

Vietnam Real Estate

Legal Structuring of
Condotels and Officetels

4 September 2019



What are Condotels and Officetels?



Commercial?



Residential?



Hospitality?

What are Condotels and Officetels?



A Condotel generally refers to a building licensed as condominium and operated as a commercial hotel property but in Vietnam it may also refer to:

- a residential apartment building operated as a hotel with units sold to investors; or
- a commercial building operated as a hotel with units sold to investors.

An Officetel generally refers to a building offering dual residential and commercial usage in a single purchased unit (i.e. a place where a business and a residence may be registered).

General Legal Structure: Condotels

Condotels are not currently specifically regulated under Vietnamese law but is subject to compliance with, at a minimum, the following:

- Decree 76/2015/ND-CP dated 10 September 2015, providing detailed regulations for implementation of the Law on Real Estate Business;
- Vietnam Law on Tourism Law No. 09/2017/QH14;
- Vietnam Law on Commerce Law No.36/2005/QH11; and
- Law on Urban Planning Law No. 30/2009/QH12



General Legal Structure: Condotels

Without a specific legal framework, Condotels are structured in various ways and with varying levels of security:

- 1 Buildings constructed on land designated as residential and licensed as a condominium with sales conducted through purchase of a specific condominium unit and rental income generated through collective rental management
- 2 Buildings constructed on land designated as residential and licensed as an apartment with sales conducted in the form of long-term leases granted to investors and rental income generated through collective rental management
- 3 Buildings constructed on land designated as commercial and not formally registered as a condominium with sales conducted on a leasehold contractual basis and operated as a commercial hotel
- 4 Buildings constructed on land designated as commercial with sales conducted in the form of share acquisition tied to a particular unit either through an on-shore or offshore investment company and operated as a commercial hotel
- 5 Buildings constructed on land designated as commercial with sales conducted through a rental club (time share) program granting rights to income rather than to ownership in a particular unit with the building operated as a commercial hotel

General Legal Structure: Condotels

Is the Condotel structure legal under current law?

Key Questions:

Is the land use right correctly designated for the intended purpose? (i.e. can the building be used for commercial purposes and licensed as a hotel)

Is the operating entity (i.e. the operator of the Condotel) authorized to conduct hotel and tourism activities under its IRC and ERC?

If purchasing shares in an on-shore entity, is the on-shore entity licensed to conduct the rental activities and tourism activities?

If purchasing shares in an off-shore entity, has the off-shore entity legally acquired its shareholding/charter capital in the Vietnam entity (permitted to invest and actually contributed payment for shareholder/charter capital)?

General Legal Structure: Officetel



Similar to Condotel, Officetels are not currently specifically regulated under Vietnamese law but is subject to compliance with, at a minimum, the following:

- Decree 76/2015/ND-CP dated 10 September 2015, providing detailed regulations for implementation of the Law on Real Estate Business;
- Vietnam Law on Enterprises Law No. 68-2014-QH13;
- Vietnam Law on Commerce Law No.36/2005/QH11; and
- Law on Urban Planning Law No. 30/2009/QH12

General Legal Structure: Officetels

Key Considerations:



Whether the officetel unit is classified as residential or commercial in accordance with the land use right certificate;



Whether clear land use rights are provided to the purchaser of an officetel unit; and



Whether a business or residence may be legally registered at the officetel address.

Legal Clarity for Officetels and Condotels

The Prime Minister issued Directive No. 11/CT-TTg dated 23 April 2019 (“**Directive 11**”) which tasks the Ministry of Construction, the Ministry of Culture, Sports, and Tourism, and the Ministry of Natural Resources and Environment to establish a clear legal framework for tourism properties (condotels, resort villas) and hybrid residential commercial properties (officetels) especially the regime of land use, ownership timeframe, regulation on management and operation, and issuance of the certificate of land use rights and assets attached to land.



Legal Clarity for Officetels and Condotels

When are regulations expected?

Updates within 3rd
Quarter of 2019 as per
Directive 11

Draft regulations
expected between 2019
and 2021

Implementation of
regulatory framework
expected between 2020
and 2021

Legal Clarity for Officetels and Condotels

Latest Update?

Based upon our informal discussions with the Ministry of Culture, Sports and Tourism on 3 September 2019, draft legislation on condotel management is expected to be published within the next week for public comment and review.

It is uncertain when draft legislation from the Ministry of Construction and the Ministry of Natural Resources and Environment will be issued covering condotel and officetel regulations in line with Directive 11.



QUESTIONS?

SPEAKER



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Paul Volodarsky is a Senior Legal Adviser based in Vietnam and Thailand. Paul has brought a wealth of experience to DFDL Thailand and Vietnam. Prior to joining DFDL, he worked with Limcharoen Legal in Bangkok managing the workflow for their offices in Phuket, Samui, Ho Chi Minh City, and Bangkok. He has advised individual buyers, developers and investment groups on real estate investment throughout Thailand with specific emphasis on the resort and hospitality sector in Phuket, Samui, Pattaya, and Hua Hin. He has significant experience handling the legal complexities in setting up the corporate structure for real estate developments, advising purchasers on acquisition of residential and resort property in Thailand, and negotiating hotel management agreements with international hotel brands, including Hilton Hotels and Resorts, Marriott International, Hyatt Hotels, and Hotel Okura. Paul is admitted to the New York Bar. He holds a Juris Doctor degree from New York Law School (2009) and a Bachelor of Science, Major in Biological Anthropology from The George Washington University, Washington DC (2004). Paul is based in Ho Chi Minh City, Vietnam with frequent travel to Bangkok, Thailand.

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