

Significant Changes in Vietnamese Policy and Law on Foreigners' Land Use Rights

Abstract

The Law on Foreign Investment of 1987 and the Law on Land of 1993 marked a significant turning point, officially recognizing the right to lease land from the State for investment projects. The next phase (with the Law on Land, 2003) led to continuous sound improvements in regulations on land leasing and capital contribution through land use rights. At the same time, the Law on Housing 2005 opened up the possibility for foreigners to purchase houses, although with many limitations. The most significant breakthrough came with the Law on Land 2013 and the Law on Housing 2014, when regulations on foreign homeownership were significantly relaxed, creating more favorable conditions for foreigners to live and work in Vietnam. The Law on Land 2024 continues to clarify related mechanisms, demonstrating consistency in Vietnam's land policy and legislation regarding land use rights for foreigners – relaxation, but with characteristic limitations. This paper examines the evolution of land policy and legislation in Vietnam regarding land use rights for foreigners to promote sustainable socio-economic development. Beginning with the pre-Renovation (Đổi Mới) period, when regulations were restrictive and almost entirely barred foreign access to land, Vietnam has undergone a gradual transformation. The analysis reveals that this policy shift is a testament to the flexibility and adaptability of Vietnamese law, which significantly contributes to attracting foreign investment, stimulating the real estate market, and promoting international economic integration. However, the paper also highlights existing challenges and provides several recommendations to further enhance policy in the future.

KEYWORDS: foreigner, investor, land, land use right, Vietnam

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1 | Introduction

Vietnam has established a system of all-people ownership of land, and this ownership regime serves as the essential basis for shaping land law, which differs significantly from the usual law of real property. Under that ownership regime, Vietnamese people are not considered land owners, despite being constituent stakeholders of “the true owner is the whole people.”^[1] However, the regime of all-people ownership of land does not deny the land use rights of other subjects.^[2] Replacing the old legal thinking established by the 1980 Constitution and the Law on Land 1987 (hereinafter referred to as “LOL”), Vietnamese lawmakers officially recognize and grant Vietnamese people land use rights for transferred and used land, as outlined in the 1992 Constitution and the LOL 1993.^[3] Outstandingly, under the public ownership system, senior leaders began to “recognize the transferability of land use rights under a public ownership land system,”^[4] even though the abstract phenomenon manifests “different legal positions for different actors.”^[5] As a derivative right of ownership,^[6] the land use rights are property rights attached to land; and Vietnamese landholders have property rights to such properties.^[7] That reasoning also began to

¹ Cuc Nguyen, “Làm Rõ Thêm Nội Hàm Sở Hữu Toàn Dân về Đất Đai [Further Clarifying the Content of All-People Ownership of Land],” *Political Theory*, 1 (2014): 14.

² Thi Minh Chau Tran, “Phê Phán Những Quan Điểm Sai Lầm về Chế Độ Sở Hữu Đất Đai ở Việt Nam [Criticizing the Wrong Views on Land Ownership in Vietnam]” *Communist Review*, 957 (2021): 55.

³ Thi Bich Loan Hoang, “Quan Điểm Đất Đai Thuộc Sở Hữu Toàn Dân Do Nhà Nước Đại Diện Chủ Sở Hữu và Thống Nhất Quản Lý – Nhận Thức và Thực Tiễn [The View of All-People Ownership of Land Presented and Uniformly Managed by the State – Perception and Practice]” *Political Theory*, 8 (2018): 24-25.

⁴ Toan Le, “Interpreting the Constitutional Debate Over Land Ownership in the Socialist Republic of Vietnam (2012-2013),” *Asian Journal of Comparative Law*, No. 2 (2016): 293.

⁵ Martin Gainsborough, “The Myth of a Centralised Socialist State in Vietnam: What Kind of a Myth?” *Journal of Current Southeast Asian Affairs*, No. 3 (2017): 79.

⁶ Quang Tuyen Nguyen, “Vài Suy Nghĩ về Sở Hữu Toàn Dân Đối Với Đất Đai [Some Thoughts on the All-People Ownership of Land]” *State and Law Review, Vietnam*, 1 (2016): 15.

⁷ Van Cap Chu, “Chế Độ Sở Hữu Toàn Dân về Đất Đai [All-People Ownership of Land]” *Natural Resource and Environment*, 4 (2015): 11.

recognize land and land use rights as commodities^[8] as a premise for the formation and development of the real estate market later.^[9]

Different from the “closed” and “static” economic development policies in the previous period, the renovation process opened up in the late 1980s (“Doi Moi” in Vietnamese), offering a new and open approach in policy and law-making in Vietnam. The most significant aspect of Vietnam’s partially “open” economy during the early stages of reform was its focus on attracting foreign direct investment (hereinafter “FDI”), primarily due to the country’s weak domestic financial capital potential at the time. FDI and even foreign indirect investment (hereinafter “FII”) are always considered essential factors for Vietnam to take advantage of and exploit in realizing economic development goals. Creating a favorable and open legal environment has therefore become an urgent task for Vietnam to achieve the desired FDI targets.

As part of the renovation,^[10] the improvement of land policies and laws has also become a crucial component in that chain of actions. This partly stems from the aforementioned sustainable development goals, and partly from the fact that, after more than a decade of implementing the planned economic development policy since the day of the country’s reunification, the most valuable asset of Vietnam’s economy is still land. In the first pilot joint ventures, Vietnamese enterprises mainly still contribute capital with land use rights and achieve a small proportion of capital holdings in joint ventures from the value of such land use rights. Among the tasks that need to be implemented, Vietnam’s land law needs to create a solid legal foundation to contribute to the liberation of land resources. Expanding opportunities for FDI to flow into the land economy and ensuring foreign investors can maintain long-term stability in their investments in Vietnam is a key objective. As a result, it is undeniable that the interaction

⁸ Hong Hanh Le, “Bản Chất Pháp Lý Của Quyền Sử Dụng Đất Trong Pháp Luật Việt Nam. [Legal Nature of Land Use Rights in Vietnamese Law]” *Democracy and Law*, 8 (2017): 21, 24.

