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Security Without Freehold: Transferable Land Use Rights and Land Market Development in Vietnam

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ABSTRACT

This article argues that security of land rights is a matter of function, not form. Vietnam's transferable land use right supplies much of that function without freehold, but its security depends on two relations: against private parties, through continuity and registered transfer; and against public power, through the protection of value and the availability of remedy. The first is strong yet conditional; the second is the weaker, because the holder's protection turns on how the State values and compensates, and the State, within statutory limits, also decides whether to recover. Land market development in Vietnam is therefore constrained less by the absence of freehold than by the rules through which the State recovers, values and compensates land. The argument applies a four-criterion framework to the Constitution of 2013, the Civil Code of 2015, the Land Law of 2024 and the Law on Real Estate Business of 2023, and tests the criterion of continuity against leasehold in China and Hong Kong. It proposes three reforms within Articles 53 and 54: independent valuation decisions, disclosed valuation data and judicial testing of prices.

Keywords: *land use rights, security of tenure, land recovery, land valuation, Vietnam, leasehold*

I. INTRODUCTION: A QUESTION OF FUNCTION, NOT FORM

A land right is secure when its holder can keep it, use it, transfer it and defend its value against those who would take it. Whether the holder is called an owner is a separate question. Vietnam makes that separation unusually visible.

Under Article 53 of the Constitution of 2013, land belongs to the entire people and the State acts as the owner's representative.¹ No private person holds land in freehold. Yet the Civil Code of 2015 classifies the land use right as a property right,² and the Land Law of 2024 allows its holders to transfer, lease, bequeath, give, mortgage and contribute it as capital.³ For residential

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¹ CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM art. 53 (2013) [hereinafter VIET. CONST.].

² Civil Code No. 91/2015/QH13, art. 115 (2015) (Viet.) [hereinafter Civil Code 2015].

³ Law on Land No. 31/2024/QH15, art. 27 (2024) (Viet.) [hereinafter Land Law 2024].

land the right carries no fixed term.⁴ A right that is tradable, registrable and open-ended in time has many of the attributes that make freehold valuable.

The same legal order gives the State a power that no private party holds. Article 54(3) of the Constitution permits recovery of land where it is truly necessary, on grounds fixed by law, and provides for compensation as the law prescribes.⁵ The State organs that exercise that power also take part in fixing the price on which compensation rests. A land use right therefore faces two different counterparties. Against private parties, its strength lies in continuity and registered transfer. Against public power, its strength lies in the protection of value and in the availability of remedy.

This article argues that security of land rights is a matter of function, not form. Vietnam's transferable land use right supplies much of that function without freehold, but its security depends on two relations: against private parties, through continuity and registered transfer; and against public power, through the protection of value and the availability of remedy. The first is strong yet conditional; the second is the weaker, because the holder's protection turns on how the State values and compensates, and the State, within statutory limits, also decides whether to recover. Land market development in Vietnam is therefore constrained less by the absence of freehold than by the rules through which the State recovers, values and compensates land.

The claim is legal and structural. It concerns the conditions that law sets for a land market, not the volume or price of the transactions that follow. It also stays inside the constitutional principle of Article 53: the reforms it supports change the rules that govern State action over land, and they leave the identity of the owner untouched. Much of the titling literature asks what registration does for holders. This article asks who fixes the value of a holder's right when the State takes it, and by what rules.

II. SECURITY OF LAND RIGHTS AS FUNCTION: A TWO-RELATION FRAMEWORK

The tenure-security literature locates security in what a right allows and in who can interfere with it, not in a single form of title. Feder and Feeny treat property rights as institutions that reduce uncertainty over who may do what with a resource, and they separate the quality of a right from the form of ownership.⁶ Besley distinguishes three channels through which rights affect behaviour, namely protection against expropriation, use of land as collateral and gains

⁴ Land Law 2024, art. 171(1).

⁵ VIET. CONST. art. 54(3).

