

RIGHT TO ACCOMMODATION: INTERNATIONAL AND NATIONAL LEGAL ASPECTS

DOI: 10.17803/2713-0533.2023.4.26.847-871



Regulations on Conditions for Foreigners' Housing Ownership in Vietnam: Inadequacies and Possible Solutions

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Abstract: In Vietnam, the concept of “settling down, having a good career” becomes an important goal of each individual. It means having a stable place to live can be guaranteed when you get a job. Therefore, home ownership becomes a basic human right. In the current integration trend, when the opening to trade between countries around the world is deepening, the demand for house ownership is not only limited to Vietnamese citizens, but also to foreigners. Vietnam has also recognized the problem of foreigners owning houses in Vietnam, but there are still restrictions on the number of houses, the area of houses owned and other issues. Currently, the Government is implementing a policy to attract investment in housing in order to exploit the development potential of this field in Vietnam as well as to solve the outstanding housing problem and expand the housing market. Therefore, the issue of foreigners’ home ownership becomes an important concern and is one of the research subjects to implement this policy.

The article presents the provisions of Vietnamese law, international law on home ownership rights of foreign individuals and organizations in Vietnam, as well as conditions for foreign individuals and organizations to own housing in Vietnam, a guarantee of human rights. In addition, the article also points out to the shortcomings of the national legal regulation, thus making some recommendations to overcome the difficulties of the real estate market and housing development in Vietnam.

Keywords: the Constitution of the Socialist Republic of Vietnam of 2013; Law on Housing of 2014; housing development; foreign ownership of houses; real estate market

Cite as: Le, T.S. and Nguyen, X.Q., (2023). Regulations on Conditions for Foreigners' Housing Ownership in Vietnam: Inadequacies and Possible Solutions. *Kutafin Law Review*, 10(4), pp. 847–871, doi: 10.17803/2713-0533.2023.4.26.847-871.

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I. Introduction

With a for-the-people and people-oriented view, the Communist Party and Government have promulgated various guidelines, policies, and laws to ensure that human rights are recognized and protected including housing issues of Vietnamese citizens, as well as foreign individuals and organizations. Article 59 of the 2013 Constitution, according to which “The State shall adopt housing development policies and create the conditions for everyone to have his or her own home.” The phrase “everyone” mentioned shows that Vietnamese law does not differentiate between those who are Vietnamese citizens and those who are not, when it comes to the right to accommodation.

Article 32 of the 2013 Constitution continues to state that “Everyone has the right to ownership of his or her lawful income, savings, *housing*, chattels, means of production and capital contributions to enterprises or other economic entities.” Thus, the term “everyone” applies to each member of society, with no distinction between Vietnamese citizens and foreign nationals. This comes from the nature of housing, housing is considered a valuable asset in social life. The need for housing is essential in any society. As Vietnam is integrating deeply with the world, foreigners are coming to live and work in Vietnam at an increasing rate, so the recognition of housing ownership rights for Vietnamese people in general and foreign individuals and organizations, in particular, is essential for the protection of human rights in Vietnam. However, the pilot issue of house ownership by foreigners was only resolved when the National Assembly Resolution No. 19/2008/NQ-QH12 of 3 June 2008 was adopted. According to this Resolution, five groups of foreigners are allowed to own houses that are condominiums in commercial projects, but not other types of houses in Vietnam. This is explained because houses are attached to the land use rights. The land belongs to the entire people and has certain territorial characteristics, thus, the recognition of ownership rights of foreign individuals and organizations must follow the roadmap with limitation. Before the Law on Housing of 2014 was adopted, the National Assembly Resolution No. 19/2008/NQ-QH12 on “pilot permission for foreign organizations and individuals to purchase and own residential houses in Vietnam” had officially recognized the ownership of houses by foreign nationals. Foreign nationals’ housing ownership is respected, protected, and assured, which is exercised by the following institutions: the National Assembly, the Government, the People’s Court, the People’s Procuracy, and other institutions such as the Fatherland Front. However, because it is a specific type of property (Nguyen, Tran, 2019, p. 45), foreigners who want to own housing in Vietnam must meet some conditions. Furthermore, the current legal provisions still have limitations related to the limit on the number of housing, the characteristics of houses owned as well as issues related to the extension of housing ownership. The current policy of the Government is to encourage investment in housing development, to solve the current housing backlog. The potential of the housing market

in Vietnam has not been fully exploited yet. Therefore, the objective of this study is to analyze the provisions of Vietnamese law to show the national legal on the issue of housing rights of foreign nationals, in particular, the article focuses on clarifying the conditions for foreign nationals to become homeowners in Vietnam. The methods applied include the comparative method as well as the methods of analyzing legal regulations, pointing out to the inadequacies in implementing Vietnam's integration policy, contributing to perfecting the housing law.

