



LegalClinic: questions and answers on Thailand property legal issues

BY DESMOND HUGHES & CHRISTIAN GLANVILLE

# Fractional Ownership

**Q.** I have seen attractively packaged investments offering 'fractional ownership' in resort projects. I remember reading about 'timeshare' in Europe in the 1980's which I don't think is the same? As fractional ownership is clearly different, please could you explain the legal differences, and how my investment would be 'protected'. - *Frederique Boulanger, France*

**A.** 'Fractional ownership' is not a legal term, but the general intention is different in nature to the concept of timeshare. A genuine fractional ownership structure in a resort would mean that as an investor you actually legally or beneficially own the interest through legal documentation, and such interest will be properly documented, as opposed to receiving a contract for time. Legal fractional ownership structures provide for evidence of ownership which may have to be indirect interest due to the way in which property laws and foreign investment work in Thailand. When appointing legal advisers, a prospective fractional ownership investment should be investigated in the same manner that a stand alone property investment would be: the land title under the properties should be checked; the contracts reviewed and the corporate structure of the relevant entities reviewed and reported on. If there is the added dimension that the investment is in an off plan resort, then construction agreements and other pertinent documents relating to the future management of the development/resort should be reviewed.

Fractional ownership is often linked to income or returns on use of the unit by third parties with some kind of pooled income to be shared by the fractional owners. The management documentation is therefore crucial and should be reviewed carefully.

**Q.** I have a unit in a resort in Phuket which is shortly to be taken over by a branded management and resort company. I have received a letter, as have other owners, asking us to consider placing our unit into a 'fractional ownership' scheme, through which income on our unit and other units would be shared, less certain expenses. At the moment, I am struggling to find time and resources to rent out my unit. What legal precautions should I take before responding to the offer? - *Robert Carne, Reading, UK*

**A.** It is quite common for there to be a change of brands in hotels and for operators to change

during the term of an investment. The quality of the branded chain making the proposals is a commercial decision to examine. A 'raw' private letting return may seem more attractive financially, but in reality even with deductions for the operator or if you are guaranteed a fixed return, the branded manager may produce more consistent results.

The constitution of the fractional ownership scheme should be analysed, and part of the legal documentation review would include scrutiny of the rental return provisions, deductions from 'income', financial definitions of profit ('gross operating profit' 'net operating profit' etc.) and how they link to the 'returns'. There may be 'opt out' provisions, but how much notice is required? Opt-in provisions may be linked to the purchase of the fractional ownership operator's furniture package and use of internal services (cleaning). Replacement of furniture, fixtures and equipment ('FF&E') may be your responsibility, which you can view as a deduction from your income.

**Q.** "If I am part of a 'fractional ownership' scheme, how can I sell my interest, legally to a prospective purchaser?" - *Irvyn Stooter, Indonesia*

**A.** During the initial check and review of the legal package to which you subscribed, your attorneys should have advised you on how the legal instruments used to provide you with your fractional ownership could be transferred in the future. If you own your fractional ownership in your own name, then a transfer of the interest could be a transfer of an 'asset' and therefore subject to tax in Thailand if the legal documents reflect a transfer in Thailand and this causes a taxable event. If you set up your interest into a tax efficient corporate vehicle, then you may be able to sell your interest, minimizing your tax liability, which could also be attractive for a prospective purchaser of the interest.

It is important to check in the contracts if there are any 'assignment' fees, or restrictions on change of control of your fractional ownership interest. If you signed a 'shareholders agreement' as part of the legal package, then pre-emption rights should be considered, and the incoming shareholder – the purchaser, would be expected to sign an 'accession agreement' to be bound by the same terms and conditions your interest was subject to when you first purchased the same.

*Please send any legal questions to [legal@property-report.com](mailto:legal@property-report.com) for expert answers from our panel*

This legal clinic was co-written by Desmond Hughes (Partner) and Christian Glanville (Senior Associate) based in the Phuket offices of Belmont Limcharoen which has also offices in Bangkok and Koh Samui. [www.belmontlimcharoen.com](http://www.belmontlimcharoen.com)

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