



SPECIAL EDITION: LAW ON REAL ESTATE BUSINESS 2023

LAW BULLETIN

ATS LAW FIRM

Ha Noi City Office
10th Floor, Dao Duy Anh Tower
9 Dao Duy Anh Street, Dong Da District, Ha Noi City
Email: partners@atslegal.vn – Tel: +84-24-3751 1888

Ho Chi Minh City Office
12th Floor, 40 Pham Ngoc Thach
Vo Thi Sau Ward, District 3, Ho Chi Minh City
Website: www.atslegal.vn - Tel: 84-28-3926 2635



ATS



VŨ THỊ THU HÀ

LUẬT SƯ ĐIỀU HÀNH – CÔNG TY LUẬT TNHH ATS



— WELCOME —

WORDS FROM MANAGING PARTNER

We are committed to providing an effective, reliable and responsive service to each of our clients.

Our approach is client-focused, solution-oriented and innovative. We have a dedicated and experienced team providing a comprehensive range of services to meet the needs of our clients.

We strive to do whatever it takes in order to resolve the legal issues that face clients, allowing them to minimize administrative overheads and focus on their core business activities.

ASSOCIATION – TRUST – SUCCESS

At ATS Law Firm, our deeds reflect our creed – to provide the very best professional legal services, and to gain and maintain our clients' trust and satisfaction

To become a top-level legal services provider on domestic and international matters, we have formed associations with many local, national and international organizations to exchange knowledge, experience and skills.

We pride ourselves on our ability to build client trust and support them in navigating applicable laws. We have a very high rate of success in accomplishing our clients' objectives, consistently exceeding expectations.

An aerial photograph of a city, likely Manila, Philippines. The image shows a wide river in the foreground with a multi-lane highway bridge crossing it. The city is densely packed with buildings, including several tall skyscrapers in the background. A large blue banner with white text is overlaid on the center of the image.

NOTABLE CHANGES OF LAW ON REAL ESTATE BUSINESS 2023

INDEX

NOTABLE CHANGES OF LAW ON REAL ESTATE BUSINESS 2023

1. Types of real estate assets being capable of trading
2. Public disclosure of information about real estate put into business
3. Thin capital rule for all real estate developers
4. Scope of doing real estate business of foreign-invested organizations
5. Sale of existing house or construction works without sale of the underlying land use right



INDEX

NOTABLE CHANGES OF LAW ON REAL ESTATE BUSINESS 2023

6. Sale and lease-purchase of separate floor area of construction works is permitted
7. Sale of products of delayed real estate projects is not permitted
8. Foreign-invested companies' lease of real estate for use
9. New conditions for off-plan real estate to be made available for trading



