

LEGAL UPDATE

September 2024

KEY POINTS OF THE DECREE GUIDING THE NEW LAW ON REAL ESTATE BUSINESS**KEY TAKEAWAYS**

- On 24 July 2024, the Vietnamese government issued a decree (Decree 96) guiding some articles of the Law on Real Estate Business of 2023 (New LREB). Specifically, Decree 96 guides 11 matters, ranging from definitions of “condotels” and “officetels” to the possible adjustments of authorities in the real estate market when necessary.
- “Condotels” and “officetels” are specifically addressed and broadly defined in Decree 96. Technically, these types of real estate products can now be owned and transacted. Decree 96 also sets out restrictions for capital mobilization by real estate businesses and provides 11 standard contract forms with strict requirements for the use of those contracts.

OVERVIEW

On 24 July 2024, the Vietnamese government issued Decree No. 96/2024/ND-CP (“**Decree 96**”) guiding in details several provisions of Law No. 29/2023/QH15 on Real Estate Business (“**New LREB**”).

Decree 96 is to serve the following purposes:

- (a) Defining “construction floor area in a construction project” (guiding Articles 2 and 3 of the New LREB);
- (b) Detailing requirements for public disclosure of information regarding real estate projects to be put into operation (guiding Article 6);
- (c) Regulating the ratios of outstanding credit and corporate bond debts to the equity of real estate businesses (guiding Article 9);
- (d) Detailing the requirement to notify the provincial of eligible houses for sale or lease-to-own by investors (guiding Article 24.4);
- (e) Regulating the procedure for notifying the provincial authority regarding eligible land plots for transfer to individual buyers (guiding Article 31.7);
- (f) Regulating the procedure for transferring part or the entire real estate project to another investor (guiding Article 42);
- (g) Providing standard contract forms in real estate business (guiding Article 44.1);
- (h) Regulating the procedures, dossiers, and sequence for transferring real estate-related contracts (e.g., transfer of pre-sale contracts between individual buyers, etc.) (guiding Article 52);
- (i) Regulating the establishment and operation of real estate trading floors (guiding Articles

54-56 and Article 60);

- (j) Stipulating the conditions for real estate brokerage services (guiding Articles 61 and 70); and
- (k) Regulating real estate market adjustments carried out by the Ministry of Construction in coordination with other ministries and provincial People's Committees (guiding Articles 77-79).

This news update discusses some key provisions in Decree 96 which we deem new (in comparison to the previous provisions under the Law on Real Estate Business of 2014 and its guiding decrees) and relevant to investors (foreign and domestic).

DEFINITION OF CONDOTELS AND OFFICETELS

In our previous article “**Previous Article**”),¹ we explained that “condotels” and “officetels” are not specifically mentioned in the New LREB. Instead, Vietnamese law makers introduced the term “construction floor area in a construction project” (in Vietnamese: “*phần diện tích sàn xây dựng trong công trình xây dựng*”) which is considered as a type of real estate allowed for transactions.

In detailing the New LREB on this issue, Decree 96 defines “construction floor area in a construction project” to cover the following categories:

- “a) Floor area serving commercial purposes, including: commercial spaces, commercial lots, and other floor areas serving commercial purposes with different names;
- b) Floor area serving office purposes, including: offices, offices combined with accommodation, and other floor areas serving office purposes with different names;
- c) Floor area serving tourism and accommodation purposes, including: tourist apartments, accommodation apartments, and other floor areas serving tourism and accommodation purposes with different names; and
- d) Floor area serving mixed purposes and other floor areas serving other purposes within the construction project.”²

The foregoing list in Article 96 covers a broad range of real properties which falls under the category “construction floor area in a construction project,” including “condotels” and “officetels.” Technically, these types of properties are now eligible for ownership and transaction pursuant to Article 14 of the New LREB and analyzed in our Previous Article. Nevertheless, as a matter of practice in Vietnam, the above-mentioned regulations on “condotels” and “officetels” will need more time to test their applicability.

