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A BUYER'S GUIDE TO

PROPERTY OWNERSHIP IN THAILAND

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INTRODUCTION

Please indulge us in a self-serving (but true) opening gambit: if you are thinking of investing in property in Thailand, the first step you should take is to choose a good lawyer! You will want a trusted guide to help you navigate the relevant Thai legal procedures, some of which can be complicated. A little background information on the legal avenues open to you can go a long way to help you choose the best path available.

The following is a summary of the basic principles of Thai property ownership which will give a foreigner thinking of investing in Thai property a clearer picture of what is involved.

AM I ALLOWED TO BUY LAND/PROPERTY?

This is usually the first question asked by foreigners. Although Thai law (the Land Code) prohibits foreigners from owning land in Thailand, there are ways in which foreigners can effectively own or have control of land and still comply with existing Thai laws. The following three procedures are the most common:

1. The purchase of land through a Thai limited company.

Buying land/property in a Thai company name is a popular choice among foreigners who wish to acquire an interest in freehold land in Thailand (as opposed to the leasehold option set out below).

In order to comply with Thai law, the shareholding in a Thai company must be at least 51% Thai (i.e. majority) with the foreign shareholding being a maximum 49%. In previous years, nominee shareholdings (i.e. where the Thai shareholders were simply named individuals with no financial interest in the company and with weighted voting rights being given to the foreign shareholders) developed as a way of giving foreigners control of the company's affairs. However, the Thai Government now cracked down on Thai companies set up with nominee Thai shareholders, which has led to a change in the initial company set-up. Your lawyer can discuss the practicalities with you.

2. The registering of a leasehold interest.

A registered lease is relatively uncomplicated and easy to acquire and register. A long term lease can be held and registered in your own name (no company required). Foreigners are permitted to lease land in Thailand for a maximum of 30 years with an option to renew for a further period of 30 years. A lease registered with the Land Office remains in force throughout the term of the lease, regardless of whether the freehold owner sells or otherwise transfers the freehold. However, even though

the owner may agree to a renewal clause in the lease agreement, it is uncertain at present whether this right can be enforced against a purchaser/successor of the freehold interest. If the lessor is a company and the company is sold as opposed to the land held by the original lessor, of course, the situation would not change and the new shareholder would then have to deal with the lessee based on the original lease agreement.

As opposed to land a foreign buyer can have the ownership of a house registered in his own name although he only has a lease of the land it stands upon.

3. Condominiums.

Foreigners can own a condominium in their own name but not more than 49% of the aggregate unit space of the condo development may be owned by foreigners. Once the foreign quota is full foreigners can only lease condominium units and these leases can be registered with the Land Department as is the case with land as explained already. Also foreigners could establish Thai companies and acquire freehold title to a unit. The explanation provided above in respect of purchasing land with a Thai company applies here too.

THE CLASSES OF LAND TITLE

When you are in the process of looking for a Thai property, it is very important to find out the class of title of the land.

The following is a brief description of some of the rights in land you will find in Thailand and which are suitable to be bought or leased and can be used to build houses or apartment or condominium buildings.

Chanote - Nor Sor 4 Jor is the only document that can be described as a true land title deed, because it alone confirms ownership of land. The land was accurately surveyed and plotted in relation to a national survey grid. Unique numbered marker posts set in the ground mark its boundaries. It is possible to subdivide the land into smaller plots. This is the best title available.

Nor Sor 3 Gor signifies the land occupier's right to possess the land, but without conferring actual ownership. De facto though there is little difference between Chanote and Nor Sor Sarm Gor.

The land is in general accurately surveyed and each plot is cross-referenced to a master survey of the area and a corresponding aerial photograph. Unique numbered marker posts set in the ground mark its boundaries. It is possible to subdivide the land into smaller plots. The second best title available as it can be readily upgraded to Chanote title.

Chanote – and Nor Sor 3 Gor are the only land titles where registered right of ownership or lease can exist. Any

land titles lower than these are not recommended for foreign investment. In some cases upgrading to Chanote would make land subject to these lower ranked "titles" also suitable for foreign investment.

THE LAWYER'S ROLE - DUE DILIGENCE & CONTRACTS

Once you have chosen your property, your lawyer will carry out due diligence on your behalf. A search will be carried out at the Land Office to verify the identity of the owner and whether or not there are any encumbrances against the property. Your lawyer will also check the access to the property – i.e. is there a public or private road leading to the property? If it is a private road your lawyer will need to ensure a servitude (registered access) is marked on the relevant title deed at the Land Office upon completion of the purchase.