Types of real estate assets being capable of trading

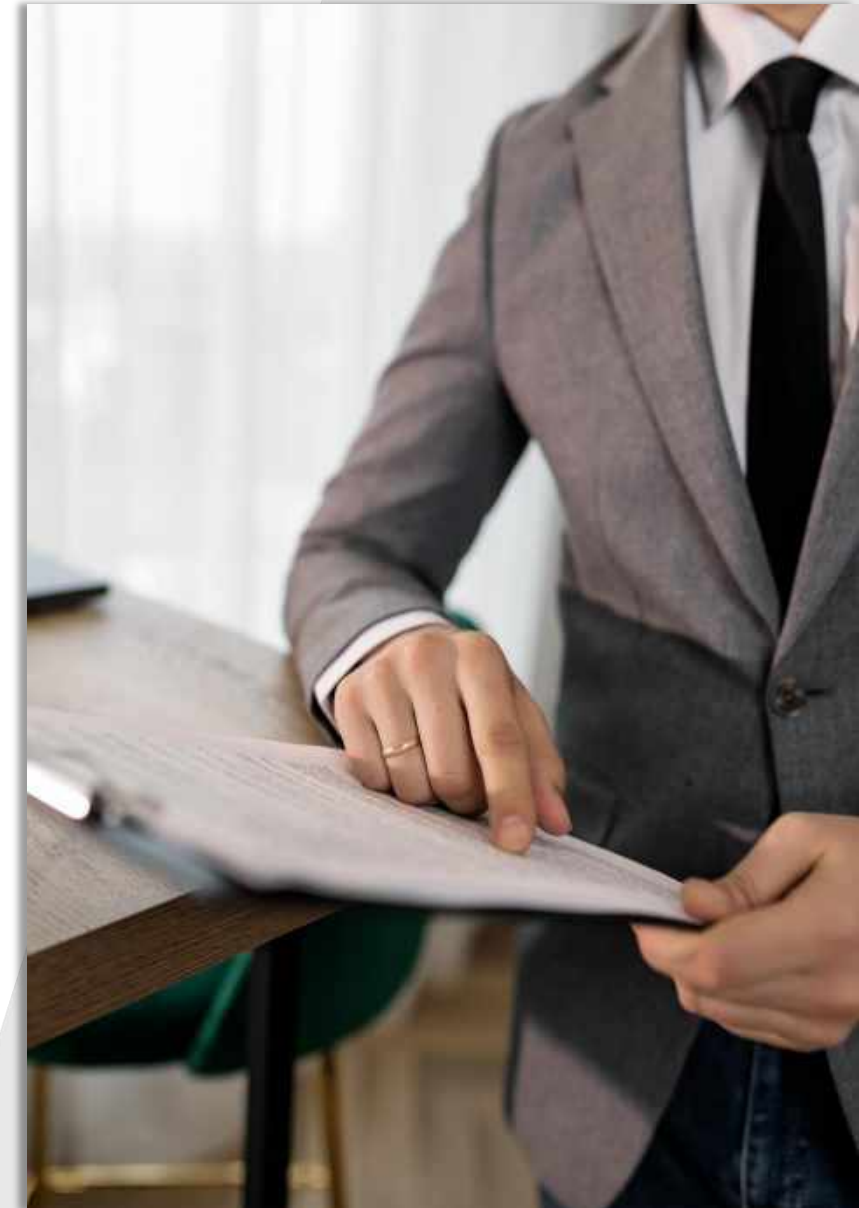
Under the Real Estate Business Law 2023, an existing residential house or construction work is now defined to mean residential house or construction work which have been accepted for operation. Under the Real Estate Business Law 2014, existing residential house or construction work is residential house or construction work which has been put into operation. Accordingly, the scope of existing real estate assets is now expanded to include assets which have not been handed over to the customers, but which have been accepted for operation.

The Real Estate Business Law 2023 will no longer govern all types of transaction involving land use rights. Instead, only land use right having infrastructure in a real estate project could be made available for real estate trading.

The Real Estate Business Law 2023 now clarifies types of construction works that could be made available for real estate trading. Those include, among others, construction works having functions of tourism, accommodation, and mixed-use. Though the Real Estate Business Law 2023 only provides a few general regulations on such types of construction works, it is an attempt to set out a clear legal framework for development and operation of condotel and officetel projects.

The Real Estate Business Law 2023 now expressly recognize the trading of floor area of construction works (e.g., an office floor or a retail floor).

➤ [Law on Real estate business 2023](#)





Public disclosure of information about real estate put into business

The government seems to take a serious view on public disclosure of information on real estate made available for trading by imposing more requirements on the real estate developer. In particular,

- The scope of information and documents required for public disclosure are now broader and more detailed than those under the current law. Specifically, the Real Estate Business Law 2023 expressly requires the real estate developer to publish all key licenses and permits of its project, including, among others, in-principle approval, approved master plan, decisions on land allocation or land lease, and construction permit;
- In addition to public disclosure of requisite information in the developer's website, the

developer will be required to publish the relevant information on housing and real estate market portal of the government; and

- Completing public disclosure of information is a condition to put the real estate available for trading.

