

**LEGAL UPDATE**

April 2024

**CHANGES IN THE NEW LAW ON REAL ESTATE BUSINESS AFFECTING FOREIGN INVESTORS****KEY TAKEAWAYS**

- On 28 November 2023 Vietnam enacted the new law on real estate business which will replace the existing law on 1 January 2025.
- The new law further clarifies the types of real estate which can be transacted, types of transactions, conditions for transactions, types of real estate services, rights and obligations of involved parties. From the policy perspectives, the new law provides more favorable conditions for real estate companies along with adding some new protections for consumers.
- For foreign investors, the new law expands their business scope to largely the same rights as local investors, except for the purchase of residential property directly from Vietnamese citizens.
- “Condotels” and “officetels” aren’t explicitly mentioned as types of real estate, but they fall under the category of “construction floor area in a construction project.” Land regulations establish requirements for obtaining ownership certificates for condotels, and the new law elaborates on the conditions for their transactions.

**OVERVIEW**

On 28 November 2023, the Vietnam’s National Assembly passed Law No. 29/2023/QH15 on Real Estate Business (“**New LREB**”) which will replace the current Law on Real Estate Business of 2014 (“**Current LREB**”) on 1 January 2025.

Generally, the New LREB provides new or detailed provisions on the types of real estate which can be transacted (e.g., sale and purchase, etc.), types of transactions, conditions for transactions, types of real estate services (e.g., brokerage, consultancy and management services, and operation of trading floors, etc.), rights and obligations of involved parties. From the policy perspectives, the new law provides more favorable conditions for real estate companies along with adding some new protections for consumers (e.g., requirements for information disclosure from real estate companies, etc.).

This article discusses some key changes in the New LREB which impacts foreign investors.

**EXPANSION OF BUSINESS FOR FOREIGN INVESTORS**

Following the new rules of the Law on Investment of 2020 (“**LOI**”), the New LREB divides foreign investors investing in real estate in Vietnam in the form of setting up a wholly-foreign owned subsidiary or forming a joint-venture company with a local partner or purchasing shares in a local company into two types: (i) foreign investors holding more than 50% of the shareholding equity in the target company (i.e., the subsidiary, joint-venture company or the local company whose shareholders have sold 50% or more of their shares to the foreign investor) (“**Majority Foreign Investors**”); and (ii) foreign investors holding 50% or less of the shareholding equity in the target

company (“**Minority Foreign Investors**”).<sup>1</sup>

For Minor Foreign Investors, the New LREB treat them as local investors. Accordingly, they are allowed to do the following activities:<sup>2</sup>

- (a) Investing in housing construction, construction projects for sale, lease, or lease purchase;
- (b) Investing in the construction of technical infrastructure in real estate projects to transfer, lease, or sublease land use rights that already have technical infrastructure;
- (c) Buying, lease-purchasing houses, construction projects, construction floor areas in construction projects for sale, lease, or lease-purchase;
- (d) Receiving transfer of land use rights with technical infrastructure in real estate projects for transfer or lease;
- (e) Renting houses, construction works, construction floor areas in construction works for sublease;
- (f) Renting land use rights with technical infrastructure for sublease; and
- (g) Receiving transfer of all or part of a real estate project to continue investment.

For Major Foreign Investors, after having met the licensing conditions (i.e., obtaining permits for setting up the subsidiary, joint venture company or approval for purchasing the majority shares), they are allowed to do the following activities:<sup>3</sup>

- (a) Investing in housing construction, construction works associated with land use rights for sale, lease, or lease purchase;
- (b) Investing in the construction of technical infrastructure in real estate projects to transfer, lease, or sublease land use rights that already have technical infrastructure;
- (c) Renting houses, construction works, construction floor areas in construction works for sublease; and
- (d) Receiving transfer of all or part of a real estate project to continue investing in construction and business.

In addition to the above-listed business activities, Article 15.3 of the New LREB allows Major Foreign Investors “to buy and rent housing for use; to rent residential houses for business purposes according to the provisions of this Law; to buy or rent construction works and construction floor areas in construction works of real estate investors or businesses to use according to the functions of the construction works; renting a construction project, the construction floor area in a construction project to sublease and use according to the construction’s functions.” In essence, the New LREB allows Major Foreign Investors to conduct most real estate business activities comparable to local investors, with the exception of directly purchasing residential properties from

---

<sup>1</sup> See Articles 10.4 and 10.5 of the New LREB; Article 23 of the LOI.

<sup>2</sup> Articles 10.1 and 10.5 of the New LREB.

<sup>3</sup> *Id.*, Articles 10.1, 10.3 and 10.4.

