

PROPERTY LAW BRIEFING

Legal and Tax Tips for your Property in Thailand

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- Building Ownership in Thailand
- Sale with Right of Redemption (“Khai Fah”)

New & Events:

- Phuket Branch of FRANK Legal & Tax opened
- Events and Seminars

[*Advance bookings and enquiries*](#)

Welcome to the first edition of FRANK’s Thailand “Property Law Briefing”. From now on, each month Property Law Briefing will provide you with tips and analysis, law and regulations and practical tax information for your property in Thailand. This month we will touch on the following matters:

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Building Ownership in Thailand

According to Thai law, ownership of a land plot and ownership of a house situated on such land plot can be separated under certain conditions. This enables foreigners to **own the house** on land which they lease.

If the house ownership is transferred separately from the land ownership, 30-days public notice is required before the transfer of house ownership can be registered. During this notice period, objections against the house ownership transfer

can be filed. If land and house are sold jointly, no public notice is required.

As opposed to land, there are no title deeds for buildings and therefore evidence of ownership is not as clearly documented. Generally speaking, there is an assumption that the land owner is also the owner of a house that is situated on such land. Such assumption may however be

disproved in particular by (1) a superficies, (2) building permit and/or (3) an official house sale and purchase agreement. In this article, we will look further into the various options and also into the significance of the construction agreement and the so-called house registration book.

1. Superficies

The Thai CCC sets forth a clear procedure of separating land and house ownership through



registering a “**superficies**” (Sect. 1410-1416 CCC), which creates the right to own a house on a land plot that one does not own. The superficies is registered on the title deed, which evidences the ownership of the respective house and provides notice to third parties.

2. Building permit

According to the rulings of some Thai courts and administrative practice, house ownership can also be established merely pursuant to Section 146 sentence 2 CCC which distinguishes and separates the land from a house built thereon where the house is built “in the exercise of a right over [the land owner’s] land” and without a superficies. Thai courts consider leasehold to be a “right to another person’s land” and current administrative practice in Thailand takes the same position.

However, current administrative practice may also require additional documentation that it deems to be evidence of house ownership. For the first owner of a house, i.e. the builder, this is the **building permit** for the house. Administrative practice considers the permit relevant indicia of house ownership (for the first owner of the house only) purportedly because the land owner must consent in writing to the issuance of the permit and because the permit form calls the grantee the “owner” of the house to be built.

3. Official House Sale Agreement

In the case where the building is purchased from a property developer, usually together with an interest in the land, the developer will have applied for the building permit. Then, the documentation of the house purchase will be relevant, in particular the **official “House Sale Agreement”**. The official agreements are issued by and are part of the file of the land office. And, thereby, ownership of the house in the name of the owner from the second owner on is officially

registered at the relevant land office. A duplicate of the latest agreement is given to a new owner of the house.

It should be noted that, as opposed to the building permit, the official house sale and purchase agreement serves as strong evidence for house ownership that is not easy to challenge.

4. Construction Agreement

In combination with the aforementioned documentation, a construction agreement related to the house may also be brought forward as indicia for house ownership.

5. House Registration Book

Despite a common misconception, the **house registration book** (in Thai “Tabien Baan” or “Blue Book”) does not serve as evidence for house ownership in any way. The house registration book states the address of the house and the persons who live in it. This will often be the owner, but it does not necessarily have to be the case.

The house registration book is however an important document for dealings related to utilities, etc. and it generally serves as certificate of residence.

There are two types of House Registration books, the blue and the yellow book. The blue book is issued for Thai nationals or foreigners with permanent residence status, the yellow book for foreign nationals. In both cases please note that only individuals, not companies, can be stated.

As a summary, we would like to point out that a review of the house ownership situation should be an important part of every legal due diligence prior to acquisition of property in Thailand. There are means to clearly document the house ownership in the name of the purchaser, and these should not be missed.



Hotel Licenses in Phuket

Tourism in Thailand represents an uninterrupted growth-market and accordingly, the number of hotels and resorts is rising steadily. In Phuket, according to the last statistics of December 2011, there were 43,759 rooms in the registered hotels and resorts and by 2015 the estimated number will reach 50,031 rooms.

It is, however, interesting to note that the majority of hotels in Phuket operate without the legally required hotel license. Enforcement of the pertinent laws by the competent government bodies seems to remain very lenient.

In order to obtain the license, hotel operators must comply with the requirements set forth in the Thai Hotel Act (B.E. 2547; 2004, as amended) and file an application with the District Office, if their business falls within the definition of hotel in the Hotel Act.

Under the Act, “hotel” means specifically all lodging premises, established for commercial purposes to provide temporary accommodation to a traveler or any person for a consideration. Also so-called “serviced apartments” are considered as hotels according to the Act if they provide accommodation on a daily or weekly basis. But exempted from the hotel license requirement are in particular places which provide accommodation for more than one month. Furthermore, all residential premises with no more than four rooms on all floors in total (whether in a single building or in several buildings) and a total service capacity of not more than 20 guests are exempted.

The intention of the legislator to require certain preconditions for obtaining a hotel license for permission to run a hotel in Thailand is the control of hotel standards, promotion of hotel business operation, promotion and preservation of environmental quality, sturdiness, hygiene and safety of hotels.

What are the key requirements to obtain a license?

The Hotel Act sets forth requirements which a hotel manager (Section 33 Hotel Act) and a hotel operator (Section 16 of the Hotel Act) must meet. The hotel operator is the person obtaining licenses for the hotel operation, while the hotel manager is the person appointed by the hotel operator to be in charge of hotel management.

The manager must be able to present proof of professional education and/or experience in the field of hotel management. The hotel manager can be either Thai or foreign with the appropriate visa and work permission.



The Act also sets forth that the hotel operator, who is the owner or the operator of the hotel and applicant for the Hotel License, can be either an individual person or a juristic person. Certain circumstances may preclude the applicant as hotel operator¹.

Additionally, the building of the hotel must comply with the Building Control Act (B.E. 2522, 1979, as amended) and the building permit must stipulate that the building may be used as a hotel (if located within the jurisdiction of the Building Control Act).

¹

According to the Thai Foreign Business Act, hotel undertakings are in principle not permitted for foreigners (unless they are limited to hotel *management* services or Board of Investment promotion / a Foreign Business License has been obtained from the competent Thai authorities). Therefore, private or public limited liability companies that engage in this business will usually have Thai shareholding at a rate of 51% or more. The director of the company must be Thai (if there is one non-Thai director, there must be two additional Thai directors).

The application process includes involvement of various government agencies (local and provincial). The procedure is lengthy and takes approximately two months in Phuket, but this may vary if the hotel is located in another province of Thailand. Once a hotel license has been obtained it will be valid for a period of five years from the date of issuance and can be transferred to third parties if the transferee meets the aforementioned statutory requirements.

While the reasons for lack of compliance may be various, more stringent enforcement of the existing laws would certainly be desirable in order to achieve the Hotel Act's goals of transparency, quality control and eventually the increase in competitiveness of the Thai tourism sector.

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FRANK News & Events

FRANK Branch Office in Phuket Now Open

FRANK Legal & Tax proudly announces the opening of our branch office in Phuket. The office is conveniently located in Cherngtalay at the junction of Laguna Road and Bandon Road (traffic lights) and the address is:

FRANK Legal & Tax
Palm Plaza, 55/1 Bandon-Cherngtalay Road,
Cherngtalay, Thalang, Phuket 83110, Thailand

Please see a location map as follows:



We look forward to welcoming you in our new office premises!

Kind regards,

FRANK Legal & Tax

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