⁶ Gershon Feder & David Feeny, *Land Tenure and Property Rights: Theory and Implications for Development Policy*, 5 WORLD BANK ECON. REV. 135, 136–37 (1991), <https://doi.org/10.1093/wber/5.1.135>.

from trade.⁷ De Soto's argument concerns the formal recording of rights: rights that are recorded and enforceable can be represented, transferred and pledged, and so become assets that strangers can trust.⁸

The empirical record warns against treating any one instrument as sufficient. Deininger and Feder find that registration depends on governance and complementary conditions, with limited evidence of better credit access.⁹ A systematic review by Lawry and co-authors finds context-dependent benefits but no evidence for a credit mechanism.¹⁰ For Vietnam, Do and Iyer relate the certification that followed the 1993 reform to changes in crop choice and labour allocation,¹¹ and Markussen, Tarp and Van Den Broeck show that crop-choice restrictions constrain diversification and increase household labour input.¹² Deininger and Jin study sales and rental markets in use rights in rural Vietnam.¹³ These studies concern rural land under earlier reforms and cannot be extended to the Land Law of 2024. They show that the content of the use right, and not only its documentation, shapes holders' behaviour. A legal assessment must therefore examine content: term, transferability, protection on recovery and remedy.

Two features of freehold systems show why form is a poor guide. First, the fee simple of English law is an estate held within a tenurial structure, so the holder of what is called ownership in everyday speech holds an estate in land and not the land itself.¹⁴ Second, compulsory acquisition belongs to the sovereign power and not to the State as owner. Freehold systems have it, and in the United States the Fifth Amendment conditions it on just compensation for property taken for public use.¹⁵ What differs between systems is the grounds for taking, the procedure and the standard of compensation, which constitutions, statutes and case law shape.

⁷ Timothy Besley, *Property Rights and Investment Incentives: Theory and Evidence from Ghana*, 103 J. POL. ECON. 903, 906–07 (1995), <https://doi.org/10.1086/262008>.

⁸ HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (Basic Books 2000); Hernando de Soto, *The Mystery of Capital*, FIN. & DEV., Mar. 2001 (section "Potential energy in assets"), <https://www.imf.org/external/pubs/ft/fandd/2001/03/desoto.htm>.

⁹ Klaus Deininger & Gershon Feder, *Land Registration, Governance, and Development: Evidence and Implications for Policy*, 24 WORLD BANK RSCH. OBSERVER 233, 255–56 (2009), <https://doi.org/10.1093/wbro/lkp007>.

¹⁰ Steven Lawry et al., *The Impact of Land Property Rights Interventions on Investment and Agricultural Productivity in Developing Countries: A Systematic Review*, 9 J. DEV. EFFECTIVENESS 61 (2017), <https://doi.org/10.1080/19439342.2016.1160947>.

¹¹ Quy-Toan Do & Lakshmi Iyer, *Land Titling and Rural Transition in Vietnam*, 56 ECON. DEV. & CULTURAL CHANGE 531 (2008), <https://doi.org/10.1086/533549>.

¹² Thomas Markussen, Finn Tarp & Katleen Van Den Broeck, *The Forgotten Property Rights: Evidence on Land Use Rights in Vietnam*, 39 WORLD DEV. 839 (2011), <https://doi.org/10.1016/j.worlddev.2010.09.016>.

¹³ Klaus Deininger & Songqing Jin, *Land Sales and Rental Markets in Transition: Evidence from Rural Vietnam*, 70 OXFORD BULL. ECON. & STAT. 67 (2008), <https://doi.org/10.1111/j.1468-0084.2007.00484.x>.

¹⁴ Law of Property Act 1925, 15 & 16 Geo. 5 c. 20, § 1(1) (Eng.) (recognising the fee simple absolute in possession and the term of years absolute as legal estates in England and Wales).

¹⁵ U.S. CONST. amend. V.

The use right is therefore assessed by function, along two relations and with four criteria. The relations organise the analysis. Against private parties, the question is whether anyone can displace the holder or defeat a transfer. Against public power, the question is whether the State's decisions on allocation, term, recovery and valuation leave the holder's value intact. The criteria are the instruments of assessment: continuity of the right in term and extension; effect of registration and transfer; protection of value on recovery; and availability of remedy. They do not divide into one pair for each relation, because term, extension and registration also depend on public decisions. The FAO Voluntary Guidelines give a general orientation of the same kind: they call on States to recognise and protect legitimate tenure rights whatever the form of tenure.¹⁶

Land market development is defined here narrowly, as the set of legal conditions under which land rights can be traded formally, reallocated to other users and uses, held at manageable transaction cost and valued without loss when the State intervenes. A rise in land prices does not by itself show a developed market, so the definition leaves price movements aside. The ranking of the two relations is likewise structural. In the private relation, the holder invokes rules against a counterparty, and the State stands as registrar and adjudicator. In the public relation, the State is the counterparty, and it also takes part in supplying the valuation on which the holder's compensation depends. Protection is weaker where the party that takes also takes part in fixing the value of what it takes.

