

# Chambers

GLOBAL PRACTICE GUIDE

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

# Real Estate

## Thailand

Olaf Duensing, Jerrold Kippen,  
Weeraya Kippen and Tippaya Moonmanee  
**Duensing Kippen, Ltd**

[chambers.com](https://www.chambers.com)

# 2020

# THAILAND

## Law and Practice

Contributed by:

Olaf Duensing, Jerrold Kippen,

Weeraya Kippen and Tippaya Moonmanee

Duensing Kippen, Ltd see p.17



## Contents

<b>1. General</b>	p.4	<b>4. Planning and Zoning</b>	p.9
1.1 Main Sources of Law	p.4	4.1 Legislative and Government Controls Applicable to Strategic Planning and Zoning	p.9
1.2 Main Market Trends and Deals	p.4	4.2 Legislative and Government Controls Applicable to Design, Appearance and Method of Construction	p.9
1.3 Impact of Disruptive Technologies	p.4	4.3 Regulatory Authorities	p.9
1.4 Proposals for Reform	p.4	4.4 Obtaining Entitlements to Develop a New Project	p.9
<b>2. Sale and Purchase</b>	p.4	4.5 Right of Appeal Against an Authority's Decision	p.9
2.1 Categories of Property Rights	p.4	4.6 Agreements with Local or Government Authorities	p.9
2.2 Laws Applicable to Transfer of Title	p.5	4.7 Enforcement of Restrictions on Development and Designated Use	p.10
2.3 Effecting Lawful and Proper Transfer of Title	p.5	<b>5. Investment Vehicles</b>	p.10
2.4 Real Estate Due Diligence	p.5	5.1 Types of Entities Available to Investors to Hold Real Estate Assets	p.10
2.5 Typical Representations and Warranties	p.5	5.2 Main Features of the Constitution of Each Type of Entity	p.10
2.6 Important Areas of Law for Investors	p.6	5.3 Minimum Capital Requirement	p.11
2.7 Soil Pollution or Environmental Contamination	p.6	5.4 Applicable Governance Requirements	p.11
2.8 Permitted Uses of Real Estate Under Zoning or Planning Law	p.6	5.5 Annual Entity Maintenance and Accounting Compliance	p.11
2.9 Condemnation, Expropriation or Compulsory Purchase	p.6	<b>6. Commercial Leases</b>	p.11
2.10 Taxes Applicable to a Transaction	p.6	6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time	p.11
2.11 Legal Restrictions on Foreign Investors	p.7	6.2 Types of Commercial Leases	p.11
<b>3. Real Estate Finance</b>	p.7	6.3 Regulation of Rents or Lease Terms	p.12
3.1 Financing Acquisitions of Commercial Real Estate	p.7	6.4 Typical Terms of a Lease	p.12
3.2 Typical Security Created by Commercial Investors	p.7	6.5 Rent Variation	p.12
3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders	p.8	6.6 Determination of New Rent	p.12
3.4 Taxes or Fees Relating to the Granting and Enforcement of Security	p.8	6.7 Payment of VAT	p.12
3.5 Legal Requirements Before an Entity Can Give Valid Security	p.8	6.8 Costs Payable by Tenant at Start of Lease	p.12
3.6 Formalities When a Borrower Is in Default	p.8	6.9 Payment of Maintenance and Repair of Communal Areas	p.12
3.7 Subordinating Existing Debt to Newly Created Debt	p.8	6.10 Payment of Utilities and Telecommunications	p.12
3.8 Lenders' Liability Under Environmental Laws	p.8		
3.9 Effects of Borrower Becoming Insolvent	p.8		
3.10 Consequences of LIBOR Index Expiry	p.9		

# THAILAND CONTENTS

---

6.11	Insuring the Real Estate that is Subject to the Lease	p.13
6.12	Restrictions on Use of Real Estate	p.13
6.13	Tenant's Ability to Alter and Improve Real Estate	p.13
6.14	Specific Regulations	p.13
6.15	Effect of Tenant's Insolvency	p.13
6.16	Forms of Security to Protect Against Failure of Tenant to Meet Obligations	p.13
6.17	Right to Occupy After Termination or Expiry of a Lease	p.13
6.18	Right to Assign Leasehold Interest	p.13
6.19	Right to Terminate Lease	p.13
6.20	Registration Requirements	p.14
6.21	Forced Eviction	p.14
6.22	Termination by Third Party	p.14

