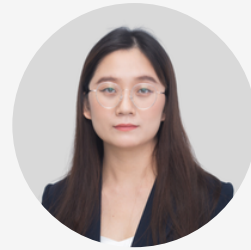


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## ASSESSMENT OF INVESTMENT MODELS AND ENTERPRISE TYPES FOR HOTEL BUSINESS PROJECTS IN VIETNAM

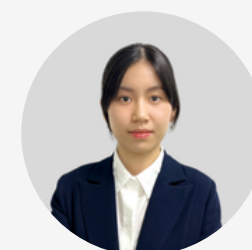
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01

**JOINT VENTURE MODEL WITH A VIETNAMESE PARTNER  
& WHOLLY FOREIGN-OWNED COMPANY MODEL**



In the hotel service business sector (CPC Code 64110), the Vietnamese market has now been **fully opened to foreign investors**. The barriers under the WTO Schedule of Commitments (stipulating that, during the first 8 years after accession, such business must be associated with investment in the construction, upgrading, or renovation of hotels) have been completely removed. Currently, investors are entitled to **hold ownership from 1% up to a maximum of 100%** and may flexibly participate in the market through either direct or indirect investment. On that basis, investors may establish a joint venture model or a wholly foreign-owned company model. The two models will have certain differences, and investors need to rely on their financial plans and business orientation to select an appropriate model

CRITERIA	JOINT VENTURE WITH A VIETNAMESE PARTNER	WHOLLY FOREIGN-OWNED COMPANY
Right of Establishment	The investor may cooperate with a Vietnamese partner and freely agree on the capital contribution ratio (e.g., Canada 99% – Vietnam 1%)	Pursuant to WTO commitments, foreign investors are entitled to ownership from 1% up to a maximum of 100% of the charter capital; therefore, they are permitted to establish an enterprise.
<b>Procedures</b>	<p>The procedures are applied uniformly to both models, specifically:</p> <p>Step 1. Apply for the Investment Registration Certificate (IRC).</p> <p>Step 2. Apply for the Enterprise Registration Certificate (ERC).</p> <p>Step 3. Obtain sub-licenses for accommodation establishments (Security and Order, Fire Prevention and Fighting, Environmental Protection, Food Safety).</p>	
<b>Documentation</b>	<p>In principle, the dossier required for enterprise establishment in Vietnam under both the joint venture model and the wholly foreign-owned model is substantially similar:</p> <ul style="list-style-type: none"> <li>• For procedures to establish an investment project for the purpose of obtaining the Investment Registration Certificate (IRC): Application form; legal documents of the parties; financial capacity evidence; project proposal; documents evidencing land use rights, etc.</li> <li>• For procedures to establish a legal entity to manage the project for the purpose of obtaining the Enterprise Registration Certificate (ERC): Charter; list of members/shareholders; legal documents; copy of IRC, etc.</li> </ul> <p><i>All legal documents must be consular legalized and notarized translated into Vietnamese.</i></p>	

Table 1



02

## **SELECTION OF ENTERPRISE TYPE**



Corresponding to the joint venture model or the establishment of a wholly foreign-owned company, investors may select the appropriate enterprise type, including a Multiple-Member Limited Liability Company, a Single-Member Limited Liability Company, or a Joint Stock Company. Within the scope of this publication, CDLAF will focus on comparing the Multiple-Member Limited Liability Company and the Joint Stock Company, as these are the two most common types in cases where multiple investors participate.

CRITERIA	MULTIPLE-MEMBER LIMITED LIABILITY COMPANY	JOINT STOCK COMPANY
<b>Number of Investors</b>	<b>From 02 to 50 members</b> (suitable if the client group has 2–5 companies)	Minimum of <b>03</b> shareholders, no maximum limit (if the client group has only 2 companies, a Joint Stock Company cannot be established).
<b>Governance Structure</b>	Structure includes: Members' Council, Chairman of the Members' Council, Director/General Director. The company is not required to have a Supervisory Board (except for state-owned enterprises).  <b>The model is not overly complex</b>	Structure includes: General Meeting of Shareholders, Board of Directors, Director/General Director. A Supervisory Board is required if the group of foreign investors being organizations holds 50% or more of the total shares of the company.  <b>More complex compared to a Limited Liability Company.</b>
<b>Advantages</b>	In accordance with regulations, capital contributions may only be transferred after being offered to the remaining members in proportion to their respective ownership under the same conditions.  Only if the existing members do not fully purchase within 30 days may such capital contributions be transferred to external parties.  <i>This avoids situations where members may unilaterally transfer capital to outsiders</i>	A Joint Stock Company is entitled to issue shares, bonds, and other securities.  Advantageous if the client intends to raise large-scale capital from the public, issue additional shares to new partners, or has a vision to list on the stock exchange to expand a nationwide hotel chain.

