



Legal clinic: Questions and answers on Thailand property legal issues

BY DESMOND HUGHES (PARTNER) AND CHRISTIAN GLAVILLE

Players in a real estate transaction

Q. I am looking at my first overseas property transaction. I am from the UK, and have bought and sold property both for both personal and commercial use. How does the process and the parties involved differ in Thailand? Who do I have to deal with and how can I ensure the process is managed effectively whilst remaining protected? - *D. Fairview, Mayfair, UK*

A. You may have found your property through an agent or agency in Thailand. If this is the case, then the agent should be responsible for ensuring that dialogue between the seller/developer and both legal teams is set up in a timely and efficient manner, but providing adequate time for the relevant services to be provided to you in order for a deal to be completed safely. Generally, after seeing the property you are most interested in, you will be encouraged to sign a reservation form by the agent and the developer. The terms of the reservation should allow for a standard 30 days of due diligence. This is not a slow timeframe, it is quite quick – as in the UK you may be involved in a property ‘chain’ which can sometimes extend conveyances to lengthy periods.

In Thailand, you will also be unused to the method of property investment, so time must be allowed for you to meet your legal team, or communicate with them on the telephone and by email if you are only in Thailand for a short period of time. To engage a law firm, you will need to understand the initial processes that law firm needs to go through to commence work, and if the agents and developer are experienced and professional, they will also be familiar with the process and understand it. The law firm will need to identify you and keep on record identification and full contact details; a signed engagement letter setting out the scope of works the law firm will conduct for you and the corresponding fees on your transaction should be signed; deposits ought to be paid on account to ensure that the law firm has some protection against ‘holiday buyers’ who may change their mind post utilization of professional time and resource.

After engagement of the law firm, you should then plan with your legal team the time frame for due diligence and the structure of your investment. This will involve a flow of information on the land, the property, and the contracts between the developer’s legal team and your legal team, with appropriate reporting to you. Your own lawyers should be seeking to protect you, the agent’s driver will be commission on the transaction, but perhaps also repeat work and maintenance of reputation (which is why you should conduct a credibility check not only of lawyers, but of all professionals you deal with, including agents), the seller’s driver is very strongly – to sell. In addition to lawyers, agents and seller – you may also be dealing with a structural surveyor to check a property if it is already built, an accountant to deal with tax if you have a sophisticated tax status, an architect if you are redesigning or creating modifications to a unit and you



IT IS PERFECTLY ACCEPTABLE FOR YOU TO UTILIZE TRUSTED ADVISERS AND ASSISTANTS TO OVERSEE MATTERS IN JURISDICTIONS YOU MIGHT NOT BE FAMILIAR WITH.

shouldn’t forget your furniture and accessories for your new second residence.

Q. Conveyancing is almost automatic in my home country, but I understand that due diligence in Thailand should be conducted in a different way to the US. What is involved in that process? Can I be protected? - *Sandra Romain, California, LA*

A. Yes, transactions can be conducted safely if appropriate due diligence is carried out. The level of due diligence can be set according to your risk profile (no risk = maximum due diligence) and the purchase price and status of the property. Naturally cautious legal teams will always recommend full due diligence, but you can assess by discussion how you feel about each stage. Land titles in Thailand operate on a registered land title system, so the owners of a land title are recorded at the government office. However, lawyers are supposed to check the entire history of land title, to ascertain if there are any outstanding issues that could affect the legal issuance of the title now or in the past. In addition to that history check, the building regulations and environmental regulations affecting your property should be checked, even if your property is in a managed estate.

The players in the transaction should also be examined. From the agent that introduces you to the project, the sales team of the seller or developer, the principals behind the development and the individuals providing financial assistance to the project should all be reviewed. In addition to dry accounting and credibility checks – face to face meetings and examination is also advisable. Any signs of unprofessionalism, attempts to coerce you into accepting a deal too quickly may be tell-tale signs of desperation or the approach that might be applied to the quality of your unit. Confidence of a developer is important, but an awareness of your concerns and answering your questions with full and polite explanations can only be a positive plus for all concerned in the transaction.

Q. I have in my home country, my family lawyer, my favourite architect and designer, and my personal accountant and finances manager who assist me with all of my transactions, globally. When I purchase real estate in Thailand, how can I effectively ensure that local professionals interact effectively with my team, whom I trust implicitly due to the length of time they have assisted me with my personal and business affairs? - *Jodi Gullackson, Oslo, Norway*

A. It is perfectly acceptable for you to utilize trusted advisers and assistants to oversee matters in jurisdictions you might not be familiar with. In order to ensure this works effectively, real introductions to the professionals should be effected as early in the transaction as possible, and two key points of contact from your personal team and from the local team of advisers in Thailand should be designated, to avoid the ‘too many cooks spoil the broth’ scenario. Works that are local such as due diligence into land and building regulations should of course be conducted by the local team, but opinions can be reviewed by your own personal team. It is important to disclose that you wish to deal with a transaction in this manner early on.

The developer, seller and agent should all be informed that you have a personal team, so that they understand that not only must you be satisfied in relation to a prospective investment, but that your team should be satisfied too. Ultimately, however, you ought to indicate to all parties who is the real decision maker – which will normally be you, or your partner/wife/husband. For two legal teams to communicate both acting for you, it must be established that local laws differ from other jurisdictions, but an explanation of how without overly protracted coaching sessions on law generally is appropriate if your own advisers believe it necessary. You must avoid or manage realistically an overly negative approach from advisers unfamiliar with the jurisdiction you are dealing in, or your transaction will be impaired from the outset and is unlikely to improve if entrenched opinions are allowed to dominate proceedings. On the other hand, your own advisers may ensure that no unnecessary shortcuts or risks are being taken in the local jurisdiction. No professional should be concerned about working with other professionals, if they are carrying out their responsibilities effectively with knowledge and expertise. In the legal world, this is referred to as international legal services project management. A similar approach should be taken with the local and personal accountants; architects and designers.

This legal clinic was co-written by Desmond Hughes (Partner) and Christian Glaville (Senior Associate) based in the Phuket offices of Belmont Limcharoen which has also offices in Bangkok and Koh Samui with a new office in Ho Chi Minh City, Vietnam, opening soon. www.belmontlimcharoen.com