III. THE LAND USE RIGHT IN THE CONSTITUTIONAL AND STATUTORY ORDER

The Constitution fixes the principles and leaves the statutes to supply the detail. Article 53 vests land in the entire people under unified State management, with the State as the owner's representative. Article 54 recognises that land users may be allocated or leased land and may transfer their use rights in accordance with law, and it allows the State to recover land only where truly necessary, on grounds fixed by law, through a public and transparent process, with compensation as the law provides.¹⁷ The standard of that compensation is left to statute. The Constitution does use a market-price standard elsewhere, for the requisition and compulsory purchase of property under Article 32(3), but it does not apply that standard in terms to the recovery of land.¹⁸ The choice of standard for land therefore belongs to the legislature, which can adjust it without touching Article 53, provided it respects the guarantees of Article 54.

¹⁶ FOOD & AGRIC. ORG. OF THE U.N., VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY paras. 2.4, 3.1(1), (2), (4) (first rev. 2022), <https://doi.org/10.4060/i2801e>.

¹⁷ VIET. CONST. arts. 53, 54(2)–(3).

¹⁸ VIET. CONST. art. 32(3).

The Civil Code of 2015 places the land use right within the general law of property. Article 115 classifies it as a property right, which brings it within the Code's general rules on property rights and transactions. Article 267 separately recognises the surface right, which Article 159(2)(c) places among the other rights over property and Article 269 makes effective against all persons: a limited right *in rem*. The land use right is the holder's principal right in the land, and the Land Law determines its content.¹⁹

The Land Law of 2024 supplies that content. Article 27 lists the rights of land users, among them transfer, lease, inheritance, gift, mortgage and contribution of capital, and Article 45 conditions the exercise of those rights on more than a certificate.²⁰ Continuity depends on the rules of term. Article 171(1) classifies residential land as land used on a stable, long-term basis, so the right has no end date, while Article 172 governs land used for a limited term and distinguishes the continued use of agricultural land from extension on application.²¹ Stability without a term is not immunity from recovery.

The Law on Real Estate Business of 2023 adds a second layer that must be kept apart from the first. Articles 28 to 38 govern the business of land use rights in plots with completed technical infrastructure within a project. Articles 39 to 43 govern the transfer of a real estate project, in whole or in part.²² The first governs dealings in such land use rights, including lease and sublease as well as transfer, and the second moves the project together with the obligations that attach to it. Both operate on the land use right, but their content differs, and any assessment of security has to identify which regime applies.

The architecture thus places the strength of the use right in private law, in the Civil Code and the Land Law, and its exposure in public law, in Article 54(3) and in the Land Law's list of grounds for recovery. Article 79 specifies recovery for socio-economic development in the national or public interest, and other grounds sit in Articles 78, 81 and 82, so recovery is a power with legal limits.²³ The National Assembly controls the list in Article 79: clause 32 admits other cases only where the Assembly amends Article 79 under a shortened procedure.²⁴ The list is nonetheless not closed in the absolute, since Resolution 254/2025/QH15 adds the recovery of

¹⁹ Civil Code 2015, arts. 115, 159(2)(c), 267, 269 (second paragraph).

²⁰ Land Law 2024, arts. 27, 45.

²¹ Land Law 2024, arts. 171(1) (residential land classified for stable, long-term use), 172(1)(a)–(c), (3) (land used for a limited term; continued use of agricultural land distinguished from extension on application).

²² Law on Real Estate Business No. 29/2023/QH15, arts. 28–38, 39–43 (2023) (Viet.) (arts. 28–38: business of land use rights in plots with completed technical infrastructure within a real estate project; arts. 39–43: transfer of all or part of a real estate project and the associated rights and obligations).

²³ Land Law 2024, art. 79 (recovery for socio-economic development in the national or public interest); *id.* arts. 78, 81, 82 (other grounds of recovery).

²⁴ Land Law 2024, art. 79(32).

the remaining area of a project carried out through agreements to receive land use rights.²⁵ What remains open is how the holder's value is protected once a ground is met.

