



Questions and answers on Thailand property legal issues

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Financial consequences of committee power

Q. I have bought in an off-the-plan condominium building, which is now more than five months late on delivery. A series of items which were promised to be delivered have now been 'struck off' the list by the developer who asserts it has a cash shortfall. I am now concerned that certain matters will simply be imposed on the owners by the developer, even when technically the developer is in default and we could litigate - which is not the practical solution. As the condominium is not registered yet, what rights and powers do the owners have to collectively make decisions to influence the direction of the condominium? - *Charlie Brent, United Kingdom*

A. Prior to registration of the condominium juristic person you have rights as consumers but not collective rights through committee. The developer is under no legal obligation to recognize a 'committee' prior to registration of the legal juristic person for the condominium. However, the practical effect of forming a committee can be beneficial, but is only likely to succeed when applying a careful formula to the constitution and behaviour of such a committee. Sometimes committees seek to engage law firms to assist with the protection of their interests in such situations, and communication and coordination with those law firms is also improved significantly by the application of criteria to constitution and behaviour:

- The committee should have a chairman, and at most, two other members of the group as the leaders of the committee.

- The temptation to form a 'social networking forum' to complain about the developer should be strongly resisted; certain buyers may accidentally contravene the laws of defamation in Thailand, which are designed to strongly protect the reputation of individuals and corporations from unfair damage. The coordinated exchange of information does not need to be public to be effective, but there is no disadvantage to commandeering multiple members to the private group provided they are still coordinated through a chairperson.

- Any communication should be vetted prior to being sent to a developer or a developer's attorney to ensure that (a) any complaint is justified by evidence, (b) that a practical suggested solution is included, and (c) that the time-line for response or action proposed is practical and not lead by



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unreasonable demands. This is a difficult balance when there is a breach of obligation by the developer.

- Multiple engagement of law firms is possible. Not every member needs to have the same lawyer, but one project management coordinating law firm should be chosen to avoid the 'too many cooks spoil the broth' scenario.

- Minutes of all meetings should be kept, but objectively written, without emotive statements or implications, and with no attempts to bring into the minutes implications of breach in contemplation of litigation. That simply undermines the validity of the minutes and credibility of the committee.

If necessary, owners can serve legal notices under contracts, even whilst still in negotiations with the developer through committee

Q. I am Chairman of a committee in a mixed use development under which a rental pool program was instigated by the developer, and which has failed to financially yield the results originally contemplated. The developer has sought to find other methods to boost owner revenue, and has now sourced a hospitality program and resort operator, who has proposed to convert the rental pool program into a more resort-oriented program to improve revenue. This will include obtaining licenses and consents, and approval of the owners is required. If I coordinate the approvals from the co-owners in the committee, can I be held liable for the results

of the approval and any financial consequences? - *Michael Marshall, Spain*

A. You should exercise caution in relation to all of your communications relating to this matter. You should always ensure that you have a disclaimer in your communications, and legally, if you are operating as Chairman in a group as an official, you should have a work permit to fulfill this function as a foreigner. A service contract for your position with payment and an indemnity against claims other than for fraud or gross negligence is also recommended.

In terms of the hospitality program itself, you do not need to accept financial responsibility for the implementation of such a program, if you have taken the recommended precautions above, and if the hospitality operator or the developer enters into direct agreements with each of the relevant owners entering into the program. Your position will effectively be limited to 'coordinator' only in such circumstances. With the operator taking control of the property, you should maintain a committee to coordinate any owners issues in the future with respect to the operation of the facility.

Finally, you should also engage, collectively so as to share the costs, an experienced accounting and tax advisory company to review the financial projections of the hospitality program operator. This is because the projections provided to you for operation of the program will be 'budget only' and based on certain assumptions. The extent of exclusions from the assumptions should be vetted carefully, and the potential for variance from the budget analysed. Your personal tax position on receipt of the revenue from such a program should not be overlooked, as the receipt of such monies in Thailand is a taxable event. The actual arrangements between the developer and the operator should also be analysed by the committee and you overseeing the committee, to take into account the length of any agreement, and any potential for change of control of operator in the future, which could ultimately affect the returns from the hospitality program, and your returns.

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