



LEGAL UPDATE

LAND OWNERSHIP OF ECONOMIC ORGANISATIONS WITH FOREIGN INVESTMENT: ANALYSIS OF A RECENT COURT JUDGEMENT

The rights to land ownership of economic organisations with foreign investment in Vietnam have long been a matter of significant concern for foreign investors. The concept of an “foreign-invested economic organisation” or “FIEO” has been defined and regulated across different legal instruments, including the Law on Investment, the Land Law, and the Law on Real Estate Business, with variations over time. According to Article 23.2 of Law on Investment No. 67/2014/QH13 (effective from 1 July 2015 to 1 January 2021), an FIEO with 4 layers of ownership or more would enjoy investment conditions and procedures like a domestic company. Taking advantage of this regulation, a lot of FIEOs were structured with 4 layers of ownership to be entitled to run business in conditional or even prohibited sectors. However, a recent appellate judgement handed down by the Supreme People’s Court of Vietnam confirmed that for the purposes of evaluating the validity of the land ownership entitlement/land use rights, an FIEO even with the 4 layers of ownership in place, would still be barred to own land in Vietnam. The ruling is based on Law on Investment No. 67/2014/QH13 and Land Law No. 45/2013/QH13.

I. Judgement No. 36/2025/DS-PT dated 31 July 2025 issued by the Supreme People’s Court (“Judgement”)

1. Case summary

On 2 December 2019, the Claimants (two individuals) and the Defendant (a company established under the laws of Vietnam) entered into an agreement for the transfer of land use rights in respect of four land plots located in Binh Duong Province (“**Transfer Agreement**”). Under the Transfer Agreement, the Claimants agreed to transfer the land use rights to the Defendant at a total consideration of approximately VND 80.7 billion (around USD 3.1 million). The Transfer Agreement was duly notarised at a notary office in Vietnam.

Following the execution of the Transfer Agreement, the Defendant paid a substantial portion of the transfer price to the Claimants. The Claimants stated that, during the process of applying for the amendment to the land use

right certificates to reflect the Defendant as the new landowner, they identified that the Defendant had 70% of foreign investment capital. On that basis, the Claimants argued that the Defendant should be classified as a foreign-invested enterprise and, accordingly, was not permitted under Vietnamese law to directly receive transfers of land use rights from individuals. The Claimants therefore initiated legal proceedings, requesting the Court to declare the Transfer Agreement void on the grounds that it violated statutory restrictions on land transfers.

The Defendant submitted that the Transfer Agreement did not violate any prohibitions of law. The Defendant argued that it did not qualify as a foreign-invested enterprise under Articles 5.7 and 56.1 of the Land Law No. 45/2013/QH13 (“**2013 Land Law**”). In addition, the Defendant contended that it should not be regarded as an FIEO, or more specifically, as an “economic organisation required to satisfy investment conditions and carry out investment procedures applicable to foreign investors” under the terminology of either Law on Investment No. 67/2014/QH13 (“**2014 Law on Investment**”) or Law on Investment No. 61/2020/QH14 (“**2020 Law on Investment**”). On that basis, the Defendant asserted that it should not be subject to restrictions on the acquisition of land use rights under the 2013 Land Law. Figure 1 below illustrates the ownership structure of the Defendant at the time the Transfer Agreement was executed.

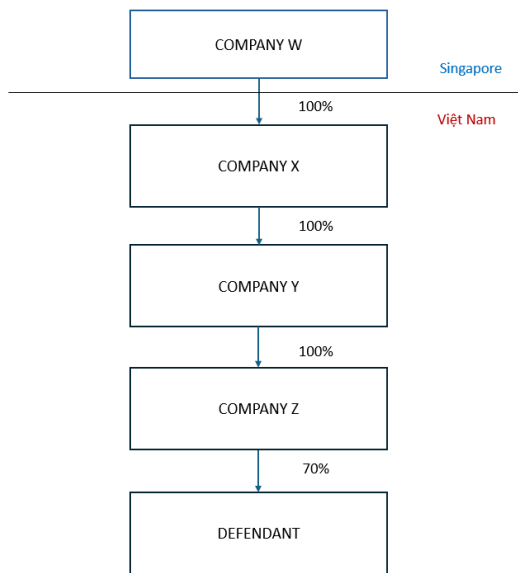


Figure 1: Ownership structure of the Defendant¹

2. Court rulings

According to the first-instance judgement No. 08/2025/DS-ST dated 24 February 2025 issued by the People’s Court of Binh Duong Province, the court accepted the Claimants’ claims and declared the Transfer Agreement void.