⁹ Van Thao Nguyen, “Nắm Vững và Xử Lý Tốt Mối Quan Hệ Giữa Nhà Nước, Thị Trường và Xã Hội Trong Phân Bổ và Sử Dụng Nguồn Lực Đất Đai Phát Triển Kinh Tế – Xã Hội ở Nước Ta Hiện Nay [Grasp and Handle Well the Relationship between the State, the Market, and Society in the Allocation and Use of Land Resources for Socio-Economic Development in Our Country Today]” *Communist Review*, 1 (2021): 67.

¹⁰ Van Ha Tran, “Mâu Thuẫn Đất Đai và Quan Hệ Dân Tộc ở Vùng Đông Bắc Từ Đổi Mới (1986) Đến Nay [Land Conflicts and Ethnic Relations in the Northeast Region from Renovation (1986) to the Present]” *Journal of Social Science in Vietnam*, 5 (2020): 83.

between the legal adjustments to land use rights of foreigners and Vietnam's sustainable economic development policy, along with the controversy it causes, especially in relation to the theory of all-people ownership of land in Vietnam.^[11] These changes are part of the policy aimed at attracting foreign investment and leveraging it to continue activating foreign investment capital in Vietnam. In particular, the most notable is FDI in the real estate sector, as foreign investors undertake numerous large-scale real estate projects. Obviously, in a market economy, the benefits from land use determine the method of land use, which does not wholly depend on the ownership regime for land.^[12]

Vietnam's reforms in socio-economic development led to the LOL 2003, which officially expanded the subjects of land use rights in Vietnam. The law presented more protection mechanisms for land tenure.^[13] In addition to domestic subjects, overseas Vietnamese and foreigners are allowed to use land in some cases. It should be recalled that, like the Vietnamese, these subjects only have property rights - land use rights for the land they are using, not ownership rights.

To further strengthen the mutual relationship between land laws and economic development policies, Vietnam has made adjustments and improvements to the land use rights of foreigners in the recent LOL 2013 and LOL 2024. Relevant legal documents, like the Law on Housing (hereinafter "LOH") and the Law on Real Estate Business (hereinafter "LOR"), have also been amended to supplement and strengthen the general legal framework on real estate. However, some legal issues related to the use of land by foreigners have not been addressed clearly and thoroughly, thereby creating gaps and even contradictions between relevant legal documents. The most typical is the land use rights of foreign individuals.

This paper analyzes the significant amendments to Vietnamese law regarding land use rights for foreigners. In addition to studying the content

¹¹ Van Phuc Vu, "Sở Hữu Toàn Dân về Đất Đai: Tất Yếu, Nhưng Cần Đổi Mới về Nội Dung Trong Cơ Chế Hiện Thực Hoá [The Whole People's Ownership of Land: Inevitable, but Needs Innovation in the Content of the Realization Mechanism]" *Political Theory*, 4 (2012): 24, 25.

¹² Thi Minh Chau Tran, "Quan Hệ Giữa Cơ Quan Quản Lý Nhà Nước và Người Sử Dụng Đất Trong Chế Độ Sở Hữu Toàn Dân về Đất Đai ở Nước Ta [The Relationship between State Management Agencies and Land Users in the Regime of All-People Ownership of Land in Our Country]" *Communist Review*, 835 (2012): 56.

¹³ Thanh-Huyen Do, "Land Conflicts in Emerging Suburban Areas in Viet Nam: Causes and Effects" *Local Administration Journal*, No. 4 (2020): 320.

of the adjustment and the positive impact of the new legal policy, the paper also analyzes the existing inadequacies. First of all, after the Introduction, the next part of the paper will clarify the new economic development policy and the demand for FDI capital in Vietnam's economic development. Accordingly, the following content will analyze the changes in Vietnamese legal regulations on land use rights of foreigners through versions of the LOL and related documents, as well as their impact on economic development and codification. The conclusion will summarize the paper, incorporating the comments and reviews.

2 | The New Vietnamese Economic Development Policy and the Foreigners' Demands for Using Land in Vietnam

Vietnam built a centrally planned economy from a very early stage. This model began to be established after 1954 in the North, and developed throughout the country after 1975. It is undeniable that this economic model has numerous advantages, having brought about significant achievements, including the reconstruction and development of post-war infrastructure, social stability, and the provision of basic welfare, particularly by concentrating resources on strategic objectives for post-war economic recovery. However, after less than a decade of expansion to the whole country, this economic model has revealed many limitations, stagnation of the economy, and the development of society. Vietnam's economy during this period developed unbalanced, failed to promote comparative advantages, and eroded personal motivation and competitiveness, particularly due to the policy of equalizing resource and income distribution. One of the characteristics and causes of the economic crisis is the public ownership of means of production, including land, which enables the allocation of resources according to a plan or the management of the economy through orders, decisions, or principles. It is undeniable that the improper awareness and application of the all-people ownership regime for land has created certain doubts about

the ownership regime, even a controversial debate on the recognition of private or public ownership of land.^[14]

In addition to impacts from outside in the post-Soviet system,^[15] the Communist Party of Vietnam at the Sixth Congress (1986) officially launched an innovative initiative to transform the economy after properly assessing the role and mission of the planned economic model in a particular historical period. The concept of a market economy, which regulates the economy according to market rules, has been recognized (and clarified) in the Vietnamese steps in the familiar “transition.”^[16] Notable are the changes in foreign policy and investment. Specifically, according to the “Doi Moi” policy, Vietnam develops an open economy, diversifies relationships instead of being closed within the bloc of socialist countries, moves to join regional and global organizations, and breaks the siege and embargo. Immediately afterwards, Vietnam promulgated the Law on Investment 1987 and, through it, created an initial legal corridor to attract FDI as well as initiate trade integration.^[17] However, changes in administrative institutions, such as the implementation of management by economic and legal tools, management decentralization, and streamlining of the administrative apparatus, have also contributed significantly to a new economic institution – a socialist-oriented market economy.