IV. PRIVATE RELATIONS: CONTINUITY AND REGISTERED TRANSFER

Against private parties the use right is strong but conditional, and the conditions are the point at which the market bears administrative risk. Continuity is the strongest element. Article 171(1) of the Land Law of 2024 classifies residential land as land used on a stable, long-term basis, so no term expires and no extension has to be sought. Land under Article 172 is held for terms, and with mechanisms of continuation, that differ by group, and its continuity depends on those rules.²⁶

Transfer is a different matter. The Land Law authorises it, but its exercise depends on form and on conditions. Article 27(3)(a) requires notarisation or authentication of contracts for transfer, gift, mortgage and contribution of capital by land use right, and Article 27(3)(b) provides for notarisation or authentication on request in the case of lease, sublease and exchange of agricultural land, and in the case of transfer and contribution of capital where one party is a real estate business organisation.²⁷ Article 45(1) then makes the exercise of the rights depend on a certificate, with exceptions; on land being free of dispute, or the dispute having been resolved by an effective decision; on land not being under attachment or an enforcement security measure; on the term still running; and on the absence of a provisional urgent measure.²⁸ Later paragraphs of the article add conditions for particular cases.

Registration decides when a transfer takes effect. Under Article 503 of the Civil Code of 2015, the transfer of a land use right takes effect from the moment of registration. Two questions must therefore be kept apart: whether the contract is valid and when the transfer takes effect. The rule on registration belongs to the Civil Code and to the Land Law's chapter on registration, and it should not be read into Articles 27(3) or 45(1), which concern form and conditions.²⁹ Articles 131 to 135 of the Land Law regulate the principles of registration, first registration, registration of changes, the certificate and the principles for issuing it.³⁰

The law also contains one narrow rescue for defects of form. Article 129(2) of the Civil Code allows a court, on the request of a party, to recognise a written transaction that breaches

²⁵ Resolution No. 254/2025/QH15 of the National Assembly, art. 3(2)(b) (Dec. 11, 2025) (Viet.) [hereinafter Resolution 254].

²⁶ Land Law 2024, arts. 171(1) (residential land classified for stable, long-term use), 172(1)(a)–(c), (3) (land used for a limited term; continued use of agricultural land distinguished from extension on application).

²⁷ Land Law 2024, art. 27(1), (3)(a)–(b).

²⁸ Land Law 2024, art. 45(1).

²⁹ Civil Code 2015, art. 503.

³⁰ Land Law 2024, arts. 131–135.

mandatory notarisation or authentication rules where a party has performed at least two thirds of its obligations. Recognition is a decision of the court, and validity does not arise automatically.³¹ Precedent 55/2022/AL applied the rule to contracts for the transfer of land use rights concluded before 1 January 2017 without notarisation or authentication, where the transferee had performed at least two thirds of its obligations.³² Judicial recognition cures the formal defect; it does not dispense with registration of the transfer under Article 503.³³ The rescue is a rule that the legislature wrote, and it is narrow in its conditions and in time. It shows that the law itself treats form as a cost to be allocated.

The conditions fall into two kinds. The first kind protects the function of a market: absence of dispute, absence of attachment, a term still running and registration. Each removes a risk that a transferee would otherwise bear against third parties, and a market without them would price that risk into every transaction. The second kind moves administrative risk to the holder. The law makes the certificate, the registration and the notarisation or authentication conditions of exercise or of effect. Where the certificate is late, the registration is delayed or wrong, or the authentication fails at a stage controlled by a public authority, the transaction is delayed or defeated and the consequence falls on the parties. That allocation follows from the structure of the norms. It may also give parties a reason to complete the transaction outside the formal channel, a possibility that this article notes without measuring.

On the first two criteria, then, the use right is strong in continuity for residential land and strong in registered transfer once registration is complete, and it is conditional before that point. Conditional security in this relation is not cured by a different form of title. It is cured when the public acts that the law makes conditions are performed on time and without error.

V. PUBLIC POWER: RECOVERY, VALUATION AND REMEDY

Against public power the use right is the weaker, and the weakness lies less in the grounds for recovery than in who fixes the value that compensation protects. The grounds are limited. Article 78 permits recovery for national defence and security, and Article 79 for socio-economic development in the national and public interest. Other grounds of recovery, in Articles 81 and 82, lie outside the scope of this article.³⁴

³¹ Civil Code 2015, art. 129(2).

³² Precedent No. 55/2022/AL (Council of Judges of the Sup. People's Ct., adopted Sept. 7, 2022, published Oct. 14, 2022 by Decision No. 323/QĐ-CA) (Viet.), ¶ [6], at 6 (applying Civil Code 2015, arts. 129(2), 502(1), 688(1) (b), and Law on Land No. 45/2013/QH13, arts. 167(3)(a), 188(1) (2013) (Viet.)).