Table 2



Corresponding to the joint venture model or the establishment of a wholly foreign-owned company, investors may select the appropriate enterprise type, including a Multiple-Member Limited Liability Company, a Single-Member Limited Liability Company, or a Joint Stock Company. Within the scope of this publication, CDLAF will focus on comparing the Multiple-Member Limited Liability Company and the Joint Stock Company, as these are the two most common types in cases where multiple investors participate.

CRITERIA	MULTIPLE-MEMBER LIMITED LIABILITY COMPANY	JOINT STOCK COMPANY
<b>Disadvantages</b>	A Multiple-Member Limited Liability Company is not permitted to issue shares, except for conversion into a Joint Stock Company, thereby limiting its ability to raise capital from the public	Transfer restrictions apply only to founding shareholders within the first 03 years from the date of establishment.  After 03 years, shareholders may freely transfer shares to any party without requiring the consent of the remaining shareholders.
<b>Scalability</b>	The enterprise may establish branches and representative offices domestically and overseas, including multiple units within a single locality.  When expanding to a second or third hotel in Vietnam, the company may set up additional Branches or Business Locations under the parent company in Ho Chi Minh City.	The enterprise is entitled to establish Branches and Business Locations in other provinces and cities to expand the hotel chain.
	<p><b>Note on Scalability:</b> After obtaining the initial Investment Registration Certificate (IRC), the company may establish Branches/Business Locations without a new investment project. Specifically:</p> <p><b>Case 1 (NO new IRC required):</b> Only registration for the establishment of a Branch/Business Location is required if the client leases existing premises or a pre-constructed building to operate the hotel.</p> <p><b>Case 2 (NEW IRC required):</b> Applicable where an independent investment project is implemented (e.g., State land allocation/lease or land use conversion for new hotel construction). In such cases, it is deemed a new project, and the parent company must obtain a new IRC.</p>	

Table 2 (continue)



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## ASSESSMENT & RECOMMENDATION

We are of the view that the wholly foreign-owned enterprise model continues to be considered advantageous. This is because, pursuant to the WTO commitment roadmap and the prevailing investment laws, restrictions on ownership ratios and conditions relating to new construction investment have been officially abolished. The establishment of a wholly owned legal entity enables investors to exercise the highest level of control. This not only ensures consistency in the application of international operational standards (SOPs) but also entirely eliminates the risk of conflicts of interest among shareholder groups. From a financial and legal perspective, this model further allows investors to proactively optimize profits and simplifies the process of profit remittance abroad without being constrained by complex profit-sharing arrangements with third parties.

**The joint venture model should only be considered as a situational and exceptional solution.** This structure is only feasible where the local partner possesses “**real estate assets**” – specifically, prime land banks in core urban areas such as Ho Chi Minh City – which foreign investors cannot access through lease or direct land allocation mechanisms. However, it should be noted that this option entails significant legal risks relating to asset valuation and dilution of voting rights. In many cases, inflated land use right valuations may place foreign investors in a minority shareholder position, thereby diminishing their control over key corporate governance decisions.



*In further detail: If the Vietnamese partner uses land allocated by the State with land use fees or land leased with a one-off rental payment for the entire lease term, they are entitled to contribute capital using the value of the land use rights (pursuant to Point e, Clause 1, Article 33 of the Land Law). Conversely, where the land is leased from the State with annual rental payments, the Vietnamese partner is not permitted to contribute capital using land use rights, but may only contribute capital using “assets under its ownership attached to the land” (pursuant to Point d, Clause 1, Article 34 of the Land Law).*