The Defendant subsequently appealed the first-instance judgement in its entirety. In the appellate judgement No. 36/2025/DS-PT dated 31 July 2025 issued by the Supreme People’s Court in Ho Chi Minh City (“SPC”), the SPC dismissed the appeal and upheld the first-instance judgement.

In its reasoning, the SPC relied on Articles 3.16 and 3.17 of the 2014 Law on Investment to determine that the Defendant would be regarded as an FIEO. The SPC further held that the 2013 Land Law does not permit FIEOs to

directly receive transfers of land use rights from households or individuals. On that basis, the SPC considered that the first-instance court’s decision to declare the Transfer Agreement void for violating a statutory prohibition was in line with applicable law. As a result, the Defendant was required to give back to the Claimants the four land plots together with the original land use right certificates, while the Claimants were required to refund the amounts received from the Defendant.

II. Foreign-invested enterprises under the 2013 Land Law

The Judgement applies the 2013 Land Law to assess the validity of the Transfer Agreement, while relying on the 2014 Law on Investment to determine whether the Defendant was classified as a foreign-invested enterprise. Against this background, this Section II analyses the legal framework under the 2013 Land Law and the investment laws applicable during the same period. Section III examines the Court’s approach in classifying the Defendant as a foreign-invested enterprise. Section IV considers the position under the Land Law No. 31/2024/QH15 which became effective from 18 January 2024 (“2024 Land Law”).

1. Under the 2013 Land Law

Article 5.7 of the 2013 Land Law provides that *foreign-invested enterprises include enterprises wholly owned by foreign investors, joint ventures, and Vietnamese enterprises in which foreign investors acquire equity through share purchase, merger, or acquisition in accordance with the investment laws*. Under this rule, a foreign-invested enterprise includes: (i) enterprises wholly owned by foreign investors and (ii) joint ventures and

¹ Details of the ownership structure of the Defendant are set out on pages 5, 6 and 13 of the Judgement. As the names of the relevant companies appear similar in the Judgement, for ease of reference, this article adopts the following abbreviations: (1) Company Z refers to Công ty TNHH D1 (CUCVC), as mentioned on line 2 of the last paragraph on page 5 of the Judgement; (2) Company Y refers to Công ty TNHH D1 (CUC Medical), as

mentioned on lines 7 and 8 of the last paragraph on page 5 of the Judgement; (3) Company X refers to Công ty TNHH D1 (CUC VN), as mentioned on line 3 of the first paragraph on page 6 of the Judgement; and (4) Company W refers to Cuc Singapore Pte. Ltd., a company incorporated and operating under the laws of Singapore, as mentioned on line 4 of the first paragraph on page 6 of the Judgement.



Vietnamese enterprises in which foreign investors acquire equity in accordance with the investment laws.

2. Under the investment laws

2.1 Definition of foreign-invested enterprises

For completeness, given that the 2014 Law on Investment and the 2020 Law on Investment adopt a substantially similar approach and terminology in relation to foreign-invested enterprises and were both in force during the period in which the 2013 Land Law applied, reference is made to the relevant provisions of both laws below.

The 2014 Law on Investment, and similarly the 2020 Law on Investment, do not provide a definition of a “foreign-invested enterprise” (“FIE”). Instead, they define the concept of a “foreign-invested economic organisation” or “FIEO”.

Under Article 3.16 of the 2014 Law on Investment (see also Article 3.21 of the 2020 Law on Investment), *an economic organisation is an entity established and operating in accordance with Vietnamese law, including **enterprises**, co-operatives, unions of co-operatives, and other organisations carrying out investment and business activities*. On this basis, it can be understood that the legal regime applied to a FIEO is also applied to a FIE.

Under Article 3.17 of the 2014 Law on Investment (see also Article 3.22 of the 2020 Law on Investment), a FIEO is defined as *an economic organisation **having foreign investors as members or shareholders***. This definition is broadly consistent with the concept of a FIE under Article 5.7 of the 2013 Land Law. On this basis, an economic organisation is considered a FIEO if two conditions are satisfied: (i) it has a foreign investor; and (ii) such foreign investor is a member or shareholder of that organisation.

(i) Presence of a foreign investor

Pursuant to Article 3.14 of the 2014 Law on Investment (see also Article 3.19 of the 2020 Law on

Investment), a foreign investor is defined as *an individual having a foreign nationality or an organisation established under foreign laws carrying out investment and business activities in Vietnam*.