Naturally, the economic renewal from the 1980s has led to an experimental model where Vietnam practices, learns from experience, and refines its approach. It is undeniable that, after a short period of drastic implementation, the FDI attraction policy has been remarkably effective. Based on the attraction policy, focusing on tax incentives and land, applied to many priority sectors and economic regions to mobilize capital, technology, jobs,

¹⁴ This also becomes a counter-argument for maintaining the regime of public ownership of land. Vu, “Sở Hữu Toàn Dân về Đất Đai: Tất Yếu, Nhưng Cần Đổi Mới về Nội Dung Trong Cơ Chế Hiện Thực Hoá [The Whole People’s Ownership of Land: Inevitable, but Needs Innovation in the Content of the Realization Mechanism],” 24; Le, “Interpreting the Constitutional Debate Over Land Ownership in the Socialist Republic of Vietnam (2012–2013),” 294–295; Minh Tuan Nguyen, “Chế Độ Sở Hữu Toàn Dân về Đất Đai – Một Số Vấn Đề Cần Kiên Quyết Thực Hiện [The Regime of All-People Ownership of Land – Some Issues Need to Be Resolutely Implemented]” *Communist Review*, 846 (2013): 59.

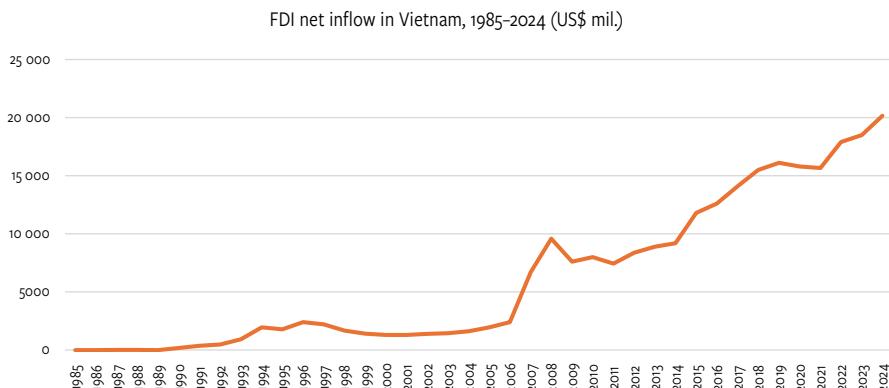
¹⁵ Martin Gainsborough, “The Myth of a Centralised Socialist State in Vietnam: What Kind of a Myth?” *Journal of Current Southeast Asian Affairs*, No. 3 (2017): 17.

¹⁶ Gainsborough, “The Myth of a Centralised Socialist State in Vietnam,” 17.

¹⁷ Anja Baum, “Vietnam’s Development Success Story and the Unfinished SDG Agenda” *Working Paper*, No. 031 (2020): 8.

and management experience, in the first period (1985-1995), the amount of FDI reached nearly 1.8 billion USD, according to the World Bank. The legal adjustments in the versions of the Law on Investment that have been amended or renewed over the years continue to create a significant push for Vietnam to expand investment fields and forms. From the joint venture company model, Vietnam expanded to the 100% foreign-owned enterprise model and other forms of business cooperation.

For its part, FDI has constantly contributed significantly to the development of Vietnam. FDI is indeed an essential source of additional capital in the total investment capital of Vietnam's economy. According to the World Bank's DataBank, FDI contributes to the expansion of capital and production, and naturally promotes GDP economic growth, accounting for more than 32% of GDP each year on average from 2005 to 2024. In addition to short-term and medium-term impacts, FDI contributes to bringing Vietnam out of the crisis period, approaching the goals of sustainable economic development, most notably: (i) rational economic restructuring; and (ii) job creation and improving the quality of human resources.^[18]



Source: World Bank Databank, 2025

It is undeniable that FDI also creates many challenges. One of those challenges is how to ensure that Vietnam continues to maintain an effective and sustainable source of FDI. In other words, Doi Moi is under significant pressure to achieve the goal of developing a sustainable open dualism economy.^[19] In response, the Central Committee of the Communist Party

¹⁸ Ibidem, 5-6, 8.

¹⁹ Ibidem, 6.

of Vietnam and the Central Government of Vietnam have clearly defined the strategic orientation of constantly encouraging the private economy, and the Resolution on Private Economic Sector Development once again articulates this, which was adopted this year. By emphasizing the importance of the state-owned and collective economy, Vietnam has undertaken significant reforms and restructuring of SOEs. It has also changed land policies to effectively develop the agricultural economy, encompassing land contracting, allocation, lease, and granting land use rights to individual households.^[20]

Innovation thinking is considered a key factor in helping Vietnam succeed in the innovation process. Acknowledging the multifaceted ownership of means of production, the development process has been guided by building a multi-component commodity economy that operates according to the market mechanism.^[21] After the initial successes, Vietnam has consistently promoted the development and improvement of synchronous institutions, particularly legal institutions, to foster the growth of capital, labor, and land markets. The stock market has also officially operated since 2000, along with reasonable easing for FDI in the new period. Stepping into the global playing field after formally becoming a member of the WTO (2007), according to Prime Minister at that time Nguyen Tan Dung, Vietnam officially positioned its economy with the following goals: (i) deep integration into the world economy, (ii) focus on sustainable development, and (iii) improve the quality of growth. Developing knowledge and a high-tech economy, promoting sustainable development and a green economy, actively participating in global value chains, and continuing administrative reform are key actions to achieve these goals.^[22]

Obviously, during the journey of economic renewal up to this point, land policies and laws have a significant foothold. From a domestic perspective,

²⁰ Thi Thanh Huyen Phan and Tien Sy Nguyen, “Nâng Cao Hiệu Quả Giao Đất, Cho Thuê Đất Phù Hợp Với Chế Độ Sở Hữu Toàn Dân về Đất Đai [Improving the Efficiency of Land Allocation and Land Lease under the Regime of All People’s Ownership]” *Natural Resource and Environment*, 23 (2015): 11; Chu, “Chế Độ Sở Hữu Toàn Dân về Đất Đai [All-People Ownership of Land],” 10.