³³ Civil Code 2015, art. 503 (Công báo [Official Gazette] Nos. 1245–1246, at 33); Precedent No. 55/2022/AL, ¶ [6], at 6 (paragraph [6] belongs to the reasoning, not the holding).

³⁴ Land Law 2024, arts. 78, 79, 81, 82.

Article 79 lists thirty-one cases, and clause 32 leaves any further case to an amendment of the article by the National Assembly under a shortened procedure. The list has nonetheless been extended by resolution. Article 3(2)(b) of Resolution 254/2025/QH15 allows the provincial People's Council to approve the recovery of the remaining area of a project carried out through agreements to receive land use rights, so that the area can be allocated or leased to the investor, once the period for completing the agreements or its extension has expired and the project has reached more than 75 per cent of the area and more than 75 per cent of the land users.³⁵ The list is therefore controlled but not fixed, and a holder whose parcel lies within such a project can lose it without having agreed to transfer it.

Compensation is where the holder's value is protected or lost. Article 91(1) states the principles of compensation as democratic, objective, fair, public, transparent, timely and in accordance with law. Article 91(2) provides compensation in land of the same purpose of use and, where none is available, in money at the specific land price at the date of the decision approving the compensation plan, or by another option according to conditions.³⁶

Resolution 254/2025/QH15 changes the method. From 1 January 2026, the date on which it applies under Article 13(1), Article 3(6) calculates the amount of compensation from the land price table and an adjustment coefficient.³⁷ Under Article 7(4), the provincial People's Committee may choose the Resolution's mechanism or continue to determine specific prices under the Law for files in which no price had been decided before it took effect, and Article 3(13) provides that compensation plans already approved continue to be carried out while plans not yet approved follow the new mechanism.³⁸ Article 91(2) is therefore not the whole of the current rule, and the change alters how value is protected. A specific price is fixed for one parcel and one project, and the holder can argue the facts of that parcel. A table and a coefficient are fixed in advance for a class of land, which gives predictability, while the holder's room to argue about the parcel narrows to the application of the coefficient. Protection of value then depends on a prior question: who sets the table and the coefficient, and on what data.

The valuation rules already contain a principle of independence. Articles 158(1)(d) and 161(6) of the Land Law state it, and the rules separate three roles: the consultant who determines the price, the appraisal council that reviews it and the decision-maker. Under Article 160(2), the Chairperson of the People's Committee decides the specific land price.³⁹ Competence has

³⁵ Resolution 254, art. 3(2)(b).

³⁶ Land Law 2024, art. 91(1)–(2).

³⁷ Resolution 254, arts. 3(6), 13(1)–(2).

³⁸ Resolution 254, arts. 3(13)(a)–(c), 7(4)–(5).

³⁹ Land Law 2024, arts. 158(1)(d), 160(2), 161.

moved since 2024. Since 1 January 2026, Resolution 254 gives the provincial People's Council the decision on the table, the provincial People's Committee the annual coefficient and an appraisal council the review of both, and Decree 49/2026/NĐ-CP lays down transitional rules.⁴⁰

The law already requires independence among the consultant, the appraisal councils and the decision-maker (Article 158(1)(d)), but organisation does not secure it: the council is chaired by the Chairperson or a Vice-Chairperson of the People's Committee (Article 161(1)–(3)), and the Committee that recovers the land approves the plan (Article 87(3)(c)). The specific price and the coefficient rest with the People's Committee or its chairperson, the same executive hierarchy that carries out the recovery. The table is the exception to that allocation, because the Resolution gives it to the provincial People's Council and fixes it before any project is known. The coefficient, however, adjusts the figure for the parcel, and it stays with the executive. Independent advice and appraisal bind the decision only as inputs. The organ that takes thus also decides the value of what it takes, and this structural fact places protection of value on recovery below the strength of the private relation. It holds under the Land Law as enacted and under Resolution 254, and whether the price is specific or tabular. The Constitution leaves the standard of compensation to statute, so the allocation of the price decision can change within Article 53 and subject to the guarantees of Article 54.⁴¹

Remedy is the fourth criterion, and a route exists. Article 237(1)–(2) of the Land Law of 2024 allows complaint and litigation against decisions in the field of land. Article 87(3) adds steps inside the recovery procedure itself: the plan is posted at the commune People's Committee and the residential community, for thirty days under the Land Law as enacted and for ten days since Resolution 254/2025/QH15 took effect, and put to consultation and dialogue (point (a)), appraised before submission (point (b)) and approved by the People's Committee competent to recover the land (point (c)).⁴² The appraisal council under Article 161 is not an adjudicating body, and Article 161(6) asks it to act independently and objectively.