(ii) Foreign investor being a member or shareholder

The determination of whether a foreign investor is a member or shareholder of an enterprise should be assessed in accordance with the applicable Law on Enterprises. Under the Law on Enterprises, a shareholder is an individual or organisation that owns at least one share of a joint stock company, and a member of a limited liability company or a partnership is an individual or organisation owning part or all of the charter capital of such company.²

On this basis, an organisation must directly own at least one share in a joint stock company or a portion of the charter capital in a limited liability company or partnership to be regarded as a shareholder or member of that company. Indirect ownership through another company does not confer shareholder or member status in the relevant enterprise.

In summary, for an organisation to be classified as a FIE under the 2013 Land Law, or as a FIEO under the 2014 Law on Investment or the 2020 Law on Investment, **it must be directly owned by a foreign investor** through shares or capital contribution, regardless of the percentage of such foreign ownership.

2.2 Investment activities of FIEOs

To regulate foreign investment activities, Vietnamese law requires foreign investors to satisfy specific investment conditions and comply with separate investment procedures. Investment conditions generally refer to statutory restrictions on whether foreign investors are permitted to invest in certain sectors, as well as requirements imposing stricter market access conditions

² Article 4.2 and Article 4.23 of the Law on Enterprises no. 68/2014/QH13 (see also Article 4.3 and Article 4.29 of Law on Enterprises no. 59/2020/QH14)



compared to domestic investors. Investment procedures applicable to foreign investors typically include the requirement to obtain an Investment Registration Certificate to implement an investment project. Where the investment is carried out through the acquisition of capital contributions or shares in an existing enterprise, the investor must also complete the procedures for approval of such acquisition (commonly referred to as M&A Approval).

Certain economic organisations are also required to comply with these investment conditions and procedures when conducting investment activities in Vietnam.

Under Article 23.1 of the 2014 Law on Investment, an economic organisation must satisfy investment conditions and carry out investment procedures applicable to foreign investors when establishing another economic organisation, making capital contributions, purchasing shares or capital contributions, or implementing investment projects, if it falls within one of the following cases:

- (a) a foreign investor holds 51% or more of its charter capital, or a majority of general partners are foreign individuals in the case of a partnership;
- (b) an economic organisation as referred to in point (a) holds 51% or more of its charter capital; or
- (c) both a foreign investor and an economic organisation as referred to in point (a) together hold 51% or more of its charter capital.

III. Assessment of the classification of the FIE under the Judgement

As illustrated in Figure 1 regarding the ownership structure of the Defendant and based on the relevant regulations of the 2014 Law on Investment, the classification of the relevant companies may be determined as follows:

- (i) Company W is considered a foreign investor as it is established in Singapore under Singapore law, pursuant to Article 3.14 of the 2014 Law on Investment.
- (ii) Company X is a company established under the laws of Vietnam and is considered a FIE (or FIEO) as it is

wholly owned by a foreign investor, namely Company X, pursuant to Article 3.17 of the 2014 Law on Investment. However, Company X is an economic organisation falling under Article 23.1(a) of the 2014 Law on Investment, as it is wholly owned by a foreign investor, namely Company W. Accordingly, it is required to satisfy investment conditions and carry out investment procedures applicable to foreign investors.

- (iii) Company Y is a company established under the laws of Vietnam and is not a FIE (or FIEO) because it does not have any direct ownership of a foreign investor. However, Company Y is an economic organisation falling within Article 23.1(b) of the 2014 Law on Investment, as more than 51% of its charter capital is held by an economic organisation specified under Article 23.1(a) of the 2014 Law on Investment, namely Company X. Accordingly, Company Y is required to satisfy investment conditions and carry out investment procedures applicable to foreign investors.

- (iv) Company Z is a company established under the laws of Vietnam and is wholly owned by Company Y. Thus, according to Article 23.2 of the 2014 Law on Investment, Company Z would enjoy investment conditions and procedures like a domestic company.

Because Company Z has a status like a domestic company, its subsidiary or the Defendant should be deemed as a domestic company.

In the Judgement, the SPC relied on Articles 3.16 and 3.17 of the 2014 Law on Investment to conclude that the Defendant was a FIE without providing detailed reasoning on this point.

The approach adopted by the SPC appears to depart from a strict reading of the statutory framework. Although the Defendant is not directly owned by any foreign investor and may therefore not fall within the definition of a FIEO under Article 3.17 of the 2014 Law on Investment, the Court nevertheless classified it as such. This may suggest that the Court took into account indirect ownership and the degree of control exercised through the ownership



chain. The Court's conclusion appears to reflect a control-based approach, rather than the formal ownership-based test set out in the 2014 Law on Investment.

