

Legal Clinic: questions and answers on Thailand property legal issues

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Q. I have recently sold out my dried fish export company in Siberia and have some monies I would like to re-invest. I love Thailand and love Phuket, so I should like to invest in some land, and build a development. Should I build condominiums, apartments or villas? How long will it be before I can sell my new project out? - *Gavin Green, Greater Eastern Seaboard*

Answer: If you have not been involved in a development before, then you will either have to proceed through each stage of planning through to completion slowly, recruiting in-house expertise, or as is more common where expertise is lacking – with a joint venture partner. In order to properly acquire the land site in Thailand, you will need to joint venture into an arrangement to develop the land legitimately. A financial analysis of the land is actually as important as location because you can have a great location but your building blueprint, at the market segment you may have in mind as the prospective purchaser, may not be appropriate. When you are looking a potential land sites, you should have engaged an architect, design consultant, surveyor and legal team to conduct a study of the land. To avoid multiple abortive due diligence costs, a joint venture partner should be able to assist with providing insight on the viability of the land site.

To protect your monies, which are the strong point of your input together with business expertise (but in a different field),

you should have a shareholders and joint venture agreement. In terms of the scope of legal work required for a development, this spans beyond a residential conveyance. Initial due diligence; negotiating with the seller or joint venture partner; reviewing service contracts with third party professionals (architects; designers; and marketing companies); construction tender issues; preparing the corporate structure for foreign investment into Thai companies with Thai partners; and close preparation of the sales materials and substantive project information to be commensurate with the legal sales documents are all necessary acts which are time consuming and require professional preparation. It is common to joint venture with a party who has performed this, successfully, and made a profit, before.

You therefore have numerous issues to consider before analyzing the type of development you create. If you choose to build apartments, villas or condominiums at the outset, then you should only look at land suitable in accordance with your development financial plan based on a cost per square metre and realistic selling price. Legally, villas, apartments and condominiums are all suitable for sale in Thailand, but with different legal structures and different methods of legal investment.

Q. I have invested significantly into property in Thailand both for personal reasons in relation

to my principal residence, but also in relation to residential luxury property development projects in which I am a key investor. I recently had a health check and have realized that at my age and in my current state of health, I should consider some estate planning for the event of my death. I don't know where to start – should I use my lawyers in my home jurisdiction or in Thailand? Do I need multiple wills? Where is the best place for me to pay tax? - *David Dodderly, Denmark*

Estate Planning can be quite complex, depending on the extent of your assets, the size of your family, your deemed tax domicile and of course – what you believe you 'own' in Thailand. If you are also married, there is an added dimension to planning your estate, and having your estate controlled by law. If you are not 'resident' in your original home jurisdiction, which is measured by a prescribed number of days being spent outside of your county amongst other criteria, then the laws relating to where you are resident – such as Thailand, should be considered.

You should map out your wishes, the extent of your assets, lists of any companies that you have an interest in and any future investments that you are quite certain may occur. You should then run through this list with a legal advisor; tax expert – either at the same time or at least in conjunction. A tax expert could minimise your tax in an optimum way, but you could be left

with an unattractive structure from a legal sales perspective, equally—the lawyer may not know enough about tax to assist you with specific needs—that is why you should combine advice.

Corporate structures in Thailand are the most likely elements that may need restructuring. What would your joint venture partner expect if you were to pass away in the duration of an ongoing project? Would you want your beneficiaries to a) continue with a project and b) reap the rewards (or losses) of a project? If you have shares in a company, how will these pass to your beneficiary and would they be better owned by an offshore entity for tax purposes? If you own offshore interests, then measures should be taken to develop estate planning in that jurisdiction. You can, for example, have a will governed by British Virgin Islands law, relating to your British Virgin Islands companies.

If you have a will in your home country, this should be reconsidered in light of the advice you receive in your tax domicile/Thailand. If necessary, your lawyers in each country should liaise with each other, but at the very least a copy of the will should be supplied to your lawyer in Thailand.

In terms of timing, it is a cliché in almost all business matters to state that you should 'start early' but in this case – there is really no other professional measured way of dealing with and being prepared for your eventual demise. **P**