Vietnamese citizens.

## CONDOTEL AND OFFICETEL TRANSACTIONS

The lack of specific regulations for new real estate products like "condotels" and "officetels" under previous laws caused concern for foreign and domestic developers and hotel operators. This uncertainty included how these products would be legally classified, whether they could be bought and sold, mortgaged, and so on.

While the New LREB doesn't explicitly mention condotels or officetels, it introduces the category of "construction floor area in a construction project" (in Vietnamese: "*phần diện tích sàn xây dựng trong công trình xây dựng*") as a type of real estate allowed for transactions. Although the new law doesn't provide a detailed definition of this term, experts believe it encompasses condotels, officetels, and potentially other innovative real estate products that may emerge.

Nevertheless, the New LREB defers the regulation of condotel ownership recognition to land laws.<sup>4</sup> In particular, Article 1.4 of Decree No. 10/2023/ND-CP of the government dated 3 April 2023 amending some decrees guiding the Law on Land of 2013 stipulates that: "For construction works used for tourist accommodation purposes according to the provisions of the law on tourism on commercial and service land, if they meet all the conditions prescribed by the land, construction and real estate business laws, they will be granted certificates of ownership over construction works attached to land...". In short, this provision can be interpreted as allowing ownership certificates for "condotels" to be issued if the related construction works are built on "commercial and service land," and meet other conditions prescribed under the laws on construction (for compliance with requirements for development of a project), land (for compliance with requirements for land type and financial obligations with the local government, if any), and real estate business.

The New LREB elaborates the conditions for a "construction floor area in a construction work" to be transacted in Article 14. Article 14.3 spells out the conditions as follows:

"The construction floor area of the construction project sold or leased to purchase by the investor, in addition to meeting the conditions specified in Clauses 1 and 2 of this Article,<sup>5</sup> must also ensure the following conditions:

- a) Construction works are created under investment projects according to the provisions of investment law and construction law; meet the conditions prescribed by law on property registration to be granted property ownership registration by a state agency to the buyer or lease-purchaser;
- b) The construction floor area in a construction project that is sold or leased must have a specific use function and be separated from other areas in the construction project according to the project approved by the authority. The authority to accept and approve must be clearly shown in the design documents of the project or construction work so that the owner can independently manage and use the construction floor area in the construction work;
- c) Construction works and construction floor areas in construction works in the project must

---

<sup>4</sup> It is worth noting that land laws and regulations have only addressed ownership of "condotels."

<sup>5</sup> Clauses 1 and 2 detail the conditions for residential houses and construction works (other than "construction floor areas") to be transacted.

be designed properly and in accordance with specialized regulations and standards applicable to the type and functions of the construction work;

d) The construction floor area of a construction project that is sold or leased must determine the land use rights associated with that construction floor area in terms of form, land use term, and land area for joint or separate use with other construction project owners and other land users according to the provisions of land law;

dd) The construction floor area of the construction project must clearly identify financial obligations related to land including land use fees, land rent and taxes, fees and charges related to land to the State (if applicable) that the seller, lease-purchasing party or buyer, lease-purchaser of the construction floor area in the construction project are obliged to pay and recorded in the sale or lease-purchase contract; and

e) Construction works must be built on land in the form of land use allocated by the State with land use fees or land leased with a one-time land rent for the entire lease period.”

In summary, even though “condotels” and “officetels” are not specifically identified in the New LREB, they are categorized as a type of real estate called “construction floor area in a construction project.” The land regulations set forth the conditions for granting ownership certificates for condotels, while the LREB elaborates on the conditions for transactions involving them.

#### **OTHER NOTABLE PROVISIONS**

Foreign investors should be aware of these additional provisions in the New LREB:

- (a) **Deposit collection:** Unlike previous laws, the New LREB allows developers to collect deposits from buyers and lease-purchasers. However, Article 23.5 restricts the deposit amount to a maximum of 5% of the selling price or lease-purchase price. This applies only after the housing or construction project meets all conditions for operation under the LREB. The deposit agreement must clearly specify the price and the type of property (house, construction project, or construction floor area); and
- (b) **Restriction on Authorizations:** To address the issue of Vietnamese developers avoiding responsibility in disputes by authorizing other companies to sign contracts (like sale contracts) on their behalf, the New LREB prohibits such practices. Article 17.4 specifically disallows real estate project investors from authorizing “other organizations or individuals to sign contracts for deposits, purchases, sales, transfers, or lease-purchases of housing, construction projects, construction floor areas, or land use rights with existing technical infrastructure within the real estate project.”

We hope our article has been helpful to you. Please feel free to contact us if you have any further inquiries.

**Scientia**