# 03

## **FURTHER DISCUSSION ON CAPITAL CONTRIBUTION BY REAL ESTATE IN THE JOINT VENTURE MODEL**

## 1. Forms of Real Estate Capital Contribution

CAPITAL CONTRIBUTION PROCEDURES	CASE 1: CAPITAL CONTRIBUTION BY LAND USE RIGHTS	CASE 2: CAPITAL CONTRIBUTION BY ASSETS ATTACHED TO LAND
	<p><b>Preparation and notarization of contract:</b> The parties shall prepare a capital contribution agreement in the form of land use rights. Such agreement must be notarized or certified in accordance with the law (Point a, Clause 3, Article 27 of the Land Law).</p> <p><b>Transfer of land use rights:</b> The Vietnamese partner must transfer land use rights to the joint venture company at the competent authority; such transfer for capital contribution is exempt from registration fees. (Point a, Clause 1, Article 35 of the Law on Enterprises).</p> <p><b>Completion of capital contribution:</b> The capital contribution is deemed fully paid only when the lawful ownership rights to the asset (land use rights) have been officially transferred to the joint venture company (Clause 3, Article 35 of the Law on Enterprises).</p>	<p><b>Verification of asset conditions:</b> Assets attached to land used for capital contribution must be lawfully created, have registered ownership rights, and in particular must have been completed in accordance with the approved detailed planning and investment project (Clause 1, Article 46 of the Land Law).</p> <p><b>Transfer of ownership of assets:</b> The capital-contributing party must carry out procedures to transfer ownership of such assets (buildings, hotels) to the joint venture company (Point a, Clause 1 and Clause 3, Article 35 of the Law on Enterprises).</p> <p><b>Continuation of State Land Lease:</b> Where capital is contributed by assets attached to leased land, the joint venture company may continue the land lease for the remaining term and must complete procedures with the competent authority to assume such lease rights.</p>

## 2. Notes on Risk Management in Capital Contribution by Real Estate

### 2.1. Risks in Receiving Capital Contribution by Land for a Multiple-Member Limited Liability Company

#### (i) Risks in Valuation and Risk of Loss of Control

The law requires contributed assets to be valued either by unanimous agreement among members or by a valuation organization (where a valuation organization is engaged, the valuation must be approved by more than 50% of the members) (Pursuant to Clause 2, Article 36 of the Law on Enterprises).

Joint liability risk: If the asset is valued higher than its actual value, the members shall be jointly liable to contribute an additional amount equivalent to the difference and jointly liable for damages caused by intentional overvaluation, regardless of whether such valuation was agreed upon by the members or determined by a valuation organization (Pursuant to Clause 2, Article 36 of the Law on Enterprises).

Risk of loss of control: High land values may inflate the Vietnamese partner's stake to 65%–75%, causing the investor to lose control due to insufficient voting rights for key decisions. (Pursuant to Clause 3, Article 59 of the Law on Enterprises).

### **(ii) Procedures for Transfer of Land Use Rights, Ownership, and Dissolution**

- Procedural barriers: Upon establishment of the company, the Vietnamese partner is required to carry out procedures to transfer land use rights to the company (Pursuant to Point a, Clause 1, Article 35 of the Law on Enterprises). This process is time-consuming, while the law stipulates that capital contribution is deemed completed only when the land has been officially transferred to the company (Pursuant to Clause 3, Article 35 of the Law on Enterprises).
- Upon dissolution/bankruptcy: If the company incurs losses, the land use rights must be handled in accordance with the laws on enterprises and bankruptcy (Pursuant to Clause 3, Article 36 of the Land Law). The withdrawal and liquidation of real estate assets will require considerable time and cost.

## **2.2. Risks in Receiving Capital Contribution by Land for a Joint Stock Company (JSC)**

### **(i) Risks in Valuation and Risk of Loss of Control** *(Higher Risk than LLC)*

- Contributed assets must be valued by founding shareholders or a valuation organization (approved by >50%). In case of overvaluation, founding shareholders are jointly liable for the shortfall and damages. (Pursuant to Clause 2, Article 36 of the Law on Enterprises).
- Higher takeover risk: In a JSC, lower voting thresholds mean a shareholder holding 50%–65% may unilaterally pass key resolutions, potentially reducing the investor to a minority position with limited control.

### **(ii) Procedures for Transfer of Land Use Rights, Ownership, and Dissolution:**

- Similar to an LLC, a shareholder contributing capital by land is required to complete procedures for transferring land use rights (Land Use Right Certificate) to the JSC (Pursuant to Point a, Clause 1, Article 35 of the Law on Enterprises), and only upon completion shall the shares be deemed fully paid (Pursuant to Clause 3, Article 35 of the Law on Enterprises).
- In the event of losses leading to dissolution or bankruptcy, such real estate assets shall also be handled in accordance with the laws on recovery, bankruptcy, and other relevant regulations (Pursuant to Clause 3, Article 36 of the Land Law).

