

Happy New Year

Gong Xi Fa Cai! Xin Nian Kuai Le!

Wishing you a happy and prosperous New Year in the year of the Ox!

January 2009 has been historic for many reasons. USA welcomed their first President of African origin, Barrack Obama. What a historic event it was, many American friends in Bangkok even stayed up the whole night to catch the inauguration ceremony live. With the security concerns over some eccentric individual or the extremist group trying to make the wrong history by assassinating him, the whole episode adds even more drama to this fairy-tale type run up to the Presidency. Now the whole world anxiously awaits where Obama can act as smoothly as his delivery of inspiring speeches.

In Singapore, we reported a GDP contraction of 16.9% in Q4 2008, the highest ever in history. And then not too long after that we announced that we may need to dig into our sovereign fund for the first time. The government's early budget release clearly shows that the government is taking steps to mitigate the imminent growth in unemployment. Though these issues are closely debated in parliament, it certainly is better than no action at all. Amidst all the heart-stopping news, most recently we have a change of leadership at Temasek Holdings. For the first time, a foreigner will take over the CEO position from Ho Ching from 1st October 2009 amidst some controversial investments by Temasek of late.

Closer to home, the Thai government approved a law against seizing airports. While this is a much delayed law, the penalty is just a slap on the wrist for potential airport seizures. Imposing a fine between Bt 500 to 10,000 can hardly be compared to the billions the country lost during the 8-day seizure in December, not to mention the loss from the scores or travelers that have cancelled proposed trips to the Kingdom. Coupled with the global economy crisis, this has even resulted in employees in the hospitably industry losing their jobs or taking salary cuts.

Despite all this, we can still have some optimism to look forward to. The US-led governmental economic stimulus packages, including Singapore government's anti-recession budget and the Thai government's US\$3.35 stimulus package, bring a ray of hope that 2009 may hopefully be not so bad as some expected it to be.

Yours sincerely,

Daniel Loh

STCC Newsletter & Website Director



STCC Happenings

STCC Happenings

STCC Networking Night at Baan Amata

Khun Vikrom Kromadit, graciously invited STCC to hold our January 2009 networking event at his beautiful home on top of Kromadit Building on 22nd January 2009. In the event Khun Vikrom, emphasized the good relationship Singapore has with Thailand and asks for all to give a chance and support the Khun Abisit government. The event was sponsored and hosted by Khun Vikrom and Amata Holdings. STCC wishes to extend out appreciate to Khun Vikrom and Amata Holdings for their hospitality. We wish Khun Vikrom the very best in his quest to finish his series of books he is writing.





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Chinese New Year Sinner 2009

A good crowd of 150 STCC members and their friends gathered at Montien Riverside Hotel on 5th February 2009 to toss the “Yu Sheng” (Raw fish salad) for good fortune and usher in the year of the Ox. After a welcome by the Chinese Lion Dance troupe, Chairman Mr. Oh Lock Soon explained the significance of tossing the Yu Sheng. Guest-of-Honor, HE Mr. Peter Chan, Singapore’s Ambassador to Thailand addressed the crowd before the joyous tossing began. The evening was accompanied by a jokes session by Mr. Winston Doong & Khun Pakdee and ended with a Karaoke session.





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Does 90 Years Lease of Land Exist in Thailand ?

By David Tan

David is a Lecturer of Business Law at Asian University and author of the book "A Primer of Thai Business Law". Any questions or comments to David should be sent to blas.inter@yahoo.com



This is possible if the plot of land is not sold to another new owner or the land owner stay alive long enough to renew your lease terms. Other than this, it is fallacious to think that you can lease a plot of land for 90 years under Thai civil laws.

Under Thai civil laws, a long term lease of a plot of land can be up to a maximum lease period of 30 years. The law also provides for leasing land for the life period of the land owner or the lessee.

A 30 years lease of land is a long term lease and has to be made in writing, signed by the lessor and lessee and registered at the district Land Office in order to be legally enforceable. In Thailand any lease of immovable property for more than 3 years must be registered. The registration of the 30 years lease period at the district Land Office means that you, the lessee, have the right to use or benefit from the plot of land for the registered 30 years lease period. No other third party would be able to use or receive benefits from the land for the 30 years.