²¹ Thanh Tung Tran, “Những Yếu Tố Tác Động Làm Thay Đổi Quan Hệ Sở Hữu Của Việt Nam Trong Thời Kỳ Quá Độ Lên Chủ Nghĩa Xã Hội [Factors Affecting Changes in Ownership Relations in Vietnam during the Transition Period to Socialism]” *Political Education*, 319 (2021): 56-57.

²² Nguyen Tan Dung, “Gia nhập Tổ chức Thương mại Thế giới: Cơ hội, thách thức và hành động của chúng ta [Joining the World Trade Organization, Opportunities, Challenges and our actions]” *Baochinhphu.vn*, 7 November 2006.

the process of land coordination and granting land use rights to domestic land users opens up great opportunities to effectively release and exploit land resources. Regulations on the expansion of land use rights contribute to the development of the land use right market and the real estate market, promote the capitalization process, bring land into circulation, improve value, create a strong motivation, and promote agricultural production and industrial development. Changes in policy and practical land economic activities have created a premise for the development of other sectors, such as construction, finance, banking, and services.

It is undeniable that the adjustments in Vietnam's land policies and laws have a reciprocal relationship with FDI growth in this country. FDI provides capital, driving growth in the real estate market and other business activities. On the contrary, Vietnam, in the goal of institutional reform, has also developed land laws in the direction of contributing to creating a legal corridor that contributes to attracting FDI. The changes have been implemented step by step and include: (i) recording the land use rights of foreign investors, (ii) creating land funds for production and business, (iii) expanding and ensuring land use rights for investors, and finally (iv) for investors to stabilize their residence and long-term investment. From the initial adjustments applied to investors, experts, and high-tech workers, the land law extends home ownership to all foreigners. Naturally, investment opportunities of foreign investors have also been adjusted from foreign-invested enterprises to foreign-invested economic organizations. The specific content of these legal changes continues to be analyzed in the following section.

3 | **Changing Laws on Foreigners' Land Use Rights and Their Impacts**

3.1. Revolution of Law on Land 2003: Foreigners as Land Users as Vietnamese

After many patchwork amendments to the LOL 1993, as well as the previous first version, the LOL 2003 was passed by the National Assembly. This can be considered a revolutionary version of the LOL for the whole process of

codifying land law, the most complicated legal field in Vietnam. Firstly, the LOL 2003 is a unified document, resolving the issue of multiple partially amended versions, which previously led to a large number of legal documents guiding implementation. Secondly, the LOL 2003 is built on an almost complete economic reform policy. Clearly, it shows the legal reforms that have been the foundation for the codification of land law processes until now. In other words, the LOL 2003 has also introduced many new legal ideas, particularly breakthrough developments in land use regulations. And, therefore, finally, and most importantly, the LOL recognizes the right to use land and the legal status of land users of many subjects: religious entities, residential communities, overseas Vietnamese, and especially foreign organizations and individuals.^[23]

Recognizing the land use rights of foreigners is a breakthrough legal solution. It may be necessary to solve a significant number of theoretical problems, but recognizing foreigners as land users as Vietnamese reflects a shift in thinking and efforts to exploit land effectively, serving the socio-economic development process opened up by the Doi Moi movement. It is worth noting that when foreigners are recognized as land users, they are also granted certificates of land use rights, allowing them to record their land use rights like Vietnamese citizens. Land use right certificates are an essential legal basis for recording legal land use rights, ensuring conditions for exercising rights, and obtaining the protection of the Vietnamese state for such lawful property rights.

In addition, the LOL 2003 shapes an open legal framework, creating a premise for bringing land into the market and developing the economy. Nearly all transactions on land use rights are recorded by the LOL 2003, although they may have previously been restricted or even prohibited. These transactions include exchanges, transfers, donations, inheritances, leases, capital contributions, mortgages, and guarantees with land use rights. More importantly, almost all land users, including overseas Vietnamese or foreigners, can make transactions. This is a remarkable development point in terms of legal thinking. Theoretically, the right to conduct transactions on land use rights is widened and “exceeds the original land use rights” of land users, such as using, disposing, benefiting, and even occupying a part of the right to compensation when the state recovers land and such land

²³ Art. 9 Law on Land (2003).

use rights.^[24] Some of those rights are familiar with the full proprietary rights or even the land owner's title.^[25] for the fact that, under the current ownership of land system, "because the people are the main subjects, not the State," who "retain the majority of their rights and only hand over a limited number of rights to the State."^[26]

The opportunity to implement is also widely applicable to various types of land, forms of land use, and situations that meet different transaction conditions, in addition to what happens in the relevant contract law.^[27] For example, the LOL 1987 strictly prohibits land buyers and sellers in any form, while the LOL 1993 allows the transfer or inheritance of land use rights in some cases. Through the improvements of the LOL 2003, the transfer of use rights has become a pillar transaction that almost all land users have the right to perform. The right to leave inheritance of individuals and members of households using land is also extended to all types of land.

