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DEVELOPER STATUS AS A REGULATED POSITION: GATEKEEPING AND RISK ALLOCATION IN THE TRANSFER OF REAL ESTATE PROJECTS IN VIETNAM

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ABSTRACT

Transferring a real estate project does not merely move property from one company to another: it hands over a position that the State itself created, the status of developer. This article treats that position as a regulated asset and asks how Vietnamese law allocates the public, market and private risks that accompany its transfer. Using doctrinal, historical, comparative and normative analysis, it examines the Law on Real Estate Business No. 29/2023/QH15 and Decree No. 96/2024/ND-CP together with the Law on Investment No. 143/2025/QH15, the Land Law No. 31/2024/QH15 and the tax guidance applied to transfers. It argues that the 2023 reforms moved scrutiny from paperwork to the substantive legal status of the project and the capacity of the transferee, yet five stress points remain: open-textured thresholds, a deadlock over mortgaged projects, dual-track procedures, an unmonitored share-transfer route and weak deterrence. A limited reference to China and to the draft amendments under consideration in 2026 informs a package of staged reforms. The analysis is doctrinal and calls for later empirical testing.

Keywords: *real estate project transfer; developer status; real estate business; risk allocation; mergers and acquisitions; Vietnamese law*

I. INTRODUCTION

A real estate project in Vietnam is the product of several State decisions layered on top of one another: an investment policy decision, an approved detailed plan, an allocation or lease of land, and a judgment that the investor has the means to see the project through. Its life cycle spans many years, absorbs large amounts of capital and is highly exposed to market cycles, credit policy and legal change. When a developer can no longer carry the project, because funds

have run short, strategy has changed or capacity has been lost, the sensible economic response is to pass it to a party that can, rather than leave land idle and earlier investment wasted.

That response cannot, however, be organised on ordinary civil terms. What changes hands is not only a bundle of property but the status of developer, a position that the State confers through investor selection and the allocation or lease of land. Free trade in that position would allow holders of favourably allocated land to profit from price differences without investing, would weaken the State's control over land use, and would expose buyers of off-plan housing, lenders and contractors to a counterparty they never assessed. Excessive control produces the opposite harm: stalled projects stay stalled and capital stays locked. The law of project transfers is an attempt to hold these two risks in balance.

The question has become pressing in the period 2022–2026. The market went through a prolonged liquidity squeeze, and many enterprises facing maturing bond obligations had to restructure their project portfolios. Legislation was reformed in parallel. The Law on Real Estate Business No 29/2023/QH15,¹ the Law on Housing No 27/2023/QH15² and the Land Law No 31/2024/QH15³ took effect on 1 August 2024 under Law No 43/2024/QH15.⁴ Decree No 96/2024/ND-CP details the Law on Real Estate Business⁵ and has since been amended by Decree No 54/2026/ND-CP,⁶ while the Law on Investment No 143/2025/QH15 took effect on 1 March 2026.⁷ In 2026 the Government also submitted a draft amended Law on Real Estate Business that would place the entire authority to approve project transfers with provincial People's Committees.⁸

This article argues that the transfer regime is best understood as a mechanism for allocating risk among the State, the market and private counterparties. Its present weaknesses lie less in the absence of rules than in rules that are too open-textured to apply uniformly, too fragmented across statutes to apply efficiently, and too easy to bypass. The analysis is doctrinal and normative. It combines study of the statutes with a historical comparison of the 2006, 2014 and

¹ Law on Real Estate Business 2023 (Law No 29/2023/QH15).

² Law on Housing 2023 (Law No 27/2023/QH15).

³ Land Law 2024 (Law No 31/2024/QH15).

⁴ Law No 43/2024/QH15 amending and supplementing a number of articles of the Land Law No 31/2024/QH15, the Law on Housing No 27/2023/QH15, the Law on Real Estate Business No 29/2023/QH15 and the Law on Credit Institutions No 32/2024/QH15.

⁵ Government of Vietnam, Decree No 96/2024/ND-CP detailing a number of articles of the Law on Real Estate Business (2024).

