
Foreign Ownership Restriction to Real Estate in Vietnam

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Abstract: Foreigners are restricted to own land plots and residential houses in Vietnam. Nonetheless, it is revealed in practice that foreigners may evade those restrictions by way of arranging nominee ownership for their Vietnamese spouses. This article discusses the legality and the lawful rights that foreigners may enjoy in case of disputing with their Vietnamese nominees or spouses by evaluating the latest jurisprudences developed in Vietnam over recent years. It is likely that in practice, the Vietnamese court recognizes that foreigners can only be reimbursed for their monetary contribution and is not entitled to co-hold the property title. To address this issue, the Vietnamese Government is currently amending the Law on Land and the Law on Housing, aiming to relax the restrictions on foreigners owning land use rights and residential houses in Vietnam. However, from a regulatory standpoint, this relaxation alone may not meet the high demand in the real estate market or effectively discourage foreigners from resorting to nominee arrangements. An alternative solution could be to establish the recognition of trust agreements between the true owner and the nominee. By adopting this approach, foreigners would still be able to retain the land use rights and ownership of the house without violating the restrictions outlined in the Law on Land and the Law on Housing.

Keywords: Real Estate Foreign Ownership, Foreign Ownership Restriction in Vietnam, Vietnam Land Laws, Vietnam Housing Laws, Nominee Arrangement in Vietnam

1. Introduction

Under the current impact of the US-China trade war, many foreign investors tend to relocate their factories and businesses to Vietnam. The local real estate market is certainly impacted, from high-end apartments for foreigners to affordable houses for workers [1].

While foreigners in Vietnam are not allowed to own residential lands and restricted to own houses under Vietnamese laws, there has been a rising demand for foreign housing ownership pushing them to “evade” those restrictions, by arranging a nominee structure with their Vietnamese spouses. Those arrangements are generally acceptable in Vietnam. The Vietnamese Family Laws recognizes that those properties are community properties; the nominee arrangement may set out potential disputes, notably between the “nominee” and the foreign true owners of the properties. From a civil law perspective, the common disputes concerning foreign housing ownership are regarding the “nominee ownership” and “ownership in marriage between a foreigner

and a Vietnamese”.

This research examines the methods employed by foreigners to circumvent the restrictions imposed by the Law on Land and the Law on Housing to acquire ownership of houses and land use rights in Vietnam. The author's objective is to analyze the patterns observed in court rulings when foreigners find themselves in disputes with their spouse-nominees regarding illegal nominee arrangements, to update with the latest proposal under the on-going debate of amending Law on Land and Law on Housing; and to propose certain solutions for foreigners holding their lawful property ownership in Vietnam. The author believes that this research topic is novel and has the potential to pave the way for further in-depth exploration.

2. Foreign Ownerships Restriction

2.1. Definition of Foreigners

Under Article 3.5 of Law on Vietnamese Nationality [2],

foreigners residing in Vietnam are foreign citizens and stateless person who resides permanently or temporarily in Vietnam. Under Article 3.1 of Law on entry, exit, transit, and residence of foreigners in Vietnam [3], foreigners include persons holding identification papers as foreign citizens and stateless persons who enter, exit, transit and reside in Vietnam. It could be understood that foreigners are persons who are not a citizen of Vietnam.

2.2. Restriction to Land Plot Ownership

There is no private land ownership in Vietnam. The Vietnam has adopted a concept of “land use right” which is explained that the entire land is common owned by the people and managed by the state [4]. Land users can only hold the “land use right” and must use the land in accordance with the approved land use purpose and land use term. The state, on behalf of the people, can allocate, lease, or withdraw the land use right [5]. There are seven lawful land users listed by Law on Land, including: (i) domestic organizations; (ii) domestic households or individuals; (iii) communities; (iv) religious institutions; (v) foreign organizations with diplomatic functions; (vi) overseas Vietnamese; and (vii) foreign-invested enterprises [6].

Foreigners are not included in the list of lawful land users under Article 5 of Law on Land. It is understood that foreigners are not allowed to own land plot in Vietnam, including any land plot of any kind for agricultural, commercial, or residential use purposes.

