

Legal Clinic: questions and answers on Thailand property legal issues

Topic: A typical property transaction

By Desmond Hughes and Kris Limcharoen



What is the first matter an investor should consider prior to pooling funds or proposing to invest into a project or property in Thailand?

Property in Thailand is built on land and the history of that land, what can be built upon the land, the environmental restrictions and legality of title should be considered fully, in the context of the value of the potential investment, by the investor and its advisers at the very outset or inception of a plan to invest. Seller's will always maintain that their title and land is 'clear' but the risk falls solely to the Purchaser after monies have exchanged hands.

What is the scope of land title legal due diligence? Is there a crossover with other types of due diligence?

Land title due diligence extends to regulations governing use of the subject land. Environmental consultants will provide more detail than law firms on the viability of a project if a master plan already exists. An overview can be obtained from a law firm first before committing to a full environmental survey. Soil tests and other physical due diligence must also be considered. If construction already exists of significant value, independent structural engineers should be commandeered to inspect and report on the same.

At what stage should my company consider committing to placing a deposit? Where should these funds be held?

Should there be any conditions?

The commercial dynamics of a transaction can often override or modify the legal 'ideal' of balance between prospective purchaser and seller. If funds can be placed into the bank account of the purchaser's advisers, subject to an agreement on what basis the funds are held, then the seller sees the act of good faith of monies being placed in the custody of a third party. Sometimes the third

party will be less impetus to satisfy the conditions.

How long should it take before full contracts are entered into? What key provisions should these contracts contain?

From the date of striking a deal and placing a deposit, it is commercially standard to allow 30 days for wrapping up a transaction to execution of contracts. This is relatively speedy in contrast to jurisdictions that have de-

veloped their legal systems over a longer period of time. In the UK for example, it is not common for a transaction to take a matter of weeks as even local authority searches can take some time to be issued. Sales contracts in a development and what they contain should be governed by the type of real estate product being sold: condominium freehold, leasehold, leasehold with an indirect interest in the landlord company to protect renewals or freehold. However, a prospective purchaser might not be suited to a particular method of ownership so there should be early consultation on what is and isn't appropriate. The

What is the normal process for 'completion' of contracts?

Contracts can then be reviewed in the context of applicable laws. For example, condominium sales contracts are governed by specific laws in Thailand. Lawyers differentiate between 'completion of a contract' and 'execution' of a contract. A contract is legally binding after it is complete, signed, witnessed and where appropriate, a company seal or seals affixed. When a set of contracts and their amendments are agreed, usually by a series of emails between the parties and their advisers, the final contracts should be printed and sent to the purchaser's lawyers for 'proof-reading' – that is to check for errors and to ensure all agreed amendments are included. It is not normal, nor fair, for contracts to be sent by lawyers to purchasers directly. This is deemed to be 'circumvention' of the advice of a prospective purchaser. After the 'proofing' and checking exercise, the purchaser will sign the contracts, which ought to have been signed by the seller. At such a point, monies can be released and then one contract is placed with the seller, and one with the buyer or in the custody of their respective advisers.

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party can be independent if necessary and if offshore then a 'legal escrow' agreement could be signed. In Thailand, the legal concept of escrow is not enshrined into law. Where there is a 'hot transaction' monies can be placed subject to 'conditions precedent' whereby certain conditions have to be satisfied before monies are 'released' and then a series of 'conditions subsequent' whereby certain conditions have to be satisfied post-release of the monies. The more conditions subsequent, the better the deal the seller will be deemed to have obtained in terms of risk, because the monies will have passed already and

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