⁶ Government of Vietnam, Decree No 54/2026/ND-CP amending and supplementing a number of articles of the decrees detailing the Law on Housing and the Law on Real Estate Business (2026).

⁷ Law on Investment 2025 (Law No 143/2025/QH15).

⁸ 'Proposal to Authorize Provincial People's Committees to Decide on Real Estate Project Transfers' *VnExpress* (29 July 2026) <<https://vnexpress.net/de-xuat-giao-ubnd-tinh-quyet-viec-chuyen-nhuong-du-an-bat-dong-san-5103059.html>>.

2023 Laws on Real Estate Business and a limited functional reference to China, and it evaluates the rules against three criteria: their clarity and feasibility, their capacity to control speculation and loss of State revenue, and the protection they give to buyers, lenders and other affected persons. No quantitative survey is attempted because data on transfer applications have not been published systematically. The recommendations should therefore be read as proposals that require later empirical testing.

Part II sets out the conceptual framework. Part III develops the risk-allocation rationale for regulation. Part IV describes the evolution and current design of the Vietnamese regime. Part V identifies the points at which the regime comes under strain. Part VI considers comparative and reform perspectives, Part VII offers recommendations, and Part VIII concludes.

II. CONCEPTUAL FRAMEWORK

A. The project as a composite legal asset

Under the Law on Real Estate Business 2023, real estate projects include investment projects for the construction of housing and buildings, projects for developing technical infrastructure in urban areas and industrial parks, and other projects implemented lawfully for business purposes.⁹ A project transfer is the conveyance by a developer, by contract and after permission from the competent State authority, of all or part of a project together with the rights, obligations, responsibilities and lawful interests attached to it, so that the transferee may continue investment, construction and business operations.¹⁰

The object of the transaction is therefore composite. It comprises the land-use rights of the project or project component; completed works and infrastructure; the legal documentation that makes the project lawful, such as the investment policy decision, detailed planning and construction permits; financial obligations to the State; and commitments to customers, contractors and credit institutions. This is what separates a project transfer from a bare transfer of land-use rights or a sale of assets standing on land.

B. Developer status as a regulated position

Three features follow from the nature of the object. First, the parties have special standing. The transferor must be a developer whose status the State has established, and the transferee must

⁹ Law on Real Estate Business 2023 (n 1).

¹⁰ Law on Real Estate Business 2023 (n 1); 'New Points of the Law on Real Estate Business 2023 on Conditions for Real Estate Project Transfers' *Industry and Trade Magazine* <<https://tapchicongthuong.vn/nhung-diem-moi-cua-luat-kinh-doanh-bat-dong-san-nam-2023-ve-dieu-kien-chuyen-nhuong-du-an-bat-dong-san-130687.htm>>.

satisfy the conditions applicable to real estate business organisations, including requirements on business lines, equity capital and capacity to mobilise funds.¹¹ The law is concerned not only with the will of the parties but with who will become the next user of land resources.

Second, the transaction is subject to prior administrative control. The transfer contract may be signed only after the competent authority has permitted the transfer, which distinguishes it from ordinary civil transactions whose validity rests mainly on the agreement of the parties under the Civil Code 2015.¹² Third, the legal effect is substitution. The transferee succeeds to the rights and obligations of the transferor within the scope of the transferred project or component and need not repeat the project dossier procedures if the approved content is unchanged.¹³ In substance, a project transfer combines the transfer of property, the assignment of claims and the assumption of obligations under civil law, fixed in place by the administrative permission mechanism of specialised legislation. A useful way to capture this is to describe developer status as a licence-like position: it can be passed on, but only to someone the State is satisfied can hold it.

C. Project transfers and their functional substitutes

Project transfers must be distinguished from neighbouring transactions. The transfer of serviced land plots to individuals for self-built housing conveys part of the assets but not the status of developer. The transfer of shares or capital contributions in a project company changes who controls the enterprise but leaves the developer formally unchanged, and it is governed mainly by the Law on Enterprises 2020.¹⁴ Business cooperation contracts and capital contributions in the form of land-use rights create co-investment relationships without ending the original developer's status. These distinctions matter because parties often choose the form of a transaction precisely in order to avoid the conditions and procedures of a project transfer, a point to which Part V returns.

