Volume 23 Issue 8
Originally issued as B3

Global Journal of Management and Business Research: B
Economics And Commerce
Volume 23 Issue 3 Version 1.0 Year 2023
Type: Double Blind Peer Reviewed International Research Journal
Publisher: Global Journals
Online ISSN: 2249-4588 & Print ISSN: 0975-5853

Real Estate Business of Foreign Investors under Vietnam Law

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Summary- Restate business is increasingly expanding and gradually meeting the diverse needs of customers with real estate needs. This expansion also creates fierce competition in the market not only in terms of price but also in quality. The real estate business environment has made great progress, creating a transparent and clear legal environment, thereby helping the real estate industry to make great strides. Along with the development of the real estate industry, more and more companies were established, new types of real estate business appeared, the Law on Real Estate Business began to have many limitations and inadequacies in the process. Adjust the law on real estate business conditions. Money laundering in real estate business should be prevented and prevented. The article studies the real estate business of foreign investors in accordance with Vietnamese law and proposes recommendations to improve the law on real estate business of foreign investors in Vietnam.

Keywords: *law, real estate business conditions, foreign investors.*

GJMBR-B Classification: *JEL Code: L85*

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Real Estate Business of Foreign Investors under Vietnam Law

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Summary- Restate business is increasingly expanding and gradually meeting the diverse needs of customers with real estate needs. This expansion also creates fierce competition in the market not only in terms of price but also in quality. The real estate business environment has made great progress, creating a transparent and clear legal environment, thereby helping the real estate industry to make great strides. Along with the development of the real estate industry, more and more companies were established, new types of real estate business appeared, the Law on Real Estate Business began to have many limitations and inadequacies in the process. Adjust the law on real estate business conditions. Money laundering in real estate business should be prevented and prevented. The article studies the real estate business of foreign investors in accordance with Vietnamese law and proposes recommendations to improve the law on real estate business of foreign investors in Vietnam.

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I. Content

a) Foreign Investors when Implementing Real Estate Business Projects

Foreign investors, when implementing real estate business projects in Vietnam, must comply with the provisions of the Law on Investment, the Law on Real Estate Business, the Law on Housing and other relevant laws. Foreign investors who want to carry out real estate business projects in Vietnam must establish foreign-invested economic organizations; capital contribution, purchase of shares or capital contribution to a Vietnamese economic organization. Accordingly, the scope of real estate business of foreign investors is somewhat more limited than that of other entities. Regulations on the form of real estate business of foreign-invested enterprises include: Renting houses and construction works for sublease; For land leased by the State, it is allowed to invest in the construction of houses for lease; Investing in the construction of houses and construction works other than houses for sale, lease, or lease-purchase; Receive transfer of the whole or part of real estate project of the investor to build houses, construction works for sale, lease, lease purchase; [1] For land allocated by the State, it is allowed to invest in the construction of houses for sale, lease, or lease-purchase. For leased land in industrial parks, industrial clusters, export processing zones, hi-tech parks and economic zones, they may invest in building houses and construction works for business according to the right land use purposes.

Conditions of organizations and individuals doing real estate business must establish enterprises in accordance with the law on enterprises or cooperatives in accordance with the provisions of law. When conducting real estate business in Vietnam, foreign investors need to carry out procedures for granting Investment Registration Certificate and Business Registration Certificate in accordance with Vietnamese law. It can be understood that: Foreign investors' conditions for real estate business are those applicable to individuals with foreign nationality and the right to establish foreign-invested economic organizations; contribute capital, purchase shares, and contribute capital to Vietnamese economic organizations in accordance with Vietnamese law and are permitted to conduct real estate investment and business activities in Vietnam.

b) Real Estate Business Conditions of Foreign Investors

i. *Special Investment Incentives and Support*

According to the 2020 Investment Law on special investment incentives and support policies in Article 20, the application of special investment incentives and support aims to encourage the development of a number of investment projects that have an Major impacts on socio-economic development shall be decided by the Government and applied to the following subjects:

- New investment projects (including the expansion of such newly established projects) of innovation centers, research and development centers with a total investment capital of 3,000 billion VND or more. currently disbursing at least VND 1,000 billion within 03 years from the date of issuance of the Investment Registration Certificate or approval of investment policies; The national innovation center was established under the Prime Minister's decision.
- Investment projects in industries or trades with special investment incentives with an investment capital of VND 30,000 billion or more, disbursed at least VND 10,000 billion within 3 years from the date of issuance of the Certificate. Investment registration or approval of investment policy.