For the first time, the LOL 2003 is also quite flexible, opening up opportunities to access land for this group of investors. In principle, although it is rare, foreigners can also be allocated land by the state without paying land use levies.^[28] However, according to the LOL 2003, foreign organizations and individuals lease land to implement investment projects. More specifically, foreigners are allowed to lease land for production, business, or construction of public works for business purposes; building infrastructure for transfer or lease, mineral activities, production of building materials, or making pottery. In particular, foreign organizations and individuals are also leasing land from the state to build houses for sale or lease.^[29] Importantly, organizations and individuals that use land leased

²⁴ Tran, "Quan Hệ Giữa Cơ Quan Quản Lý Nhà Nước và Người Sử Dụng Đất Trong Chế Độ Sở Hữu Toàn Dân về Đất Đai ở Nước Ta [The Relationship between State Management Agencies and Land Users in the Regime of All-People Ownership of Land in Our Country]," 60.

²⁵ Van Cap Chu, "Phải Chăng Sở Hữu Xã Hội Chủ Nghĩa Là Mục Tiêu Của Xây Dựng Chủ Nghĩa Xã Hội [Is Socialist Ownership the Goal of Building Socialism?]" *Communist Review*, 943 (2020): 66; Quoc Suu Nguyen, "Tiếp Tục Cải Cách Chế Độ Sở Hữu về Đất Đai Nhằm Nâng Cao Hiệu Quả Quản Lý, Sử Dụng Nguồn Lực Đất Đai" *Legislative Studies*, 17 (2021): 32.

²⁶ Vu Van Phuc, "People's Land Ownership with State Representing Land Owners in Vietnam" *Vietnam Social Sciences*, No. 4 (2022): 15.

²⁷ This partially explains why the land law is complex and more complicated. See more. Martin Dixon, *Modern Land Law*, 6th ed. (London: Routledge, 2009), 3.

²⁸ Art. 33 Law on Land.

²⁹ Art. 35 Law on Land.

from the state and have paid the full land rent fee have the right to transfer, contribute capital, mortgage, guarantee, and sublease such land use rights. In cases where foreigners use land leased and pay an annual land rent fee, transactions may be made concerning assets on the land. Particularly, in the case of implementing a housing business project, the right to sell the house of the foreign investor is almost the same as the legal regime applicable to domestic investors.^[30] In addition, Vietnamese law at that time also had guarantees for organizations and individuals to fully exercise the above-mentioned rights in the case of using leased land in industrial parks, hi-tech parks, and economic zones.^[31] However, this regulation enables foreign investors to access land and implement direct FDI projects in Vietnam to some extent. In other words, the rules on recording land use rights of foreign organizations and individuals also consider foreign individuals using land as land use investors, as land use organizations. The legal thinking becomes more evident when the LOL 2013 stipulates limited land use rights for foreign-invested enterprises,^[32] and the 2024 LOL identifies this subject as a foreign-invested economic organization.^[33]

What is special is that Vietnam developed the LOL 2003 at a stage when there were specific reforms in the law-making process, and building a synchronous legal framework on land and the real estate market. As a result, from this period, Vietnam has consistently made efforts to develop and pass three laws on real estate simultaneously, including the LOL, the LOR, and the LOR. Up to now, this goal of legislation has at least repeated three cycles: 2003, 2013, and, more recently, 2023-2024. In the recent legal adjustment, although the LOR and the LOR were prepared almost simultaneously, they were passed by the National Assembly in 2023. The passage of the amended LOL was intended to be postponed due to its new requirements and inherent complexity. However, to ensure synchronization of the real estate legal framework as mentioned, the National Assembly's unfavorable session approved the amended LOL at the beginning of 2024, allowing new regulations to be applied simultaneously with the corresponding provisions in the LOH and the LOR that have been passed. It should also be noted that in Vietnam, legal proposal is mainly prepared with sector regulators,

³⁰ Art. 119 Law on Land.

³¹ Art. 120 Law on Land.

³² In Vietnamese, it is provided that “doanh nghiệp có vốn đầu tư nước ngoài”. Art. 5 Law on Land (2013).

³³ In Vietnamese, it is provided that “tổ chức kinh tế có vốn đầu tư nước ngoài”. See. Art. 4 Law on Land (2024).

even though the Central Government officially plays a role in submitting bills to the National Assembly. In particular, the land bill is prepared by the Ministry of Natural Resources and Environment, and the Ministry of Construction is the agency in charge of developing the LOH and the LOR.

Returning to the LOL 2003, both the LOR 2005 and the LOR 2006 were also passed by the National Assembly of Vietnam, respectively, and have unambiguous provisions supporting the LOL. The latter two bills that have been passed have introduced a specific mechanism for foreigners to own houses and implement real estate business projects. This includes regulations on commercial housing projects and housing ownership under projects built by foreign investors, as well as regulations on real estate business and other real estate services.^[34] Among the long list of foreign real estate companies and their projects, CapitaLand (Singapore) with the D1 Mansion, Vista, and The Krista (in Ho Chi Minh city) or Lotte Land (Korea) with Diamond Plaza, La Premier (in Ho Chi Minh city), and Lotte Center (in Hanoi) can be presented as a feasible illustration. However, similar to the LOL 2003, the housing law in Vietnam in this period only allows foreign investors to rent houses for living, including detached dwellings or self-contained apartments.^[35] By contrast, the legal regulations applicable to overseas Vietnamese in this period are more open. Through it, they have the right to purchase and own houses in Vietnam, and in some cases, they are not limited to renting houses like foreigners.^[36] In practice, overseas Vietnamese succeeded in recovering their houses left behind when they had immigrated to other countries. Take an interesting case of Mr. Kha and Ms. Khanh's claim for instance. After four years of preparation and submission, under the attorney's consultation, in 2011, they recovered the homeownership of the valuable property in District 3, Ho Chi Minh City.^[37]

³⁴ Art. 10 Law on Real Estate Business (2023).

³⁵ Art. 131-132 Law on Housing (2005).

³⁶ In Vietnamese, it is provided that “người Việt Nam định cư ở nước ngoài mua nhà ở gắn liền với quyền sử dụng đất ở tại Việt Nam có các quyền và nghĩa vụ sau đây.” Art. 121 Law on Land, 2003; Art. 126 Law on Housing, 2005.