III. A RISK-ALLOCATION RATIONALE FOR REGULATION

State intervention in project transfers is commonly defended in general terms. It is more instructive to ask which risks the intervention is meant to absorb, and who would otherwise bear them. Four sets of considerations can be identified.

¹¹ Law on Real Estate Business 2023 (n 1).

¹² Civil Code 2015 (Law No 91/2015/QH13).

¹³ Law on Real Estate Business 2023 (n 1).

¹⁴ Law on Enterprises 2020 (Law No 59/2020/QH14).

A. Public-law risk: land held in trust for the entire people

In Vietnam land is owned by the entire people, with the State acting as owner's representative and exercising unified management. A developer's land-use rights arise from decisions on land allocation, land lease or change of land-use purpose tied to a specific project.¹⁵ When the developer wishes to withdraw, the State has a legitimate interest in examining whether the incoming party can use the land for the proper purpose, in accordance with planning and within the required timeline. Without that examination the risk of unused or misused land would fall on the public.

B. Market risk: speculation and project trading

If developer status could be bought and sold freely, some actors might seek land allocation or lease through preferential or non-competitive mechanisms and then resell the project to capture price differentials without making any investment. This diverts differential land rent that belongs to the State and society and pushes up real estate prices. Conditions requiring the transferor to complete compensation and site clearance and to perform its land-related financial obligations are the tools designed to limit this phenomenon.¹⁶

C. Private-law risk: buyers, lenders and contractors

A project under implementation is tied to many private actors: buyers of off-plan housing, credit institutions holding mortgages, construction contractors, and persons whose land has been recovered and who await resettlement. A change of developer may affect the capacity to honour commitments to each of them. The principle of protecting the lawful rights and interests of customers and related parties is accordingly a foundational requirement of the regime.¹⁷

D. The efficiency counterweight

Against these protective rationales stands the interest in letting resources move to those who can use them better. Project transfers are an important tool for corporate restructuring, bad-debt resolution and the unblocking of stalled projects. State intervention must therefore be proportionate: sufficient to contain the risks above, but not so burdensome that the permission procedure becomes an administrative barrier that destroys the viability of the transaction. The balance between control and flexibility is the benchmark against which the Vietnamese rules

¹⁵ Land Law 2024 (n 3).

¹⁶ Law on Real Estate Business 2023 (n 1); 'New Points of the Law on Real Estate Business 2023' (n 10).

¹⁷ Law on Real Estate Business 2023 (n 1).

are assessed in the remainder of this article.

IV. THE VIETNAMESE REGIME: EVOLUTION AND CURRENT DESIGN

A. From the 2006 Law to the 2023 Law

The Law on Real Estate Business 2006 first recognised the transfer of entire projects for new urban areas, housing areas and industrial park infrastructure. Its scope was narrow, it did not allow partial transfers and its conditions were general. The Law on Real Estate Business 2014 expanded the regime considerably by devoting a section (articles 48 to 51) to the transfer of all or part of a project, setting out principles, conditions, competent authorities, procedures and the rights and obligations of the parties.¹⁸ A key condition was that the project or transferred component must hold a land-use right certificate. That condition promoted legal certainty but created difficulties for projects that had been allocated or leased land and had not yet received certificates because of procedural obstacles.

The Law on Real Estate Business 2023 keeps the structure of its predecessor but changes its emphasis. Articles 39 to 43 address the principles of transfer, the conditions, the competent authorities, the procedures and the rights and obligations of the parties.¹⁹ The new law no longer rigidly requires a land-use right certificate and accepts cases in which the developer holds a land allocation or land lease decision and has performed its financial obligations. It adds conditions on the legal status of the project, such as the absence of distraint or suspension and the continuation of the implementation period, and conditions on the capacity of the transferee.²⁰ The Law on Investment 2025 maintains a cross-referencing approach under which the transfer of an investment project must satisfy the conditions laid down in land, housing and real estate business legislation.²¹ The consistent direction is to broaden the scope of transfers and improve their feasibility while moving the focus of control from documents to the substantive legal status of the project and the actual capacity of the transferee.

