January, 2024 No.75

This issue covers the following topics:

Vietnam

New Law on Real Estate Business

ベトナムでは、2023 年 11 月に新たな不動産事業法が成立し、同法は 2025 年 1 月 1 日に施行される。新法は、不動産市場の発展に合わせて、現行法の問題点や不備を解決し、不動産市場の透明性と安全性を確保することを目的としている。本稿では、改正内容のうち、実務的に関心が高いと思われる点をご紹介する。

On 28 November 2023, the Law on Real-Estate Business 2023 (the "**LREB 2023**") has been adopted. The new law will be enforceable from 01 January 2025 and replace the current Law on Real-Estate Business 2014 ("**LREB 2014**").

Set out below is a summary of the notable changes under LREB 2023.

1. Forms and scope of real-estate business conducted by foreign invested enterprises

LREB 2014 generally regulates the forms and scope of real-estate business for all foreign-invested enterprises ("**FIEs**") regardless of the shares of foreign investment. On the other hand, LREB 2023 separates foreign-invested enterprises into two types: (i) FIEs, which are subject to the conditions and requirements under Law on Investment 2020 ("**LOI 2020**"); (ii) FIEs, which do not fall into (i) above, and accordingly regulates the business scope for each category.

Although not stated clearly, it can be assumed that LREB 2023 refers to FIEs stipulated in Article 23 of LOI 2020. Accordingly, FIEs of type (i) include:

a) Enterprises in which over 50% of the charter capital is held by a foreign investor(s) or, in the case of a partnership, the majority of its general partners are foreigners;

b) Enterprises in which over 50% of the charter capital is held by an enterprise(s) mentioned in a); and

c) Enterprises in which over 50% of the charter capital is held by a foreign investor(s) and an enterprise(s) mentioned in a).

Under LREB 2023, FIEs of type (i) can conduct real-estate business with the same form and scope as Vietnamese people residing abroad but not holding Vietnamese nationality. The difference between LREB 2023 and LREB 2014 is that under LREB 2023, these FIEs are permitted to build technical infrastructure to transfer, lease, or sublease land use rights that already have technical infrastructure, while under LREB 2014, FIEs can only invest in housing and construction works.

The forms and scope of real-estate business that the FIEs of type (ii) can conduct are the same as domestic enterprises. In particular, these FIEs are allowed to buy houses or construction works for resale, lease, or lease-purchase. Under LREB 2014, all FIEs are not allowed to do such transactions because Vietnam only encourages FIEs to invest as real-estate developers and real-estate service providers. This notable change creates more opportunities for foreign investors in Vietnam's real-estate business.

To elucidate, the forms and scope of business conducted by FIEs in housing, construction works, and land use rights that already has infrastructure, etc., under LREB 2023 in comparison with LREB 2014 are as follows:

Forms and scope of business	**LREB 2014**	**LREB 2023**	
	All FIEs	FIEs subject to the conditions and requirements under Law on Investment	Other FIEs
1. Buy or enter into lease-purchase of houses, construction works for resale, lease, or lease-purchase	not allowed	not allowed	allowed
2. Lease houses or construction works for sublease	allowed	allowed	allowed
3. Invest in the construction of houses or construction works for sale, lease or lease-purchase according to forms, purpose and term of land use as prescribed by the laws (including cases of construction on land located in industrial parks, industrial complexes, export-processing zones, hi-tech zones, or economic zones)	allowed	allowed	allowed
4. Receive transfer of entire or partial real-estate project for continuing construction and trading	allowed	allowed	allowed
5. Receive transfer of rights to use land that already has infrastructure within real-estate projects for further transfer or lease;	not allowed	not allowed	allowed
6. Lease rights to use land that already has infrastructure within real-estate projects for sublease	not allowed	not allowed	allowed
7. Invest in the construction of infrastructure facilities within real-estate projects for transfer, lease or sublease of rights to use land that already has infrastructure	not allowed	allowed	allowed

2. Conditions for organizations and individuals when doing real-estate business

Same with LREB 2014, except for some instances, any organization or individual engaged in real-estate business must establish an enterprise or cooperative ("**real-estate enterprises**"). LREB 2023 adds some conditions for real-estate enterprises as follows:

(i) The real-estate enterprise must not be banned from real-estate business activities, suspended or suspended from operations according to a judgment or a decision of a court, or a decision of a competent authority;

(ii) The real-estate enterprise must ensure the ratio of outstanding credit debt and outstanding corporate bonds to owner's equity is maintained (however, there are currently no guidelines for this condition);

(iii) The real-estate enterprise must have equity capital of not less than 20% of the total investment capital for projects with a land use scale of less than 20 hectares, not less than 15% of total investment capital for projects with land use scale of 20 hectares or more. In particular, the new law supplements the requirement that when an enterprise has many projects, it must have sufficient equity capital to ensure each project's above-mentioned ratio to implement all projects. This condition is currently stipulated in Decree No.02/2022/ND-CP.