The above changes are welcomed and expected to enhance the transparency of the real estate market. However, we think that the disclosure requirements should only apply to real estate products which are sold to individual customers who is usually incapable of doing due diligence against the developer and the real estate projects. For transactions between two professional real estate developers or customers, the requirements for public disclosure are less necessary.

➤ [Law on Real estate business 2023](#)

Thin capital rule for all real estate developers

Under the Real Estate Business Law 2023, enterprise doing real estate business via real estate project must have its own capital for implementation of the real estate project equal to at least 20% of the total investment in case of project using less than 20 hectares of land; or to at least 15% of the total investment in case of project using 20 hectares of land or more. The thin capital rule under the Real Estate Business Law 2023 is an updated version of that under current Decree 2/2022.

However, it is still not clear when the equity capital condition is considered to be satisfied. There are two possible interpretations as follows:

- the equity capital condition could be considered satisfied when the sponsor/shareholder contributes at least

15% or 20% of the total investment capital of the project to the charter capital of the project company. This interpretation is consistent with the thin capital rules under the current land law; or

- the equity capital condition could be considered satisfied when the sponsor/shareholder maintains the equity capital of the project company to be at least 20% of the total investment capital of the project at all times. This is the most aggressive (and unreasonable) interpretation of the condition. Since under this interpretation, even if the investor has completed construction of the project and sold all its products, the investor still has to maintain sufficient equity capital.

➤ [Law on Real estate business 2023](#)





Scope of doing real estate business of foreign-invested organizations

The Real Estate Business Law 2023 finally makes clear the scope of doing real estate business of foreign-invested organizations (FIO) to include the development of infrastructure on land via a real estate project in order to transfer, lease, sub-lease land use right having ready-built infrastructure. Under the current real estate business regulations, a FIO can only do real estate business with respect to houses and construction works. This results in a practical issue that the FIOs have to rely on the regulations of the Land Law 2013 to do real estate business concerning land use rights while there is a theoretical risk that their business is not in line with the Real Estate Business Law 2014.

In term of drafting aspect, the Real Estate Business Law 2023 now consistently uses the term “foreign-invested economic organization”, which appears to mean the same concept as provided in the Investment Law 2020. Under the current Real Estate Business Law 2014, the draftsman uses the term “foreign-invested enterprise” with no clear legal definition.

➤ [Law on Real estate business 2023](#)



Sale of existing house or construction works without sale of the underlying land use right

Under the Real Estate Business Law 2023, the sale of existing houses or construction works without sale of the underlying land use right can be conducted if the land law or housing law allows so. This change makes the Real Estate Business Law 2023 consistent with the Land Law 2013 (and perhaps, the upcoming

new land law), which allows the owner of a house or construction work could be different from the user of the underlying land use right.

▶ [Law on Real estate business 2023](#)

Sale and lease-purchase of separate floor area of construction works is permitted

The Real Estate Business Law 2023 now follows the current land law's approach when expressly recognizing the sale and purchase of each separate floor area of construction works if it satisfies certain conditions. Among the conditions, the Real Estate Business Law 2023 requires the construction works having the transferred floor area must be constructed in the land having use form of land assignment from State with fee or leasing land from State with one-off rental payment for the whole lease term. This regulation gives rise to the following issues:

- It appears that the draftsman of the Real Estate Business Law 2023 is not updated with the proposed changes in the new land law. Under the proposed new land law, it is likely that the cases land users can lease

land with form of one-off rental is very limited. Whereas, the land used for developing the construction work having transferred floor area may be land leased with annual land rental (e.g., land for commerce, service); and

- The Real Estate Business Law 2023 already sets out a condition that the parties under the sale contract must specify the financial obligation on the land applicable to the transferred floor area. Accordingly, the rental payment form of the underlying land should not be relevant.