³⁷ Thanh Phuong, “Luật gia thắng kiện, thân chủ buộc phải trả 68 tỷ đồng hứa thưởng [Lawyer wins lawsuit, client forced to pay 68 billion VND promised reward]” VietNamNet News, 31 May 2022. <https://vietnamnet.vn/luat-gia-thang-kien-than-chu-buoc-phai-tra-68-ty-dong-hua-thuong-2025211.html>.

3.2. Ongoing Improvements and Positive Impacts

As mentioned, the reform provisions on land use rights of foreigners from the LOL 2003 continue to be partially maintained, and part of it continues to be developed in subsequent versions of the LOL, including the LOL 2013 and the 2024 LOL. Naturally, the amended and supplemented LOL continues to meet the needs of adjusting the law, the context, and the orientation in Vietnam's "open" economic development policy. Some adjustments are highly appreciated, contributing to effective law enforcement and, of course, having a positive impact on the investment and business environment. However, there are also inappropriate adjustments and issues that need to be addressed to meet the fluctuating reality, which the drafting committee of the LOL 2013 has overlooked. For example, the provisions on capital contribution with land use rights in the LOL 2013 inadvertently exclude the case of parties contributing capital to business cooperation, but not establishing enterprises, even though this form has been mentioned previously in the LOL 2003 and even before. Naturally, this has been overcome by the adjustments of the LOL 2024.

It is worth noting that Vietnam has made specific adjustments to the land use rights of foreigners, while it has not adjusted the regulations on land use rights of overseas Vietnamese. Most typically, unlike the LOL 2003, the LOL 2013 only records the land use rights of foreign-invested enterprises. In other words, foreign individuals do not have land use rights and are not land users in Vietnam. However, the ownership of houses for living by foreigners is recorded. More specifically, in addition to housing in housing projects, the 2014 LOR allows foreign individuals allowed to enter Vietnam to buy, lease, purchase, donate, and inherit commercial houses, including apartments and detached homes, in housing construction investment projects similar to the relaxations applicable to overseas Vietnamese.^[38]

³⁸ It is provided that: "1. Foreign entities eligible for the homeownership in Vietnam include: a) Foreign entities who invest in project-based housing construction in Vietnam as prescribed in this Law and corresponding regulations of law; b) Foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign-invested funds and branches of foreign banks operating in Vietnam (hereinafter referred to as foreign organization); c) Foreign individuals who are allowed to enter Vietnam. 2. The foreign entities eligible for the homeownership in Vietnam if they: a) Invest in project-based housing construction in Vietnam as prescribed in this Law and corresponding regulations of law; b) Buy, rent and purchase, receive, or inherit commercial housing including apartments and separate houses in the project for housing construction, except for areas under

The LOL 2013 does not limit the establishment of property ownership rights and even accepts the issuance of house ownership certificates for them (in Vietnam, land management agencies have carried out this activity since the LOL 2013). Foreigners continue to make transactions and receive house ownership certificates. Yet, they may not be aware of the legal distinction between the provisions of the LOL and the LOR. Therefore, there is an opinion that when foreigners are allowed to own houses in Vietnam, they also have the right to use the land in Vietnam.^[39]

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management relating to national defense and security as prescribed in regulations of the Government." Art. 159 Law on Housing (2014).

³⁹ Thi Nga Nguyen, "Bất Cấp Trong Các Quy Định về Chủ Thể Sử Dụng Đất Của Luật Đất Đai Năm 2013 [Inadequacies in Regulations on Land Users of the Law on Land 2013]" *State and Law Review, Vietnam*, 12 (2018): 74. \\uco\\u8221{} {\\i{}State and Law Review, Vietnam} 12 (2018)

⁴⁰ It is provided that: "1. Foreign entities eligible for the homeownership in Vietnam include: a) Foreign entities who invest in project-based housing construction in Vietnam as prescribed in this Law and corresponding regulations of law; b) Foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign-invested funds and branches of foreign banks operating in Vietnam (hereinafter referred to as foreign organization); c) Foreign individuals who are allowed to enter Vietnam. 2. The foreign entities eligible for the homeownership in Vietnam if they: a) Invest in project-based housing construction in Vietnam as prescribed in this Law and corresponding regulations of law; b) Buy, rent and purchase, receive, or inherit commercial housing including apartments and separate houses in the project for housing construction, except for areas under management relating to national defense and security as prescribed in regulations of the Government." Art. 159 Law on Housing (2014).

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Secondly, when having land use rights, foreigners are also entitled to exercise almost all the rights of property rights holders. The most important recognition of Vietnamese law is the right to perform land use right transactions. Similar to domestic land users, foreigners have the right to conduct transfers, leases, mortgages, and capital contributions with land use rights. This provision applies when foreigners use land allocated by the State with the collection of land use levies, or lease land with a lump-sum land rent payment.^[42] It is applied to the case of receiving capital contributions with land use rights.^[43] Particularly for the case of using land leased with an annual fee, foreigners are entitled to sell or transfer assets on the land. Depending on each case, the buyer or transferee of the property may continue to lease the land, or the state shall issue a decision to lease the land or switch to land allocation.^[44] A significant difference compared to domestic land users is that foreigners do not have the right to donate land use rights. This likely stems from Vietnam's system of all-people ownership of land, where the whole people (and not the state) hold ownership rights to land.^[45] It is admitted that the land ownership system

⁴¹ Thi Nga Nguyen, “Bất Cấp Trong Các Quy Định về Chủ Thể Sử Dụng Đất Của Luật Đất Đai Năm 2013 [Inadequacies in Regulations on Land Users of the Law on Land 2013]” *State and Law Review, Vietnam*, 12 (2018): 74. \\uco\\u8221{} {\u0111} State and Law Review, Vietnam} 12 (2018)

⁴² Art. 41 Law on Land, 2024.