IV. FIEO under the 2024 Land Law

1. Under the 2024 Land Law

The concept of a FIEO is defined in Article 3.46 of the 2024 Land Law as follows: *A foreign-invested economic organisation is an **economic organisation that is required to satisfy investment conditions and carry out investment procedures applicable to foreign investors under the Law on Investment** for the purpose of implementing land-related projects.*

Accordingly, the concept of a FIEO under the 2024 Land Law differs from the concept of a FIE under the 2013 Land Law. Under the 2024 Land Law, the classification is determined by reference to whether the economic organisation is required to satisfy investment conditions and procedures applicable to foreign investors under the Law on Investment.

2. Under the Law on Investment

The requirement that an economic organisation must satisfy investment conditions and carry out investment procedures applicable to foreign investors is provided under Article 23.1 of the 2020 Law on Investment (as analysed in the Section II.2.2 above of this article) and, in similar terms, Article 20.1 of Law on Investment No. 143/2025/QH152025 which became effective from 1 March 2026 ("**2025 Law on Investment**"). Accordingly, under the 2024 Land Law, a foreign-invested economic organisation is limited to entities falling within these provisions, namely:

³ **Article 4. Land users**

1. **Domestic organisations include:**

(a) State agencies, agencies of the Communist Party of Vietnam, people's armed forces units, the Vietnam Fatherland Front, socio-political organisations, socio-political-professional organisations, social organisations, socio-professional organisations, public non-business units, and other organisations as provided by law;

- (a) an economic organisation in which a foreign investor holds more than 50% of its charter capital, or in the case of a partnership, where a majority of general partners are foreign individuals;
- (b) an economic organisation in which an economic organisation referred to in point (a) holds more than 50% of its charter capital; or
- (c) an economic organisation in which both a foreign investor and an economic organisation referred to in point (a) together hold more than 50% of its charter capital.

However, it should be noted that Article 3.17 of the 2020 Law on Investment or Article 3.22 of the 2025 Law on Investment define a FIEO more broadly as an economic organisation in which a foreign investor is a member or shareholder, regardless of the percentage of such foreign ownership.

Accordingly, when comparing the concept of a FIEO under the 2024 Land Law with that under the 2020 Law on Investment and the 2025 Law on Investment, the 2024 Land Law adopts a narrower approach. In particular, under Article 4.1(b) of the 2024 Land Law,³ an economic organisation that does not fall within the cases specified in Article 23.1 of the 2020 Law on Investment and Article 20.1 of the 2025 Law on Investment is treated as a **domestic economic organisation**.⁴ By way of illustration, an economic organisation in which foreign investors hold 50% or less of its charter capital is classified as a domestic economic organisation under the 2024 Land Law.

Pursuant to Article 28.1(b) of the 2024 Land Law, domestic economic organisations are entitled to directly receive transfers of land use rights from lawful land users in Vietnam. Accordingly, FIEO with foreign ownership of 50%

(b) **Economic organisations as defined under the Law on Investment, except for the case specified in Clause 7 of this Article** (hereinafter referred to as "economic organisations");

...

7. **Economic organisations with foreign investment capital.**



or less are also entitled to directly receive such transfers, as they are treated as domestic economic organisations under the 2024 Land Law. This represents an expansion of landownership entitlement for certain economic organisations with direct or indirect foreign investment.

If the case addressed in the Judgement were assessed under the 2024 Land Law in conjunction with the 2020 Law on Investment or the 2025 Law on Investment, there would appear to be stronger grounds to conclude that the Defendant would be entitled to receive transfers of land use rights from the Claimants, as the Defendant does not fall within the category of economic organisations required to satisfy investment conditions and procedures applicable to foreign investors under the 2020 Law on Investment or the 2025 Law on Investment.

V. Conclusion

The classification of FIEOs is not a new concept under the laws of Vietnam. However, the Judgement No. 36/2025/DS-PT dated 31 July 2025 issued by the Supreme People's Court is among the very few court judgements that directly discuss the classification of FIEO. As discussed above, the approach adopted by the SPC in this judgement appears to take a more flexible interpretative approach to the applicable laws, including the 2013 Land Law and the 2014 Law on Investment. There is a risk that transactions entered into under the 2013 Land Law may still be subject to dispute and judicial assessment based on the legal framework applicable at the time of their conclusion. While the 2024 Land Law expands landownership entitlement for FIEOs, in the absence of clear judicial guidance, it remains uncertain how the relevant provisions under the 2024 Land Law will be interpreted and applied by Vietnamese courts in practice.

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