

# The New Housing Law

## Opportunities for Foreigners to Own and Invest in Residential Condominiums and Villas in Vietnam

### General Introduction

by Fred Burke - Baker & McKenzie, Amcham Board of Governors

Amcham Vietnam- Ho Chi Minh city, 16 December 2014

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# 1. Pilot Program: initial trial for real estate market

- Failed “sales” legislation goes back to early ‘90’s.
- Resolution No. 19/2008/QH12:
  - Eligible foreign buyers are limited to: making direct investment; managerial positions; special skills needed in Vietnam; married to Vietnamese citizens;
  - Foreigner buyers must reside in Vietnam for at least 12 months;
  - Can only purchase one condo, for residential purpose only, for maximum of 50 years without extension;
  - Can not exercise rights such as: lease out, mortgage, contribute as capital, etc.

# New Housing Law

- Effective date: 1 July 2015.
- Eligible buyers:
  - Foreigners who are allowed to enter Vietnam:
  - Foreign invested companies; branches, representative offices of foreign companies; foreign funds and foreign bank branches which are licensed to operate in Vietnam.
- Forms of ownership: purchase, hire-purchase; gift; inheritance; or build residential houses in the appropriately zoned land plots.
- Right of owners: In general, same as Vietnamese owners, including the rights to sell, lease, mortgage, contribute as capital, gift, bequest, exchange, etc, subject to certain limitations (*as set out in the next slide*).
- Ownership term: Maximum 50 years, extendable upon request and subject to applicable laws at the time. Indefinite term for foreigners married to Vietnamese citizens. Must be consistent with the term of organization's investment certificate, license in Vietnam.

# New Housing Law: limitations & restrictions

- Foreigners leasing out their houses must notify the competent state agencies and must pay taxes in accordance with the prevailing laws;
- Foreign organizations can only use the houses for their own staffs' residential purpose and must not use their houses for other purposes (such as office, leasing out, etc...);
- Foreigners and organizations must make payment of purchases or hire-purchases through a licensed credit institution in Vietnam;
- Maximum 30% of the total condominiums in a single condominium building (or other cap provided by the Prime Minister in areas having a large number of condominium buildings); and
- Maximum 250 villas, townhouses in an area having the population equivalent to an administrative level of a ward.

# New Real Estate Business Law

- Effective date: 1 July 2014
- For developers of housing project, which are foreign invested companies:
  - Allowed to lease house, construction work for purpose of sub-lease.
  - Minimum capital to conduct business of real estate is VND 20 billion, except for small investors, not conducting real estate business on regular basis.
  - Pre-sale:
    - developers must obtain bank guarantee for the pre-sale;
    - first instalment: maximum 30% contract price;
    - following instalment (before handover) must comply with the progress of the project but must not more than 70% of the contract price applicable to domestic developer, and 50% applicable to foreign invested developers; and
    - After handover and prior to issuance of Red Book: developers can collect up to 95% of the contract price.

# Lawyers' Biographies



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Frederick Burke is the Managing Partner of Baker & McKenzie in Vietnam and oversees the Vietnam Practice Group. Recognised as one of Vietnam's most prominent and leading lawyers, Mr. Burke has extensive experience in International Trade, WTO and Customs, Taxation, M&A, Foreign Investment & Securities, Banking & Finance, International Employment, Real Estate, Construction/Projects and Dispute Resolution.

Mr. Burke was the first American student to study at the University of Ho Chi Minh City after 1975. He helped found the American Chamber of Commerce in Vietnam, has served as Chairman and Board member of its Ho Chi Minh City chapter for many years and chairs its Legal Committee. He serves on the Prime Minister's Advisory Council on Administrative Reform, he co-chairs the Manufacturing & Distribution Working Group of the Vietnam Business Forum, and he was recognized by the Ministry of Justice in 2003 for his "Many active contributions in the field of International Law."



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Mr. Nguyen has seven years' experiences in the planning, negotiation and operation of foreign invested real estate projects, hotel management, real estate investment funds, and other related issues of property development.

Mr. Nguyen graduated with a LL.M. from TLBU Transnational Graduate School of Law (2007). He received his Bachelors Degree of Law from Hanoi Law University (2005). Mr. Nguyen is a fully qualified lawyer of the Hanoi Bar Association, and has also achieved his Certificate of Auctioneer; he speaks English fluently in addition to his native Vietnamese.