II. The Concept of “Housing” and “Foreigners” in Vietnam

II.1. The Concept of “Housing”

From a social perspective, housing is one of the most important components of life as it provides shelter, safety, and warmth, as well as providing a place to rest. Housing has an essential role in the economic development of each country. European countries' statistic shows that housing-related activities account for 10–20 % of total economic activity in the country, while housing is the largest fixed asset of households.¹ Housing demand is not only one of the basic human needs but also a criterion to evaluate people's living standards. Today, besides the basic need for a house to live in, there is also a need for a house that is architecturally and environmentally friendly, tranquilizing, and economical (Henilane, 2015, pp. 93–106).

The definition of housing is offered in many different studies. The economist Smith defines housing as a commodity (Smith, 1776, p. 2), Ricardo defines housing as a tangible asset with profit potential (Ricardo, 2004, p. 13–14), and Jevons argues that it is a fixed asset regardless of whether the home is owned or rented (Jevons, 1871, p. 28). Researchers Grimes and Orville explain that in the past, the concept of “housing” was associated with a physical phenomenon and that countries' policy on supply was primarily related to the cost of construction, which can vary largely depending on the type of building materials, housing varies with building standards and quality (Grimes and Orville, 1976, p. 38).

¹ European Commission (2005). Housing Finance Systems for Countries in Transition: principles and examples. Available at: http://www.unec.org/fileadmin/DAM/hlm/documents/Publications/housing_finance_system.pdf [Accessed 10.11.2023].

In general, although the definition is different in terms of wording, the main purpose of housing is to be used for human living purposes.

In Vietnam, the definition of “house” is reflected in legal documents. Vietnamese law defines housing in Clause 1, Art. 3 of the Law on Housing of 2014, according to which “housing means any building in which households or individuals live.” Thus, in order to be called “housing,” the object must meet the first sign of construction work. This means, it must be (i) products built according to specific designs, (ii) made by human labor, construction materials, equipment installed in the works, that must involve human labor, use construction materials to make that work, (iii) be linked to the land, which may include the underground part, the above ground part, the part below the water surface and the part above the water, attached to a location (Ekholm, 1996, pp. 30–35) according to the provisions of Clause 10, Art. 3 of the Law on Construction of 2014, amended and supplemented in 2020. The second condition to be called a “housing” rather than a “house for office” is the purpose of the house, only used to meet the “needs for living,” which can be understood as the need to live, perform basic activities of households, individuals or organizations not listed in this clause.

Also according to the Law on Housing of 2014, the types of housing listed to include separate housing,² apartment building,³ commercial housing,⁴ official residence,⁵ house serving relocation,⁶ and social

² Separate house means any house which is built on a detached land plot under lawful rights to use of an organization, household or individual, including villas, row houses and detached houses.

³ Apartment building means any multi-storey building which has multiple apartments, public stairs, hall ways, private areas, common areas and common infrastructural works for organizations, households or individuals, including apartment buildings for residential use and mixed-use buildings for both business and residential purposes.

⁴ Commercial housing means any house that is built for sale, lease, or lease purchase according to market mechanism.

⁵ Official residence means any house rent by entities entitled to live in official residences as prescribed in this Law over the duration in which they are on duty.

⁶ House serving relocation means any house provided for households or individuals who have to relocate when the State withdraw land or carry out land clearance as prescribed in regulations of law.

housing.⁷ Each type of housing has its characteristics and requires meeting certain conditions. For example, to buy social housing, a subject must satisfy the conditions established in Art. 51 of the Law on Housing of 2014 and not all subjects are allowed to buy social housing.

Article 107 of the 2015 Civil Code lists types of property as real estate, including “house.” Thus, “housing” is an asset in the real estate category. Housing is first and foremost a construction work, which is built to live and serve the daily life needs of households and individuals. If this purpose is not ensured, such “construction” cannot be called “housing.” Besides, it is the purpose of “living and serving the daily-life needs” that are the basis of establishing individuals’ ownership of houses.

II.2. The Concept of “Foreign Individuals” and “Organizations”

According to Clause 1, Art. 3 of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam of 2014, a foreigner is defined as a person who carries papers proving their foreign nationalities, or those without nationalities who enter, leave, transit through, or reside in Vietnam. Clause 2, Art. 4 of the Enterprise Law of 2020 stipulates that a foreign individual is the bearer of documents determining foreign nationality. Therefore, foreigners shall include persons without nationality and persons with foreign nationality.

According to the Law on Vietnamese Nationality, a foreign nationality is understood in the territory of the Socialist Republic of Vietnam as the nationality of a country other than Vietnam. In addition, a stateless person is understood as a person that has neither Vietnamese nationality nor any other foreign nationality. Determining individuals’ nationality contributes to identifying a country’s citizens, thereby having separate legal mechanisms for each subject.

A foreign organization is understood as an organization established under foreign law (Clause 32, Art. 4 of the Enterprise Law of 2020) or international law. The identification of a foreign organization is usually based on its operating permits. If the activities are carried out under

⁷ Social housing means any house provided for entities benefitting from the policies on housing support carried out by the State as prescribed in this Law.

foreign law then the organization is considered a foreign organization, and therefore the application of the law on housing for those subjects will also be different from that of domestic organizations.

