

NOTABLE PROVISIONS OF THE LAW ON REAL ESTATE BUSINESS 2023

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After eight years after the promulgation of the Law on Real Estate Business 66/2014/QH13 (**Law on Real Estate Business 2014**), according to the implementation assessment summary in Submission Report 150/TTr-CP dated April 26, 2023 of the Government on the Project of the Law on Real Estate Business (amended), the implementation of this law still has many shortcomings, causing difficulties and hindering business activities, transactions in the real estate market. Realizing the urgency in completing the provisions of the Law on Real Estate Business 2014, in order to remove obstacles, and difficulties from the remaining shortcomings, on November 28, 2023, the National Assembly promulgated the Law on Real Estate Business 29/2023/QH15 (**Law on Real Estate Business 2023**), effective from August 1, 2024. This article will focus on analyzing some important amendments of the Law on Real Estate Business 2023, specifically as follows:

Firstly, expanding the forms and scopes of business of entities conducting real estate business pursuant to the new provisions, in particular:

First, the Law on Real Estate Business 2023 has applied the term “foreign-invested economic organizations” instead of “foreign-invested enterprises” under the Law on Real Estate Business 2014 to ensure terminology consistency with the Law on Investment 2020.

In accordance with the Law on Real Estate Business 2023, foreign-invested economic organizations that *are subject to meet the conditions and implement the investment procedures prescribed for foreign investors* under the Law on Investment (one of the three cases stipulated in clause 1, Article 23 of the Law on Investment 2020) are **entitled to conduct real estate business in the forms and scopes of real estate business of Vietnamese people residing abroad who are not Vietnamese citizens** (clause 4, Article 10 of the Law on Real Estate Business 2023). These foreign-invested economic organizations include:

“a) Those having foreign investors hold more than 50% of the charter capital or, for economic organizations



being partnerships, having the majority of their general partners be foreign individuals;

b) Those having more than 50% of the charter capital held by the economic organizations specified at point a of this clause;

c) Those having more than 50% of the charter capital held by the foreign investors and economic organizations specified at point a of this clause” (clause 1, Article 23 of the Law on Investment 2020).

Foreign-invested economic organizations that *are not required to meet the conditions and implement the investment procedures prescribed for foreign investors under the Law on Investment as mentioned above* will be free to access and conduct real estate business in the forms and scopes of business applying to domestic organizations (clause 5, Article 10 of the Law on Real Estate 2023).

Second, the Law on Real Estate Business 2023 separates two groups of subjects including (i) Vietnamese people residing abroad who are Vietnamese citizens and (ii) Vietnamese people residing abroad who are not Vietnamese citizens. This regulation is also in line with the Law on Land 2024. Specifically, the scopes and forms for conducting business of houses, construction works and land use rights with available technical infrastructure in real estate projects, transfer of real estate projects of Vietnamese people residing abroad who are Vietnamese citizens will be similar to those applied to domestic individuals (clause 2, Article 10 of the Law on Real Estate Business 2023). Vietnamese people residing abroad who are not Vietnamese citizens are entitled to conduct

business in the limited forms and scopes of business under clause 3, Article 10 of the Law on Real Estate Business 2023.

It is noticeable that the Law on Real Estate Business 2023 has *expanded the forms and scopes of business* for (i) **the group of subjects being foreign-invested economic organizations that are not required to meet the conditions and implement investment procedures for foreign investors** and (ii) **the group of Vietnamese people residing abroad who are Vietnamese citizens**. This expansion facilitates the entities with good capital capacity to participate in the real estate business market and promotes more robust development of this market in the future.

Secondly, *innovating the conditions for real estate brokerage service business*. The new regulation imposes stricter conditions on organizations, and individuals providing real estate brokerage services compared to the previous one. Specifically, there are 2 main contents as follows:

First, the Law on Real Estate Business 2023 requires organizations, and individuals providing real estate brokerage services to *establish an enterprise providing real estate services* under the Law on Real Estate Business 2023 which fully meets all of the following conditions: (i) Having regulations on real estate brokerage service operation; (ii) Having facilities and techniques that meet the operational requirements in accordance with the law (specified in Article 18 of Decree 96/2024/ND-CP); (iii) Having at least 1 individual holding real estate brokerage certificate; (iv) Before its operation, having sent the information about the enterprise to the provincial-level state management agency in charge of real estate business where it is established for posting on the housing and real estate market information system (clause 5, Article 9 and clause 1, Article 61 of the Law on Real Estate Business 2023).