⁴³ Art. 42 Law on Land, 2024.

⁴⁴ It is provided that “c) Right/obligation to make capital contribution with privately owned property affixed to the leased land within the land lease term; the recipient of such contributed capital may continue leasing the land for the intended purpose within the remaining lease term; d) Right/obligation to sell privately owned property affixed to the leased land, or to sell privately owned property affixed to the leased land and the right to lease in the land lease contract if the lessee meets the requirements prescribed in Article 46 of this Law. A purchaser of the property affixed to the leased land and the right to lease in the land lease contract may continue leasing the land for the intended purpose within the remaining land use term, and have the rights and obligations of the land user (lessee) according to this Law and other relevant laws.” Art. 41 Law on Land, 2024.

⁴⁵ Phuc, “People’s Land Ownership with State Representing Land Owners in Vietnam,” 12; Chu, “Ché Độ Sở Hữu Toàn Dân về Đất Đai [All-People Ownership of Land],” 910.

in Vietnam meant the “ownership of the entire Vietnamese people of land and natural resources.”^[46]

Vietnamese law has flexibly expanded and adjusted the land use rights of foreigners. First of all, the provisions of the LOL create conditions for foreign-invested enterprises to access land through many different forms.^[47] Secondly, foreigners are permitted to exercise rights and engage in transactions related to land use rights and land under their use rights. Thirdly, Vietnam has also made appropriate adjustments to expand the opportunity to own a house for any individual, who is allowed to enter Vietnam without many binding conditions, such as having to invest and live in Vietnam for a long time, as before.

As a result, an increasing number of foreigners are buying houses in Vietnam. According to the Vietnam Association of Realtors (VARS)'s statistics, the number of foreigners buying houses in Vietnam in the period 2018-2022 accounted for 0,53%. More interestingly, the market started to boom at the beginning of 2023.^[48] By the end of the third quarter of 2023, following over 8 years of the 2014 Housing Law, more than 3,035 foreigners had purchased apartments in Vietnam, primarily in projects located in major cities and provinces: Hanoi (1,765 apartments), Ho Chi Minh City (850 apartments), Bac Ninh (110 apartments), Binh Duong (210 apartments), and Ba Ria - Vung Tau 950 apartments). Most of the buyers came from China, Korea, Singapore, the US, Australia, Japan, and Malaysia.^[49] A report from the Ministry of Construction said that in the first half of 2024, more than 1,000 properties were sold to foreigners in the Hanoi market alone, accounting for a third of the total number in the previous 5-year

⁴⁶ Do, “Land Conflicts in Emerging Suburban Areas in Viet Nam,” 324; Phuc, “People’s Land Ownership with State Representing Land Owners in Vietnam,” 12.

⁴⁷ Quang Huy Tran, “Hoàn Thiện Quy Định Pháp Luật về Quyền và Nghĩa vụ Của Chủ Thể Có Yếu Tố Nước Ngoài Sử Dụng Đất Tại Việt Nam [Improving Legal Provisions on Rights and Obligations of Entities Involving Foreign Elements Using Land in Vietnam]” *Hanoi Law Review*, 4 (2023): 38.

⁴⁸ Ngoc Ngan, “Ngày càng nhiều người nước ngoài mua nhà ở Việt Nam [More and more foreigners are buying houses in Vietnam]” *Vnexpress.net*, 11 December 2024, <https://vnexpress.net/ngay-cang-nhieu-nguo-nuoc-ngoai-mua-nha-o-viet-nam-4812691.html>.

⁴⁹ Mai Ban, “Tạo điều kiện thuận lợi cho người nước ngoài được sở hữu nhà ở [Facilitate foreign home ownership]” *VnEconomy*, December 2, 2024. <https://vneconomy.vn/tao-dieu-kien-thuan-loi-cho-nguo-nuoc-ngoai-duoc-so-huu-nha-o.html>.

period. Particularly, more than 90% cases bought apartments.^[50] Besides, data from CBRE Vietnam shows that in the past 10 years, with almost 5,000 transactions carried out by CBRE, up to 45% belonged to foreign customers, with the highest demand coming from customers from Hong Kong, Taiwan, Korea, and Singapore, followed by Europe and the US. The Ministry of Construction estimates that nearly 4 million foreigners and overseas Vietnamese need to buy houses in Vietnam.^[51]

Legal adjustments to land use rights of foreigners have a positive impact on the implementation of economic development policies in Vietnam. First of all, the recognition of land use rights and house ownership by foreigners contributes to increasing demand and thereby activating the vibrant real estate market in Vietnam, especially in the luxury or medium segments. Naturally, legal adjustments also contribute to strengthening the legal environment to continue to attract foreign investment, including FDI for the real estate sector. In other words, the improvement of land law and policy always contributes to the incentive for FDI and enhances economic development in Vietnam.^[52]

3.3. Obstacles and Challenges

In addition to reasonable adjustments to legal regulations on land use rights of foreigners, inconsistent regulations on home ownership of foreigners have caused many controversies. Especially in the case of foreigners owning apartments, they will still use the land together with other apartment owners on different floors of the building. The fact that the law does not recognize their right to use land does not deny it. More importantly, because it is assumed that there is no land use right, foreigners will also have no rights and obligations to that property right before the state, as well as the

⁵⁰ Ngoc Ngan, “Ngày càng nhiều người nước ngoài mua nhà ở Việt Nam [More and more foreigners are buying houses in Vietnam].”

⁵¹ Mai, “Tạo điều kiện thuận lợi cho người nước ngoài được sở hữu nhà ở [Facilitate foreign home ownership].”