III. Housing Ownership Conditions for Foreign Nationals according to Vietnamese Law

III.1. Housing Ownership Rights of Foreign Nationals

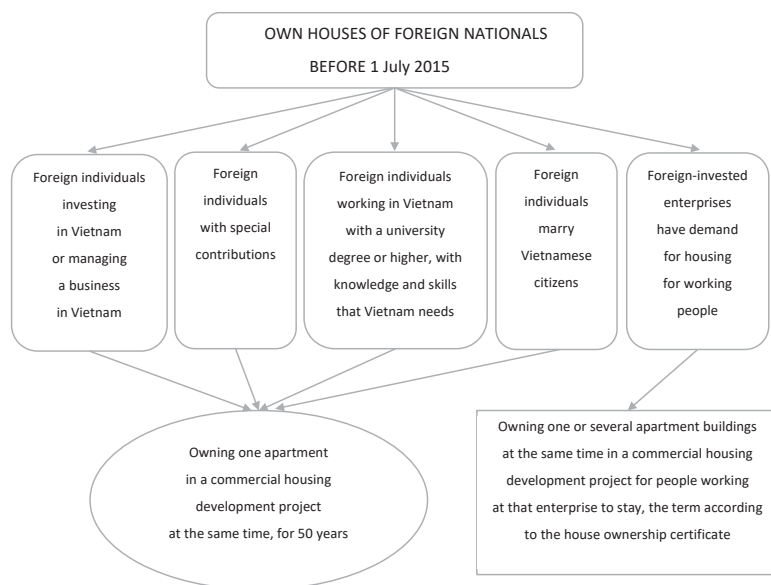
International documents that refer to the issue of housing ownership as a human right, belonging to a fundamental right, include the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Civil Rights. Article 25 of the 1948 Universal Declaration of Human Rights states that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing* and medical care [...]”.⁸ The 1966 International Covenant on Civil and Political Rights also stipulates that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.”⁹ On 20 September 1977, Vietnam officially became a member of the United Nations, therefore, compliance with commitments on ensuring civil, political and human rights is an indispensable requirement for the Vietnamese legal system. In particular, housing ownership is recognized not only for Vietnamese citizens but also for foreign nationals.

On 3 April 2008, Resolution No. 19/2008/QH12 on piloting for foreign organizations and individuals to buy and own housing in Vietnam was adopted. This is the first legal document to recognize the issue of housing ownership of foreign nationals in Vietnam. Since it is only a “pilot” activity, this Resolution imposes limitations. Regarding the subjects, only five groups of subjects are allowed to own houses in Vietnam, including: (i) Foreign individuals who make direct investment

⁸ Art. 25 of The 1948 Universal Declaration of Human Rights. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [Accessed 10.11.2023].

⁹ Art. 17 of The 1966 International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [Accessed 10.11.2023].

in Vietnam under the investment law or are hired to work as managers by enterprises operating in Vietnam under the enterprises law, including domestic enterprises and foreign-invested enterprises; (ii) Foreign individuals who have made contributions to Vietnam and are conferred orders or medals by the President of the Socialist Republic of Vietnam: foreign individuals who have made special contributions to Vietnam as decided by the Prime Minister; (iii) Foreign individuals who are working in socio-economic domains and possess university or higher degrees, and specialists in field; which Vietnam has demand for; (iv) Foreign individuals who marry Vietnamese citizens; (v) Foreign-invested enterprises that are operating in Vietnam under the investment law but not engaged in real estate business, and wish to purchase residential houses for their employees. Regarding the quantity and time limit, an individual can only own 1 apartment at a time, the term is 50 years, after that time limit, the housing must be sold or donated. Foreign-invested enterprises may own one or several apartment buildings in commercial housing development projects for the people who are working at that enterprise to stay for the term stated in the Certificate of housing rights ownership.



The restrictions on home ownership of foreign individuals and organizations mentioned above partly affect housing investment and development policies in Vietnam, especially when Vietnam increasingly integrates into the world economy. Therefore, Clause 1, Art. 32 of the 2013 Constitution stipulates that everyone has the right to ownership of his or her lawful income, savings, housing, chattels, means of production and capital contributions to enterprises or other economic entities. The Constitution uses the phrase “everyone,” meaning that the scope includes not only Vietnamese citizens but also foreigners, who also have the right to own houses. Housing with its purpose is to be used for the “living and serving the daily life needs,” therefore, the right to have a house is a fundamental right of individuals. However, since real estate naturally poses the issue of geographical territory, some countries — including Vietnam — stipulate restrictions on the ownership of houses for subjects that are not Vietnamese “citizens.” Some other countries such as Germany, France, the United Kingdom, Portugal, the Netherlands, Belgium, and Luxembourg do not have any restrictions on foreigners on the right to own or use land, whereby foreigners are allowed to own land on an equal basis with those countries’ citizens¹⁰ (Gardner, 1994, p. 20).

In essence, the restrictions or controls on the ownership of land and housing (attached to land) of each country are appropriate because it ensures the country’s national territory. If the exchange of land or housing by foreigners is for investment, investment support, or other purposes that are not used solely for living, then it should be restricted. Because the house in these cases is not used for “living and serving the daily life needs” that the law on human rights is aimed at. International custom does not restrict the right of a state to limit or regulate foreigners’ ownership of land in their territory because a state has sovereignty over its natural resources — including land¹¹ to which houses are attached.