B. Gatekeeping conditions in three layers

Article 40 of the Law on Real Estate Business 2023 organises the conditions of transfer in three layers.²² Each layer corresponds to one of the risks identified in Part III.

¹⁸ Law on Real Estate Business 2014 (Law No 66/2014/QH13), arts 48–51.

¹⁹ Law on Real Estate Business 2023 (n 1), arts 39–43.

²⁰ 'New Points of the Law on Real Estate Business 2023' (n 10).

²¹ Law on Investment 2025 (n 7), art 34.

²² Law on Real Estate Business 2023 (n 1), art 40.

The first layer concerns the object. The competent authority must have decided or approved the investment policy or approved the investment; a detailed plan must have been approved; compensation, support and resettlement must have been completed for the project or transferred component; the land-use rights must not be in dispute or subject to distraint for judgment enforcement; the project must not have been suspended or terminated or be subject to a land recovery decision; it must remain within its implementation period; and any mortgage over the project or component must have been discharged before transfer.²³ For a partial transfer, the transferred component must be sufficiently independent to be implemented and operated.²⁴ The purpose is to ensure that what is transferred is legally clean.

The second layer concerns the transferor. It must hold a land allocation or land lease decision and must have performed its financial obligations on land-use levies, land rent and land-related taxes, fees and charges for the transferred project or component.²⁵ The purpose is to prevent exit before accounts with the State are settled.

The third layer concerns the transferee. It must be a real estate business enterprise meeting article 9 of the Law on Real Estate Business 2023, established under enterprise law with a real estate business line and not banned or suspended from operation. Its equity capital must be no less than 20% of total investment capital for projects using less than 20 hectares of land and no less than 15% for projects using 20 hectares or more. It must also keep prescribed ratios of outstanding loans and corporate bonds to equity and must undertake to continue investment, construction and business in accordance with the approved project content.²⁶ Where the transferee is a foreign investor, market-access conditions under investment law also apply.²⁷ The purpose is to ensure that the project passes to a capable successor.

C. Permission, procedure and succession

Article 39 states the governing principles. A developer may transfer all or part of a project to another developer for continued investment and construction; the transfer must not change the planning or objectives of the project and must protect the lawful rights and interests of related parties; and the transferee succeeds to the rights and obligations of the transferor without redoing the project dossier if the project content is unchanged.²⁸ The rule against changing

²³ Law on Real Estate Business 2023 (n 1), art 40; 'New Points of the Law on Real Estate Business 2023' (n 10).

²⁴ 'New Points of the Law on Real Estate Business 2023' (n 10).

²⁵ 'New Points of the Law on Real Estate Business 2023' (n 10).

²⁶ Law on Real Estate Business 2023 (n 1), arts 9 and 40.

²⁷ Law on Investment 2025 (n 7).

²⁸ Law on Real Estate Business 2023 (n 1), art 39.

objectives and planning reflects the view that a transfer substitutes the implementing party and is not an opportunity to redesign the project.

Under article 41, the authority to permit a transfer follows the level that approved the investment policy: the Prime Minister for projects whose investment policy was decided or approved at that level, and provincial People's Committees for other projects.²⁹ Article 42 of the Law and articles 10 and 11 of Decree No 96/2024/ND-CP regulate dossiers and procedures.³⁰ The transferor submits a dossier to the provincial People's Committee or the designated provincial real estate management agency, and the review period is 45 days for projects within the Prime Minister's authority and 30 days for projects within the authority of provincial People's Committees, counted from receipt of a complete and valid dossier. The lead agency consults bodies such as those responsible for construction, finance, agriculture and environment, and tax. Once permission is granted, the parties sign the transfer contract, hand over the project, perform the resulting financial obligations, complete land procedures and publicly disclose the transfer.

Article 43 allocates the parties' duties. The transferor must hand over the rights, obligations and complete documentation, cooperate with the transferee in land procedures, perform financial obligations to the State and notify customers and related parties. The transferee holds the right of succession and must continue the project in accordance with the approved schedule and content and honour the commitments the transferor made to customers.³¹ The mechanism is intended to ensure that no gap in responsibility opens when the developer changes. Decree No 54/2026/ND-CP amended several provisions of Decree No 96/2024/ND-CP, mainly on real estate trading floors, apartment building management and the reduction of documentary requirements, but left the basic structure of the transfer procedure untouched.³² This suggests that reform of the transfer procedure is being addressed at the level of statute rather than only through decrees.