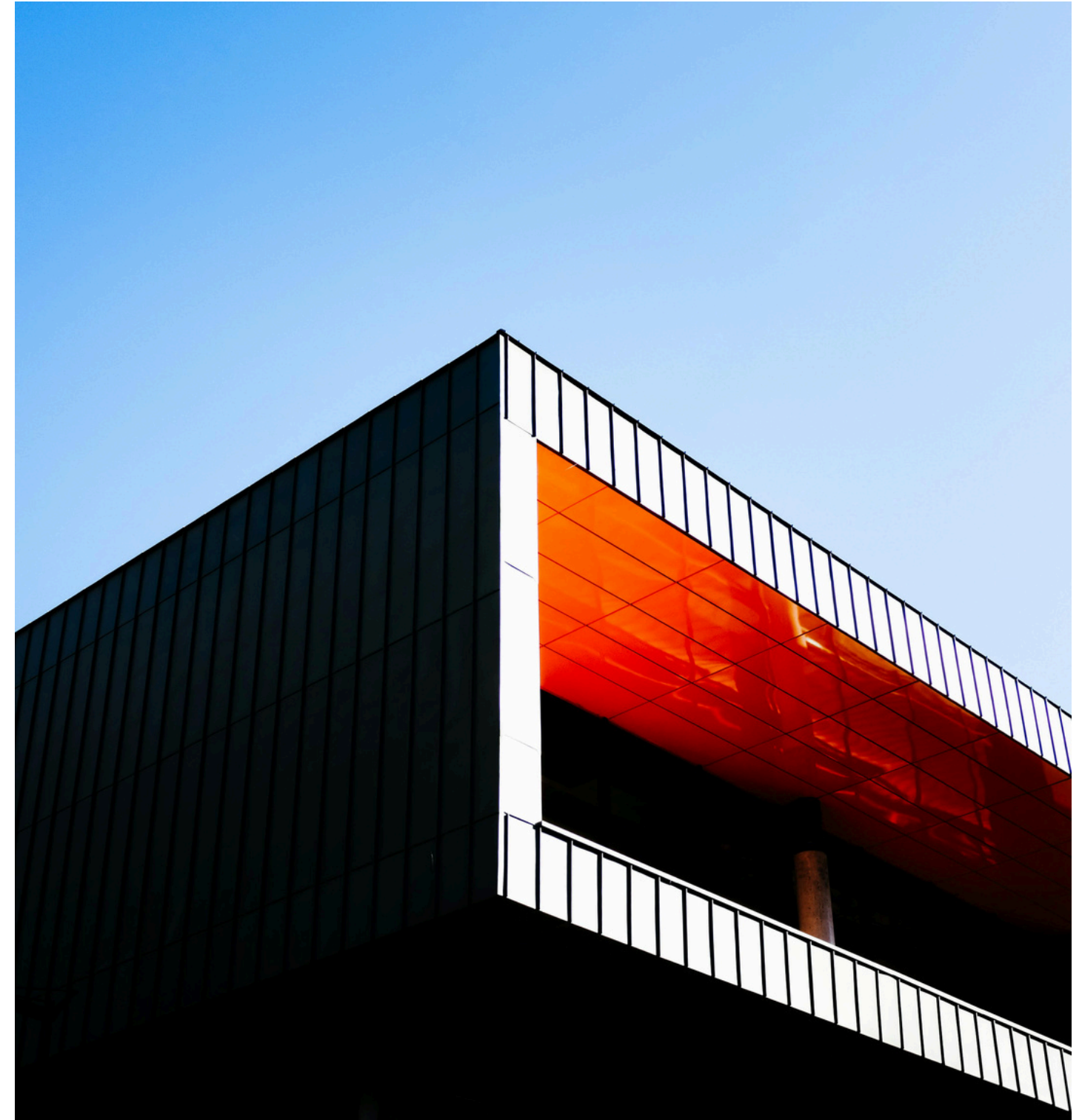
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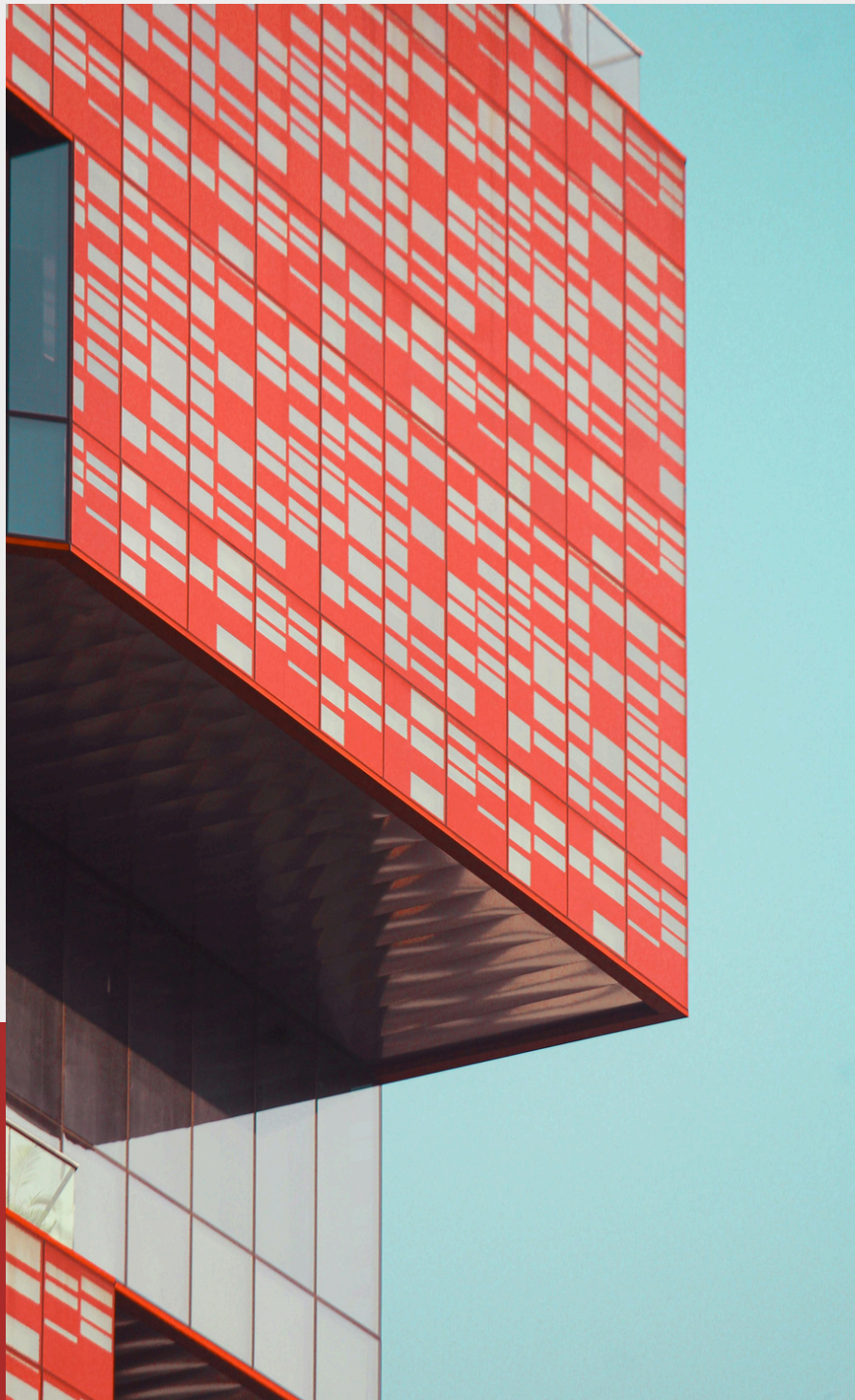
## CONCLUSION

From a legal perspective, it can be affirmed that entering the accommodation service market in Vietnam, in the context of implementing new-generation international commitments, is no longer a purely formal procedure. It is a process requiring investors to prepare and plan a comprehensive strategy, including an appropriate capital ownership structure, long-term business orientation, and sufficient financial capacity to ensure the feasibility of the project.

In practice, while the wholly foreign-owned enterprise model is often preferred due to its transparency and high level of autonomy in governance, and the joint venture model may become a necessary option to access land banks or local resources, each approach is associated with its own legal requirements and limitations.

Therefore, early and comprehensive identification of legal barriers, investment and business conditions, and related compliance obligations not only helps investors mitigate risks but also plays a key role in establishing a feasible and sustainable business framework in the Vietnamese market.





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