As far as contracts are concerned, there will usually be a Reservation Agreement between the buyer and the seller pursuant to which a deposit securing the property will be paid by the buyer (usually between 5 and 10%). There will be a time period stipulated in the Reservation Agreement (usually 30 days) for the due diligence to be carried out. If due diligence is satisfactory then the buyer and seller will proceed to sign a Sale and Purchase Agreement. If due diligence is not satisfactory the buyer may withdraw and get a refund of his deposit.

It is important that as a buyer you make sure your lawyer checks and approves the Reservation Agreement prior to you signing it. There have been cases in the past where buyers have signed a Reservation Agreement without legal advice and subsequently had problems getting their deposits back when the due diligence turned out to be unsatisfactory.

If due diligence is satisfactory and a Sale and Purchase Agreement is signed, your lawyer will attend the Land Office on completion of the transfer to ensure the property is transferred into your company name (or your personal name if leasehold) with simultaneous payment of the balance of the purchase price.

WHAT FEES ARE PAYABLE UPON BUYING LAND?

There are basically two types of fee payable when you buy land; firstly, your lawyer's fee. Most lawyers have standard rates for the buying of land and property so make sure that you ask for their fee schedule. The second set of fees you will be liable to pay are at the Land Office upon transfer of the land. These are:

Land Office Fee for land purchase:

Specific Business Tax - 3.3% of the actual purchase price;

Transfer Fee - 2% of the appraised (by the Land Dept/Min of Interior) value of the Land;

Withholding Tax - 1% of the actual purchase price.

Companies that dispose of immovable properties are required to deduct tax at 1% from the proceeds. A progressive scale applies to capital gains derived from immovable properties by individuals.

Land Office Fee for registering a lease:

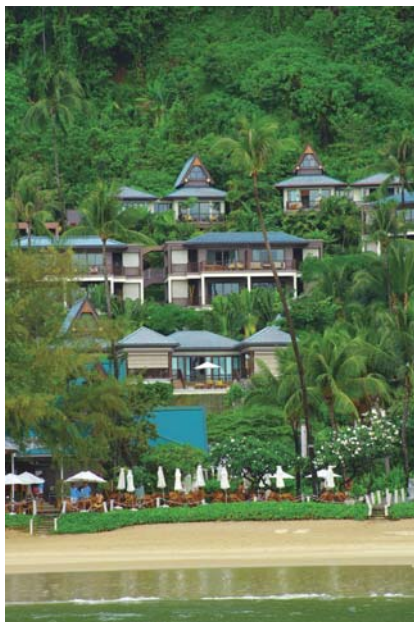
1.1% of the registered rental/lease amount.

There is no capital gains tax in Thailand (unlike many countries) and withholding tax on property is the comparable replacement. Although one might expect the seller to pay the withholding tax, in practice, this is not always the case and really depends on what has been agreed during negotiations. It is often the case that Land Office fees are shared 50/50 between the buyer and the seller.

THE THAI SYSTEM OF LAND MEASUREMENT

You will often hear Thais and foreigners talking about the "rai". Land is measured in Thailand by Wah, Ngan, and Rai. The following is an easy conversion table;

- 1 Wah = 4 m² = 42.7 ft²
- 1 Ngan = 100 Wah = 400 m² = 4,277 ft²
- 1 Rai = 400 Wah = 1,600 m² = 17,109 ft²
- 1 Acre = 2.5 Rai = 4,000 m² = 42,772 ft²
- 1 hectare = 6.25 Rai



WHAT ARE THE RISKS?

As with any land or house purchase, there are always risks involved no matter where you buy. Your lawyer will help you to identify and minimize them.

For example, is the property on a completed development? If it is not on a completed development what is the probable completion time? How long has the development been under construction? Is it possible it may never be completed? What kind of construction warranty will be provided – 1 year, 2 years, 5 years? Who will be my neighbors? Are there any other building developments planned nearby? Where is the water source? Is there sufficient electricity supply? Who manages the communal facilities like security, refuse collection, shuttle services? How is the property currently owned?

SUMMARY

Seeking the advice of a lawyer who is a property specialist when considering the purchase of property in Thailand is recommended- just as you would do back home. There are law firms in Thailand offering qualified legal advice. We hope you will choose DFDL.

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