¹⁰ In Germany, Art. 14(2) of Grundgesetz provides that there is no distinction in property ownership between citizens and non-citizens. A similar provision exists in Art. 711 of the Civil Code in France. In Belgium, property ownership is a fundamental right of both Belgians and foreigners.

¹¹ This principle of customary international law was most recently affirmed in Principle 2 of the Rio Declaration at the 1992 Earth Summit.

On 1 July 2015, Vietnam's Law on Housing of 2014 officially took effect, restrictions established by the Resolution No. 19/2008/QH12 were gradually eased. Foreign nationals are entitled to own houses in Vietnam, but they are still subject to certain constraints. More specifically, there remain some less "strict" limitations related to the type of house, ownership period and housing transactions. Foreign organizations and individuals (including foreign organizations and individuals investing in housing construction projects in Vietnam, foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign investment funds and branches of foreign banks operating in Vietnam, and foreign individuals permitted to enter Vietnam) may exercise the rights of house owners by regulations of law. According to Art. 10 of the Law on Housing, in case of housing built on leased land, they are only entitled to lease housing.

III.2. Conditions for Foreign Nationals to Own Houses in Vietnam

To become a housing owner in Vietnam, foreign nationals must meet the requirements of being "permitted" to be legally present in Vietnam (Vu, 2018, p. 43), which appears in the following aspects:

(i) foreign entities who invest in project-based housing construction in Vietnam as prescribed in this Law and corresponding regulations of law;

(ii) foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign-invested funds and branches of foreign banks operating in Vietnam (hereinafter referred to as foreign organization);

(iii) foreign individuals who are allowed to enter Vietnam.

This "legality" is reflected in the fact that foreign nationals are "licensed" by the Vietnamese government to live or operate commercially in Vietnam. This is proven through documents ensuring housing ownership conditions in Vietnam, including: (i) an investment certificate and having housing built in the project for organizations, foreign individuals investing in housing construction under projects

in Vietnam or (ii) investment certificates or papers related to being permitted to operate in Vietnam for foreign-invested enterprises, branches, representative offices of foreign enterprises, foreign investment funds and branches of foreign banks operating in Vietnam, or (iii) documents proving that they are allowed to enter Vietnam but do not enjoy diplomatic and consular privileges and immunities in accordance with the law.

Thus, Vietnamese law basically allows foreign individuals and organizations to own housing in Vietnam, as long as these subjects meet certain conditions for permits, invest in housing projects in Vietnam or are allowed to enter Vietnam. Such an approach contributes to ensuring the attraction of investment in housing construction and development as well as creating conditions to promote the potential of housing real estate market in Vietnam, and at the same time it meets the standard of human rights so that individuals — not only Vietnamese citizens — can own housing; housing can be developed and built with better amenity; it creates more competitive value and quality.

However, according to Clause 2, Art. 159 of the Law on Housing of 2014, conditions on housing ownership of foreign individuals and organizations are not limited to conditions from the subject itself. In addition, they only have the right to own housing in Vietnam through the following forms:

- investing in housing constructed under housing projects in Vietnam in accordance with the law;
- buying, renting and purchasing, receiving as a gift, or inherit commercial houses, including apartments and separate houses in housing construction investment projects, except for areas ensuring national defense and security according to Government regulations.

Buying, renting and purchasing, receiving as a gift, or inheriting commercial houses are expressed through civil transactions in the form of contracts or unilateral legal acts (such as wills), which show that the foreign organization or individual will become the owner of the house in Vietnam. It should be noted that, in the case of a foreign individual marrying a Vietnamese citizen or marrying a Vietnamese residing abroad, they cannot automatically own a house in Vietnam

but must meet the conditions in Art. 159 of the Law on Housing of 2014 mentioned above, which means you must be allowed to enter Vietnam or invest in housing construction according to projects in Vietnam as prescribed by law (Doan and Ngo, 2016, pp. 39–40). Marriage is only intended to create conditions for foreigners to own houses in Vietnam in a more stable and long-term manner than in the case of non-existence of marriage with Vietnamese citizens or Vietnamese residing abroad.

In fact, foreign organizations and individuals establish ownership of housing often through contracts with investors of commercial housing construction projects or with organizations and individuals who are a commercial housing owner.

III.3. Conditions on Restrictions related to Housing for Ownership of Foreign Nationals

Thus, according to the enumeration of Clause 2, Art. 159 of the Law on Housing of 2014 and specified in the Decree 99/2015/ND-CP, qualified foreign individuals and organizations will be entitled to own houses in Vietnam. However, housing in Vietnam also has limits on how foreigners can own it. The first limit is about the type of the house. Housing owned by foreigners is the one provided for by investment projects to build commercial housing or individual houses, but not in areas ensuring national defense and security as prescribed by Vietnamese law, according to Clause 1, Art. 75 of the Decree 99/2015/ND-CP, as amended and supplemented by the Decree 30/2021/ND-CP. The Ministry of National Defense and the Ministry of Public Security are responsible for determining the areas that are needed to ensure security and defense in each locality and issue an official notification to the People's Committee of the province to serve as a basis for directing the Department of Construction to determine specifying a list of investment projects in the construction of commercial houses in the area, allowing foreign organizations and individuals to own houses.