Special investment incentives and support: The level of incentives and the duration of application of

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special incentives comply with the provisions of the Law on Corporate Income Tax and the law on land. Special investment support is provided in the forms specified in Clause 1, Article 18 of the Law on Investment 2020.

The above special investment incentives and support policies do not apply to the following cases:

+ An investment project that has been granted an investment certificate, an investment registration certificate or an investment policy decision before the effective date of this Law;
+ Investment projects specified in Clause 5, Article 15 of the Law on Investment 2020.

In cases where it is necessary to encourage the development of a particularly important investment project or a special administrative-economic unit, the Government shall submit it to the National Assembly for decision on the application of investment incentives other than those specified in Clause 1 of this Article. stipulated in the Investment Law 2020 and other laws.

In addition, general regulations on conditional business lines: A conditional business line is a business line in which the implementation of business investment activities in that industry or business line must satisfy the following requirements: conditions prescribed by law. For reasons of national defense, security, social order and safety, social ethics, and health of the community, which are set and monitored by relevant regulatory authorities. A detailed list of conditional business lines in accordance with the law is prescribed in the Law on Investment 2020.

Business conditions for the above-mentioned industries and trades are specified in relevant laws, ordinances, decrees and other legal documents. At the same time, it is stipulated in international treaties to which the Socialist Republic of Vietnam is a signatory. Ministries, ministerial-level agencies, People's Councils, People's Committees at all levels, other agencies, organizations and individuals may not issue regulations on business investment conditions.

Business conditions must be set out and regulated in accordance with operational objectives, in accordance with the context of the market economy and the country's circumstances in each development stage. All regulations on business conditions must ensure publicity, transparency, objectivity and fairness for investors. The regulation of business conditions also needs to advocate the spirit of saving implementation time, saving costs and requiring compliance and coordination of investors. Avoid regulations that cause difficulties, barriers, and make it difficult for investors to conduct business in the context of Vietnam's current market opening and development.

Thus, from a general point of view, real estate business is the investment of capital to carry out construction, purchase, and transfer activities for sale or transfer; lease, sublease, lease purchase of real estate; real estate brokerage services; real estate trading floor services; Real estate consulting services or real estate management for profit purposes. This content has been detailed in the Law on Real Estate Business 2014. Thus, based on this regulation, the real estate business will include 2 basic forms:

+ Organizations and individuals doing real estate business with the object of business being real estate goods;
+ Business real estate services with business objects are real estate brokerage services, real estate consulting services, real estate management services.

Currently, according to the Investment Law 2020, real estate service business does not have legal capital requirements but needs to meet the conditions for establishing an enterprise and the conditions for personnel and facilities. Not only domestic organizations and individuals, but also Vietnamese residing abroad, foreign organizations and individuals have the right to conduct business in real estate brokerage services, [2] real estate trading floors, real estate consulting, and management. real estate management. However, foreign companies that do not have a commercial presence in Vietnam are not allowed to provide cross-border real estate services but are required to set up businesses in Vietnam.

However, there will be a list of industries and trades with restrictions on market access for foreign investors (investors) specified in Article 9 of the Law on Investment in 2020, basically, foreign investors are allowed to apply the following conditions: market access as regulated for domestic investors. However, in cases where, based on laws and resolutions of the National Assembly, ordinances and resolutions of the National Assembly Standing Committee, Decrees of the Government and international treaties to which the Socialist Republic of Vietnam is a signatory, Members, the Government shall announce the list of industries and occupations restricted from market access for foreign investors, including:

Sectors and trades that have not yet had access to the market;

– Sectors and trades with conditional market access.

Therefore, in the near future, the Government will issue a list of industries and professions with restricted market access for foreign investors to apply when the Investment Law 2020 takes effect. In addition, before establishing an economic organization, foreign investors must have an investment project, carry out procedures for granting and adjusting the Investment Registration Certificate; [3] except for the case of setting up creative start-up small and medium-sized enterprises and innovative start-up investment funds in accordance

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with the law on supporting small and medium enterprises.

