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FOREIGN INDIVIDUALS MAY NOW OWN CONDOMINIUMS IN VIETNAM

In 2008, the National Assembly of the Socialist Republic of Vietnam passed Resolution 19/2008/QH12 (“Resolution 19”), a five-year pilot legislation which permits foreign organizations and individuals to purchase and own condominiums in Vietnam. A qualified foreign individual may only purchase one condominium for his or her private residential use. Resolution 19 does not allow foreign individuals to own stand-alone residential units. As a follow-up to Resolution 19, the Government issued implementation guidelines in June 2009 with Decree 51/2009/ND-CP.

Conditions of condominium ownership

By way of background, prior to Resolution 19, foreign individuals were not allowed to own residential housing of any type in Vietnam. Therefore, prior to Resolution 19, foreign “purchasers” would enter into long-term lease contracts for up to 50 years. However, no legal title instruments were given to the long-term lessees and none were recorded with government agencies. Moreover, because of concerns with the legal validity of long-term leased condominiums, they could not be mortgaged.

Under Resolution 19, qualified foreign purchasers of condominiums will be issued home-ownership certificates and the condominiums may be mortgaged. The condominium owners also will own a common interest in the land under the condominium. Nonetheless, there are some notable differences between the typical “fee simple” ownership seen in the West and ownership under Resolution 19. Under Resolution 19, the period of ownership is limited to 50 years from the date of issuance of the ownership certificate and the owner will be required to sell or donate the condominium within 12 months from the date of expiry of the period of ownership. However, unlike leases, if the condominium is sold, devised, or donated to a Vietnamese national/entity, that person/entity will take the condominium on a permanent basis. Interestingly, the law is silent on terms under which a foreign buyer may take the condominium. In a draft version of Resolution 19, foreign purchasers would take the condominium for a renewed term of 50 years (in contrast to whatever remaining term is left in the initial 50 years) but that provision was removed in the version that was passed into law. The most likely reason for this is the five-year pilot nature of Resolution 19.

Individuals eligible to purchase and own condominiums

To qualify to purchase and own a condominium in

Vietnam, foreign individuals must be currently living in Vietnam, must have permission from the competent State body to reside in Vietnam for a period of one or more years, and must not belong to the category of persons entitled to diplomatic or consular immunity and privilege as stipulated by the law of Vietnam.

In addition to the above, they must fulfill one of the following criteria:

(1) the foreign individual has a direct investment in Vietnam, or is hired by an enterprise currently operating in Vietnam (including domestic enterprises and enterprises with foreign-owned capital) to hold a managerial position in such enterprise;

(2) the foreign individual has made a contribution to Vietnam which has been rewarded with a decoration or medal from the President of the Socialist Republic of Vietnam;

(3) the foreign individual has made a special contribution to Vietnam as stipulated in a decision of the Prime Minister;

(4) the foreign individual is currently working in the socioeconomic sector with a university or higher equivalent qualification with special technical knowledge or skills which Vietnam requires; or

(5) the foreign individual is married to a Vietnamese citizen.

Procedures for obtaining a home-ownership certificate

Applicants must submit an Application for Granting of Certificate of Ownership of Residential House and Land Use Rights, informally called a “home-ownership certi-

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cate” or “pink book,” to the Department of Construction (DOC) with jurisdiction over the condominium together with appropriate supporting documents. The supporting documents typically include:

(1) a certified true copy of foreign passport;

(2) a copy of document(s) proving that the applicant is a qualified purchaser, such as an employment contract, work permit, license for practising professionally, certificate of marriage and Vietnamese passport or resident family record and identity card of the Vietnamese spouse;

(3) a copy of the sale and purchase contract or document regarding the donation or inheritance;

(4) a document proving the ownership of the seller, devisor, or donor; and

(5) receipt for payment of taxes, fees, and charges.

Applicants must pay fees for issuance of the home-ownership certificate and sign their name in the Register of Residential House Ownership. All documents must be translated into Vietnamese. A power of attorney is required if the applicant is authorizing a proxy to receive the home-ownership certificate on their behalf. The DOC will record the contents and submit the home-ownership certificate to the provincial People's Committee for signature. 🏠