<b>7. Construction</b>		p.14
7.1	Common Structures Used to Price Construction Projects	p.14
7.2	Assigning Responsibility for the Design and Construction of a Project	p.14
7.3	Management of Construction Risk	p.14
7.4	Management of Schedule-Related Risk	p.14
7.5	Additional Forms of Security to Guarantee a Contractor's Performance	p.15
7.6	Liens or Encumbrances in the Event of Non-payment	p.15
7.7	Requirements Before Use or Inhabitation	p.15

<b>8. Tax</b>		p.15
8.1	VAT	p.15
8.2	Mitigation of Tax Liability	p.15
8.3	Municipal Taxes	p.15
8.4	Income Tax Withholding for Foreign Investors	p.15
8.5	Tax Benefits	p.16

## 1. General

### 1.1 Main Sources of Law

Thailand is a civil law country. Therefore, although Thai Supreme Court opinions have a strong persuasive value, the source of all law in all areas, including real estate, is statutory.

The Civil and Commercial Code (CCC) is perhaps the single most important law applicable to real estate in Thailand. Besides governing contracts, the CCC also creates ownership of immovable property and dictates how it may be transferred. It also creates and controls the various rights that may be registered over immovable property, such as mortgage, lease, superficies, usufruct, charge, and servitude.

The Land Act creates and controls the various titles of use and ownership of land.

The Condominium Act creates a licensed development in which condominium units may be owned on a freehold basis and regulates the relationships between the owners.

The Land Allocation Act does the same with respect to land, or land with a house thereon.

Thailand's three main land use laws are:

- the Enhancement and Conservation of National Environmental Quality Act, which restricts land use in certain ways in various areas;
- the Town and City Planning Act, which controls what may be built and where; and
- the Building Control Act, which permits and dictates the requirements for structures.

### 1.2 Main Market Trends and Deals

Thailand's Land and Structure Tax Act came into effect on 1 January 2020. It replaces two antiquated taxes on real estate and creates the following four classes of property:

- residential: immovable property that is used for residential purposes to which a maximum annual tax of 0.3% applies;
- agricultural: immovable property that is used for agricultural purposes to which a maximum annual tax of 0.15% applies;
- other: immovable property that is used for anything other than residential or agricultural purposes, eg, commercial activity, to which a maximum annual tax of 1.2% applies; and
- unused: immovable property which is unused to which a maximum annual tax of 1.2% to 3.0% applies.

The most significant recent deals have largely been in the public-private partnership sector, such as:

- the high-speed railway connection to three major airports;
- U-Tapao airport and Eastern Aviation City;
- U-Tapao maintenance, repair and overhaul centre;
- phase III of the Map Ta Phut industrial port; and
- phase III of the Laem Chabang port.

### 1.3 Impact of Disruptive Technologies

Real estate investors, developers and lenders have not yet started to adapt to recent technological innovations such as blockchain, decentralised finance (DeFi) and proptech, which have begun to have a disruptive effect in the real industry in some other locations. It is therefore unlikely that any such technologies will have any significant impact on the real estate market in Thailand over the next 12 months.

### 1.4 Proposals for Reform

Due to the restrictions on foreign ownership of land in Thailand, foreign investors commonly acquire a long-term land lease. However, the maximum lease term in Thailand is currently only 30 years and although an option to renew the lease may be agreed with the lessor, such option is not enforceable against a new lessor should ownership of the land change hands during the original lease term. It is generally agreed that these limitations have inhibited foreign investment not only in real estate, but also in business ventures that require real estate to operate.

Accordingly, for many years now there have been calls, including formal white papers by the various chambers of commerce in Thailand, for the Thai government to amend its lease law to extend the maximum term to a duration close to 100 years, as found in many other international jurisdictions. At times the government has appeared receptive to these calls. However, at the moment there does not appear to be any indication that the government will extend the maximum lease term any time soon.

## 2. Sale and Purchase

### 2.1 Categories of Property Rights

There are five main real estate titles. Chanote is one of only two true ownership titles in Thailand and is issued for land. The second is the Condominium Unit Title issued for a condominium unit.