⁵² Dang Xuan Huy, “Dòng vốn đầu tư trực tiếp nước ngoài vào Việt Nam: Thực trạng năm 2024 và dự báo xu hướng năm 2025 [Foreign Direct Investment Flows into Vietnam: Current Situation in 2024 and Forecasted Trends in 2025],” *Journal of State Management*, 9 April 2025. <https://www.quanlynhauoc.vn/2025/04/09/dong-von-dau-tu-truc-tiep-nuoc-ngoai-va-viet-nam-thuc-trang-nam-2024-du-bao-xu-huong-nam-2025/>.

parties to the transaction. This is very absurd when, in fact, they still use land, and more importantly, this regulation creates an imbalance between foreigners and Vietnamese citizens who own houses in that apartment.

This legal issue has therefore been proposed to the Drafting Committee of the amended LOL 2024. There are two main options to be discussed. First, the law needs to recognize the land use rights of foreigners, particularly in cases involving residential land purchases, if foreigners are still allowed to buy and own houses in Vietnam. This opinion is mainly supported by the desire to develop “demand” for the real estate market. Of course, it contributes to creating a transparent mechanism that makes foreign investors feel comfortable when choosing Vietnam as an investment destination.^[53] Theoretically, the discussions also said that house ownership must be associated with land use rights.^[54] Secondly, foreigners are not allowed to buy houses or own houses in Vietnam if they continue to fail to exploit Vietnam’s land use rights. In this case, foreign investors stay in Vietnam by renting houses, which is a fairly common practice. They attempt to find more solutions, such as marrying a Vietnamese person, which can lead to troubles or even conflicts.^[55] This option puts pressure on lawmakers to solve theoretically, as well as shape a legal framework to ensure proportionality and fairness between the parties involved.

Interestingly, the LOH 2023 continues to recognize the home ownership rights of foreigners “allowed to enter Vietnam.” However, it imposes a slight limitation on the scope of house ownership, specifically through “buying, leasing, and purchasing houses of foreign organizations and individuals who have owned houses” in Vietnam before.^[56] Although there are certain constraints on the number of houses and the term of ownership, the rights of property owners, especially the right to sell assets, of

⁵³ Nguyen Hoang Nam, “Quy định pháp luật của một số quốc gia về sở hữu đất đai, sở hữu nhà ở với người nước ngoài và một số khuyến nghị cho Việt Nam [Some international regulations on foreigners’ land and housing ownership and recommendations for Vietnam]” *Journal of Environment*, 4 (2023): 24.

⁵⁴ Tran, “Hoàn Thiện Quy Định Pháp Luật về Quyền và Nghĩa vụ Của Chủ Thể Có Yếu Tố Nước Ngoài Sử Dụng Đất Tại Việt Nam [Improving Legal Provisions on Rights and Obligations of Entities Involving Foreign Elements Using Land in Vietnam],” 36.

⁵⁵ Nguyen Thi My Hanh and Nguyen Hoang Minh Hai, “Foreign Ownership Restriction to Real Estate in Vietnam,” *International Journal of Science, Technology and Society*, No. 4 (2023): 154.

⁵⁶ Art. 17 Law on Land, 2024.

foreigners are still guaranteed by Vietnamese law.^[57] Meanwhile, the LOL 2024, which was passed shortly afterwards, continues not to recognize the land use rights of this subject. This means that foreigners are still allowed to buy houses (and currently use land) and be granted certificates even though they do not have the legal name of land users.

As mentioned above, foreigners still buy and own houses in many commercial housing projects. The transaction price is also comparable to that of buying a home by a domestic individual, as the purchase price of a domestic individual's house includes the value of land use rights. More seriously, unlike domestic individuals, foreigners are not obliged to pay non-agricultural land use tax, even though they are still using land when owning houses. According to the current tax calculation method, apartment owners only pay tax at the rate calculated according to the total number of floors. This means that apartment owners in the same land area will jointly perform tax obligations for the same residential land area. As a result, the state will not collect enough tax on the residential land area that needs to be taxed because foreigners are not obliged to pay taxes. Apartment owners on other floors are only obliged to pay taxes at the household tax payment rate, but cannot pay the tax obligation of foreigners on their behalf. The non-recognition of land use rights for foreigners therefore not only does not exclude their actual ability to use land but also loses budget revenues. This tax base also completely disappears in the case of foreigners who own individual houses and are the only subjects who use the land.

As analyzed above, the continued recognition of home ownership by foreigners contributes to activating the housing market. However, this regulation not only fails to solve the problem of ensuring the similarity of rights and obligations of the subjects, but also poses a theoretical challenge. On the one hand, this regulation creates a lack of consistency between legal documents. On the other hand, this regulation inadvertently flawed the legal basis for the state to exercise its property rights to land. It is worth noting that finding a rationale for the actual land use rights of foreigners is challenging, as they continue to use land despite the law not recognizing their land use rights.

⁵⁷ It is provided that “the State shall protect legal rights to use land and property affixed to the land of land user.” Art. 17 and 20 Law on Land, 2024.

4 Conclusion

Vietnam has adopted a relatively open-minded approach to developing legal regulations governing the land use rights of foreigners in Vietnam, as a result of implementing the country's new economic development policy, which is characterized by speed, strength, and sustainability. FDI is considered one of the critical factors for Vietnam to develop its capital, in line with its development goals. Land is also capital, and Vietnam has implemented appropriate legal reforms to liberate production capacity and effectively exploit this resource. Land policies and laws partly open up channels for foreign investors to invest in real estate and production and business activities that have land use needs, ensure property ownership, and provide a legal basis for preserving property rights of investors over land use rights, and partly for foreign investors to stabilize their lives in the process of investing in Vietnam.

The land law, therefore, supplements regulations on the accommodation of foreigners. In addition to the method of using rental houses, Vietnam has allowed foreigners to buy and own homes. The only bottleneck is the inconsistency between the land law and the housing law, specifically in how house ownership rights for foreigners are recorded, excluding land use rights. Naturally, this is a legal issue that Vietnam needs to address, particularly in terms of legal reasoning, as foreigners can still purchase and own houses, exercising their property rights without significant practical issues.

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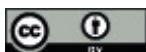
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