The reason for setting conditions for the real estate business for foreign investors in Vietnam is because real estate is a special commodity. Real estate business is also a specific business in Vietnam. The legal regulations on real estate business and the business conditions surrounding this service also need to be strictly managed and bound by the corresponding legal conditions. In order to screen and select worthy, capable and responsible investors for the business activities of the enterprise. Ensure market stability, control the real estate business market in the current economic situation. The introduction of business conditions and the limitation of the business scope of this particular industry for foreign investors, will ensure that all business activities are within the control and management scope of the state Vietnam.

ii. *Business License*

A business license is a license issued by a competent authority to an enterprise that certifies that the enterprise is eligible to do business in the field of business license. Business licenses can bear many different names based on the conditions of that industry, such as certificate of eligibility for alcohol business, license for food hygiene and safety, license for overseas study counseling, license to operate a foreign language training center, etc., granted by a competent state agency. Conditions prescribed on standards of environmental sanitation, food hygiene and safety, regulations on fire prevention and fighting, social order, traffic safety and regulations on other requirements for operations business (referred to as business conditions without a license).

For example, businesses that want to do business in the field of restaurants, hotels, or beverages,... business owners will be able to do these businesses when approved by the Food Hygiene and Safety Department, Department of Health. under the licensing province, or a city directly under the Central Government that issues the business license; or want to do business in overseas study consulting services, or set up a foreign language training center, etc., must be granted an operating license by the Department of Education of the province or city directly under the Central Government. Regardless of the type of business license, it only has a certain term as prescribed by law

c) *Controlling Money Laundering through Modern Technology is a Very Effective Measure when Vietnam Integrates Internationally in the Real Estate Sector*

In the real estate business, the real estates put into business in Vietnam include: Types of real estate put into business according to the provisions of the Law on Real Estate Business 2014 include the following 4 types: Houses, existing construction works of organizations and individuals; Second, Houses and construction works formed in the future by organizations and individuals; Thirdly, Houses and construction works are Public property permitted to: "Illegal mobilization and appropriation of capital; using capital mobilized from organizations and individuals and advances from buyers, lessees, and lessees to purchase future real estate for improper purposes as committed. Conditions for future real estate to be put into business are specified in Article 55 of the Law on Real Estate Business 2014. For goods put into business, it is necessary to study and compare the original documents. to limit risks for Real Estate Projects that are not eligible to be put into business be put into business by a competent state agency; Fourthly, Types of land that are permitted to be transferred, leased or subleased according to the provisions of the law on land shall license to trade in land use rights. Fifth, Clause 5, Article 8 of the Law on Real Estate Business 2014 stipulates prohibited acts in real estate business. Along with the policy of promoting the establishment of businesses, with the goal that by 2020-2050 there are two million businesses nationwide, foreigners will surely come to work, labor, invest and do business in Vietnam. significantly. Most people in Europe, North America, Australia, Japan… often choose to rent a house. Foreigners tend to buy houses often from a number of countries and territories in East Asia and Southeast Asia, such as: China, Korea, Taiwan, Hong Kong, Singapore. [4]. That raises a series of problems. Issues need to be adjusted by law, including regulations on real estate ownership rights of foreign workers in particular and foreign individuals and organizations in general in Vietnam. [5]. Buying real estate abroad for naturalization is an alarming situation, which can have very serious consequences, not only flowing financial resources from the country to abroad, abetting financial crimes but also aiding in financial crimes. It also robs people with real housing needs who are studying, living and working abroad. Currently, our country does not have a mechanism to control the acquisition of other nationality by Vietnamese. This is a loophole for those who want to avoid legal obligations in Vietnam. Therefore, if the forms of real estate investment abroad are developed uncontrollably, they will be a solvent for money laundering and illegal asset dispersal abroad. The crime of money laundering has a very close relationship with the crime of corruption.