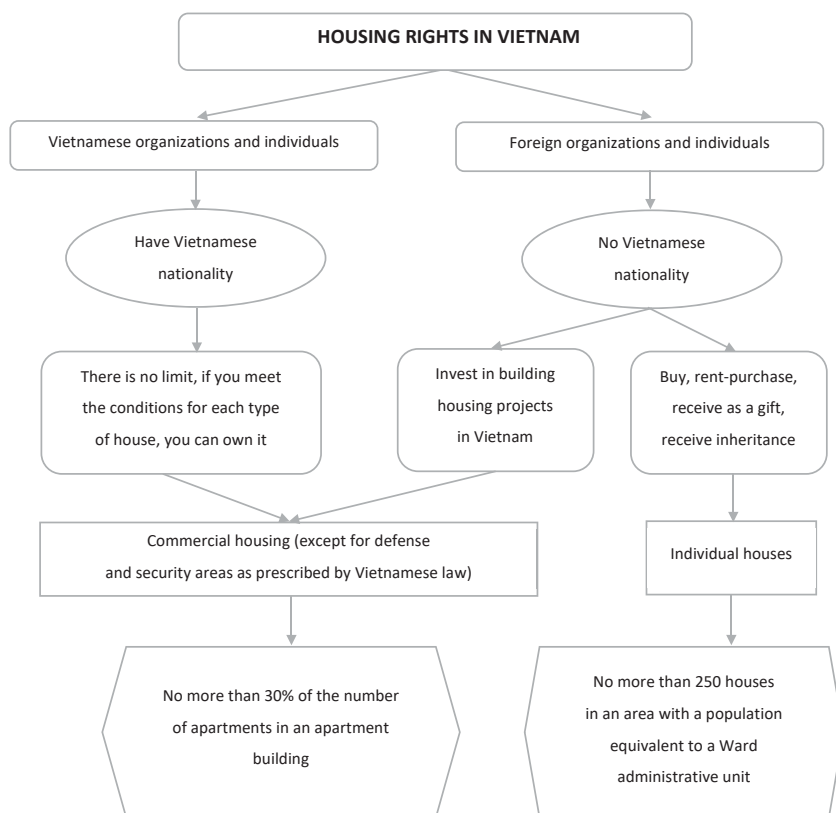
The second limit is connected with the number of houses owned by foreigners. In case the subject of housing ownership is a foreign-invested enterprise, branches, representative offices of foreign enterprises,

foreign investment funds, and foreign bank branches operating in Vietnam or foreign individuals who are allowed to enter Vietnam, the share owned by foreigners cannot exceed 30 % of the number of apartments in an apartment building; if it is a separate housing, in an area with a population equivalent to a ward-level administrative unit, no more than two hundred and fifty houses may be owned by foreigners, according to Clause 2, Art. 161 of the Law on Housing of 2014. In case of receiving a gift or inheriting a house that is not specified in Point (b), Clause 2, Art. 159 of the Law on Housing of 2014 (not a commercial house in a housing construction investment project or in the case of belonging to the national defense or security area) or exceeding the number of houses specified above, foreign organizations and individuals are only entitled to enjoy the value of that house.

The third limit is related to the time to own a house. According to Clauses 2 and 3, Art. 7 of the Decree 99/2015/ND-CP as amended and supplemented by the Decree 30/2021/ND-CP, a foreign organization is allowed to own a house for a maximum period not exceeding the statute of limitation specified in the Investment Registration Certificate issued to such organization, if expired, it will be considered for extension. This period shall not exceed 50 years. In case a foreign individual marries a Vietnamese citizen or marries a Vietnamese residing abroad, they can own a stable, long-term house and has the rights of a house owner like a Vietnamese citizen.

The fourth limit is due to conditions related to housing loans. According to Art. 2 of the Circular 39/2016/TT-NHNN dated 30 December 2016, amended and supplemented by the Circular 06/2023/TT-NHNN dated 28 June 2023, of the Governor of the Bank State banks, foreign individuals, and organizations are allowed to borrow capital in Vietnam if they meet conditions for purposes, including buying housing. However, it should also be noted that Clause 2, Art. 28 of the above Circular requires individuals with foreign nationality residing in Vietnam who want to borrow to buy housing at credit institutions in Vietnam, to ensure compliance with the deadline. The loan term does not exceed the remaining period of permitted residence in Vietnam.