If the land had been bought up by a new owner during the 30 years, this new owner is binding to your 30 years registered lease i.e. allow you to lease the land for the registered lease period. In legal language, you have a real right over the land for the registered 30 years.

Any promises to renew the 30 years lease term for another 2 x 30 lease terms are just promises agreed upon between the land owner and you. An example of such personal promises can be a stipulation in the lease of land contract: "the lessor agrees to renew the lease for another two 30 years lease terms". Besides the lessor and yourself, no other person is contractually binding to these renewal promises. A third person is not a party to these promise agreements.

Therefore, when the plot of land is sold to a new owner, the new owner is not binding to the promise to renew the lease at the end of the 30 years registered lease. If the land owner dies, the promise dies too, whoever is the land owner at the end of the 30 years is not obligated to renew the lease as well.

Tip

One of the recourse would be to lease the plot of land for only 30 years. Register the written and signed lease of land contract at the Land Office. Alternatively, you may want to consider purchasing a condominium unit(s).

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LAND OWNERSHIP BY FOREIGNERS ?

By David Tan

In general foreigners (non-Thais) have no legal rights to land ownership in Thailand, except for a few rare exceptions.

This means that the possibility of land ownership by a foreigner desiring to reside or to reside and to do business in Thailand is, in most cases, none. Consequently, this gives rise to the need to “work around the rules” or to look for alternative ways to own land in Thailand. Well, there are various structured ways being used:

(1) A foreigner leased a plot of land from a Thai person or company for 30 years (The longest lease period under the law), the lease of land contract signed by the lessor and lessee is registered at the Land Office.

Also, it is stated in the lease of land contract that “upon the completion of the 30 years lease term, the lessor agrees to renew the lease period for another 2 x 30 years lease period”. This allows a foreigner to possess (not own) the land and to use the land for 30 years, plus maybe another 2 x 30 years lease terms. (Note: If the land is sold to a new owner, this new owner is not obligated to renew the lease period for another 30 years lease period. The lease period renewal is a promise made only by the lessor);

(2) A Thai person, possibly a Thai girlfriend, wife or trustworthy friend, owns the plot of land and the foreigner owns the house or building situated thereon. (Thai law does not restrict a foreigner having ownership of a house or building);

(3) A foreigner buy share(s) of a company limited that already owns the desired plot of land. To have ownership title of the land, the company limited must have a majority of its shares or capital held by Thais or Thai companies; or

(4) A foreigner incorporates a company limited with the majority of its shares or capital owned by Thais or Thai companies. After incorporation, this company limited buys and own the plot of land. To have ownership control over the company limited, the Thai shareholders are either: nominee shareholders of the foreigner (illegal) or having their shareholders’ voting rights reduced (May become illegal given current proposed changes to the law)



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January – February 2009



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Do Not Risk Your Deposit Money or Reservation Fee

By David Tan

You look at the brochure, poster, master plan etc. of a condominium or housing development project and you want to purchase one of the condominium units or houses offered. You express your interest to the developer or seller and subsequently sign a Sale Contract and pay a deposit or reservation fee for the condominium unit or house. Do you now have a Sale Contract with the developer or seller?

Regardless of what the developer or seller tells you, in the eyes of the law, this is not a Sale Contract. This contract is considered a promise contract. The developer or seller promises to sell you the condominium unit or house at an agreed upon future date (when the property has been built) and you promise to pay the full purchase price at that time. According to the law, sale of immovable property is payment of the purchase price and ownership title transfer by registration at the local Land Office; these have not taken place yet. Both parties are contractually bound to their promises only.

