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Property Report legal Q&A



Experts from Limcharoen, Hughes and Glanville, one of the region's leading law firms, answer your questions on property law.

Q106

I am an Australian citizen and plan to acquire an empty piece of land in Bali either leasehold (Hak Sewa) or under a right to use (Hak Pakai) and wish to construct a villa on it. Can I apply for a building permit myself and have the permit issued in my name? - Stephen Forbes, Bali

Indonesian law requires that prior to commencement of any construction a building permit (Ijin Mendirikan Bangunan or 'IMB') is obtained. Generally, the Indonesian land owner would apply for the IMB of a building which means, that if you rent a piece of land you should ensure that the lease agreement contains provisions whereby the Indonesian landowner covenants that he will apply for an IMB on your behalf and at your cost. In certain regencies of Bali the relevant authorities may, subject to local regulations, grant an IMB to a foreigner directly, provided, however, that the lease term does not exceed 25 years and you may inquire this for the specific regency where your land plot is located. If you acquire a piece of land under a right to use (Hak Pakai) the authorities would generally issue a building permit in your own name provided that the Hak Pakai right is registered in your name.

It is important to note that the authorities will only grant an IMB to a foreigner if the intended purpose of the building is for residential use only. If the building was to be used for any other purposes such as rental use (pondok wisata) or as business space, the authorities would generally not issue an IMB for such purposes to a foreigner.

In order to obtain an IMB, a foreigner must submit a proper application to the local authority, the permit service office, enclosing the application form and supporting documents such as drawings of the building that comply with local building regulations, copy of passport and permit of stay (KITAS or KITAP), and a statement duly signed by the foreigner stating that the foreigner will have only 1 (one) house in Indonesia.

Ingo Mueller (Bali Office)

Q107

What types of residential property can be owned by foreigner individuals in Vietnam? - Paula Koslowski, Vietnam

On 3 June 2008, the National Assembly of Vietnam issued the Resolution No. 19/2008/NQ-QH12 permitting qualifying foreign individuals to purchase and own residential property in Vietnam ("Resolution 19"). Resolution 19 has been in full force from 1 January 2009, for a trial period of five years. The specific categories of foreign individuals who are permitted to purchase and own a residential property in Vietnam are listed in Resolution 19. It is important to note that not all would be foreign investors in

National Assembly of Vietnam issued a resolution permitting qualifying foreign individuals to purchase and own residential property in Vietnam.

residential property are currently permitted to own residential property in Vietnam. The term "residential property" under Resolution 19 shall mean "an apartment located in an apartment buildings of projects for development of commercial residential housing, and which are not in an area in which residence and movement of foreigners is restricted or prohibited". Further clarification of Resolution 19 is provided in Decree No. 51/2009/ND-CP dated 03 June 2009 which further classifies "apartments located in apartment buildings of projects for development of commercial residential housing" as either (i) a residential apartment

built by a real estate enterprise under a project approved by a competent agency for sale or lease in the market price; or (ii) a residential apartment that an individual has purchased

on a development of commercial houses for which the individual has been granted a house ownership certificate under law.

Accordingly, only residential property that falls into either of the categories above can be purchased by qualifying foreign individuals. Therefore, before making a decision to buy a residential property in Vietnam, foreign individuals must ascertain from the developer whether or not such residential property is categorized as apartments for sale to foreigners.

Christian Glanville (Ho Chi Minh City office)

Q108

We are U.K. citizens and are interested in purchasing a freehold condominium unit in Phuket, Thailand. Are there any specific laws in Thailand in which a foreigner purchasing a condominium unit should be mindful of during my transaction? - Peter Melville, Thailand

Anyone purchasing a condominium in Thailand should be mindful of the 1979 Condominium Act which was amended in 2008 to provide additional protections for purchasers through the implementation of additional rules such as regulations regarding advertisements of the condominiums. Foreigners purchasing a condominium in Thailand should also be aware of the Bank of Thailand regulations with respect to bringing funds from outside Thailand into the country. Foreigners who are purchasing their condominiums with foreign currency must obtain a foreign exchange transaction form indicating that the funds are to be used for the purchase of a condominium. The transaction form is required by the Land Office regulations for the purpose of registration of a condominium ownership. Those funds may then be repatriated back out of Thailand upon subsequent sale of the condominium. In addition to the Civil and Commercial Code, there are a number of other laws which may affect a property transaction in Thailand in terms of how certain clauses in the transaction would be enforced. Examples include the 1979 Consumer Protection Act as amended in 1998, and the 2002 Arbitration Act.

Khun Pongsak Daengkaew (Phuket Office)