D. Interfaces with investment, land, enterprise and tax law

Project transfers lie at the intersection of several fields of law, so the effectiveness of regulation depends on consistency among statutes. Article 34 of the Law on Investment 2025 permits investors to transfer all or part of an investment project if the project is not subject to termination, any foreign transferee meets market-access conditions and the transfer complies

²⁹ Law on Real Estate Business 2023 (n 1), art 41.

³⁰ Law on Real Estate Business 2023 (n 1), art 42; Decree No 96/2024/ND-CP (n 5), arts 10–11.

³¹ Law on Real Estate Business 2023 (n 1), art 43.

³² Decree No 54/2026/ND-CP (n 6).

with land, housing and real estate business legislation; article 46 of the Law on Investment 2020 took a similar approach.³³ Investment law thus functions as the general law and real estate business law as the specialised law. A project transfer also entails a change of land user, so that the transferee must complete land allocation, land lease or registration of changes under the Land Law 2024.³⁴ Finally, tax law supplies the financial consequences, and it is here that guidance has proved least stable, as Part V explains.

V. WHERE THE REGIME STRAINS

The regime described above is relatively comprehensive on paper. Five stress points emerge when it is applied. Table 1 first shows why one of them, the choice of transaction route, matters so much.

Table 1: Routes to changing control of a project and their regulatory fit

Route	Governing rules	Control applied by the State	Residual gap
Transfer of all or part of a project	Arts 39–43, Law on Real Estate Business 2023; Decree No 96/2024/ND-CP; Art 34, Law on Investment 2025	Prior permission decision; examination of project status, transferor obligations and transferee capacity	Open-textured criteria; overlapping investment and land procedures; mortgaged projects
Transfer of shares or capital contributions in the project company	Law on Enterprises 2020	Mainly registration of changes in enterprise information; no permission as for a project transfer	No notification of changes of control; capacity requirements may be bypassed
Business cooperation or capital contribution in the form of land-use rights	Civil Code 2015; Law on Investment; Land Law 2024	Depends on the form adopted; project amendment may be required	Original developer remains; disputes over profit sharing and responsibility; risk of disguised transfers

³³ Law on Investment 2025 (n 7), art 34; Law on Investment 2020 (Law No 61/2020/QH14), art 46.

³⁴ Land Law 2024 (n 3).

A. Open-textured thresholds

Many transfer conditions rely on concepts such as protecting the lawful rights and interests of related parties, not changing project objectives and ensuring that a transferred component is independent. The law gives no specific criteria for deciding what change in project content requires a new dossier or when a component is sufficiently independent.³⁵ Similar dossiers may therefore be handled differently across localities, raising compliance costs and legal risk for enterprises and leaving room for discretion by reviewing authorities. The condition that the project remains within its implementation period is applied formally in the same way. A project with only a few months left before its deadline still qualifies, yet the transferee can hardly complete the remaining works in that time and must seek an extension immediately after the transfer.³⁶

B. The mortgage deadlock

The requirement that a mortgage be discharged before transfer is meant to protect both mortgagees and transferees. In practice, though, the usual reason for a developer to seek a transfer is financial distress, and the project is typically collateral for loans from credit institutions. The developer lacks the funds to repay the debt and discharge the mortgage, while the transferee is willing to pay only once the mortgage has been discharged. The result is a circular problem that prevents the mechanism from working as a tool for bad-debt resolution and project restructuring.³⁷

C. Dual-track procedures

Although the law prescribes review periods of 30 or 45 days, the time actually needed to complete a transfer is often much longer. Consultation with several agencies, together with the parallel or sequential performance of investment project amendment, land procedures and the determination of financial obligations, extends the process. A change of investor may still require an amendment of investment policy approval or investor approval under investment law, which leaves two procedures with overlapping subject matter.³⁸ For projects within the Prime Minister's authority, dossiers must pass through the provincial level and the ministries before reaching the Prime Minister. The concentration of authority at the central level for large

³⁵ Nguyen Thi Minh Thu, 'Law on Real Estate Project Transfers: Current Situation and Recommendations for Improvement' *Vietnam Lawyers Magazine* (11 December 2025) <<https://lsvn.vn/phap-luat-ve-chuyen-nhuong-du-an-bat-dong-san-thuc-trang-va-kien-nghi-hoan-thien-a167006.html>>.