The general law supplies the procedural routes. Under the Law on Complaints, a person may choose between a complaint and direct litigation without having to complain first (Article 7), the time limit for complaint is ninety days from receipt or knowledge of the administrative decision or act, with periods of objective obstacle excluded (Article 9), dialogue is provided for

⁴⁰ Resolution 254, arts. 7(3), 8(2), 9(1); Land Law 2024, arts. 160(2), 161(1), (6); Decree No. 49/2026/NĐ-CP, arts. 16(2), 17(1), 19 (Jan. 31, 2026) (Viet.) [hereinafter Decree 49]; Decree No. 71/2024/NĐ-CP, art. 35(2)–(3) (June 27, 2024) (Viet.) [hereinafter Decree 71] (para. 3 as amended by Decree No. 226/2025/NĐ-CP, art. 1(15) (Aug. 15, 2025) (Viet.) [hereinafter Decree 226]).

⁴¹ VIET. CONST. arts. 32(3), 54(3).

⁴² Land Law 2024, arts. 87(3)(a)–(c), 161(6), 237(1)–(2); Resolution 254, art. 3(9)(b) (posting period of ten days; dialogue within thirty days of the consultation).

in Articles 30 and 39, and Article 35 allows implementation of the contested decision to be suspended.⁴³ Under the Law on Administrative Procedure, direct suit is available (Article 115), the ordinary limitation period is one year (Article 116), provisional urgent measures are available on conditions (Articles 66 to 69), and the court may annul an unlawful administrative decision (Article 193). First-instance jurisdiction now lies with the regional People's Courts.⁴⁴

The reach of these routes over valuation is narrower than their reach over its application. A holder can contest the price through the decision approving the compensation plan, an individual decision that directly affects the holder's rights, and the court can examine the price basis relevant to that decision under Articles 6 and 193 of the Law on Administrative Procedure. In Judgment No. 55/2022/HC-PT of 7 March 2022, the appellate court of the High People's Court at Da Nang upheld the annulment of a household-specific resettlement land-price decision and the associated resettlement plan because the applicable transitional rules had been misapplied.⁴⁵ The example shows that the route against the decision can reach the application of a specific price in one case. It does not show review of valuation data, and it does not represent practice in general. A consultant's report, the minutes of an appraisal council, and the general table and coefficients do not automatically count as separate objects of suit. No precedent or provision allows a separate suit against the table and coefficients or against valuation inputs. The route therefore reaches the application of a price to one parcel more readily than the data and models from which the price was built.

On the third criterion, then, the Land Law of 2024 offers principles and a price method that Resolution 254 now partly displaces. On the fourth, a route exists, but its reach over the data and models of valuation is narrower than its reach over the application of a price to one parcel. The two gaps concern one question, who decides the value and how that decision can be tested, and neither is a gap in the form of title.

⁴³ Law on Complaints No. 02/2011/QH13, arts. 7, 9, 30, 35, 39 (2011) (Viet.), *as consolidated in* Consolidated Text No. 28/VBHN-VPQH (Mar. 13, 2026).

⁴⁴ Law on Administrative Procedure No. 93/2015/QH13, arts. 6, 31(1)–(2), 66–69, 78(2), 84(2)(g), 93(2)–(3), 95(1)–(2), 115, 116, 193(1), (2)(b) (2015) (Viet.), *as consolidated in* Consolidated Text No. 13/VBHN-VPQH (2026) [hereinafter Law on Administrative Procedure]. Article 31(1)–(2) supports the first-instance jurisdiction of the regional People's Courts; Article 6 supports review of related documents within a suit and does not itself create a right to sue separately over price tables or coefficients.

⁴⁵ Judgment No. 55/2022/HC-PT (High People's Ct. at Da Nang Mar. 7, 2022) (Viet.), at 9–11 (affirming Judgment No. 71/2021/HC-ST (People's Ct. of Đắk Lắk Province Nov. 4, 2021)), <https://toaan.gov.vn/webcenter/ShowProperty?nodeId=%2FUCMServer%2FTAND285274>. The decision concerns a resettlement land price and is not evidence that the court fixed a market price or reviewed market data.