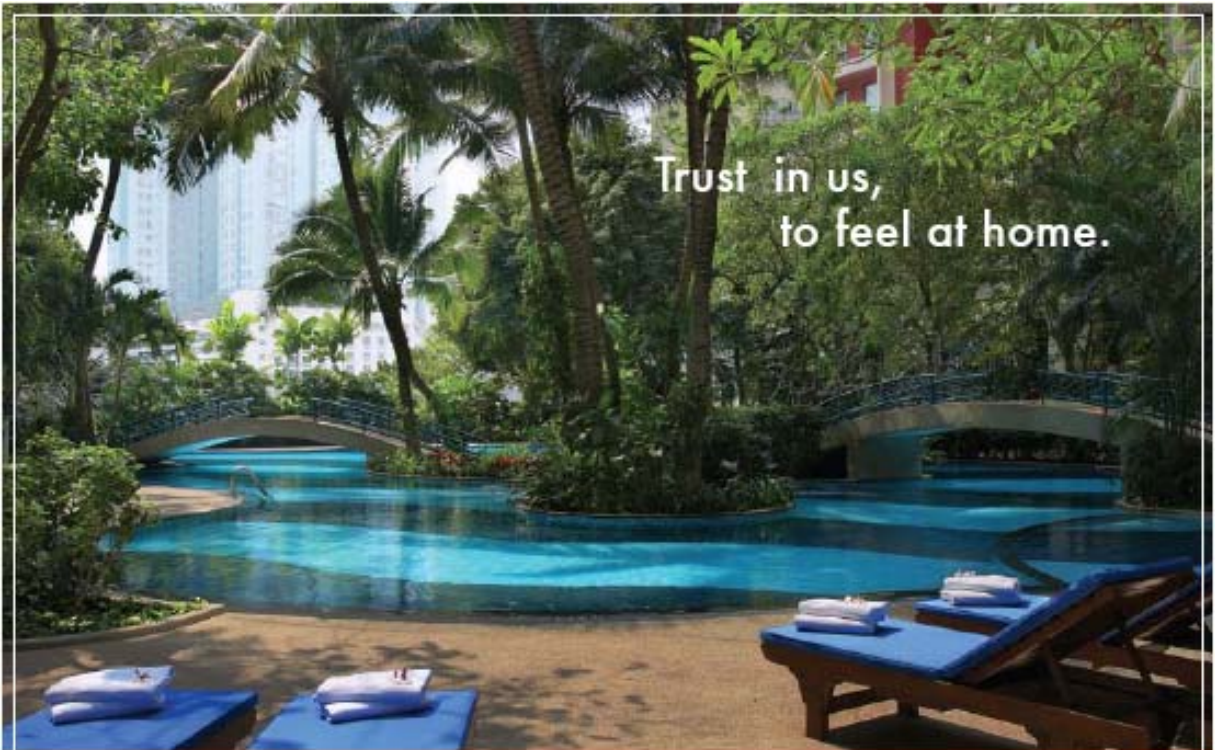
However, since you (the buyer) had already paid deposit money or a reservation fee to the developer or seller, if the developer or seller defaults in transferring the ownership tile to you by registration at the Land Office on the agreed upon future date, you will have to request the developer or seller to return all deposit money or reservation fee paid by you. If the developer or seller does not do so, you will have to claim against them in court.

Not transferring ownership title to you may be due to: the developer or seller not being able to complete building the project on time, you are not satisfied with the building specifications or materials used, creditor(s) cannot release mortgage, encumbrance or charge placed on the property, developer or seller going bankrupt etc.

Tip

Do some investigative work. Check on whether the developer or seller have being in the business for many years, is a company listed on the Stock Exchange of Thailand, is a company with a capital amount sufficient enough to fund the project etc. Unless the result of this investigation is positive, you should not risk making any sort of deposit or reservation fee payment. Instead, make a one time payment of the whole purchase price upon the developer's or seller's registration of ownership title transfer of the completed property to you.

Having said this, if you must pay deposit money or reservation fee, minimize your risk exposure by negotiating for the lowest possible amount.



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Advise on Property Investment

Buying a Condominium Unit ? Proceed with Diligence

By David Tan



The legal way for a foreigner to own real estate in Thailand is to buy a condominium unit(s) (“Condo Unit”). This was proposed in my last article on foreign land ownership. In Bangkok, Condo Unit purchases are now considered trendy among the younger generation of Thais as Condominiums are conveniently located in the inner city area and it is more economical to commute.