It is note worthy that the standard contract forms for the sale of condotels or officetels are prescribed in Appendices III and V of Decree 96, respectively.

¹ Scientia, Changes in the New Law on Real Estate Business Affecting Foreign Investors, available at: <https://scientia-law.com/wp-content/uploads/2024/04/On-the-New-Law-on-Real-Estate-Business-of-2023.pdf>.

² Article 3.2 of Decree 96.

THRESHOLDS FOR DEBTS

Decree 96 sets forth the following debt restrictions applicable to real estate developers:³

- (a) **Debt-to-project ratio:** In the case where a real estate business borrows from a credit institution(s) and/or issues corporate bonds to implement a real estate project, the total outstanding debt from the credit institution(s), the outstanding corporate bonds, and the required equity for each project must not exceed 100% of the total investment capital of that project; and
- (b) **Total debt ratio:** The total ratio of outstanding debts at credit institutions and outstanding corporate bonds for project implementation must not exceed four times the equity of the enterprise for a real estate project with a land use area of less than 20 hectares. The total debt ratio must not exceed 5.67 times the equity of the enterprise for a real estate project with a land use area of 20 hectares or more.

The terms “equity” and “investment capital” are defined in Article 6 of Decree 96.

REQUIREMENTS FOR THE STANDARD FORM CONTRACTS

Decree 96 provides the following 11 standard form contracts which are applicable to real estate businesses:

- (a) House purchase and sale contracts and house lease-purchase contracts;
- (b) House rental contracts;
- (c) Construction project purchase and sale contracts, lease-purchase contracts for a portion of the floor area in a construction project used for tourism and accommodation purposes (i.e., condotels);
- (d) Rental contracts for a construction project or a portion of the floor area in a construction project used for tourism and accommodation purposes;
- (e) Purchase and sale contracts, lease-purchase contracts for a construction project; purchase and sale contracts, lease-purchase contracts for a portion of the floor area in a construction project used for education, healthcare, sports, culture, office, commerce, services, industry, and mixed-use construction (i.e., officetels);
- (f) Rental contracts for a construction project or a portion of the floor area in a construction project used for education, healthcare, sports, culture, office, commerce, services, industry, and mixed-use construction;
- (g) Contracts for the transfer of land use rights with existing infrastructure in a real estate project;
- (h) Lease contracts, sublease contracts for land use rights with existing infrastructure in a real estate project;

³ Articles 5.1(b) and 5.1(c) of Decree 96.

- (i) Contracts for the transfer of an entire real estate project;
- (j) Contracts for the transfer of part of a real estate project; and
- (k) Contracts for the transfer/assignment of a purchase and sale contract, a house lease-purchase contract, or a construction project purchase and sale contract.

When using the aforementioned standard contracts, real estate businesses are required to comply with the following requirements:

- (a) Contracts must only be signed after the public disclosure obligations have been fulfilled;
- (b) The contents of the real estate business contracts must be strictly adhered to the templates provided in Decree 96. In cases where a standard contract allows for additional content, such additions must ensure that they do not violate any legal prohibitions, contravene social ethics, or alter or contradict with the existing contents of the related standard contract;
- (c) In case of amendments or supplements to a publicly disclosed contract, the real estate business must concurrently publicize the amended or supplemented contract before signing it; and
- (d) Businesses must comply with and subject themselves to inspection and supervision by the real estate business management authorities;

In cases where a real estate business uses a contract that contains content inconsistent with the standard contract or does not comply with the publicly disclosed standard contract (as stipulated in Decree 96) or the aforementioned requirements, the business will be subject to penalties and damages incurred by customers due to such violation.

Decree 96 took effect on 1 August 2024 and replaced Decree No. 22/2022/ND-CP guiding the old Law on Real Estate Business of 2014 on the same date.

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

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