VI. TWO LEASEHOLD COMPARATORS: CHINA AND HONG KONG

Two leasehold systems test the criterion of continuity, without any claim to a general comparison. In China and Hong Kong, land is held for limited terms under grants from public authority, and the question is how each system carries the right past the end of its term.

In China, the Civil Code of 2020 addresses the end of the term in Articles 358 and 359. Article 358 provides that where land is recovered before the term expires in the public interest, the holder must be compensated for houses and other immovable property in accordance with Article 243, and the unused portion of the transfer fee must be refunded.⁴⁶ Article 359 provides that the land use right for construction of housing renews automatically when the term expires, and automatic renewal does not mean renewal without charge, since the payment, reduction or waiver of a renewal fee is governed by law and administrative regulation.⁴⁷ The automatic rule covers housing land only. For that land, continuity is a rule of the Code, and its cost is left to law and regulation.

In Hong Kong, the Extension of Government Leases Ordinance (Ordinance No. 14 of 2024, now Cap. 648) took effect on 5 July 2024. Under sections 12 and 13 of Cap. 648, eligible leases covered by an Extension Notice are extended for 50 years without additional premium, subject to statutory exclusions, with existing encumbrances generally continuing.⁴⁸ A lease qualifies only if it is covered by an Extension Notice, is not on the Non-extension List, is not a special-purpose lease and has not been validly opted out of extension. For non-exempt leases, annual Government rent is 3 per cent of the rateable value.⁴⁹ A future public-purpose requirement does not, by itself, justify withholding extension of a general-purpose lease; where land is needed, the Government recovers it and pays compensation.⁵⁰ Singapore's public-housing system includes Housing and Development Board (HDB) flats held on 99-year leases.⁵¹

⁴⁶ Minfadian (民法典) [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021) art. 358 (China) (official English translation, english.www.gov.cn, Dec. 31, 2020, at 64) [hereinafter PRC Civil Code].

⁴⁷ PRC Civil Code art. 359.

⁴⁸ Extension of Government Leases Ordinance, (2024) Cap. 648, §§ 3, 7–9, 12(1), (3), 13(1)(a), (3) (H.K.) (Ordinance No. 14 of 2024), <https://www.legco.gov.hk/yr2024/english/ord/2024ord014-e.pdf>.

⁴⁹ Rating & Valuation Dep't (H.K.), *Government Rent* (section "Percentage Charge"), https://www.rvd.gov.hk/en/our_services/government_rent.html (last visited Oct. 13, 2026).

⁵⁰ Lands Dep't (H.K.), *Lease Extension* (section "Policy for lease extension"), <https://www.landsd.gov.hk/en/land-disposal-transaction/extension.html?section=6076> (last visited Oct. 13, 2026).

⁵¹ Hous. & Dev. Bd. (Sing.), Annex A to News Release of July 2, 2022 on Additional Rehousing Options for Flat Owners, at 2, https://www.hdb.gov.sg/-/media/hdb-pulse/news/2022/hdb-offers-two-additional-rehousing-options-for-flat-owners-under-ser/Annex_A.pdf.

Three points follow. First, in both systems continuity beyond the term is secured by a rule of extension that the legislature has written, and the holder bears the cost of that continuity: a renewal fee left to law in China and annual Government rent in Hong Kong. Neither system makes continuity absolute. Hong Kong keeps statutory exclusions and the Non-extension List, and it deals with public use of land after expiry by recovery with compensation and not by refusal to extend; China permits recovery before the term ends under Article 358. Second, the Vietnamese position differs on this criterion. Article 171(1) of the Land Law of 2024 classifies residential land as land used on a stable, long-term basis, so there is no end date to extend and no renewal fee to pay on that account. That stability is not immunity from recovery, since Articles 78 and 79 operate on residential land as on any other use right.⁵²

Third, continuity and protection of value on recovery are separate axes. Leasehold shows that continuity can be secured without freehold. Article 358 shows that a system can set the compensation rules for early recovery apart from its renewal rules, refunding the unused portion of the fee. Hong Kong likewise handles public use of land after expiry by recovery with compensation and not by refusal to extend, which keeps the two axes apart. The Vietnamese residential right has continuity of an unusually strong kind, and that leaves the standard of compensation on recovery to be settled on its own terms. The comparison concerns the legal design of continuity. It supports no inference about the performance of either land market.

