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# BUILDING EQUALITY
## AMONG FOREIGN REALTY INVESTORS

Coupled with the rapid growth in the economy, development in capital markets, and increased capital inflow over recent years, Vietnam's new real estate laws have contributed significantly to the interest and activities of foreign investors in the Vietnamese real estate sector. Kevin Hawkins, Co-Executive Partner at ZICO Law Vietnam, sheds light on the current legal landscape for real estate in Vietnam, and suggests further improvements to real estate laws to increase competitiveness and further growth in the sector.

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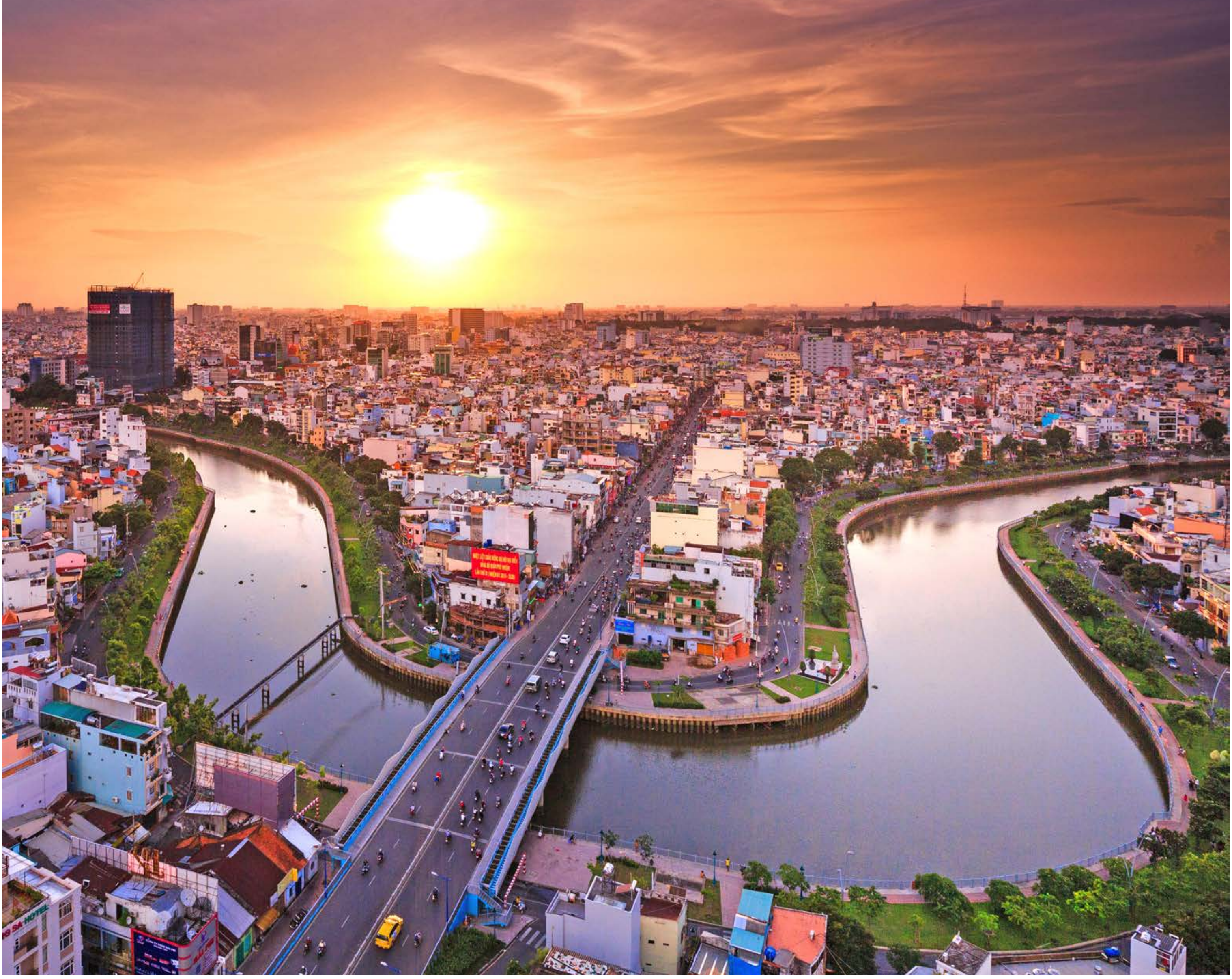

# Long gone are the days when foreign investors could legally own only properties in Vietnam by forming a joint venture with a local company to develop a real estate project.

It has been more than three years since the implementation of the Law on Housing No.65/2014/QH13 and the Law on Real Estate Business No.66/2014/QH13 (LREB) in July 2015 which partially lifted the barriers for foreigners investing in the Vietnamese real estate market and thus opened the floodgate for foreign investment in the sector.

With the rapid growth in the economy, development in capital markets, and increase in capital inflow in Vietnam over recent years, it is no surprise that the new laws contributed significantly to the interest and activities of foreign investors in the Vietnamese real estate sector.

## CURRENT LEGAL LANDSCAPE

The new laws have not only simplified the legislation but also expanded the rights and protections afforded to overseas backers while maintaining certain restrictions to keep them from overrunning investment in Vietnam's real estate opportunities. Among the notable changes under the new laws, foreign investors are now permitted to acquire 30 per cent of apartment units within one apartment building or 250 individual residential houses comprising villas and terraced houses in one ward.