Current housing laws specify housing ownership rights of foreign individuals and organizations in Vietnam; this is the implementation of human rights related to housing (Vo and Nguyen, 2018, pp. 66–68). At the same time creating favorable conditions to promote the real estate market in Vietnam has a great potential. However, it is found that the statute of limitation of housing ownership by foreign subjects has certain shortcomings, making housing ownership of foreign subjects in Vietnam difficult, hindering housing business activities, and creating difficulties in “overlapping” regulations between different legal fields. The housing ownership problem of individuals and organizations in Vietnam can be summarized as follows/



III.4. Legal Regime on Housing Ownership by Foreign Nationals in Vietnam

When becoming an owner of a house in Vietnam, foreign nationals cannot automatically acquire all the rights of a house owner like a Vietnamese organization or individual. If foreign nationals investing in housing construction under projects in Vietnam meet the above conditions and become housing owners in Vietnam, they have the same rights as domestic organizations, households, individuals or Vietnamese residing abroad. However, it should be noted that in the case of building a house on leased land, only the right to rent the house is allowed.

According to Clause 1, Art. 161 and Art. 10 of the Law on Housing of 2014, foreign nationals investing in housing construction under projects in Vietnam who meet the above conditions and become housing owners have following rights.

- They enjoy inalienable rights to his/her lawful housing. This means that no subject is allowed to violate the legal ownership of foreign nationals investing in housing construction. Any act of arbitrary infringement without the consent of the owner is a violation of the law and the State will protect these legal rights (Ho, 2023, pp. 22–25).

- They use the house for residential purposes and other purposes not prohibited by regulations of law. The owner is allowed to use the house for residential purposes and other purposes as long as it complies with the provisions of law. The law only interferes with this right when the owner uses the house for prohibited activities, for example, storing banned substances, trading in explosive materials, etc. (Art. 6 of the Law on Housing of 2014).

- They have the right to be granted a Certificate for housing under your legal ownership. This is a legal certificate certifying from the government that this subject is the owner of the house, which is the basis for the State to manage and express the material and spiritual value of the house for the subject who owns it.

- They sell housing or transfer the agreement on housing purchase, lease, lease and purchase, gifting, exchange, inheritance, mortgage, capital contribution, lending, permission for stay, or authorize housing management. This means that, when becoming a housing owner, this

subject has the right to carry out transactions related to housing, expressing his or her right of disposal. However, since there has not been a unification of land law on land use rights of foreign individuals and organizations, issues of buying and selling houses and mortgaging houses to serve the owner's loan are very difficult to implement in practice, because the implementation of these transactions is closely linked to land use rights (Nguyen, 2023, pp. 52–53), especially for separate houses. In housing transactions, mortgage issues as well as housing sales represent the needs of the real estate market. Therefore, many studies on the Housing Law and the revised Land Law are being carried out¹² in the direction of unifying regulations to record land use rights of foreign organizations investing in Vietnam to create favorable conditions for transactions.

— They share the public utilities in that residential area as prescribed. This is an attached right when buying a house in an area with public utilities. The owner will be able to use these buildings in common, however, it is necessary to clearly determine with the investor what part is for common use and whether there are any restrictions to comply with public rules.

— They provide maintenance, renovation, demolition, and rebuilding of housing. The author of the article believes that this is both a right and an obligation of homeowners. The implementation of housing maintenance, renovation, construction, and demolition acts are according to the owner's purpose and wishes, however, these acts also demonstrate the owner's responsibility in ensuring the house is safe and aesthetically pleasing to the community.

— They receive the compensation as prescribed in regulations of law or payment according to fair market price when their house is demolished, imposed compulsory purchase order, or commandeered by the State for national defense and security purposes; for socio-economic development purposes, or in the state of war, state of emergency, or disaster situations. To sacrifice some individual rights to serve the

¹² Many major contents of the draft Land Law (amended) have been edited and supplemented. Available at: <https://baochinhphu.vn/nhieu-noi-dung-lon-cua-du-thao-luat-dat-dai-sua-doi-duoc-chinh-sua-bo-sung-102231103093857006.htm> [Accessed 05.11.2023]. (In Vietnamese).

greater benefit of the community, in certain cases the State will demolish and requisition houses. However, the homeowner will be compensated reasonably, and the foreign nationals in this case will also be similarly compensated according to the principles of fairness and equality.

— They file complaints, denunciation, or lawsuits over violations against their lawful ownership and other violations against the law on housing. Similar to Vietnamese individuals and organizations, foreign nationals also have the right to request competent Vietnamese state agencies to resolve cases to protect their legitimate rights when their rights related to housing ownership are violated. Competent Vietnamese agencies cannot refuse settlement because this is a foreigner's house. This demonstrates Vietnam's commitment to comprehensively ensuring housing ownership rights of foreign nationals.

Consequently, despite being recognized as housing owners, foreign nationals are limited in certain rights compared to domestic owners. However, a general assessment is that the regulations largely ensure the freedom of foreign nationals to participate and conduct transactions in the Vietnamese real estate market. The evidence is that policies to encourage the development of the housing market in Vietnam create conditions for foreigners to participate in the process of investing and owning housing in Vietnam and have the same rights as Vietnamese citizens. Absoluteness in regulating the issue of housing ownership for foreigners is difficult to guarantee because of national sovereignty and security issues; housing is real estate associated with a particular geographical area, so foreigners have limitations on conditions for home ownership compared to citizens of a country. Nonetheless, legal policies are changed in each period to suit the trend of international integration while ensuring the stable development of the people in the country.