Second, the Law on Real Estate Business 2023 no longer allows individuals to provide real estate brokerage freely. Individuals practicing real estate brokerage must meet the following conditions: (i) Having a real estate brokerage practice certificate; (ii) Practicing in an enterprise providing real estate trading floor service or real estate brokerage service (clause 2, Article 61 of the Law on Real Estate Business 2023).

Thirdly, *supplementing detailed regulations on the*

establishment, registration, and operating conditions of real estate trading floors. This new provision has 2 following notable contents:

First, Article 54 of the Law on Real Estate Business 2023 has supplemented details to complete the provisions on *conducting real estate trading floor service*. Organizations and individuals providing real estate trading floor service must establish enterprises conducting real estate services. The name of such enterprise must contain the phrase “*real estate trading floor*” and must not be identical or confusing with the name of other registered enterprises conducting real estate trading floor service. In addition, before operating, the investors of a real estate trading floor must send a dossier to the provincial-level state management agency in charge of the real estate business where the trading floor is headquartered to obtain the operation license.

Second, in addition to the detailed requirements on the establishment, and registration of real estate trading floors, compared to the Law on Real Estate Business 2014, Article 55 of the Law on Real Estate Business 2023 also supplements detailed provisions on the operation conditions of real estate trading floors, including the conditions for the managers, operators of real estate trading floors and conditions for real estate trading floors. In particular, a real estate trading floor must (i) be established and registered for operation under the Law on Real Estate Business 2023, (ii) promulgate, and publicize the procedure for real estate transactions through the real estate trading floor and (iii) register a fixed operation location with the facilities and techniques to ensure implementation of the real estate trading floor activities.

Fourthly, *supplementing regulations on deposits in the sale, lease-purchase of houses, and construction works formed in the future*. Accordingly, the Law on Real Estate Business 2023 for the first time recognizes “*deposit*” as a *guaranteed measure in the sale, lease-purchase of houses, construction works, and construction floor area in construction works*. Investors of real estate projects are only allowed to collect deposits “*not exceeding 5% of the sale, lease-purchase price of houses, construction works, construction floor area in construction works from the depositor for sale or lease-purchase when the houses, construction works have fully met the conditions for business launching*”. The relevant

deposit agreement must clearly stipulate the provisions on the sale or lease-purchase price of houses, construction works, and construction floor area in construction works (clause 5, Article 23 of the Law on Real Estate Business 2023).

Fifthly, *adjusting regulations on conditions for the transfer of the whole or part of real estate projects.* Specifically, the regulation of “*not required to have a land use rights certificate*” in clause 3, Article 40 of the Law on Real Estate Business 2023 is found more progressive than the previous provisions, creating favorable conditions for the transfer of projects. This regulation is in sync with the provisions of the Law on Land 2024 with the hope of removing bottlenecks in permitting project transfer to ensure land use efficiency. Under the new regulation assignors are only required to meet the conditions including (i) Having acquired the decision on land allocation, land lease, and permission to change the land use purpose for project implementation; (ii) Having fulfilled the project's land-related financial obligations, including land use levy, land rent and other land-related taxes, charges and fees of the project/part of the transferred project, but “*not required to have a certificate of land use rights in accordance with the law on land for the whole or part of the transferred project*”.

It is found that the Law on Real Estate Business 2023 has many amendments, and supplements compared to the Law on Real Estate Business 2014 to complete the legal framework for conducting real estate business activities and real estate service business in Viet Nam. Individuals and enterprises (especially Vietnamese people residing abroad, and foreign-invested economic organizations) should update and study the provisions of the Law on Real Estate Business 2023, as well as detailed guiding documents of this Law to approach and implement business investment activities effectively. In addition, individuals and enterprises need to pay attention to the transitional provisions in Article 83 of the Law on Real Estate Business 2023 for their real estate business activities. In particular, the enterprises conducting real estate business and real estate service business that are operating but do not fully meet the conditions of the Law on Real Estate Business 2023 are supposed to adjust and supplement the full conditions within 6 months from the effective date of the Law on Real Estate Business 2023 to continue their business in accordance with regulations. For your better understanding of the new policies and regulations of the Law on Real Estate 2023, NHQuang&Associates is willing to provide relevant answers and legal opinions.