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Real Estate Sector Set to Attract More Investors

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Vietnam's real estate market has witnessed several positive changes in 2014, and investment in this sector from foreign-invested enterprises (FIEs) is again on the rise. Instrumental to this revival of the real estate market have been the positive changes brought about by the 2013 Land Law.

First, the 2013 Land Law, by its provisions, promotes equality between domestic and foreign investors by permitting FIEs to apply for land allocation with collection of land use fees for development of residential projects for sale or sale/lease. Such provisions have solved the rather complicated problem in the (now superseded) 2003 Land Law, where FIEs initially leasing land with a 50-year term for housing development were required later to perform procedures to switch to leasing the land with a 70-year term, or to pay the difference between the land use fee and the 50-year land rental when they sold their houses.

Second, the 2013 Land Law allows FIEs to acquire shares/capital in the form of land use rights, except when the land is for agricultural or forestry purposes. This law provides that FIEs may invest in the real estate sector by a new form not previously provided for in the 2003 Land Law: investment through acquisition of shares/capital as land use rights.

Third, pursuant to the 2003 Land Law, land with an inland or coastal water surface and fluvial or coastal alluvial sediments could only be used for agricultural, forestry, aquaculture or salt mining purposes. Nevertheless, investors in realty often wish to use such land for other business purposes, e.g., for marina, eco-resort, entertainment, commercial or other housing businesses. The lack of an adequate legal frame to govern the use of the above kinds of land for other purposes, however, made it difficult for investors to formulate their plans for development on such land.

The 2013 Land Law has finally resolved this problem by permitting development on land with an inland or coastal water surface and fluvial or coastal alluvial sediments for non-agricultural as well as agricultural purposes.

Fourth, the 2013 Land Law allows for investors of residential development projects in urban areas to assign the land use rights through division into lots upon the completed construction of the infrastructure and the discharge of financial obligations in respect of land. Pursuant to this provision, investors with housing development projects in urban areas do not necessarily have to sell their houses; instead, they may sell land lots to family households and individuals to construct their own residential housing.

Specifically, depending on the demand for urban development, the capacity to mobilise resources and the investors' requests, provincial People's Committees shall determine the areas where the land use rights in respect of land with constructed infrastructure may be transferred to family households and individuals for their own construction purposes after having obtained written approving opinions from the Ministry of Construction.

Areas in which land use rights may be transferred must have technical infrastructure works constructed in accordance with the approved detailed planning for connection to the general infrastructure of the areas before land use rights may be transferred to residents for their own construction of residential houses.

The above provision is considered one of the most positive changes in the 2013 Land Law as it permits investors with housing projects in urban areas to divide land into lots for sale. Previously, the 2003 Land Law did not allow investors with housing development projects in urban areas to transfer to family households and individuals land use rights in respect of bare land lots without a built house.

And fifth, pursuant to the 2003 Land Law, investors with real estate projects would have had their land recovered if such land was not used within 12 consecutive months or if progress with the land use was more than 24 months behind the schedule stated in the investment projects, starting from the date of the on-the-site land handover, unless permitted by the competent State authority issuing the land assignment or land lease decision.

However, the 2013 Land Law has integrated positive changes for investors in this issue by permitting them – where the land assigned or leased out by the State for project implementation is not used within 12 consecutive months, or where progress with the land use is 24 months behind the schedule stated in the investment projects – to apply for an extension period of 24 months and pay to the State an amount equal to the land use fees, the land rental payable in the behind-schedule period. Should the investors at the end of the extension period still have failed to put the land into use, the State shall recover the land.

In fact, to develop a real estate project, investors must go through many steps and obtain many different approvals and permits from the competent State authorities, so real estate projects that are delayed or behind schedule are quite common in reality. With the changes in the 2013 Land Law, it is hoped that investors in real estate projects may be more proactive and flexible in planning their project development schedule.

All in all, with the above provisions in effect, there is a strong belief that Vietnam's real estate market will attract more investment from foreign individuals and entities in times ahead.
