



Legal Clinic: questions and answers on Thailand property legal issues

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Steps to completing a contract

Q. I own several properties in the UK and simply leave completion in the hands of my lawyers, who seem to process all matters relating to my investments automatically. I have purchased some property in Thailand, and the process was completely different. There seemed to be an omission of the enquiries before purchaser (there is a standard set in the UK); none of the 'automatic' government searches of matters relating to the surrounding area of the property, and I was surprised that in the report there was no mention of access to the property, which I already knew to fall across private land albeit the same owner as the property being sold to me. I would like to avoid repetition of this experience, what matters in the process of stages leading to 'completion' of a contract, should I follow – and look to my advisers to follow? – *Steven Swan, Kent*

A. Apart from the difference in legal systems and jurisdictions of the UK and Thailand, which in itself would be a large volume of text, it is fair to say that certain legal and commercial matters in real estate remain consistent, even when the procedures and laws governing those matters differ. By applying practical common sense to your experience of property investment in another country, you can estimate fairly well the issues that an adviser should deal with in relation to investment. A series of issues should be discussed with your adviser and then those issues dealt with through your adviser communicating with the seller, and checking certain matters with the relevant government offices in Thailand.

To list the general matters that you should consider:

1. Your advisers should raise enquiries of the developer which relate to the situation of the development. At an early stage of being engaged by you, copies of contracts and relevant land/ownership titles must also be obtained. In an off-the-plan investment enquiries should be specifically tailored to issues which arise where properties are to be built.

2. The land title or titles of the property should be reviewed by qualified Thai lawyers, who will check the entire history of the land title from its first coming into existence perhaps many decades ago, to date.

3. An aerial survey of the property should be conducted, which should then be reviewed in comparison to building restrictions; environmental restrictions and local rules and regulations relating to that area.

4. The construction permit of the property should be reviewed generally by your advisers, but if you are applying full caution, then you will appoint a third party professional to review the actual (if built) property, in comparison to that which was authorised under the construction agreement.

5. You should have a qualified professional surveyor conduct a full structural and non-structural survey, noting that in different jurisdictions, this



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process might be mandatory for you to insure the property, but in Thailand, this is not common practice

6. You should decide, in consultation with your advisers, early on in the process, on the method of 'investment'; 'ownership' or use of the property with rights to re-sale. You should note that there are strong prohibitions on land ownership interwoven into Thai law for foreigners generally, but that foreign freehold condominium ownership; long leasehold ownership subject to a maximum registrable period of 30 years; and ownership of buildings is available and permitted. Businesses are also, through legitimately formed Thai enterprises such as limited liability companies, entitled to own land. In sophisticated developments, leasehold ownership is available, with very strong and clear safeguards in place to allow 'renewal' of the 30 years leases so that the leases are consistently renewed, subject to payment of taxes to the government (applicable at the time) and both the landlord and lessee attending the land office to register the lease. Through proper corporate structures, this process can be set up safely.

7. If the property is in a managed estate, then management procedures and management contract should be reviewed.

8. If the property is part of a mandatory rental scheme, then the rules and operation of that scheme now, plus the financial permutations of being in that scheme should be analysed carefully. The opportunities, if any, for the scheme to be 'adjusted' should also be reviewed.

9. The sales contract should be reviewed to ensure the correct warranties and representations are included, which at a minimum should comply with Consumer Protection laws in Thailand, but in a residential development of good repute, should also contain assurances relating to the represented quality and situation of the property and development

10. It is worth referring to a checklist when discussing these points with your advisers, so you can

ensure all of these steps and issues are considered, aside from specific issues which may arise relating certain unique elements of the property.

Q. I had thought that completion of a contract meant 'signing the contract, dating it, and having some witnesses present'. However, I am told in relation to my purchase, that there are other steps to consider to make sure property acquisition 'completes'. Please can you clarify what 'completion' means in relation to a contract in real estate? – *Charles Skinner, Boston, USA*

A. There are two distinct matters you refer to in your question. One is the legal 'execution' of a contract. In order to properly execute a contract, subject to the laws of the jurisdiction governing that particular contract, you would expect a contract to be signed by all relevant parties or their appointed attorneys through power of attorney; dated; and signed in the presence of witnesses. There may be additional requirements such as the application of 'stamp' duty or taxes to a contract; legal registration; notarisation by an independent lawyer; or certification by a Ministry of Foreign Affairs. Given the large number of possible permutations, you should rely upon the advice of your appointed advisers on the proper and legitimate execution of the contracts.

The second matter relates to obligations of 'completion' under the contract. If you imagine the act of signing the contract, then you can guess that certain matters cannot practically occur exactly at the same time as signing. The most obvious is that of 'payment', which even through electronic transfer, will require a 'gap' between signing a contract and remittance of funds. However, in real estate, there are normally a host of obligations which should be followed relating to completion, the easiest examples of which relate to acquisition of a property. These 'completion' obligations are normally weighted towards the seller such as: giving up possession and handing over the keys to the property; passing title of the furniture of the property (which can be dealt with in the sale and purchase agreement); handing over all legal title documents to the property, and registration of change of name being effected which differ in straight forward land titles; building ownership; and house occupancy registration; leasehold ownership. The main obligation for the purchaser is of course, to pay, but might also be – prior to completion – to confirm that finance is in place if finance has been disclosed as a matter relevant to the purchase.

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