

## Important Issues for Property Investors

**I am interested in buying a land plot in Phuket which shall be owned by a Thai company as, in principle, land can only be owned by a Thai individual or a Thai company in accordance with Thai law. How should the Thai company be structured?**

Under Thai law, a limited liability company requires a minimum of three (3) shareholders the majority of whom must be Thai. Foreigners may own up to 49% of the shares. However, as the company will own land, it is recommendable to have a lower shareholding of not more than 39% by foreigners. Thai companies owning land which have a foreign shareholding are stringently regulated and it is important the company is not seen as being set up merely to enable a foreigner to own land through a 'nominee' structure. Further, you must never use non-bona fide or 'nominee' shareholders.

Foreigners could also invest in a Thai company through a foreign company which would be incorporated abroad with the foreign shareholder(s) owning 100% of it and each having an equal share. The company would then be the shareholder in the Thai company meaning there would be only one (1) foreign shareholder so that only two (2) Thai shareholders would be required.

As foreigners can only own a minority shareholding in a Thai company, specific structures and instruments should be put in place giving them indirect power. This would be done through adoption of special articles of associations giving the foreign shareholders veto rights and effective 'negative' control of certain matters so that no decisions by the Thai shareholders could be made without the foreign shareholders' affirmative vote. A shareholders' agreement may also be entered into between the shareholders to provide further protection in key areas such as the transfer of shares by existing shareholders to third parties by requiring them to first offer their shares to the foreign shareholders. Furthermore, any shareholder who breaches the terms of the shareholders' agreement could be required to sell their shares to the foreign shareholders at a set price.

*(Desmond Hughes, Partner)*

**The land plot I want to buy is Nor Sor Sam Gor. What is the difference to Chanote and what is the process to upgrade it to Chanote?**

Nor Sor Sam Gor is a certificate that allows the holder to use the land plot and is issued by the Land Office after soliciting objections from neighbours and interested parties, respectively. The boundaries are determined by aerial photography and reasonably precise. Nor Saw Sam Gor documents are widely accepted by the public as a title document of land and also generally accepted by financial institutions to be used as collateral for loans.

The strictly legal distinction to Chanote is that ownership over Nor Saw Sam Gor land still actually 'belongs' to the State and private individual or juristic persons can only have the so called 'Right of Possession'. Ultimate ownership over the land can only be obtained by upgrading Nor Saw Sam Gor to Chanote which is the highest rank of land title and freely transferable.

It is, in principle, possible to upgrade Nor Saw Sam Gor land to Chanote at the Land Office. The difficulty to predict the process is that it depends on the land's history and the precision of the boundaries and whether any are



disputed. A more specific answer to this question can only be given when the land's history has been investigated through a land due diligence.

The process to upgrade the land title to Chanote will to some extent depend on the officials at the relevant Land Office, but takes, in general, between three (3) to nine (9) months. The procedure would require carrying out a survey by the local authorities. The whole process should be supported and coordinated by your lawyers.

*(Kris Limcharoen, Partner)*

**What is the process for due diligence of the land?**

The key focus of the land due diligence is to ensure that the land title has been correctly issued because in a small number of cases the title has been illegally or improperly issued or may be subject to conflicting claims. Despite land documents being in existence, issues such as fraud or duress could mean they were legally not valid. The due diligence aims to identify such issues.

The history of the title back to its origins of possessory title 'Sor Kor 1' would be reviewed to ensure there are no 'gaps' in the history of the land from this time to the present day.

Enquiries at the Land Office would be made whether there are any mortgages or other encumbrances over the land that they have records of. Searches in the local courts should also be carried out to see if there is any litigation taking place or pending against the current land owner which may affect its ownership of the land and its ability to sell the land.

Further, an aerial survey should be carried out which would reveal any issues relating to the boundaries, whether the land fell within zones with building restrictions and whether there were gradient or any other issues that might restrict the development of the land.

*(Desmond Hughes, Partner)*

## LIMCHAROEN HUGHES & GLANVILLE

### Limcharoen Hughes Glanville (Phuket)

T: +66 (0) 7634 2882-4 F: +66 (0) 7634 2885  
E: Phuket@Limcharoen.com

### Limcharoen Hughes Glanville (Bangkok)

T: +66 (0) 2635 5071-3 F: +66 (0) 2635 5074  
E: Bangkok@Limcharoen.com

### Limcharoen Hughes Glanville (Samui)

T: +66 (0) 7724 6185 - 7 F: +66 (0) 7724 6188  
E: Samui@Limcharoen.com

### Limcharoen Hughes Glanville (Ho Chi Minh City)

T: +84 938 8469021 E: HoChiMinhCity@Limcharoen.com

[www.limcharoen.com](http://www.limcharoen.com)