TIP

Whether you are going to buy a Condo Unit to reside or for investment purposes, I would like to walk you through the following due diligence steps:

(1) If you can narrow down your choices of Condo Units to 1 or 2 Condo Units, a physical inspection must be conducted by an expert or civil engineer on the Condo Unit and the condominium building. Are they as according to the promises made by the seller ?

Checks should be conducted for water leakage in the Condo Unit, proper and safe electricity supply, adequate car parking spaces allocated, fire exits, correct building materials used.

(2) What is payable by an owner of the Condo Unit for up keeping e.g. common facilities fees, water charges, electricity charges. Who should they be paid to and how much are they? Find these out from the owner of the Condo Unit.

(3) If (1) and (2) above are satisfactory to you, request from the owner of the Condo Unit a copy of the Condo Unit Title Deed. Take this to the local district or Amphur Land Office and counter check with the original Title Deed kept there on:

(a) Who is the owner of the Condo Unit ? This owner should be the person whom you are dealing with and signing the contract to sell you the Condo Unit.

If the owner is a company limited, who can sign on behalf of this company ? Does the company limited have enough capital to complete building the condominium ? The answers to these questions can be obtained from the incorporation records of the company limited at the Ministry of Commerce;

(b) Is the condominium building registered at the Land Office ?; and

(c) Does the original Title Deed reveal any registered encumbrances, lease, mortgage or charges ?

continue next page.....

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Buying a Condominium Unit ? Proceed with Diligence (con't)

By David Tan

(4) Have a lawyer peruse the conditions of the Reservation Contract or To Sell and To Buy Condo Unit Contract prior to signing it. Legally speaking, this Contract does not create any property rights for you yet because the Condo Unit ownership title will transfer to you at a later date. This Contract is binding only on the promises of both the seller and you that ownership title transfer and sale of Condo Unit will take place at the agreed upon later date. However, the risk exposure to you here is that, at the signing of this Contract, you are usually requested to place a deposit with the seller. If the seller does not sell and transfer ownership title of the Condo Unit to you at the agreed date, you will have to claim the seller in court for breach of Contract to get the deposit back.

As a result, I do not recommend the signing of this type of Contract. You should make a 1 time payment of the whole purchase price at the sale and upon ownership title transfer of the Condo Unit to you. Alternatively, you could arrange for a neutral escrow agent to hold your money and hold the original Title Deed (Note: Under the new Escrow Business Law, effective on May 19, 2008, an authorized financial institution or commercial bank can provide escrow agent services).

(5) Clarify with the owner who is responsible for the ownership title transfer fee, income tax and specific business tax or stamp duties payable at the Land Office on the day of ownership title transfer. Unless agreed otherwise between the owner and you, you are only legally responsible for 50% of the ownership title transfer fee.

Please note that the amounts payable here can be calculated for you by an official at the Land Office.

(6) Make sure that the owner have obtained from the Condominium Juristic Office the following:

- (a) A letter verifying that foreigners have ownership in condominium units not exceeding 49% of the total space of all units in the condominium building; and
- (b) A letter verifying that the owner has no outstanding debts owing to the Office.

(7) You have obtained the required bank document to verify that the purchase price for buying the Condo Unit was remitted into Thailand.

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Upcoming Activities

Upcoming Activities

1) Luncheon with H.E. Prime Minister Abhisit Vejjajiva

Date : 23rd February 2009

Time: 11.15am - 2.30pm

Venue: Centara Grand Convention Centre, Central World, Bangkok

Cost: 1,500 Baht nett per person

15,000 Baht nett per table

2) STCC – THTA Golf Challenge

Date : 28th February 2009

Time : Registration starts at 5.45am

1st Tee-off at 6.14am

Venue : Chuan Chuen Golf Club

Cost : 2,400 Baht nett (including green fee, Caddy & Lunch)