

EQUALIZING RIGHTS OF FOREIGN-INVESTED COMPANIES USING LAND IN INDUSTRIAL PARKS

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The current Land Law 2013 (“**Land Law 2013**”) regulates some restrictions concerning the scope of land use rights via leasing and subleasing land in industrial parks, industrial clusters, and export processing zones applicable to foreign-invested companies (“**FICs**”). Such regulations are restricting several foreign investment sectors from investing in Vietnam markets, particularly, some disadvantages were encountered while sub-leasing land from infrastructure development companies (developers).

According to Land Law 2013, the State shall allocate land use rights to infrastructure development enterprises. FICs can sublease land via these developers on the condition that they pay land rentals and fees for infrastructure usage.¹ However, this article seems to have an impact on the benefits of FICs sub-leasing land within industrial parks, industrial clusters, and export processing zones in practice.

Specifically, in the case of the developers’ speculation on land use right, the State does not reserve the right to adjust land rental as stipulated under general regulations on periodic adjustment of land levy. As a matter of fact, the developers would impose conditions on the obligation to pay land rental which includes annual land rental payment and one-off rental payment for infrastructure usage for the entire leasing period. Although this does not go against the principle ‘leased land with annual rental payment can only be subleased with annual rental payment’, FICs renting land use rights are facing up to some drawbacks.

¹ Article 185 Land Law 2013

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The current regulations are yet to distinguish the State's "raw" land leasing rights with the developers' right to lease infrastructure. As a consequence, FICs with land subleased by the developers do not have incentives on land rental, save for land rental and reduction in land rental whereas the developers might be entitled to receive such supports from the government.

Moreover, FICs' rights are restricted when Land Law 2013 has yet to regulate forms of acquiring land use rights through transferring or renting the land of households, individuals and domestic economic organizations. If they are vested in the land use right via the primary market directly from households, individuals, and other economic organizations it will bring about the more appeal of investment environment of Vietnam.

Under the recently promulgated Land Law 2024 ("**Land Law 2024**"), regulations on FICs' rights to land use have been enlarged significantly, particularly in Article 28.1(c) of Land Law 2024 - FICs are allowed to acquire land use rights in industrial parks, industrial clusters, and high-tech zones. This change illustrates the progressiveness in the law making approach as well as the acceleration in the pace of equalizing the rights right between FICs and domestic economic organizations.

However, Land Law 2024 has yet to provide a comprehensive conveyance regarding the provision on the right to acquire land use right within industrial parks, industrial clusters, and export processing zones under Article 28.1(c) and Article 43.1. These articles seem to conflict with each other; while Article 28.1(c) allows FICs to acquire land use rights within industrial parks, industrial clusters, and export processing zones, Article 43 does not specify this right regarding FICs as the land acquirers. Instead, Article 43 solely recognizes the right to acquire land use rights within industrial parks, industrial clusters, and

export processing zones with respect to overseas Vietnamese. The related stakeholders are now in the hope of the guiding regulations should take into account of the aforementioned matters in a compatible and uniform manner in order to bridge regulatory gaps.