IV. Some Inadequacies and Recommendations

From the regulations related to the ownership of houses by foreign subjects mentioned above, there are several unresolved issues. First, there remains the inconsistency between the Housing Law and the current Land Law. The nature of land law in Vietnam is that land is owned by the entire people and the State is the representative of the

owner's rights (Art. 53 of the 2013 Constitution of the Socialist Republic of Vietnam). Therefore, land is granted to individuals and organizations in the form of land use rights, not ownership rights to land (Ho Chi Minh City University of Law textbook, 2017, pp. 29–30). When building houses on land, organizations and individuals can become house owners but only have the right to use the land area used to build houses. For foreign organizations and individuals, home ownership is recognized by law, so the question is whether this right can be attached to land use rights.

Clause 2, Art. 159 of the Law on Housing of 2014 and Art. 75 of the Decree 99/2015/ND-CP, as amended and supplemented by the Decree 30/2021/ND-CP, foreign organizations, and individuals are allowed to own commercial housing means apartment buildings and separate houses in a housing construction investment project. However, for some type of housing such as separate housing, the peculiarity is that it is associated with land use rights, but Art. 5 of the 2013 Land Law does not stipulate whether foreign individuals and organizations who met the conditions set in the Law on Housing were entitled to use land. This leads to a lack of consistency between the two areas of housing and land law, as foreigners are allowed to own houses that are attached to land but do not have land use rights.

As a neighboring country of Vietnam, China — the third largest country in the world — stipulates that land in the cities is owned by the State (Art. 10 Constitution of the the People's Republic of China).¹³ Foreign individuals working or studying in China as well as branches and representative offices established by foreign organizations located in China can buy housing or offices in China for their use. Foreign individuals and businesses can receive urban land use rights and participate in land development (Zhang, 2023, pp. 5–6). Promoting the real estate market in China by attracting investment from foreign individuals and organizations is increasingly emphasized (Hui and Chan, 2014, pp. 232–233).

¹³ Available at: http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content_1372963.htm [Accessed 05.11.2023].

Indonesia being a member of the Association of Southeast Asian Nations (ASEAN) like Vietnam, has its own concerns about economic and social conditions, especially implementing its “open door policy.” It has regulations on housing and land that create favorable conditions for foreign investment in this country. In Indonesia, housing is not only a fundamental need but also a basis for promoting foreign investment and economic development. Land use rights that come from the government may be granted to individuals, citizens of the Republic of Indonesia, foreigners, a group of persons, and private or public legal entities. This is reflected in the provisions on rights to land as provided for in Art. 4, Clause 1 of Law No. 5 of 1960 on Basic Regulation of Agrarian Principles.¹⁴ The regulation of land use rights is important because it grants rights to a subject, even though it is the right to use land — which consists of the layers of land, water, and space above it — including the issue of property rights. Housing ownership or housing owned by foreigners residing in Indonesia is closely related to land use rights. The right to use a type of land right granted to foreigners residing in Indonesia, as well as to foreign legal entities with representation in Indonesia in accordance with Art. 42 of Law No. 5 of 1960. This provision creates the legal basis for foreigners or foreign legal entities to use land. The introduction to the Vietnamese Government’s Regulation No. 103 in 2015 related to housing or housing ownership of foreigners facilitates the exercise of housing ownership by foreigners, avoiding conflicts caused by permitting housing ownership, but not foreigners’ rights to use land. Realizing that Indonesia is also a member of the ASEAN, there are basically similarities with the economy and society in Vietnam, Indonesia’s “open door policy” on housing and land brings this country many benefits (Wong, Higgins and Carlson, 2018, pp. 89–90). Therefore, it is important to approach these empirical values to resolve conflicts in national legal regulations to ensure harmonization, therefore, the authors propose the following recommendations.

¹⁴ Para. 1 Art. 4 provides as follows: On the basis of the right of control of the state of land as referred to in Art. 2, it is determined that there are various kinds of rights to the surface of the earth, called land, which can be acquired to and possessed by people, either alone or together with the others as well as legal entities.

The first recommendation would be to add foreign individuals and organizations that meet the conditions set by the Housing Law as also one of the “land users” according to Art. 5 of the Land Law of 2013.

As far as the time limits for foreign owners are concerned, it should be noted that previously, Resolution No. 19/2008/QH12 of the National Assembly did not allow the extension of time for foreign owners to housing in Vietnam. However, with the current Housing Law, the right to extend the term of house ownership has been recognized. As mentioned above, the statute of limitation for foreign organizations to own housing in Vietnam is according to the period of the Investment Registration Certificate and could be extended after the end of that period depending on the review by competent state agencies. As it is, the right to renew belongs to the State, which is appropriate, in our opinion, because the State is the representative of the people. However, in order to decide whether to extend or not, what is the basis for the State to approve and decide, what conditions must be met by organizations and individuals wishing to be extended in terms of capital, investment process... the law has yet to answer. Article 77 of the Decree 99/2015/ND-CP also stops foreign individuals and organizations to submit applications and the provincial People’s Committees to consider them. If a foreign individual or organization, after the expiration of the statute of the limitation stated on the Certificate, wants to extend the period to continue investing in their housing business or continue to exercise the right to “live,” the conditions to “apply for an extension” of that validity period have to be additionally specified.