This change is encouraging as overseas individuals were only allowed to own one apartment unit in an apartment building prior to the implementation of the new laws. The laws also loosened restrictions and conditions imposed on foreign financiers whereby individuals are allowed to own residential property without residency status or have any investment in Vietnam as long as the individual enters the country with a valid passport. This makes it more accessible for outsiders to fund without the need to go through stringent conditions which may not be proportionate to the investment return and thereby deter foreign investment in the country. Further, foreign-invested enterprises (FIEs) can now lease real estate for sub-lease and this was not available to them prior to the implementation of these laws.

All these changes contributed to the significant increase in real estate activities as shown in the data from the Ministry of Construction where it reported that Hanoi had about 8,650 successful deals in the first two quarters of 2018, while Ho Chi Minh City had about 9,550 deals. Both major cities in Vietnam recorded an increase of more than 20 per cent on-year.

While the new laws have brought about changes welcomed by foreign investors and thus encouraged more investment, it is realistic to expect that there is still room for improvement, particularly in relation to the different treatment between local and overseas investors, and the implementation of a level playing field between foreign and local backers so as to increase competitiveness in the sector.

## HOPEFUL IMPROVEMENTS

Despite the reforms intended to encourage investment from outside the country, there remains a difference in the treatment between local and foreign investors in the real estate sector. Under Article 11 of LREB, foreign financiers are not permitted to transfer land use rights in the form of division of land into plots for sale, contrary to such right being available to local investors. The same article in LREB also expressly permits local developers to purchase houses and buildings for sale, lease-out or offer for lease-purchase while foreign investors are only permitted to sub-lease houses and buildings. Article 57 of LREB also permits local developers to collect up to 70 per cent of the value of the contract for sale and purchase or hire-purchase of real estate property to be formed in the future, while foreign developers are permitted to collect only up to 50 per cent. The difference in treatment is not necessary and should be removed as it impairs competitiveness in the market. The implementation of the relevant provisions in practice also renders the investment market less efficient than it should be, given that there are general rules applicable to both local and foreign investors, which may not be consistent with the restrictions on overseas funders.

There should also be clarity and guidance on the definition of an FIE. The Land Law 2013 defines them as joint ventures and enterprises wholly or partly owned by a foreign company but with no indication on the foreign ownership percentage which would render the enterprise an overseas entity.

The Law on Investment 2014, on the other hand, provides that an economic organisation with foreign ownership of 51 per cent or more shall be subject to regulations applicable to foreign investors. As there is no certainty in the interpretation of the definition of overseas ownership or FIEs under the Land Law and LREB, confusion arises as to what restrictions are applicable and the compliance expected from these investors pouring money into various forms of establishment.

Guidelines should therefore be issued to make clear of the definition so that they can choose to fund, collaborate or set up a joint venture with local financiers and enjoy synergies derived from having local expertise to jointly develop the Vietnamese real estate market.

## SETTING NEW CONDITIONS

There is also a popularly discussed inadequacy in the current laws and the lack of specific legal frameworks to regulate the construction, ownership and management of condotels. Condotels are a relatively new real estate product in Vietnam, the demand for which has risen significantly since 2014. Owing to the unclear classification of condotels, investors who put money into condotels are not issued with red books to document ownership. This uncertainty affects the value of the property and the drop in sales and demand is imminent. In terms of the land use right certificate issued to foreign individuals for residential houses in a residential project, investors from outside the country will only be granted a term of 50 years while local investors are entitled to an indefinite term. Although an extension of 50 years is available, the right to extend the term is not tested and the conditions for extension are not provided in the legislation. The purpose intended to have different term of the right to use the land is not known and it discourages foreign backing as the remainder terms affect the liquidity of the sale to foreign buyers. The sale of the property is also inhibited as the pool of buyers is limited to local buyers who will enjoy indefinite term of use upon purchase of the property from foreigners.

Similarly, as the percentage of foreign ownership in a single apartment building is limited to 30 per cent, any sale of apartment units may face the same limitation. The pool of buyers will inevitably limit the price that the owners can obtain if the quota for foreign ownership in that particular apartment has reached the allowed percentage, sale to potential overseas buyers will not be permitted.

With the government's commitment to ensure growth of foreign investment, and the optimism in the market as demonstrated by investors, it is hoped that their rights in the real estate sector will further improve to allow them the same rights as local ones in all areas of real estate, and clear and consistent guidelines will be provided to increase competitiveness in the sector.

If you have any questions or require any additional information, you may contact the following person or the ZICO Law Partner you usually deal with.

**Kevin Hawkins**
Co-Executive Partner

kevin.hawkins@zicolaw
t. +84 28 3915 1000

**Kevin** is an accomplished U.S. lawyer who has more than 20 years of experience, with more than 15 years as a registered foreign lawyer in Vietnam. Based in Ho Chi Minh City, Kevin advises clients on a variety of matters including business formation, oil, gas & power, education, trading & distribution, dispute resolution, mergers & acquisitions, property development, real estate, employment, corporate governance, and international trade.

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