There are also three possessory rights title documents for land and in order of preference they are: Nor Sor 3 Gor; Nor Sor 3; and Sor Kor 1. Property rights, including transfer of ownership, can only be registered on the chanote, the Condominium Unit

# THAILAND LAW AND PRACTICE

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

Title, Nor Sor 3 Gor and Nor Sor 3 deeds, but a Sor Kor 1 can usually be upgraded to a chanote or Nor Sor 3 Gor.

Immovable property may be leased for up to 30 years under the CCC. Whereas leases for industrial or commercial purposes are eligible for a lease term of up to 50 years in some circumstances.

A registered usufruct gives the grantee the right to possess and benefit from immovable property for up to 30 years.

A habitation may be registered and gives the holder the right of occupation of a structure for either up to 30 years or the life of the holder.

A superficies is the right to own a structure that is built on another party's land for up to 30 years.

A servitude grants the owner of one property rights, eg, access, over another property owned by someone else. However, a servitude is not a personal right, it is registered in favour of one piece of real estate over another piece of real estate and this remains the case regardless of who owns the properties. Thus, a servitude has no time limitation.

A charge is similar to a servitude, but it is a personal right that gives the holder rights over real estate owned by someone else for either the holder's life or up to 30 years.

## 2.2 Laws Applicable to Transfer of Title

The CCC applies to the transfer of real estate in Thailand. Special laws do not apply to a transfer of title for specific types of real estate, such as: residential, offices, retail, factories, or hotels. However, some of these, eg, factories and hotels, are regulated uses of the real estate that require a licence to operate. Thus, if a new owner purchases real estate that is being used as a factory or hotel, that new owner would need to obtain a licence to use the real estate for either of those purposes.

## 2.3 Effecting Lawful and Proper Transfer of Title

All real estate in Thailand is registered and held under various forms of title (see **2.1 Categories of Property Rights**) as prescribed by the Land Code.

The CCC requires an agreement to sell and purchase real estate to be in writing and registered at the local land office where the property is located.

Title insurance is not common in Thailand, but it is available. Buyers who are "land banking" (ie, whose sole purpose for the investment is to hold the real estate for a period of time and then resell for an anticipated profit) or who hold land for commercial purposes, are most likely to purchase title insurance

which generally insures the owner against any flaw in the title which would invalidate it.

## 2.4 Real Estate Due Diligence

Buyers typically engage a law firm to perform legal due diligence into the property. This typically includes searches at the: land office; local administrative office; forest resources and management office; natural resources and environment office; public works and town and city planning office; civil courts; bankruptcy courts; and the department of legal execution, where the land is located. Title searches are particularly important, as wrongfully issued titles are not unknown in Thailand. Even if the title is not clearly invalid, official real estate records are sometimes lost or destroyed, which may make it impossible to verify the title to the real estate.

Additionally, commercial real estate investors typically conduct economic and physical due diligence into the property. The former will usually include an assessment of the revenue generated by the property, eg, from rental tenants, while the latter will typically include one or more physical surveys, eg, topographical, hydrological, etc, of the property.

## 2.5 Typical Representations and Warranties

The seller typically provides contractual representations and warranties of ownership and proof that no third-party rights, such as any mortgage or lease, encumber the property.

In the case of any defect in a property sold, of which the buyer was not, nor should have been, aware, this impairs either its value or fitness for ordinary purposes or for the purposes of the contract, and the seller is liable by statute regardless of whether or not the seller knew of the defect.

The seller is also liable by statute for the consequences of any disturbance caused to the buyer's possession of, or eviction from, the property by any person having a right over the property at the time of sale, of which the buyer was unaware, or by the fault of the seller.

The law allows parties to contract out of these statutory warranties, thus the sale and purchase typically releases the seller from liability or disturbance. However, such a non-liability clause does not exempt the seller from repayment of the purchase price, unless the clause specifies otherwise. Thus, this release is also typically included. At the same time, a non-liability clause may not exempt a seller from the consequences of their own acts or facts which they knew and concealed.

