

Important Issues for Property Investors

I am interested in buying a property in Phuket. What are the main legal issues that I have to consider?

There are various types how property investments in Thailand can be made that would each affect the respective legal structure.

Land and building leasehold: You could lease a property that is owned by a Thai individual or company, plus the land on which the property is located (land and building leasehold). The leases would be registered and may have a period of up to 30 years – with the possibility to include renewal rights in the lease agreements for multiple 30 years periods; common practice are two renewals.

Land leasehold and building freehold: Other than leasing the property, you could also buy (or employ a contractor to construct) and own property directly in your own name that is located on land being owned by a Thai individual or company (land leasehold and building freehold). The ownership of the building strengthens your legal position in relation thereto as it provides you with full legal title.

Collective leasehold: Another structure could be collective leasehold provided that the envisaged project consists of multiple property units. The land on which the units are located would be owned by a Thai company in which a company usually established offshore held a certain percentage of the shares (including specific additional rights, such as to prohibit a sale of the land). The unit would be either directly owned by or leased to you. Shareholders of the offshore company would be the owners and lessees, respectively, of the property units with one share reflecting one unit. As regards condominium projects, it has additionally to be taken into account that only 49% of the registerable area of the condominium project can be directly owned by non-Thai individuals or companies; the other 51% have to be leased. This 51% can also use the collective leasehold structure.

Land and building freehold: Contrary to the common structures set out above, a land and building freehold, i.e. the land and the property being owned directly by you, would be the most difficult option as neither a non-Thai individual nor company can generally own land in its own name under Thai law.

The best option to fit your interests best and the nuances of a suitable structure would have to be considered by your tax and legal advisors.

(Desmond Hughes, Partner)

As I will use the property that I want to buy only for a couple of weeks a year, I am interested in renting it out for the rest of the time. How could this be managed?

Developers may offer you a fixed rental return for the time you are not using the property. It is important to review your tax situation and whether you would be considered responsible for any expenses connected to the property. You should also investigate the financial credibility and strength of the developer guaranteeing the rental return.

Tax considerations: Generally, as a non-resident in Thailand (being there less than 180 days per year), you would have to pay a flat rate of 15% withholding tax on your rental income. Further tax considerations would be required.

Expenses: In terms of expenses in relation to the property, it has to be negotiated with the developer or, if non-negotiable, understood who has to bear which costs that may arise during the rental period. For example, it would likely be expected that you were responsible

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for any major refurbishment that is required. Further, it would have to be agreed who had to pay for the costs of furniture repair and replacement, insurance and general day to day maintenance expenses. This may be part of the general maintenance costs to be borne by you. It may also be that if you wanted to stay at the property during peak season you would have to pay an additional fee to the developer.

(Kris Limcharoen, Partner)

Are there any alternative investments for buying a property assuming that I will stay there only a couple of weeks a year?

If you don't want to buy a property exclusively for your own use and/or to rent it out while you are not using it, you could think about fractional or "alternative" ownership.

Fractional ownership: Fractional ownership can exist in various programs you might hear: private residence clubs, destination ownership clubs and a variety of other names covering the same type of legal right. The commercial advantage is that your upfront investment sum is less than buying a property by your own and renting it out and rather reflects your usage period of the property during the year.

Structure of fractional ownership: The common structure for fractional ownership is the following: The land on which the property is located should be owned by a Thai company while the building itself may be directly owned by or leased to a company usually established offshore holding a certain percentage of the shares in the Thai company (including specific additional rights, such as to prohibit a sale of the land) and by this means control the property. The shares in the offshore company would be held by you and the other fractional owners. That participation right would entitle you to stay at the property and use its amenities for a certain period of time, starting from a weekly basis up to various months – depending generally on your personal scheme and the demand for the project. You would receive a share certificate that would represent your tangible legal interest in the property; this being a main distinction of fractional ownership to timesharing models. The collective of the fractional owners would also have to carefully elect and appoint an external management company being responsible to manage the property for the benefit but at cost of the collective of the fractional owners.

(Desmond Hughes, Partner)

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