

# PROPERTY REPORT

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SOUTH EAST ASIA

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## HOW GREEN IS ASIA?

**Bali's Cosmopolitan Enclave**

**A Gulf of Opportunity for Cambodia and Thailand**

**Inside a Singapore Property Auction**

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# Property Buyers' Legal Clinic

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

**I am a property developer and have completed a number of successful residential real estate developments in the Philippines, I have been watching the real estate market in Vietnam with considerable interest over the past few years, to what extent are foreign developers permitted to implement residential development projects in Vietnam? - (Gabriel Tamayo, Makati City)**

Generally speaking and in accordance with Article 10 of the Law on Real Estate Business, foreign investors are permitted to (i) build houses and other buildings for sale and (ii) upgrade and repair existing houses and buildings. In addition, foreign investors are permitted to carry out infrastructure works ancillary to the building and upgrading houses and other buildings. It is important to note that developers who engage in the construction of houses and other buildings for sale in Vietnam must fully comply with the construction master plan approved by the competent State authorities. Foreign developers should be aware that the scope of real estate business of foreign investors is more restricted than for domestic developers. Significantly, foreign investors are not permitted to purchase houses and buildings for sale or lease.

In accordance with Article 29.4 of the Law on Investment, foreigner developers who form a joint venture company with domestic developers are entitled to undertake the same scope of real estate business as domestic investors, providing always that the Vietnamese investor holds more than 51 per cent of the charter capital of the enterprise.

Christian Glanville  
(Ho Chi Minh City Office)

**"I am considering entering into a Lease Contract with a developer for a property in Thailand. In the respective Contract the developer guarantees a lease for 90 years under my name. In my understanding the maximum lease in Thailand would be 30 years. Could you please tell me, if a guaranteed lease for 30 years is possible under Thai law?"**  
- (Marcus Hill, London)

Under Thai law a lease is valid and can be registered for a period of 30 years maximum. But there is the possibility to renew the lease period for two more periods of 30 years. Please take into account that these renewals are not automatic. If the parties do nothing, the lease contract will simply end after 30 years without the need of any notice. The extension of the lease is an active process requiring the cooperation of both parties to the lease contract. Firstly, the parties must execute a new lease contract for the period of renewal; secondly, the parties must register the new lease at the Land Department. In other words, a renewal clause is only a promise to renew, not an actual lease contract. When a developer offers to sell you a 30+30+30 leasehold, what he actually offers is for sure not a guarantee for 90 years and even not a lease

“THE EXTENSION OF THE LEASE IS AN ACTIVE PROCESS REQUIRING THE COOPERATION OF BOTH PARTIES.”

contract with a secure renewal for two more periods of 30 years; with entering into the mentioned lease contract you will have a guaranteed leasehold for 30 years and the promise to lease to you for another 30 years, assuming, however, that, (1) the clause is actually binding (in this context there should be checked for example if there is an agreement on the rental fee for the renewal period included); and (2) there has been no assignment or succession of the contract during the first 30 years, or if there has been an assignment or succession wherein the new lessee or new landlord has agreed that a renewal clause be written, the landlord does not terminate the lease for the causes in between, and/or where the landlord is willing to sign a new lease contract for the renewal period and to execute the formality. .

Sebastian Kunz (Phuket Office)

**I understand that commonly in Indonesia contracts, especially those**

**involving corporate matters or land related transactions, are signed before a notary, however, I was told that not every document signed before a notary is a notarial deed?**

- (Samantha Travers, Bali)

Under Indonesian law, a notary is a public official authorized to draw up authentic deeds for any type of legal transaction such as agreements or other legal documentation. Certain transactions must be transacted before and by a notary, such as incorporation of corporate entities which would be processed by the notary with the Ministry of Law and Human Rights or ownership transfer of land, buildings or apartment units which would be transacted before and by a notary in his function as land deed official (Pejabat Pembuat Akta Tanah or PPAT). The notary acts as government official transacting the relevant authentic deeds with the relevant government bodies to effect registrations and the notary is responsible for the legal contents of the relevant deeds drawn up by him and he is obliged under law to ensure the contents of the deeds comply with relevant laws and regulations. Any such authentic deeds are registered by the notary and reported regularly to the relevant government institutions.

Apart from preparing authentic deeds, a notary may also provide the legalization of private contracts or other legal documents. In such case, the signatory parties of a contract would appear before a notary and prior to the signing of the document the notary would verify the signatories' identities (ID card or passport) and authority of the parties, e.g. if acting as proxy or representative of a company. Upon execution of such document, the notary will make a formal note and affix a notary seal on the document indicating that the notary has witnessed the signing of the document and that the notary has verified the identity of the signatories. The notary would also register and record any legalized document in his register book. However, the notary is not always involved in the preparation or execution of the legal document itself which has been prepared by the individual parties.

Ingo Mueller (Bali Office)