Finally, if an immovable property is declared to be subject to a servitude (elsewhere often known as an "easement") by law, the seller is not liable unless they have expressly guaranteed

that the property was free of servitudes, or from that servitude. Thus, sellers often refuse to so warrant or explicitly represent otherwise.

## 2.6 Important Areas of Law for Investors

The CCC which governs contracts, such as sale and purchase and lease agreements, as well as real estate rights, such as ownership, leaseholds and servitudes/easements, is a crucial area of law for all real estate investors. This is also true of Thailand's three main land use laws (see **1.1 Main Sources of Law**) which should be carefully evaluated by all buyers prior to investing. Depending on the type of property, the Land Code and the Condominium Act are also crucial areas of law as they determine the validity of title to land and condominiums.

Where the investor is a foreigner, laws that provide possible exemptions to Thailand's restrictions on foreign ownership of real estate, such as the Investment Promotion Act and the Industrial Estate Authority Act, may also be relevant.

## 2.7 Soil Pollution or Environmental Contamination

Under the Enhancement and Conservation of National Environmental Quality Act, the owner or possessor of any property that is a source of contamination that causes physical harm to any person or damage to someone else's property, is liable and must compensate the harmed party or parties. Furthermore, the owner or possessor must also compensate the government for all its costs in connection with cleaning up the contamination. The liability standard under the Act is strict – the owner or possessor need not have intended or been negligent with regard to the contamination from their property – and the very limited exemptions from this liability do not include the property having originally been contaminated by a prior owner or possessor. Thus, where there is any possibility of contamination, buyers typically require the seller to warrant that they have adhered to applicable environmental law and to indemnify the buyer against any liability arising from contamination from the property during the buyer's ownership or possession thereof.

## 2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

Thailand has three principal land use laws:

- the Town and City Planning Act defines several zones of land use and controls what is allowed to be in each;
- the Building Control Act (BCA) controls the issuing of construction permits and details what is required to obtain such permits; and
- the Enhancement and Conservation of National Environmental Quality Act limits the use of land, including con-

struction thereon, to varying degrees depending on where the land is located.

The Town and City Planning Act is applied by means of ministerial regulations issued under it that apply to specific regions. The BCA is applied by means of the royal decree issued under it that applies to specific geographic regions. The Enhancement and Conservation of National Environmental Quality Act is applied by means of the ministerial regulations issued under it that apply to specific geographic regions, or by announcements issued under it that apply to specific geographic regions for specified periods of time.

Some other laws may apply to land use in some areas such as the Marine and Coastal Resources Management Act and the National Reserved Forest Act. Thus, it is important for a buyer to review all such laws that are applicable to the purchase property at the time.

There is no provision for a private party to apply for exemptions from applicable land use law in order to facilitate a development project. However, it is possible for local government offices to issue regulations that would allow for more permissive variations to land use restrictions in a specified location.

## 2.9 Condemnation, Expropriation or Compulsory Purchase

Land may be expropriated by the government for public purposes in accordance with the Immovable Property Expropriation Act. Once it is determined that a property is to be expropriated, the process is as follows:

- a regulation is issued under the Act that identifies the property to be expropriated and for what purpose;
- a government committee is convened to appraise the value of the property and determine the compensation to be paid for it;
- the government then attempts to agree on a purchase price for the property;
- if the price cannot be agreed, the owner or possessor may file an appeal; and
- once the price has been determined, a new law that applies to that specific expropriation is issued and the affected owners or tenants of the expropriated land, buildings, perennial plant, or easements are paid and the property is transferred to the government.

## 2.10 Taxes Applicable to a Transaction

The ownership transfer of immovable property in Thailand is subject to the following:



# THAILAND LAW AND PRACTICE

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

- Transfer Fee: in amount equal to 2% of the government's official valuation of the property; and
- Stamp Duty: in an amount equal to 0.5% of the actual sale price or the government's official valuation of the property, whichever is higher; or
- Specific Business Tax: in an amount equal to 3.3% of the actual purchase price or the government's official valuation of the property, whichever is higher; and
- Personal Income Withholding Tax: if the seller is a natural person and has owned the property for less than eight years, the tax is calculated using the government's official valuation of the property as the tax base and applying a sliding scale from 0% to 35% which is adjusted downward depending on how long the seller has owned the property (if the seller has owned the property for eight years or longer, the full tax amount is applicable without such reduction). This tax may be treated as a final tax for this transaction with neither the income nor tax included in the seller's annual personal income tax; or
- Corporate Income Withholding Tax: if the seller is a juristic entity, a withholding tax equal to 1% of the actual sale price or the government's official valuation of the property, whichever is higher, is applicable. This withheld tax is then credited to the seller's overall payable income tax for that tax year.