The second recommendation deals with possible amendments to Clause 3, Art. 77 of Decree 99/2015/ND-CP, following the direction and regulation of foreign individuals and organizations if the statute of limitation expires. In Clauses 1 and 3 Art. 7 if the owner wishes to extend, in addition to the requirements on procedures mentioned in Clauses 1 and 2 above, a foreign individual or organization must also satisfy all conditions to be entitled to own a house according to the Law on Housing at the time of applying for the extension. Provincial-level People’s Committees shall consider their application if foreign individuals or organizations meet the conditions for housing ownership as prescribed by law. They shall decide to continue extending the time

limit for housing ownership. The addition of such regulation can reduce the refusal of extension applications without grounds by competent state agencies, affecting the right to housing, which is a basic human right related to the continued investment in housing development in the Vietnamese market.

Regarding the limit on the number of houses that can be owned, the real estate market situation, especially for the housing business, is currently facing great difficulties, stemming from capital sources, foreign currency exchange rates, investment, and “housing consumption.” On 14 December 2022, the Prime Minister issued the Official Letter 1164/CD-TTg on resolving difficulties for the real estate market and housing development, in which the Prime Minister directed government agencies to review and propose amending legal regulations according to their authority. It is overlapping and inadequate, causing obstacles in the implementation of real estate projects in the fields of construction, planning, urban development, housing, and real estate business. Foreign individuals and organizations are potential participants in the housing real estate market. Moreover, the limitation on the duration of housing ownership as well as the aforementioned conditions on the subject can partly reflect the policy on the national sovereignty of our country. Therefore, the limit on the number of houses that could be owned according to Clause 2, Art. 161 of the Law on Housing of 2014 generally creates a barrier for the market, while investment projects on commercial housing still have a lot of backlog due to the lack of available clients. In Indonesia and Japan, there is no limit on the number of houses that foreigners could collectively own, as long as they meet the conditions on the subject and the conditions related to land use rights.

Therefore, the limit on the number of houses that can be owned, generally creates a barrier for this market, while investment projects on commercial housing still have a lot of backlog due to the absence of clients. The number of real estate inventories in Vietnam is still quite high, especially in the segment of medium and high-class apartments, tourist apartments, and resettlement houses.¹⁵ Moreover, when allowed

¹⁵ Available at: https://mof.gov.vn/webcenter/portal/ttpltc/pages_r/1/chi-tiet-tin-ttpltc?dDocName=MOFUCM187328 [Accessed 07.08.2023]. (In Vietnamese).

to enter and reside in Vietnam, foreign individuals and organizations are subjects with “capital” sources. Therefore, allowing an unlimited number of houses to be owned (except for housing in national defense and security projects) by foreign individuals and organizations in Vietnam, contributes to solving the problem of “inventory is residential real estate” and promotes investment capital. In addition, the regulations on housing ownership conditions, the issue of extending the home ownership term and other contents have become a solid basis for the implementation of state management of housing. Based on the analysis of the experience of a Indonesia, another ASEAN member, it can be seen that this country does not set a limit on the number of housing that foreigners can own, either, as long as they meet the related conditions regarding land use rights.

Thereby, the authors develop a third recommendation. It is necessary to amend the limit on the number of houses that foreign organizations and individuals could own according to Clause 2, Art. 161 of the Law on Housing in the direction of increasing the number of housing units, thereby solving the backlog of many commercial real estates and promoting the development of the real estate market.

V. Conclusion

Housing ownership is a basic right of each individual, a human right stipulated in the 2013 Constitution, laws and international treaties to which Vietnam is a party. In developing the real estate market in general and solving housing market problems in particular, Vietnam is reviewing legal regulations and looking for solutions, including paying attention to issues of housing ownership of foreign individuals and organizations. However, it is found that the regulations are still inadequate and overlapping.

From the above studies, the regulations of housing law and land law are still not unified. Furthermore, the issue of the housing ownership period of foreign individuals and organizations and the number of houses that foreign nationals can own also have many inadequacies. Therefore, the authors propose to improve the provisions of housing

law in the direction of creating more favorable conditions for foreign individuals and organizations to invest and own housing in Vietnam.

Besides, to own a house in Vietnam, foreign individuals and organizations also need to understand the legal nature of the real estate market in Vietnam and conditions to become a house owner, and their obligations after establishing rights. The article can provide some basic understanding for relevant audiences to access useful information.

Thus, the study and improvement of legal policies on housing, which focus on policies and laws for foreign individuals and organizations, are crucial because Vietnam is on the path to international integration. Improvement of housing policies for foreign individuals and organizations will guarantee Vietnamese commitment to international treaties and also promote human rights that the Vietnamese have been always aiming for.

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