For example, in the family: the father has a position of embezzlement of property, the children will use the illicit property given to them by the father to launder money. The form of money transfer abroad to be able to prepare for the time of "safe landing" of those with duties and powers who abuse their positions for embezzlement is no longer a strange thing. It is worth mentioning that when these subjects have foreign nationality and are citizens of foreign countries, they will

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be found to have violated the law. As a result, the extradition of criminals with corrupt acts back home will be more difficult and complicated because the general trend is that every country has policies to protect its nationals. [6]. The impact of the industrial revolution 4.0 on the real estate business also shows great importance and significance in customer information and data management, product management, address, diagram, etc. contracts, finance, taxes, fees, charges and urge debt settlement... of the real estate trading floor. [7]. Controlling money laundering through modern technology is a very effective measure when Vietnam integrates internationally in the real estate sector. The Vietnam Real Estate Association has joined the World Real Estate Association since 2003. The exchange and learning of national experiences in the world is essential for us to prevent money laundering in the real estate sector property in Vietnam and also across the country once the real estate investment goes abroad. Therefore, the management of real estate and prevention of money laundering, investing in mixing "clean money" with "dirty money" to bring to the market for circulation is an important activity in the activity "Prevention of money laundering" in the real estate business." Currently, the situation of real estate investment is increasingly rich and complex. Therefore, research on the prevention of money laundering in the real estate business is necessary and has scientific significance in the real estate business market, preventing corruption, limiting self-interest transactions, finding solutions. Measures to prevent money laundering are effective so that the real estate market develops healthily and in the right direction.

To prevent money laundering in the real estate sector, the Ministry of Construction has issued Circular No. 12 /2011/TT-BXD dated September 1, 2011 guiding the implementation of a number of contents of Decree No. 74/2005./ND-CP dated 07/06/2005 of the Government on prevention and combat of money laundering for real estate business activities. By 2012, the National Assembly passed the Law on Anti-Money Laundering 2012 (effective from January 1, 2013) and Decree No. 116/2013/ND-CP (replacing Decree No. 74/2005/ND-CP) regulates money laundering prevention and combat in general. The 2015 Penal Code (amended and supplemented in 2017) has established a money laundering crime regime in accordance with the United Nations Convention on Anti-Money Laundering. Transnational organized crime (Palermo Convention) and specific criminal liability for legal entities.

d) Completing the Law on Real Estate Business of Foreign Investors in Vietnam

Firstly, a very important issue that the Law on Real Estate Business 2014 guides further in the mentioned documents is the procedure for adding investors in the process of real estate project implementation. In fact, the activities of cooperation, joint venture investment take place continuously and regularly throughout the implementation of real estate projects. However, there are joint venture parties that contribute a large proportion of capital and they wish to be named as a joint venture to implement the project, not merely as a secondary investor of the investor. Moreover, when the Capital market is complicated, entering the project distillation stage, large investors often choose the safe solution of having to be confirmed as an investor by a document from the competent authority, competent state.

Because of the lack of regulations on this issue, it limits the participation of foreign investors in capital contribution projects. Capital is already complicated, in Vietnam, affecting the progress and efficiency of the project. Projects, especially large projects.

Secondly, the investment license time should clearly specify the time for verification and issuance of the Investment Certificate, in which, the response time of the agencies to be consulted. However, in practice, this time is very difficult to guarantee. The agencies involved in investment, finance, construction, planning, land, banking, etc. often give their opinions on verification slower than regulations. "The reason is that a real estate investment project often involves many industries and fields. (land, environment, construction, ...) and affect the socio-economic situation of the locality where the project is located, therefore, the appraisal of a real estate project is complicated, elaborate and take time. According to a research team of the Vietnam Chamber of Commerce and Industry (VCCI), for projects that use land, there are 34 administrative procedures, which in the most favorable conditions also take at least 5 months. (155 days) to complete the licensing. However, businesses say that the actual time is many times longer than that, even with projects that take up to 14 months to complete all procedures and papers. Also according to VCCI, investment procedures, especially investment procedures in the construction sector are becoming one of the barriers to investment in Vietnam, reducing the attractiveness of Vietnam's investment environment compared to some countries in the region.

The complexity, overlapping and fragmentation of the legal system also makes policies less effective. For example, from the time the investor intends to the construction of a factory related to 4 fields of investment, land, environment and construction, administrative procedures alone have been governed by 5 Laws, 10 Decrees, 9 Circulars and a large number of provincial guidance documents. These documents are inherently complicated, and often revised, causing many difficulties for businesses. An investment project Capital is complicated, domestic enterprises want to complete licensing procedures, it takes more than 34 steps with a period of 500 to 800 days, but it will be longer if a foreign investor. The delay in licensing investment

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projects will reduce the efficiency of capital use, and the investment environment will deteriorate.