Most of these fees and taxes are the legal liability of the seller to pay. However, it is not uncommon for the parties to agree to share these costs on a 50/50 basis.

In the case of a lease, a registration plus stamp duty fee in an amount equal to 1.1% of the total rent payable for the entire lease term being registered is applicable. The payment of this is subject to negotiation – however, most commonly the lessor will require the tenant to bear this cost.

Stamp Duty of 0.001% of the share value applies to share transfers. There is no additional tax triggered by any change of corporate ownership and control of a company.

## 2.11 Legal Restrictions on Foreign Investors

The Land Code generally restricts foreign ownership of land unless otherwise permitted by law. Such exemptions are available under certain conditions if the foreign party intends to make a business investment of the type that the Thai government wishes to attract at that time, and in some cases, at a particular location under either the Investment Promotion Act or the Industrial Estate Authority Act.

There is no prohibition against foreign investors owning a building, nor against leasing land or a building.

Foreign investors may also own up to 49% of the titled floor space of a condominium project. However, the money to purchase a condominium must either be brought into Thailand as foreign currency or held by the foreigner in a Thai foreign currency account.

## 3. Real Estate Finance

### 3.1 Financing Acquisitions of Commercial Real Estate

Although sometimes financed by private equity, commercial real estate transactions in Thailand are most commonly financed by loans made by banks. The terms of such bank loans vary depending on the property, the type of development project, the borrower's history and reputation, any available guarantee (and in such case, the guarantor's standing) and the lenders' preferences. The loan may be made all at once or provided via a draw-down facility. Interest may be fixed or variable.

Thailand recently enacted a formal real estate investment trust (REIT) structure. Thailand's REIT is similar to what is found under the same name elsewhere, eg, the United States. REITs in Thailand are listed on the stock exchange of Thailand and although they initially had a slow start, they are picking up momentum and are now providing a modernised financing vehicle for large-scale commercial real estate investments in Thailand.

### 3.2 Typical Security Created by Commercial Investors

Typical security provided by commercial real estate developers to their lenders includes one or more of the following: mortgage, pledge, business collateral, assignment, and guarantee.

A mortgage is a non-possessory security and may be registered over immovable property, eg, land or buildings, and some movable properties, eg, machinery that has been registered under the Machinery Registration Act.

A pledge is a possessory security where the lender takes possession of the security and it applies only to movable property such as machinery, whether registered or not, promissory notes, bills of exchange and, most commonly, shares of the borrower. A pledge is not registered but some types of pledged property may require additional steps to be legally valid, such as shares, which in addition to the share certificates being delivered to the creditor must have the pledge record in the share-issuing company's share register book in order for the pledge to be enforceable.

Under the Business Collateral Act, essentially all of a borrower's business assets, eg, immovable property, movables, receivables and intellectual property, may be registered as security.

A developer will also often assign its contractual rights, particularly those related to the project, eg, its contractual right to supply, construction, leasing, maintenance, insurance and bond.

Lenders typically also require a third-party guarantee which provides that if the borrower defaults, the guarantor will be obliged to satisfy the debt on behalf of the borrower.

### **3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders**

There are no restrictions on granting security over real estate to foreign lenders. However, it is unclear whether a non-affiliated foreign lender would be considered to be conducting a service business under the Foreign Business Act. If so, the lender would first need to apply for and receive a foreign business licence under the Act prior to entering the loan agreement.

There are no restrictions on repayments being made to a foreign lender. However, other requirements, such as exchange controls, may be applicable.

