

A legal picture of new type real estate products — Condotel/Officetel in Vietnam —

Asia Newsletter

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In recent years, Vietnam's real estate market has seen a significant downturn. Many expect that a pending multi-level legal regulation overhaul will help overcome certain hindrances, improve land use efficiency, and secure land users' legitimate rights and interests, while improving market transparency and reliability. This newsletter's focus is on the legal framework of ownership involving new types of real estate products, including tourism real estate and officetels (collectively "**Hybrid Real Estate Products**").

1. Decree 10

In the past few years, Hybrid Real Estate Products, such as condotels, tourism villas, and officetels, to name a few, have become more popular throughout Vietnam. Hybrid Real Estate Products focused on tourism were often developed in coastal areas, such as Quang Ninh, Nha Trang, and Ba Ria - Vung Tau, including approximately 114,000 condotels, 24,400 tourism villas, and 30,900 shophouses, worth an estimated USD 30 billion in total.¹ These Hybrid Real Estate Products combine multiple functions, including office, tourism, commercial and residential, but were not "officially" regulated under Vietnam's legal frameworks until recently. As a result, one of the biggest challenges was how to issue Land Use Right Certificates ("**LURC**") for such real estate products. The local authorities were hesitant to make decisions in such circumstance, resulting in a legal gap that prevented the investors and purchasers from securing ownership and exercising their basic rights, such as mortgage, over their properties. Several official letters from state authorities, proposals, and discussions have emerged in recent years, including a few official letters confirming the illegality of LURC issued to Hybrid Real Estate Products, prompting calls for official legislation to stabilize the market and regain investors' trust.

Decree No. 10/2023/ND-CP was issued by the Government on 3 April 2023 to amend the four principal guiding decrees on the implementation of the Land Law, which took effect on 20 May 2023 ("**Decree 10**") and was the first legal document giving a clearer picture of LURC issuance for Hybrid Real Estate Products.² Decree 10 specifically allows the local authorities to issue LURC for real estate products that satisfy the following conditions:

¹ Please refer to the link for statistics (Vietnamese only):

<https://laodong.vn/bat-dong-san/loi-thoat-cho-nhung-du-an-condotel-dang-bi-dong-bang-1175875.lido>

² Decree 10 also tightened the conditions on land auction responding to the recent scandals of auction winners, but we do not discuss such amendments considering the topic of this article.

- A) being “construction works used for tourist accommodation purposes” under the law on tourism;
- B) being on commercial and service land; and
- C) meeting the conditions prescribed under the land law, the construction law, and the real estate business law.

Furthermore, Decree 10 clarifies that (1) the land use purpose to be recorded in the LURC for such real estate products is “commercial-service land use”, (2) the land use terms are a maximum of 50 years or 70 years (not an indefinite term like residential purpose lands), and (3) the project developer shall either obtain a LURC on behalf of the transferees/purchasers or shall provide such transferees/purchasers with the necessary documents to complete the procedure by themselves.


However, as the first legal document on this long-standing problem, Decree 10 fails to comprehensively guide all other new-yet-popular Hybrid Real Estate Products (1) that are not classified as tourist accommodation buildings (for example, officetels are popular in the real estate market, but are not for tourism purposes in accordance with the Law on Tourism, so such products do not fall under the governing scope of Decree 10), or (2) that are not built on commercial and service land (for example, Decree 10 does not govern the Hybrid Real Estate Products inside a mixed-use apartment building located in a residential land area, which are currently owned by a huge number of investors). Decree 10 also fails to clearly stipulate the authorities and the specific criteria to confirm the satisfaction of the conditions mentioned in C) above, given that the three laws (Land Law, Real Estate Business Law and Construction Law) do not currently provide clear conditions for Hybrid Real Estate Products.

2. Official Letter No. 3382

Immediately after the issuance of Decree 10, the Ministry of Natural Resources and Environment issued a stopgap official letter to address such shortcomings, namely, Official Letter No. 3382/BTNMT-DD dated on 15 May 2023 (“**OL 3382**”). We guess that the government might have intended to use OL 3382 as a specific short-term measure to provide details on the implementation of Decree 10 until the reforms of the three referenced laws finally resolve the matter. In particular, OL 3382 allows (1) the issuance of LURC for Hybrid Real Estate Products that were not covered by Decree 10 and (2) the issuance of LURC for Hybrid Products built on residential lands. However, as OL 3382 is only a directive document, without legal normative power, and lower than Decree 10 in the legal hierarchy, its practical application remains inconclusive.

3. Issuance of New Land Law and New LOREB

To our knowledge, from the time of issuance of Decree 10 and Official Letter No. 3382, there have been no LURC issued for condotels, tourism villas or officetels in practice. Especially, according to public media, the last year has seen an increase in the number of disagreements and disputes between the investors and the customers who have signed sale and purchase contracts in relation to LURC issuance or in relation to a breach of guaranteed profitability.



The adoption of the new Land Law and Real Estate Business Law (“**New Land Law**” and “**New LOREB**”) within the last few months, both taking effect on 1 January 2025, is expected to rescue these investors and purchasers. Unfortunately, these new laws remain silent on this matter despite long time discussion and debate at their draft stage about land use purpose, land use term and the LURC issuance process, etc., for Hybrid Real Estate Products. Accordingly, the current situation may cause authorities to hesitate approving investment projects for Hybrid Real Estate Products and issuing LURC for Hybrid Real Estate Products. However, it is hoped that their subordinate regulations properly address these issues soon.

While there has not been crystal-clear and solid legal foundation specifically addressing the LURC for Hybrid Real Estate Products, certain amendments introduced by the New Land Law and New LOREB offer valuable insights into hybrid real estate matters, notably as follows:

- The New Land Law formally recognizes land use for multiple purposes, which include scenarios where residential land purposes are combined with commercial and service land purposes. Additionally, if a developer meets certain qualifications, LURC can be granted for one or several units within a project. Such regulations strongly synchronize with Decree 10.
- The New LOREB introduces various real estate product categories, which include construction works serving office, tourism, accommodation, and mixed-use functions. Such broad scope of eligible properties could potentially encompass Hybrid Real Estate Products in general.

Given that the regulations under the New Land Law and New LOREB are still in the preliminary stages, we anticipate further legislative development and guidance from governmental authorities in this sector.

4. Conclusion

The government has taken steps through Decree 10 and OL 3382 to partially address and settle certain outstanding legal and practical problems regarding the application of the laws on Hybrid Real Estate Products. However, several shortcomings still exist. The highly anticipated New Land Law and New LOREB have been officially introduced, but definitive solutions regarding the ownership of Hybrid Real Estate Products have yet to fully evolve. Further legislative developments later this year will be crucial to protect the legitimate interests of investors, developers, and customers and we hope proper subordinate regulations will be issued soon and simplify the complicated landscape of Hybrid Real Estate Products in Vietnam.

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