³⁶ Nguyen Thi Minh Thu (n 35).

³⁷ Nguyen Thi Minh Thu (n 35).

³⁸ Nguyen Thi Minh Thu (n 35).

projects is one reason the Government has proposed vesting the entire approval authority in provincial People's Committees.³⁹

D. The share-transfer bypass

As Table 1 indicates, a transfer of shares or capital contributions in a project company can produce economic results equivalent to a project transfer without any permission procedure, because the developer formally remains the same.⁴⁰ Economically this is a lawful and efficient channel for mergers and acquisitions. From a regulatory perspective, however, it may be used to avoid the transferee capacity requirements and disclosure obligations. Current law has no notification or disclosure mechanism for changes of control over enterprises that are developers of real estate projects. The State and homebuyers may consequently be unaware that the party actually managing the project has changed, and the financial capacity requirements in articles 9 and 40 of the Law on Real Estate Business 2023 may be deprived of practical effect.

E. Tax uncertainty and thin deterrence

Two further difficulties concern the financial and enforcement environment. On tax, guidance issued by tax authorities at different times has differed on whether project transfers must be declared and made subject to value-added tax, which creates risk for enterprises in fixing transfer prices and estimating transaction costs.⁴¹ On enforcement, transfers that fail to meet the conditions or procedures, and disguised transfers through investment cooperation contracts, are mainly met with administrative sanctions whose fines are not commensurate with the unlawful gains obtained.⁴² Information on projects eligible for transfer, on permission decisions and on implementation after transfer has also not been fully integrated into the housing and real estate market information system, which limits oversight by society and by credit institutions.

VI. COMPARATIVE AND REFORM PERSPECTIVES

A. China: quantified investment thresholds

China, which also maintains State ownership of urban land, offers a quantitative approach. Its Urban Real Estate Administration Law allows land-use rights granted for real estate development to be transferred only once the full land grant premium has been paid, a land-use

³⁹ 'Proposal to Authorize Provincial People's Committees' (n 8).

⁴⁰ Law on Enterprises 2020 (n 14).

⁴¹ Nguyen Thi Minh Thu (n 35).

⁴² Nguyen Thi Minh Thu (n 35).

right certificate has been obtained and at least 25% of the total development investment has been completed.⁴³ A numerical criterion of this kind separates genuine investors from those merely holding land and narrows administrative discretion. It cannot be adopted wholesale because market structures differ, but it is a useful reference for converting the qualitative conditions of Vietnamese law into verifiable indicators.

B. The 2026 draft amendments and decentralisation

The draft amended Law on Real Estate Business was reviewed by the Standing Committee of the National Assembly on 29 July 2026. A notable proposal is to vest the entire authority to permit real estate project transfers in provincial People's Committees, rather than dividing it between the Prime Minister and the provinces as at present. During the review, concerns were raised about inter-provincial projects and projects involving national defence or security.⁴⁴ The proposal is consistent with the policy of decentralisation and the two-tier local government model, but decentralisation relocates risk and does not remove it. It should be accompanied by mechanisms to control power, uniform review criteria and clear local accountability.

VII. RECOMMENDATIONS

The measures below are grouped by the stress points identified in Part V. Several can be begun through implementing decrees, but those touching the allocation of authority, mortgaged projects and sanctions need a statutory footing, and the pending amendment of the Law on Real Estate Business is the natural vehicle.