VII. REFORM PRIORITIES AND CONCLUSION

The debate over freehold is not the principal legal constraint on land market development in Vietnam, and the reform agenda should begin elsewhere. The priorities lie in the rules on recovery, valuation and compensation, and all of them can be adopted within Articles 53 and 54 of the Constitution. Three directions follow from the assessment above, each answering a gap identified there: the decision on price, the openness of valuation and the testing of the price in court. The second and third build on provisions already in force and aim to secure their performance.

First, the decision on the annual coefficient and on specific prices should rest with a body that does not also organise the recovery. Articles 158(1)(d) and 161(6) of the Land Law already require independence among consultant, council and decision-maker, but the recovering organ still approves the plan and decides the price.⁵³ A workable design builds on the fact that the provincial People's Council already decides the table (Article 7(3) of Resolution 254), while

⁵² Land Law 2024, arts. 78, 79, 171(1).

⁵³ Land Law 2024, arts. 158(1)(d), 161(6).

the annual coefficient rests with the provincial People's Committee.⁵⁴ The coefficient should move to the Council or to another body that does not organise recoveries, and specific prices should go to a valuation authority that does not organise them either. This would require amendment of Article 8(2) of Resolution 254/2025/QH15, which now assigns the annual coefficient to the provincial People's Committee. The Council is an imperfect choice, since under Article 3(2)(b) of the same Resolution it also approves certain recoveries. The proposal relies on the Council's deciding general rules in advance and not carrying out recoveries, and a complete separation would require a different independent valuation body. The allocation is a matter of design, and other arrangements could serve the same purpose.

Second, the file disclosed before approval should allow the person whose land is recovered to test the result. Disclosure is already required in part: the plan is posted and put to consultation and dialogue under Article 87(3)(a) of the Land Law, the detailed plan must state the land price and the assets compensated, and the explanatory report on the land price plan and the land price decision are published on an electronic portal.⁵⁵ Current rules do not fix when the whole file must be disclosed before the decision. The proposal is to require disclosure, before approval, of the input data, the comparable samples selected, the adjustments, the parameters and the method of calculation, so that the holder can check the figure that the consultant and the council actually used and not only the plan that applies it.

Third, the courts should standardise their examination of the technical basis of a price. The Law on Administrative Procedure already obliges the defendant to supply documents, provides for evidence, and allows the court to review legality and annul an unlawful decision.⁵⁶ The proposal is that a court hearing a challenge to the decision approving a compensation plan examine, as a matter of course, the data on which the price rests and the application of the table and the coefficient, and that the holder be able to obtain the price data at an early stage. No precedent yet requires a court to examine all comparable market data.

The strongest objection is that the table and the coefficient exist to give predictability and to lower transaction costs, and that a body independent of the recovering organ would slow them. Predictability, however, requires that the figures be fixed in advance and published. It does not require that the organ carrying out recoveries fix them. A table decided by the provincial People's Council before any project is known already meets the first requirement under

⁵⁴ Resolution 254, arts. 3(2)(b), 7(3), 8(2).

⁵⁵ Land Law 2024, art. 87(3)(a); Decree No. 88/2024/NĐ-CP, art. 3(2)(d) (July 15, 2024) (Viet.); Decree 71, arts. 14(2), 23(2)(b)–(d), 35(4) (para. 4 as amended by Decree 226, art. 1(15)); Decree 49, app., § III.2(d1)–(d3).

⁵⁶ Law on Administrative Procedure, arts. 78(2), 84(2)(g), 93(2)–(3), 95(1)–(2), 193(1), (2)(b).

Resolution 254. The proposal extends that logic to the coefficient and to specific prices, so it keeps predictability and removes the conflict of roles.

Each direction changes rules that govern State action over land, and none touches the owner. The Constitution vests ownership in the entire people with the State as representative, and it leaves the standard of compensation to statute.⁵⁷ Reform of the decision on price, the disclosure of valuation and the scope of judicial review therefore stays inside the constitutional order, and it respects the guarantee of Article 54 that recovery be necessary, public and transparent.

Security of land rights is a matter of function, not form. Measured on two relations, Vietnam's land use right is strong though conditional against private parties and incomplete against public power. The conditions in the first relation yield to timely public acts, and the gap in the second narrows chiefly when the decision on value leaves the organ that recovers, together with disclosure of the data and a clearer scope of judicial review. Neither calls for freehold. The contribution of the analysis is to shift attention from the label of the right to the rule that decides who fixes its value when the State takes it.

⁵⁷ VIET. CONST. arts. 53, 54(3).