### **3.4 Taxes or Fees Relating to the Granting and Enforcement of Security**

The registration fee for a mortgage over immovable property is an amount equal to 1% of the loan, but not exceeding THB200,000. Mortgages over machinery attract a registration fee of 0.001% of the amount of the loan, but not exceeding THB120,000. The fee to register business collateral is an amount equal to 0.1% of the loan but not more than THB1,000 unless the collateral is immovable property, in which case, the fee is an amount equal to 1% of the loan. De minimis stamp duties apply to loan, mortgage, pledge and guarantee transactional documents.

Enforcement fees may include court and execution office fees, as well as fees in connection with the official auction and sale of any property, eg, mortgaged land or pledged assets.

### **3.5 Legal Requirements Before an Entity Can Give Valid Security**

Where the borrower is a Thai company limited, as long as the borrower has reason to believe that the authorised director is acting within the scope of their authority to provide security to the lender over the company's property, there are no further legal rules or requirements, such as financial assistance or corporate benefit rules, that must be complied with before such an entity can give valid security over its assets. However, if the articles of association do not specifically provide for the right

of the director to mortgage property, a shareholder resolution is required.

### **3.6 Formalities When a Borrower Is in Default**

Where the security provided is a mortgage, the lender must notify the debtor in writing to settle the debt within a reasonable time to be fixed in the notice. If the debtor fails to comply with the notice, the lender may then file an enforcement action in the Thai civil court to have the property seized and sold by public auction.

Where the security provided is a pledge, the lender must also notify the debtor in writing to settle the debt within a reasonable time to be fixed in the notice and if the debtor fails to comply, the lender may sell the property but only by public auction, prior to which the lender must notify the debtor in writing of the place and time of the auction.

If the security is provided under the Business Collateral Act, then the lender must send a notice to the debtor to settle the debt within 15 days of receipt of the notice. A copy of this notice must also be sent to any preferential creditors registered under the Act. If the debtor fails to comply, the lender may then sell the property.

### **3.7 Subordinating Existing Debt to Newly Created Debt**

In general, registered security rights over immovable property rank in order of registration. However, if the security is given by way of mortgage or registration under the Business Collateral Act, and a later preferential right in the property is registered based on preservation of or work done on the property, then such later registered right may be exercised in preference to a mortgage or business collateral security interest.

### **3.8 Lenders' Liability Under Environmental Laws**

A lender holding or enforcing security over real estate cannot be held liable under the Enhancement and Conservation of National Environmental Quality Act for any pollution emanating from real estate that secures a loan, unless the lender actually caused the pollution.

### **3.9 Effects of Borrower Becoming Insolvent**

Security interests created by a borrower in favour of a lender are not made void if the borrower becomes insolvent. However, insolvency is grounds for any relevant lender to force the debtor into bankruptcy. Under the Bankruptcy Act a secured creditor may enforce their security rights without need of permission from the bankruptcy court, but the lender must allow the property to be examined by the bankruptcy receiver. Furthermore, if the juristic act that created the security occurred within the three months prior to the bankruptcy petition and such act is



# THAILAND LAW AND PRACTICE

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

found to have been done in order to intentionally advantage one creditor to the disadvantage of any other creditor, the act may be cancelled. If the advantaged creditor is an insider of the debtor, the three months will be extended to one year prior to the petition.

### **3.10 Consequences of LIBOR Index Expiry**

Given the anticipated end of the LIBOR index by the end of 2021, parties with legacy contracts that are tied to LIBOR should be contacting their counterparties to amend their agreements to provide a suitable substitute index.

Migration to alternative rates will present significant challenges to several processes involving long-dated instruments referencing LIBOR, and the transition will entail significant work and risk as parties must re-assess valuation methodologies, renegotiate existing contracts, and revisit their risk profile and hedging strategies.

The THBFIX is a transaction-based benchmark rate implied from the USD-THB exchange rate and thus it will also be affected by the end of LIBOR. This may cause the Bank of Thailand to revise its BIBOR rate process away from being a predominantly survey-based rate, to a more transparent and reliable basis. This would have a significant impact in Thailand, as the THBFIX is predominantly used as the reference rate in Thai loan agreements.

## **4. Planning and Zoning**

### **4.1 Legislative and Government Controls Applicable to Strategic Planning and Zoning**

The Town and City Planning Act and the Enhancement and Conservation of National Environmental Quality Act control land use and zoning in Thailand. However, the specific, detailed and varied application of these Acts is implemented by regulations or announcements, as the case may be, issued under the Acts that apply to specific geographic localities in Thailand.