Third, simplify procedures and assign provincial authorities to carry out steps to implement real estate investment and business activities of foreign-invested enterprises, according to which: Decision on investment policy should be boldly assigned to foreign invested enterprises. Provincial People's Committee: depending on the scale of land use, migration and resettlement plans, impacts on the environment, etc. according to the provisions of the investment law. Apply for an Investment Registration Certificate if the foreign-invested enterprise has a foreign investor being an individual /organization holding 51% or more of the charter capital or the majority of general partners are individuals abroad with a partnership company. If this is not the case, after the decision on investment policy is issued, the foreign-invested enterprise can immediately implement the project.

Fourth, it is necessary to accurately assess the financial potential of investment projects. Many foreign investors want to deploy projects in the Vietnamese real estate market encourage and create favorable conditions for foreign investors to conduct real estate business effectively in the Vietnamese market. Develop legal regulations on real estate business for overseas Vietnamese and foreign-invested enterprises to ensure that it does not affect the issue of land use rights and house ownership in accordance with the land law and housing law [8]. However, in order to promote the development and create a breakthrough in the development of the domestic real estate market, it is necessary to create a more open space and legal scope for the real estate market to develop healthily and in the right direction.

Fifth, We need to control and prevent money laundering so that those who have real real estate needs can access this type of property with genuine income, avoiding wasting resources and financial resources main. In recent years, the real estate market has been exciting at times, at times bleak, erratic hot and cold market is a phenomenon, which is a high risk factor for self-interest transactions in the transfer of use rights. The soil is born and nurtured. Money laundering takes place silently and is very difficult to control. Many large sums of money invested in real estate are not mobilized from idle sources in the people, but sometimes drawn from the money of the State and the people.

Money laundering causes bad consequences to the common interests of society and infringes upon the legitimate rights of people living with legitimate work. As a result, all of them have a negative impact on society. Currently, real estate is an area with a high risk of money laundering. Through many big cases, it has been shown that, in order to launder money, subjects often ask relatives to buy, transfer, and name real estate [9]. The cooperation with FATF [10] with Vietnam Real Estate Association and Vietnam Real Estate Brokers Association has not been regular and continuous in coordinating anti-money laundering activities. Exchange of academics, skills, training and learning experiences is still limited; Reporting organizations are responsible for international cooperation in prevention and combat of money laundering in the real estate sector at the request of competent state agencies [11].

Sixth: Need clearer guidance on stipulating conditions on investment form, scope of activities, Vietnamese partners participating in the implementation of investment activities and other conditions under the provisions of international treaties to which the Socialist Republic of Vietnam is a member. Socialist Republic of Vietnam is a member. It is necessary to expand the scope of investment forms such as capital contribution, purchase of shares or capital contribution of a real estate company to the same extent as a domestic investor, without letting the investor's scope of real estate business activities be limited foreign investors will be narrower than domestic investors. Specifically, according to the Law on Real Estate Business, foreign investors may operate in the following forms: Renting houses and construction works for sublease; For land leased by the State, it is allowed to invest in the construction of houses for lease; Investing in the construction of houses and construction works other than houses for sale, lease, or lease-purchase; Receive transfer of the whole or part of real estate project of the investor to build houses, construction works for sale, lease, lease purchase; For land allocated by the State, it is allowed to invest in the construction of houses for sale, lease, or lease-purchase.

II. Conclusion

The process, procedures and methods of mutual legal assistance in the prevention and combat of money laundering shall comply with the Law on mutual legal assistance and the Code of Criminal Procedure of Vietnam, international treaties to which the Socialist Republic of Vietnam is a member. Nam is a member of the mutual legal assistance agreement between Vietnam and other countries. In order to effectively control overseas real estate investment activities, it is necessary to concretize processes, procedures and methods of cooperation in extradition of money-laundering criminals in accordance with the Law on Mutual Legal Assistance and the Law on Mutual Legal Assistance. Criminal procedure in Vietnam, international treaties to which the Socialist Republic of Vietnam is a signatory, mutual legal assistance agreements between Vietnam and other countries. The Ministry of Public Security shall act as the focal point to implement and request cooperation in extradition of money laundering criminals [12]. The situation of real estate investment in Vietnam is increasingly rich and complex. Therefore, in the real

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estate business, our state prevents corruption, self-interested transactions so that the real estate market develops healthily and in the right direction in accordance with the principle of transparency and control of corruption in the real estate market. investment law.

Note, Captions and Citations

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