

VILLAS • LAND • CONDOMINIUMS • RENTAL • SERVICED APARTMENTS • MARINE

# PROPERTY REPORT

The trusted source for Real Estate news

[www.property-report.com](http://www.property-report.com)

**THAILAND**

Issue 67 April 2010

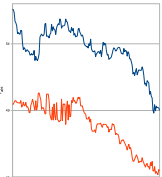
Thailand 150THB/Hong Kong 50HKD/Singapore 10SGD

# NAUTICAL LIVING

Marine property throughout the region



sterling and Euro vs Thai baht  
(Source: www.exchange-rates.org)



**Sterling takes a pounding**



**Middle of the road**



**Thailand Property Awards 2010**

ISSN 1686-6050  
9 771686 160500



### Questions and answers on Thailand property legal issues

BY DESMOND HUGHES AND CHRISTIAN GLANVILLE

# Banking on finance for your property

**Q.** I have fully mortgaged my property in Sweden and am unable to raise more finance for a purchase in Thailand. I would like to buy a property and raise monies from the Thai banks. I have a Thai girlfriend. What would be the legal steps to take to assist me in my goal? - *Jermain Johannson, Malmö, Sweden*

**A.** There have been several articles and interviews with bank officers in Thailand, indicating that bank finance is available for foreigners purchasing property in Thailand. In order to clarify this general position, it is worth mentioning that the criteria for satisfying the banks is not something most foreign investors would be able to meet.

In order to even contemplate asking the bank if they will lend you the monies, you must ensure the property you intend to purchase is legal, so you will have to carry out due diligence. This means you will incur legal costs.

The method of investment is also critical. As you as a foreigner cannot own land, or even acquire land through shell companies, so the bank will be interested in how you intend to securitise the property. If you have a legitimately established and usable Thai company, and you have co-shareholders who agree to that company raising finance for the acquisition, then you are in a position to apply. The bank will then carry out due diligence on that Thai company, and most likely charge you. You will most likely also be asked to guarantee the Thai company.

If you intend to purchase a condominium which is allocated to foreign freehold quota and could be owned in your name directly, the banks will be more interested in providing you with finance. However, most banks criteria require you to: (a) be married to a Thai national and/or (b) have been resident in Thailand for more than 10 years and/or (c) possess a Residence Book and/or (d) be employed in Thailand or evidence some income in Thailand. The bank may be flexible on some of these criteria, however whilst you explore the flexibility you will incur costs.

In summary, your position is not well placed for borrowing monies from the Thai banks from the disclosed information, although contrary to popular myth foreigners can apply, and in certain circumstances, be accepted to borrow monies from Thai banks. Some foreigners elect to take



**THE CRITERIA FOR SATISFYING THE BANKS IS NOT SOMETHING MOST FOREIGN INVESTORS WOULD BE ABLE TO MEET.**

second mortgages, or raise finance outside of Thailand through reasonably sophisticated equity structures, in order to borrow monies to make their investment in Thailand. Each of these types of structures should be vetted carefully and will involve a certain amount of administrative and execution costs.

**Q.** I was told by an estate agent that "you can obtain finance in Thailand, no problem", and without legal advice I signed a reservation contract for a property with a THB500,000 deposit. After consultation with the lawyer and a bank, it became apparent that even though I am wealthy by average standards in my home country, I would still not qualify on technical grounds for finance. I contacted the developer and the agent who have refused to refund the reservation deposit, citing "administration costs". My agent only drove me to the property twice and I met the admin officer of the developer once, so the THB500,000 is not proportionate to any time or efforts taken by either party. What legal rights do I have to get my THB500,000 back? - *Tomma Solomon, Perth*

**A.** If the reservation agreement made no mention of the condition of obtaining finance, then you are on weak ground in respect of a speedy recovery of your deposit. In terms of your rights, you have rights against the estate agent and rights in respect of the developer. Your rights relate to the terms on which you were represented prior to signing the reservation fee, and then

the fairness or not of the reservation fee being forfeited. If there is a clear non-refundable provision in the reservation agreement, you will have a tougher time. In terms of cost/benefit analysis of filing a claim for recovery, you should ascertain what your total legal costs and expenses will be versus the recovery of the deposit, prior to embarking on legal proceedings. You may also consider filing a claim with the Consumer Protection Board.

If the reservation agreement was conditional on you obtaining finance, and you didn't obtain finance for whatever reason, then you have quite a clear cut case for suing for return of your money. With no contractual right to deduct "administrative fees", the developer would struggle to justify not returning the whole amount.

**Q.** I am planning to build a small development and sell leasehold plots and villas in a managed estate. I am a first-time developer and am making a plan to incorporate my budgeting and finance. How much of the project can I finance through the Thai banks? - *Andy Cato, Buckinghamshire, U.K.*

**A.** Your business plan, master plan, valuation of the land by an official land appraiser, together with all supporting bank documentation should be submitted to more than one bank for their view on providing you with project finance. At progressed stages, the banks will also need information on your construction arrangements with a contractor and will seek to control payments to the contractor to manage the funds. You should look carefully at the release of mortgages versus the time at which you would be expected to register legal interests to consumers, and incorporate this into a plan for your legal sales contract package. You could certainly normally finance more than 50 per cent of the project and further increasing percentages depending on the value of the land, and the bank's view of your business plan and finance model.

This legal clinic was co-written by Desmond Hughes (Deputy CEO) and Christian Glanville (Managing Partner, Koh Samui) based in the Phuket office of Limcharoen Hughes & Glanville, which has also offices in Bangkok, Koh Samui, Ho Chi Minh City, and with a new office in Bali, Indonesia. [www.limcharoen.com](http://www.limcharoen.com)