3. Business of off-plan real-estate

3.1. Deposit threshold

In respect of payments to be made by customers for houses or construction works that are under construction ("**off-plan real-estate**"), LREB 2014 only regulates the payment of real-estate contract value (i.e., the selling price or lease price of the off-plan real-estate shall be paid in installments, the initial installment not exceeding 30% of the contract value). As such, LREB 2014 lacks regulations on transactions that occur before signing the contract, such as accepting deposits from customers, and only regulates payment mechanics from the time of signing the real-estate business contract. Therefore, many developers conclude deposit agreements based on the provisions of the Civil Code and request large deposits because there is no limitation on the amount of deposit under the Civil Code.

However, regulation on this matter is stricter according to LREB 2023. First, to protect customers buying or leasing an off-plan real-estate, LREB 2023 stipulates that real-estate project developers are only allowed to accept a deposit of no more than 5% of the selling price or lease price for houses, construction works, or construction floor areas of construction works from the customers. The deposit is only collected when the houses or construction works are qualified to be put on the market as per the provisions of LREB. The deposit agreements must clearly state the selling price, lease-purchase price of the houses, the construction works, and the construction floor areas. Moreover, LREB 2023 requires that the deposit must be included in the initial installment, which must not exceed 30% of the real-estate contract value.

The regulation on deposit limits and time of deposit receipt as above ensures that the nature of the deposit is not for the purpose of raising capital. It is expected to identify real-estate developers who possess authentic abilities and have a steady financial foundation.

Secondly, under LREB 2023, developers cannot authorize other parties to enter into a deposit contract. This provision aims to address situations where individuals suffer losses when buying real-estate through intermediaries or real-estate businesses. Furthermore, this regulation can address issues related to determining the responsible party and limiting instances of avoiding responsibilities in case investors delegate responsibilities to multiple parties. This regulation also applies to the business of existing houses or construction works.

3.2. Bank guarantee for the developer's financial obligations for off-plan houses.

LREB 2023 retains the requirement that the real-estate project developers must obtain a bank guarantee for the developer's financial obligations to customers in case the developer fails to hand over the house as committed, before selling or leasing an off-plan house. However, for the customers, LREB 2023 now allows them to choose whether to have such a guarantee when signing the contract of purchase and sale or lease-purchase of such house.

In fact, the developers must pay the guaranteed fee to the banks in advance, and they then add this amount to the selling price, which makes the price higher. However, with the new regulations, customers can sign a purchase contract without a bank guarantee and receive a discount on the purchase price.

A new regulation in LREB 2023 requires the developer to furnish a bank guarantee to the customer within ten days

of signing the contract, or as mutually agreed upon by the parties. Furthermore, the developer is entitled to receive payment only after the customer has received a letter of guarantee.

4. Publicizing information about the real-estate, real-estate projects to be put on the market

LREB 2014 only requests the real-estate enterprise to publish general information about the real-estate before putting it on the market. Under LREB 2023 the developer must publish information on (i) Real-estate projects, (ii) Off-plan houses and construction works, (iii) Existing houses or construction works, and (iv) Land use rights with technical infrastructure in real-estate projects. LREB 2023 regulates every detail on the information that needs to be publicized.

The above information must be public not only on the website of the real-estate enterprise but also on the information system on the housing and real-estate market.

5. Contract for real-estate business

LREB 2023 clarifies that only real-estate project developers and real-estate enterprises need to use sample real-estate business contracts. This regulation ended the controversy about the mandatory application of contract templates for other organizations and individuals under Decree 02/2022/ND-CP. Accordingly, when doing real-estate business contracts or real-estate service contracts, other organizations and individuals are only required to comply with the provisions of the LREB and the Civil Code.

Conclusion

The new LREB is expected to resolve the problems and deficiencies of the current law, ensure transparency and security of the real-estate market, and be able to cope with problems arising from the rapid development of the real-estate market in Vietnam.

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Indonesia

Supreme Court Clarifies the Necessity of Bahasa Indonesia Version in an Agreement

インドネシアでは、言語法及び最高裁の判例に従って、インドネシア法人が契約当事者に含まれる場合、インドネシア語と外国語の併記の形式で契約が締結されるのが確立した実務であるところ、今般、インドネシア語での契約締結を怠った場合に言語法違反を理由に契約無効が主張できるのは一定の場合に限定されるとの趣旨の最高裁の通達が出された。法令を変更させる効果を有するものではないものの、実務上のリスク判断においては大きな意味のある通達であることから本稿で紹介する。

Introduction

On 29 December 2023, the Supreme Court issued the Supreme Court Circular Letter No. 3 of 2023 on Implementation of 2023 Supreme Court Plenary Meeting Conclusion on Implementing Guidelines for Courts ("**Circular Letter 3/2023**"). The Circular Letter 3/2023 offers insight on the validity and consequences of agreements in foreign language not translated to Bahasa Indonesia.