Once exception is that when a foreign is inherited a land plot in Vietnam, such foreigner is not allowed to hold the land use right title. He is forced by the laws to transfer the to-be land use right title to an eligible land user and can only enjoy the value in monetary of such land use right [7].

2.3. Restriction to Housing Ownership

In contrast to land plot ownership, foreigners can enjoy a restricted ownership on residential housing in Vietnam. Foreigners are recognized as lawful owners of houses in Vietnam, amongst (i) domestic organization, household and local Vietnamese, (ii) overseas Vietnamese; and (iii) foreign organizations and foreigners [8].

Under Article 159 and 160 of Law on Residential Housing, the lawmakers allow foreign individuals, who are permitted entering Vietnam and not subjected to diplomatic privileges and exemptions, to own a house in Vietnam. Foreigners can acquire ownership by way of purchase, rent and purchase, receive, or inherit the residential housing including apartments and separate houses; within a residential real-estate project, except areas subjected to national defense and security as regulated by the Government.

Nonetheless, restriction is still applied under Article 161.2 where foreigners are not permitted to purchase, rent, and purchase, receive, inherit, and own more than:

1. 30% of the total apartments in an apartment building; or
2. 250 separate houses including villas, row houses in an area whose population is equivalent to a

ward-administrative division.

Over such thresholds, foreign individuals are only permitted to enjoy the value of the houses. Foreign house ownership is not exceeded 50 years with a possible extension for the next 50 years. Before the expiration of ownership, the foreigners are entitled to gift or sell their house(s) to entities eligible for other entities eligible for holding house ownership. Otherwise, their house(s) shall be under ownership of the State.

3. Nominee Arrangement for Foreign Ownership

Foreigners are not allowed to own land plot and can enjoy a limited ownership for residential houses; however, if foreigners get married to a Vietnamese or with a Vietnamese residing oversea, they can own the house permanently and enjoy the same ownership as Vietnamese. Nonetheless, once foreigners are divorced with their Vietnamese partners, such ownership will be withdrawn.

The current Vietnamese laws allows marriage between a foreigner and Vietnamese. As a result, taking the advantages of lawful marriage between foreigners and Vietnamese, the Vietnamese spouse can hold the title of a property on behalf of a foreigner [9]. Back to 2014 when the laws strictly prohibit foreigners to own a house in Vietnam, a lot of foreigners requested their husband or wife to be the nominee of their properties in Vietnam [10].

In this article, we study two typical cases in which foreigners evades the foreign housing ownership restrictions by appointing his/her wife to hold the property title or act as their nominee owner.

First case: Mr. C. K. Y. – a Singaporean citizen get married to Ms. C. H. L. – a Vietnamese citizen in 2003. In 2016, they divorced and failed to agree on the separation of their properties. Mr. Y petitioned to the Vietnamese court and requested to take 80% of all properties value, claiming that he has contributed to the acquisition most of the properties thanks to his expertise and professional career. Meanwhile, Ms. L is just a housewife without a stable income and cannot contribute to the acquisition of their properties, which are mainly real-estate in Vietnam. At the first-instance court, Ms. L has submitted several written commitments of Mr. Y in which Mr. Y undertakes that his wife (i.e., Ms. L) is the sole owner of their assets and that Ms. Y has used her own fund to buy the assets. Those written commitments were signed and notarized in Vietnamese in which Mr. Y has certified that he has well understood these written commitments and agreed to signed [11]. Due to these written commitments, the first-instance competent court has rejected Mr. Y’s allegation since Mr. Y has resided in Vietnam for more than 30 years and can speak and write Vietnamese fluently. Consequently, Mr. Y currently requests an appeal.

Second case: in 2011, Mr. Nguyen Duc An – American citizen has petitioned to Vietnamese court and requested his ex-wife – Ms. Pham Thi Ngoc Thuy to reimburse him the

properties valued at VND 288 billion which Ms. Thuy acted as “nominee owner” during their marriage. This happened because at this time Mr. Nguyen Duc An, as an American citizen, is not permitted to own properties in Vietnam; and he has asked Ms. Pham Ngoc Thuy to act as “nominee owner” of his properties including various apartment, land-plots, villas of luxury real-estate projects in Vietnam [12].

