



Legal Clinic: questions and answers on Thailand property legal issues

BY DESMOND HUGHES & CHRISTIAN GLANVILLE

Mixed-use developments

Q. I should like to purchase a condominium, which is part of a hotel, villa residences and sports and recreation facilities estate. I want to ensure that I receive all the benefits of the plans for the mixed-use development, as this is underpinning my decision to invest. Owning the condominium unit without the surrounding mixed-use facilities and real estate will not result in the value I want to achieve through my investment. What are the principal legal protections I can expect and what are the disadvantages. - *S.Gerrard, Merseyside, UK*

A. In addition or included in the condominium purchase contract, there should be legally binding commitments to the completion of the developments surrounding the condominium building. If you are buying into the project on the specific and express guarantee that the other phases of the project will be completed, then you are within your rights to attempt to negotiate a buy back guarantee. Some developers may not accept this as it may be too restrictive. However, you can certainly ascertain the level of commitment by exploring this issue through negotiation. The developer may not be able to commit to completion times on phases following your phase, as perhaps the other phases are reliant upon the successful sales of your phase. However, if you simply would not buy if there was the possibility that the other phases do not complete, and you are not willing to accept the risk, you need to inform the developer early on in your negotiation process so expectations of both parties are transparent and openly discussed.

Where there is a hotel in place or planned which is to be managed, you may not be permitted to be privy to the agreement in its entirety as the terms of the hotel manager operating the owned assets may be private to owner and operator. Notwithstanding this commercial sensitivity, you are entitled to ask if a legally binding contract has been signed by hotel operator with the owner, and the precise term of length of agreed operation of the hotel. Please bear in mind that agreements can normally be terminated so there is always some commercial risk in addition to the normal legal term set out in the agreement.

If the common amenities such as golf course, water park and clubhouse area are also essential to your view of the success of your investment then the timing of completion of these parts of



the estate, or at least absolute confirmation these parts shall exist, should be included in the legal documentation. Rights and remedies for the event that these parts do not eventually materialize should also be negotiated.

Q. I have been made aware by the developer of the mixed-use development I intend to invest in that the surrounding areas of land, around the site where my unit will be, are under option to be purchased. I also haven't seen a masterplan of the entire estate. Is there anything I can do to limit legal risk? - *Milton Miles, Kuala Lumpur*

A. This question is a common one posed to legal advisers, but actually this is almost a pure commercial investment question. In order to genuinely assess the minimum criteria that the developer needs to meet for you to feel comfortable, you should list items that you believe to be 'essential' to you proceeding with an investment, and items which are not and therefore are only 'nice-to-have's'. This way, you can instruct your lawyers as to what the documentation must absolutely contain. If you intend to moor a boat near your site, but the marina licence is not granted, then there is an obvious condition precedent to release of funds in your investment in the unit - the granting of the licence. You could link a payment subject to evidence that the developer acquires the Phase II land and confirms the masterplan of Phase II. There are a variety of conditions you could apply. Legally, you cannot limit much the commercial risk, if the developer is expecting you to share in the commercial risk as part of your investment.

Q. I love playing golf, and enjoy the idea of being able to see a golf course from my unit. I have already placed a reservation on a property and the owner of the golf course is the same entity which has created the development. I particularly think that the public road, adjacent to the private golf course, on the way to the development allows a fantastic view of the course when returning back to my second home - it sets my mood levels at a high to be near to the course I love to play on. Is there anything I should be cautious of before signing the full contracts, which is specific to the reasons behind my decision to invest? - *Stephen Wood, California*

A. The status of your property appears to be reliant upon not only the view from the property to the golf course, but your enjoyment of it in terms of the view from a public road to the golf course. Therefore you should check very carefully, whether it is likely that this view will be impaired or not. Unfortunately, it is possible that notwithstanding the developer actually being the owner of the development and the golf course, it may take measures which detrimentally effect the value of your investment. Examples of such measures might be the building of a high wall around the golf course adjoining the public road, for security reasons, notwithstanding the unattractiveness and impact on the enjoyment of the passageway to the development. Therefore, if the developer and the golf course owner is the same, a guarantee of the elements that you enjoy should be drawn up with a buy-back remedy for breach. This will inhibit, for at least as long as the developer controls the golf course, an event such as a view-impairing wall being built around the course. Such instances of impairment are rare, but have been known to occur in unusual circumstances. Due diligence should not be limited only to your unit, in a mixed use development investment.

This legal clinic was co-written by Desmond Hughes (Partner) and Christian Glanville (Senior Associate) based in the Phuket offices of Belmont Limcharoen which has also offices in Bangkok and Koh Samui. www.belmontlimcharoen.com