

Legal issues for Hong Kong based investors

Reason for investment

• Assess the legal structure and sales packaged to ascertain if it corresponds with your requirements. Rental income investment requires focus on management contracts; rental pool contracts and security of tenure and usage restrictions in respect of the unit. The ability to terminate or sell-out is also an important contractual feature to analyse.

Understand Thai Law basics

• It is apparent from the sale structures that there are many different ways to offer a property for investment. It is important to understand which of these is necessary under Thai law and which is actually a way of practically structuring the project or sale. A condominium requires a manager 'Condominium Juristic Person' manager and automatically under condominium law buyers are afforded a 5 year structural defects protection and a 2 year non-structural defects protection.

• Thai companies which have foreign shareholders and own land and are involved in real estate must be set up properly with regard to long term security; compliance with the Land Code and Civil and Commercial Code; compliance with Revenue requirements and accounting procedures.

• Leases can be made more secure if lessees have a controlling interest in terms of voting in the lessor company.

• Title to property in Thailand is not as simple as only understanding the categories of title: Sor Kor 1; Nor Sor 3; Nor Sor 3 Kor and Chanote, rather it is a matter of ensuring the history of the title is verified and checked as fitting and in line with the title's progression into its current state. Thorough due diligence is a mandatory procedure for those wishing to minimize risk and demonstrate to potential buyers that title has been properly checked.

Off plan requires understanding and acceptance of commercial risk regarding construction

• Independence is paramount in terms of inspection of construction quality – reliance upon the developer's internal project management team will not suffice if you require a third party objective analysis of build quality. Appoint an independent surveyor.

• Consider whether a non-variable completion date is essential to you and the consequences of late delivery. Are penalties necessary or appropriate in this regard?

Hong Kong, transfer of monies and the "Purchase Price"

• The advertised purchase price may be 20m THB but may comprise of a lease registration fee; construction payments; furniture package and other fess all of which will have been carefully worked out by the prepared developer to minimize its own tax liabilities.

When a purchaser in Hong Kong raises the monies, consideration of where the money is coming from (a Hong Kong Bank account or other overseas bank); where it is going to (some onshore into Thailand and some offshore) and how the monies will be repatriated must be considered as early as possible in the investment due diligence process

Double Tax Treaties

• The new double tax treaty between Thailand and Hong Kong and its benefits are being seized upon by certain real estate developers; in addition to legal due diligence; a qualified financial/tax adviser should be appointed to advise you upon the benefits and risks in any particular structure or raising of finance

Absent Owners

• A large majority of investors will not see their property from month to month and will certainly expect an element of management to be performed depending on their invest-

ment. It is important to know when a notice has been served upon you and where it has been served.

Summary

Those familiar with Hong Kong Law as an investor in real estate or that of a different jurisdiction, and the style of investment practices in Hong Kong or that other jurisdiction will inevitably find a difference in the practices of those in the real estate industry in Thailand. Aside from the differences in law, the consequential differences in commercial practice may be unclear until due diligence is thoroughly undertaken and proper dialogue maintained with respective legal; tax and accounting advisers. 

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