### **4.2 Legislative and Government Controls Applicable to Design, Appearance and Method of Construction**

The BCA controls construction, refurbishment and demolition of buildings. The standard provision of the Act applies to all such activity. However, under the Act, structures intended for a specific use, eg, hotels, condominiums and shopping malls, are considered “controlled structures” and more detailed and rigorous regulations issued under the Act and specific to each are applicable. Regulations may also be issued from time to time that are applicable in specific localities that prescribe particular

design and appearance requirements for newly constructed or modified buildings.

### **4.3 Regulatory Authorities**

The Town and City Planning Act, the Enhancement and Conservation of National Environmental Quality Act and the BCA regulate the development and designated use of individual parcels of real estate throughout Thailand. However, the specific, detailed and varied application of these Acts is implemented by royal decrees, regulations and announcements, as the case may be, issued under the Acts that apply to specific geographic localities in Thailand. And the local government administrations are responsible for application and enforcement of the Acts and regulations issued thereunder.

### **4.4 Obtaining Entitlements to Develop a New Project**

In general, the right to develop any new project or complete a major refurbishment is provided by obtaining a construction permit issued under the BCA by the relevant local government administration. The local administration’s decision as to whether such permission will be granted must also take into account compliance with all other applicable land use law, such as the Town and City Planning Act and the Enhancement and Conservation of National Environmental Quality Act, as well as other controls applicable to some types of construction. These include any requisite initial environmental examination or, for larger projects, any environmental impact assessment report, including analysis of a project’s expected effects on third parties.

### **4.5 Right of Appeal Against an Authority’s Decision**

A denial of construction permission under the BCA may be appealed to the relevant local government administration within 30 days of acknowledgement of such denial. The local government administration must then forward the appeal to the Appeal Consideration Committee which must rule on the appeal within 60 days thereafter. Should the appellant disagree with the ruling, he may then file an action in the Administrative Court within 30 days. During the appeal process, both the appellant and local government administration are prohibited from doing anything to the construction except where it poses danger to persons or property.

### **4.6 Agreements with Local or Government Authorities**

Local government authorities are responsible for formally granting, denying and enforcing construction permission and thus agreement with the local authorities regarding a construction project is required as a matter of course in Thailand. However, it is also not uncommon for permission to be conditional

on the provision of some benefit to the locality such as new or upgraded public infrastructure.

All owners and possessors of real estate in Thailand have a right to access utilities. However, where utilities do not yet connect to the project property it may be necessary to negotiate with the relevant local utility authority to have utilities extended to the project property.

#### **4.7 Enforcement of Restrictions on Development and Designated Use**

In the event of there being construction, alteration, demolition or removal of a building in violation of the BCA or regulation issued thereunder, the local government administration has the power to:

- order such action be stopped;
- order that no one enter any part of the building or the area where the action is occurring; and
- if the issue can be rectified, consider issuing an order to the possessor of the building to apply for permission to proceed with the action within a fixed time not less than 30 days; or
- if the issue cannot be rectified, consider issuing an order to the possessor of the building that it be either partly or wholly demolished within a fixed time not less than 30 days; and
- if any demolition order is not complied with, the local government authority may file an ex parte court filing for permission to proceed with the demolition itself, upon which granting of permission, it can then proceed with the demolition and the party that failed to demolish the building will be liable for all costs incurred by the local government administration.

A party that fails to comply with a demolition order may be imprisoned for up to six months and fined up to THB100,000.

Where a construction requires permission for a specific use, the local government administration may order a party not to use the construction in that manner until such permission has been obtained. Any party that is using a structure without the requisite permission may be imprisoned for up to six months, fined up to THB60,000 and additionally fined up to THB10,000 for each day of such impermissible use.

## **5. Investment Vehicles**

### **5.1 Types of Entities Available to Investors to Hold Real Estate Assets**

Any juristic person, such as a registered partnership, limited partnership, private company limited or public company lim-

ited, is eligible to hold real estate assets. Of these, the preferred entities for investors are private and public company limited.

Furthermore, listed property funds and REITs are used for investment purposes.