4. How the Vietnamese Court Respond to Foreign Nominee Arrangement

Case law No. 02/2016/AL: when a Vietnamese residing overseas purchases a real estate by their monies and request a local Vietnamese holding the land title as their authorized representative, the court must consider and determine the contribution of the authorized representative in reserving, renovating and increasing the value of land use right; if it is unable to determine such contribution, the court must consider that the true purchaser of the land and the authorized representative are equal to divide the increased value of the land, comparing to the original value at the time of purchasing.

It should be clarified from these transactions whether the transfer of a property by the authorized representative is lawful? Or a nominee authorization is lawful under Vietnamese laws?

The foreigner being a principal authorizes a Vietnamese being an authorized representative to conduct an act which the principal is not allowed to do in Vietnam (holding the title of the land use right). Consequently, such an act could not be considered as a legitimate authorization since the authorized representative does not act on behalf of the principal but on their own identity to carry out any land-related transaction [13].

As a result of the above case, the decision of the cassation court appeals to the decision of the first-level court and requests to restart the trial based on the considerations that Ms. Thanh purchased the land with her monies. As a Vietnamese residing overseas, Ms. Thanh is not eligible to hold the land title yet can receive the value of the land.

In conclusion, this case law reveals when a Vietnamese residing overseas purchases land and has another Vietnamese hold the title, both parties can enjoy the increased value of the land. The court may determine the contribution of the person holding the land title on behalf of the true owner to divide the increased land value. If it is unable to determine such a contribution, the increased land value will be divided half for both sides. The court views such disputes are disputes over the monies purchasing the properties, but not disputes over the property ownership [14].

5. How the Lawmakers Respond

Vietnam is amending the Law on Land [15] and Law on Housing [16]. During a recent session in National’s Assembly, the nominee arrangement between foreigners to conceal their land use right and house ownership in Vietnam ownership has

been brought to debate, to find a proper legal solution to relax the real-estate market by allowing foreigners holding house ownership in Vietnam.

In this direction, the new laws have proposed significant changes. Under the draft Law on Housing, the threshold restriction for foreigner’s house ownership in an apartment building or residential area has been removed [17]. However, under the draft Law on Land, foreigners are not allowed to hold land use right in Vietnam as a directed policy by the political bureau. While the lawmakers intend to accelerate and relax the conditions to open the real-estate market in Vietnam; yet they seem very prudent, by only allowing the foreigners to extend their ownership on the house but not the land use right [18]. Although this is a great move, it is remaining a restriction and grey area between Law on Land and Law on Housing since it does not recognize full ownership of foreigners to the house and the attached land use rights. It still not satisfies the demand of foreigners to own houses in Vietnam. As such, foreigners still rely on a nominee arrangement when purchasing their houses or land use rights in Vietnam.

Another possible solution is to recognize a trust agreement under Civil Code [19]. In a trust agreement, the trustee has full right to hold the house ownership and protects the interest of the true owner. The trustee and owner relationship are fully regulated while the foreigners still respect the ownership restrictions to land use rights and houses in Vietnam.

6. Conclusion

In practices, there has been a numerous case where foreigners authorize a Vietnamese citizen acting as their nominee of land use right.

Under Vietnamese laws, holding the land title as a nominee is not prohibited; in case of dispute, the current laws only consider such disputes are related to the “sourcing” monies (of purchasing the real estate) but not disputes over the property ownership. Consequently, foreign individuals are not eligible to hold the title of a real estate in Vietnam in any case, even requesting a Vietnamese acting as their nominee of land use right.

The provision in which foreigners are eligible to 50 years ownership of the real estate in Vietnam can be understood that foreigners are encouraged to invest in Vietnam, yet it does not mean the lawmakers permit a foreign individual to own a property in Vietnam.

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