➤ [Law on Real estate business 2023](#)





Sale of products of delayed real estate projects is not permitted

Existing houses or construction works belonging to a real estate project can only be sold if the real estate project, among other things, complies with the approved implementation schedule. Accordingly, a real estate developer of a delayed real estate project may not be able to sell its products under the Real Estate

Business Law 2023. This could be tough condition given for real estate developer given that delays in implementing a real estate project is quite common.

➤ [Law on Real estate business 2023](#)



Foreign-invested companies' lease of real estate for use

In practice, it is very common that a foreign-invested enterprise (FIE) leases real estate (e.g., factory or office building) from a real estate developer to conduct its day-to-day business in Vietnam. However, one may not notice that this activity is not expressly recognized in the current Real Estate Business Law 2014. In particular, under Article 14 of the Real Estate Business Law 2014, a FIE is only entitled to purchase or lease and purchase houses and construction works from real estate developers for use. This appears to be a drafting mistake of the draftsman. See further discussion on this issue [Here](#).

The Real Estate Business Law 2023 finally fixes this drafting mistake. Under Article 15 of

the Real Estate Business Law 2023, a FIE will be entitled to lease construction works and construction floor area from real estate developers to use for its day-to-day business.

➤ [Article 15 Law on Real estate business 2023](#)

New conditions for off-plan real estate to be made available for trading

The Real Estate Business Law 2023 introduces some new conditions applicable to off-plan real estate in order to be put into trading. Among these new conditions, Article 24.5 requires that houses and construction works made available for trading must be under a real estate project that has been approved in accordance with law and the approved content of such real estate project must include the investment purposes of constructing houses and construction work for sale and lease-purchase. This regulation has unclear intention and may give rise to the following issues.

The wording of Article 24.5 seems to suggest that if the developer's original application provides that the houses and the construction works are developed for lease, then technically

the developer cannot sell such houses and construction works after completing the construction. This approach seems unreasonable and imposes significant restrictions on how a real estate developer conducts its business; and

In case the developer's original application provides that the houses and the construction works are developed for sale, then it is not clear if the developer can retain the ready-built houses and construction works for lease.

Perhaps, to avoid the potential risks discussed above, the developer should include objectives of developing houses and construction works for lease and/or for sale.

➤ [Article 24 Law on Real estate business 2023](#)



OUR EXPERTISE

We are always at your service



Mergers & Acquisitions

We provide an end-to-end service to our clients, in cross-border as well as domestic M&A transactions, and are committed to providing pragmatic advice



Taxation

Our practice covers all types of taxes (commercial/sales, individual and VAT, among others) and we advise on matters ranging from compliance issues to the tax implications of particular transactions



Investment

We provide legal services to investors and foreign-invested enterprise. We always well understand the requirements of investors, financial institutions and stakeholders in large-scale investment projects in Vietnam.



Litigation

We always discuss thoroughly with customers and review the provided documents to propose optimal solutions which is best protect the rights and legitimate interests of customers in each specific case.



Banking & Project Finance

We have the expertise necessary to properly handle the risks in financial and banking activities and provide services such as: identifying potential risks, loan contracts, mortgage contracts, establish internal procedures of the banks



Labour

Our diverse service range from consulting employee recruitment, employee benefits, performance evaluation, contract signing and termination, personal income tax, and human resource management to, resolving labor dispute



Civil Matters

We strive to assist our clients in resolving legal issues in the area of civil, land, marriage and family



Contracts & Agreements

We provide service on consulting and reviewing contracts and agreements, to support clients to negotiate with their partners, to protect their legal rights and interests to settle contractual dispute



asia**law**
PROFILES

The
LEGAL
500

IFLR1000

ATS LAW FIRM

Han Noi City Office

10th Floor, Dao Duy Anh Tower
9 Dao Duy Anh Street, Dong Da District, Ha Noi City
Email: partners@atslegal.vn – Tel: +84-24-3751 1888

Ho Chi Minh City Office

12th Floor, 40 Pham Ngoc Thach
Vo Thi Sau Ward, District 3, Ho Chi Minh City
Website: www.atslegal.vn - Tel: 84-28-3926 2635