1. *Replace open-textured tests with verifiable indicators.* The law or an implementing decree should specify which changes in project content require a new dossier, for example changes in objectives, land area, planning indicators or product mix beyond stated thresholds, and should set criteria for the independence of a transferred component in technical infrastructure, connectivity and operation. Minimum thresholds for completed site clearance or invested capital could be considered for certain types of project, in order to distinguish genuine investors from speculative holders.
2. *Fuse the two permission tracks.* A decision permitting a project transfer should also serve as the basis for changing the investor under investment law, within a one-dossier, one-contact-point procedure. The amended Law on Real Estate Business and the

⁴³ Urban Real Estate Administration Law of the People's Republic of China (1994, as amended 2019).

⁴⁴ 'Proposal to Authorize Provincial People's Committees' (n 8).

regulations implementing the Law on Investment 2025 should contain consistent cross-references on sequence and lead agency.

3. *Pair decentralisation with safeguards.* If approval authority is vested entirely in provincial People's Committees, large-scale, inter-provincial and defence- or security-related projects should require mandatory consultation with the relevant ministry before the provincial decision. Permission decisions should be published on the national housing and real estate market information system, and the Ministry of Construction should carry out periodic post-inspection.
4. *Create a lawful path for mortgaged projects.* The law could permit the transfer of a mortgaged project where the mortgagee consents in writing and a tripartite agreement fixes the payment arrangement, under which the transfer price is applied first to the secured debt or the transferee assumes the secured obligation.⁴⁵ This would protect credit institutions while turning transfers into a genuine tool for debt resolution and project recovery.
5. *Make changes of control visible without requiring permission.* Not every share transfer should be treated as a project transfer, since that would obstruct lawful mergers and acquisitions. Where a transaction changes control over the developer of an ongoing project, however, the enterprise should notify the provincial real estate management authority and disclose the change to customers, so that the authority can verify continued compliance with the financial capacity requirements of article 9.
6. *Bind transferee commitments to money.* Deposits or performance guarantees should be considered for transferees, particularly where many project components remain uninvested or the remaining implementation period is short,⁴⁶ so that the undertaking to continue the project rests on concrete financial obligations and not on a written promise alone.
7. *Settle the private-law and fiscal loose ends.* The law should state when a transfer contract takes effect and what follows if the permission decision is annulled or the handover is not completed. Tax guidance on value-added tax, corporate income tax and the determination of the transfer price as tax base should be harmonised and kept stable over time.
8. *Make sanctions proportionate and transparent.* Fines for unlawful or disguised transfers should reflect the scale of the transaction and the unlawful gains obtained and

⁴⁵ Nguyen Thi Minh Thu (n 35).

⁴⁶ Nguyen Thi Minh Thu (n 35).

should be accompanied by remedial measures such as disgorgement of unlawful profits and disqualification from acting as developer of new projects for a specified period. Information on transferable projects, permission decisions and post-transfer implementation should be integrated into the market information system.

VIII. CONCLUSION

The transfer of a real estate project occupies a special position between freedom of business and the State's authority over land. It transfers property, rights and obligations at once, substitutes one developer for another and remains subject to prior administrative control. This article has argued that the justification for that control is best understood in terms of risk: the public risk attached to land owned by the entire people, the market risk of speculation, the private risk borne by buyers, lenders and contractors, and, pulling the other way, the cost of immobilising resources that could be put to better use.

The Law on Real Estate Business 2023 and Decree No 96/2024/ND-CP have built a relatively comprehensive framework that improves on the 2014 Law by dropping the rigid certificate requirement and by adding conditions on the legal status of projects and the capacity of transferees. Practice nevertheless shows that some conditions remain qualitative, that procedures overlap across statutes, that the position of mortgaged projects is unworkable, that share transfers linked to projects go unmonitored, and that tax treatment is inconsistent and sanctions weak.

The draft amendments of 2026 offer an important opportunity to address these problems. The appropriate course is neither simple liberalisation nor simple tightening, but a redesign built on verifiable criteria, consolidated procedures, decentralisation accompanied by control, transparent information and proportionate sanctions. Further research should test these proposals against empirical data on transfer applications once such data become available. Properly designed, the regime can turn project transfers into an effective means of reallocating resources and unblocking stalled projects, and so contribute to a safe, healthy and sustainable real estate market.