the provisions of the Investment Law are treated like domestic enterprises when they purchase, rent, hire-purchase homes and building works.

4. Payment methods in real estate business (Article 48)

The LREB 2023 provides that the receipt of payments under real estate business contracts from customers must be through accounts opened at domestic credit institutions or foreign bank branches legally operating in Vietnam.

5. Business of existing home and building works (Chapter II)

(a) The LREB 2023 further clarifies the concept of “existing homes and building works” as homes and building works of which the construction has been completed and which have been checked & accepted and put into use according to the construction laws.

(b) The LREB 2023 also adds a number of conditions for implementing the sale and lease-purchase of a construction floor area in an existing building works.

6. Business of homes and building works to be formed in the future (Chapter III)

(a) The LREB 2023 clarifies the concept of “homes and building works to be formed in the future” as homes and building works that are in the process of investment and construction or have not yet been checked & accepted and put into use according to the construction laws.

(b) The LREB 2023 only allows business of real estate be formed in the future in two following forms: purchase and sale or lease-purchase of homes, building works, and the construction floor areas of building works to be formed in the future; cancels the form of lease of real estate to be formed in the future as stipulated in the LREB 2014.

(c) The LREB 2023 also adds

(i) a series of conditions for homes, building works and construction floor areas in building works to be formed in the future, which are put into business;

(ii) regulations on deposits in purchasing and selling or hiring-purchasing real estate to be formed in the future; accordingly, deposits can only be made when the real estate is eligible to be put into business and the value of the deposit is limited to no more than 5% of the selling price or lease-purchase price of the real estate.

(d) Regulations on bank guarantees under the LREB 2023 still only apply to homes to be formed in the future, not to building works or construction floor areas of building works to be formed in the future.

However, the new Law has added foreign bank branches that are legally operating in Vietnam as entities eligible for providing guarantees to Investors; and in particular, has amended the order of and procedures for granting guarantees in the purchase and sale or lease-purchase of homes to be formed

in the future.

7. Business of the rights to use land with available technical infrastructure in real estate projects (Chapter IV)

The LREB 2023 stipulates 3 forms of business of the rights to use land with technical infrastructure, including:

(a) Transfer of the rights to use land with available technical infrastructure in real estate projects to individuals to construct their own homes (division of plots for sale);

(b) Transfer of the rights to use land with available technical infrastructure in a real estate project to an organization to invest in construction of homes and building works (transfer to secondary investors);

(c) Leasing or subleasing the rights to use land with available technical infrastructure in real estate projects.

The LREB 2023 also provides specific and detailed regulations on the conditions, rights and obligations of parties in the transfer of the rights to use land with available technical infrastructure.

8. Transfer of the whole or a part of a real estate project

Basically, the provisions of the LREB 2023 on the transfer of a part or the whole of a real estate project are still similar to those of the LREB 2014 with a few new notable points.

Regarding the authority to allow the transfer of the whole or a part of a project, for projects under the Prime Minister of Government (“PM”)’s authority, the PM can authorize the provincial-level People’s Committee to decide on a transfer permission; in this case, procedures for allowing transfer are similar to those for transferring the whole or a part of

projects under the approval authority of the provincial-level People's Committee.

9. Real estate business contract

The LREB 2023 provides 11 types of real estate business contracts, in which there are only 3 following types of contracts that are allowed to be transferred: (i) Contracts for purchase and sale of homes to be formed in the future; (ii) Contracts for lease-purchase of homes to be formed in the future; and (iii) Contracts for lease-purchase of existing building works.

10. Transitional regulations (Article 83)

(a) Investors operating before 1 January 2025 that have not yet meet the conditions by the LREB 2023 must meet all conditions within 6 months from 1 January 2025.

(b) Projects that have met the requirements for projects on investment in real estate for business according to the provisions of the LREB 2014 before 1 January 2025 do not have to meet the requirements for real estate projects specified in Article 11 of the LREB 2023; In case of implementing amendment procedures after 1 January 2023, the requirements for real estate projects must be met according to the provisions of the LREB 2023.

(c) If dossiers for transfer of the whole or a part of valid real estate project have been received according to the provisions of the LREB 2014 but by 1 January 2025, results have not been returned; then, they continue to comply with the provisions of the LREB 2014; in case of re-implementation of the procedures for transferring the whole or a part of a real estate project after 1 January 2025, the transfer will comply with the provisions of the LREB 2023.

(d) For foreign-invested enterprises according to the provisions of the LREB 2014, which are carrying out procedures

for receiving transfer of the whole or a part of a real estate project but by 1 January 2025, have not yet completed the land-related procedures for transfer of the whole or a part of real estate project, the implementation of land-related procedures shall be carried out in accordance with the provisions of Article 4 .3 of the LREB 2023.

(e) If homes and building works to be formed in the future are eligible to be put into business according to the provisions of the LREB 2014 but by 1 January 2025, a purchase and sale or lease-purchase contract has not yet been executed; then purchase and sale or lease-purchase procedures will be continued according to the provisions of the LREB 2014, but information about real estate and real estate projects put into business must be publicly disclosed according to the provisions of the LREB 2023 before execution of a purchase and sale or lease-purchase contract.

(f) Investors who have been approved by the guaranteeing bank to issue guarantees for the Investor's financial obligations to the purchaser or lessee-purchaser of home to be formed in the future do not have to re-implement the procedures for granting guarantees according to provisions of the LREB 2023.

(g) Contracts for purchase and sale or lease-purchase of homes to be formed in future that have been guaranteed by a bank, which has issued a certificate guaranteeing the investor's financial obligations to customers before 1 January 2025 are not obliged to obtain guarantee according to the provisions of this Law.

(h) The provisions of the LREB 2023 on agreements without guarantees do not apply to contracts for purchase and sale or lease-purchase of homes to be formed in the future that have been established under the LREB 2014 and legal documents detailing and providing guidelines for implementation of such Law before 1 January 2025 but the hand-over of homes have not yet been made.

(i) Real estate business contracts that have been established under the LREB 2014 before 1 January 2025 will be continued according to the LREB 2014 and legal documents detailing and providing guidelines for implementation of that Law; in case of amending such a contract after 1 January 2025, the parties must amend relevant contents of the contract according to the provisions of the LREB 2023./.

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