Position of Circular Letter under Indonesian Regulations

Before delving into the substance of the Circular Letter 3/2023, please note that under Indonesia's hierarchy of laws as stipulated in Article 7 of Law No. 12 of 2011 as amended by Law No. 13 of 2022 on the Formation of Laws and Regulations ("**Law 12/2011**"), the hierarchy of laws is as follows:

- Constitution of 1945;
- Decision of People's Consultative Assembly;
- Law and/or Government Regulation in lieu of Law;
- Government Regulation;
- Presidential Regulation;
- Local Regulation in Provincial Level; and
- Local Regulation in City / Regency Level.

Furthermore, Article 8 of Law 12/2011 stipulates that regulations other than those mentioned in Article 7, such as: Minister Regulation, Supreme Court Regulation, Bank Indonesia Regulation, are also legally enforced to the extent that the formation of such regulations are allowed under the higher regulations (i.e. regulations stated in Article 7) or they are formed based on the authority of the relevant issuer.

The issuance of circular letter of Supreme Court itself is based on the Law No. 14 of 1985 on the Supreme Court, pursuant to which the Supreme Court is allowed to further regulate certain matters which are needed for the continuous implementation of judiciary if there are matters which are not sufficiently regulated in this law.

In principle, the circular letter is issued to be a guidance for courts under the supervision of the Supreme Court in case of (i) the relevant laws and regulations are not clear or easy to be misinterpreted, or (ii) filling a legal vacuum.

Substance of Circular Letter 3/2023

One of the substances of Circular Letter 3/2023 is related to the interpretation of Law No. 24 of 2009 on Flag, Language, National Emblem, and National Anthem and its implementing regulation of Presidential Regulation No. 63 of 2019 on the Use of Indonesian Language ("**Language Laws**"). The Circular Letter stipulates as follows:

"Indonesian private institutions and/or Indonesian individuals, who enter into an agreement with foreign party in

foreign language which is not supplemented with Bahasa Indonesia translation cannot be used as the basis to annul the agreement, unless it can be proven that the absence of the Bahasa Indonesia translation is due to the bad faith of one of the parties."

As a background, the Supreme Court had previously upheld a court decision which had held that an agreement involving an Indonesian entity is null and void if it is only executed in the English language. The general argument on this issue is because an agreement that is not translated into Bahasa Indonesia does not fulfil the requirements of validity of an agreement under Article 1320 of the Indonesian Civil Code, thus it is null and void. The requirements under Article 1320 of the Indonesian Civil Code sets out the following requirements for an agreement to be valid:

a. There is consent from the contracting parties;

b. The contracting parties are capable persons;

c. The existence of particular object of an agreement; and

d. The agreement must be lawful.

With respect to the condition (d) above, i.e. an agreement must be lawful, the Indonesian Civil Code regulates that an agreement cannot be contrary to the prevailing laws, morality, and public order. In the absence of Bahasa Indonesia version, it was interpreted that it violates the prevailing Language Laws, hence the agreement shall be null and void.

Based on the aforesaid interpretation, a contracting party can submit a claim to the court to annul the agreement. Consequently, parties have been taking a conservative approach whereby an agreement between an Indonesian entity and a foreign party which is prepared in foreign language is also accompanied with Bahasa Indonesia version, despite no explicit sanctions being stipulated under the Language Laws regarding absence of Bahasa Indonesia version.

To respond to such public interpretation, the Supreme Court through the Circular Letter 3/2023 has clarified that the absence of Bahasa Indonesia cannot by itself serve as a basis to annul an agreement, unless such absence of translation is due to bad faith from any of the parties.

Conclusion

The issuance of the Circular Letter 3/2023 provides clarity to the courts that the claim for nullification of an agreement due to the absence of Bahasa Indonesia version shall not be accepted unless such absence is due to bad faith from any of the parties.

We are of the view that the issuance of the Circular Letter 3/2023 is beneficial for both foreign and Indonesian parties to protect them in case that either of the party wishes to avoid the obligations under the agreement by seeking judicial intervention to annul the agreement due to the absence of Bahasa Indonesia version even though such agreement was fairly prepared and negotiated. Please note, however, the Circular Letter 3/2023 serves as an assertation to the implementation of Language Laws, not as an exception or waiver of it. Thus, it is still mandatory to prepare the Bahasa Indonesia version in an agreement between Indonesian and foreign party.

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