

## Important Issues for Property Investors

**I understand in Phuket that building is restricted on land which is at a gradient of more than 80 meters. Is it the foundation that must be below the 80 meter mark or the roofline? What is the process for measuring?**

“The 80 meter mark relates to the gradient of land and the rule is that no building may be built on land 80 meters or more above sea level. The relevant measurement is height above sea level and so development can take place on land that is up to 79.9 meters above sea level.

However, height restriction may also be imposed on the building itself. In this case to determine the height it is the height of the building above ground level that is measured. This means the building would be measured from the ground to the top of the structure. The extent of the height restriction will depend on the zone the land falls in and, as a very rough guide, the closer the land is to the sea the lower the permitted height of buildings.

The gradient and height restrictions are ministerial regulations issued from Bangkok and enforced by the local government authorities in Phuket.”  
*(Desmond Hughes, Partner)*

**We are 2 foreigners who want to invest with a Thai investor in a Thai company. We understand that foreigners cannot have a shareholding of more than 49% and that there must be a minimum of three shareholders. However could you clarify how many Thai co-investors we will need? One piece of advice we were given was that we are fine with our 1 Thai investor (so that we are 3 shareholders in total) but other advice we were given says that the majority of shareholders must be Thai so we would need 3 Thai co-investors in total. Please advise.**

“The answer to this depends on what the purpose of the company is and what your investment is. There are different laws and regulations governing various business activities. For example, in relation to land ownership, Thai law allows ownership by a partly foreign owned Thai company so long as the maximum foreign shareholding does not exceed 49% and the majority of the shareholders are Thai. Prior to setting up your company you should seek legal advice explaining fully what the objectives and purposes of the company will be so that the company is fully compliant.”  
*(Kris Limcharoen, Partner)*

**I understand that “Chanote” title deed is the best kind of title for land in Thailand. If this is the case why, before buying a property, is it necessary to carry out due diligence on land that has Chanote title deed?**

“Chanote is the best form of document of title available in Thailand and is fully transferable. One of the purposes of land due diligence is to ensure that the document has been correctly issued and is legally valid and various enquiries and searches will be made to confirm this such as reviewing the history of the title. Due diligence is also necessary to discover whether the land is subject

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to any conflicting claims, such as leases, and whether any mortgages are recorded over the land. The scope of the investigations may also encompass making enquiries of the relevant authorities to ensure any applicable building, planning and environmental regulations have been complied with. Carrying out due diligence means that you can have full confidence in the title and reduces the possibility of any unwelcome surprises.”

*(Desmond Hughes, Partner)*

**I have recently purchased a condominium and have the title deeds showing the transfer of ownership to me. I also have the House Registration Book in my possession but this does not have my name in it. Is it possible to put my name in the house registration book?**

“Under Thai law the House Registration Book (“Tabian Bahn”) is an official document identifying the property and setting out the full address. It is not necessary to have the name of the owner of the property in the house book as it is just an administrative document and not a document of ownership of the property (the document of ownership is your land title deed).

Usually, unless a foreigner has permanent residency they cannot be named in the standard Thai House Registration Book (‘Blue Book’TR 14) but it may be possible to be listed in a registration book for foreigners (‘Yellow Book’TR13). Having the Yellow Book may be useful for transactions where you need to prove your address but is not a necessary document. However, it may be required in order to take advantage of tax reliefs relating to gains on the sale of your property when purchasing another property as having your name in the house registration book for not less than 1 year from the date of ownership of the property is one of the conditions that the law stipulates needs to be satisfied.”

*(Kris Limcharoen, Partner)*

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