### **5.2 Main Features of the Constitution of Each Type of Entity**

#### **Private Company Limited**

A private company limited is required to maintain at least three shareholders at all times. The company must be managed by one or more directors, all of whom must be natural persons. The directors are not required to be shareholders of the company.

#### **Public Company Limited**

A public company limited is required to maintain at least 15 shareholders at all times. There is no minimum capital requirement. At least five directors must manage the company and at least 50% of such directors are required to reside in Thailand.

#### **Limited Partnership**

A limited partnership has two different kinds of partner subject to different liabilities:

- one or more partners are liable only to the amount they contributed to the partnership; or
- one or more partners are jointly and unlimitedly liable for all obligations of the partnership.

#### **Registered Partnership**

In a registered partnership the individual partners are jointly and unlimitedly liable for the obligations of the partnership; the partnership is established through a contribution of money, other properties or service to the partnership by the partners; and the share of each partner in the profits and losses is determined by the amount of such contribution.

#### **Property Fund**

A property fund is established in the form of a juristic person listed on the stock exchange of Thailand. A property fund is established in order to collect funds from investors and use these funds to invest in real estate. The return of the fund's investment is generally in the form of regular income through rent. The property fund is required to hold at least 75% of its net asset value in real estate or the leasehold rights of real estate, which must be located in Thailand and be at least 80% constructed.

#### **REITs**

A REIT takes the form of a trust and does not have a juristic person status but is also listed on the stock exchange of Thailand. A REIT can also invest in real estate located abroad and can develop real estate projects.

# THAILAND LAW AND PRACTICE

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

## 5.3 Minimum Capital Requirement

The minimum registered capital for a private company limited is THB15.

There is no minimum capital requirement for a public company limited, limited partnership and registered ordinary partnership.

Property funds in Thailand are required to be closed-end funds with a minimum capital of THB500 million.

A REIT must also invest at least THB500 million in real estate assets.

## 5.4 Applicable Governance Requirements

The following governance requirements apply to each type of entity:

- a private company limited is managed by the directors in accordance with the resolution of the shareholders, its articles of association and the CCC;
- a public company limited (listed and not listed) is managed by the directors in accordance with the resolution of the shareholders, its articles of association and the Public Limited Companies Act;
- the limited partnership and registered partnership are managed by the managing partners in accordance with the decision of the partners and the CCC;
- a property fund is managed by a management company under the supervision of the mutual fund supervisor in accordance with the approved mutual fund project and the commitment made to the unitholders; and
- a REIT is managed by a REIT manager in accordance with the trust instrument as permitted by the Securities and Exchange Commission.

## 5.5 Annual Entity Maintenance and Accounting Compliance

Accounting costs usually depend on the type of entity and the amount of transactions.

A private company limited is required to prepare an audited balance sheet, file corporate income tax returns, as well as file its latest shareholder list yearly. Furthermore, it must maintain and update a register of shareholders.

A public company limited is required to hold an annual general meeting, prepare an audited balance sheet, file corporate income tax returns and file its latest shareholder list yearly. Furthermore, it must maintain and update a register of shareholders. It is also required to publish the balance sheet in a newspaper.

Limited partnerships and registered ordinary partnerships must prepare and submit annual financial statements.

Property funds and REITs must comply with Securities and Exchange Commission regulations.

## 6. Commercial Leases

### 6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

The law recognises the following arrangements:

- lease (as further described in answers below);
- usufruct: this provides the right to possess, manage and exploit a property. It can be either for the life of the grantee or a period of up to 30 years, with the possibility to renew it for up to another 30 years. The usufruct may also be transferred. However, the usufruct ends with the death of the original grantee;
- habitation: this is the right to occupy a building for either the life of the grantee or up to 30 years. Habitation can be renewed for up to 30 years. Habitation is not transferable. Unless otherwise prohibited, the grantee's family may occupy the building with the grantee;
- superficies: this is a fully transferable right to own freehold title to a building on another person's land. Superficies may either be granted for up to 30 years or for the life of the grantee. Superficies may also be renewed for another 30 years. Unless prohibited by the act creating it, a superficies is fully transferable by the grantee;
- sap-ing-sith: this is a new right over real estate by registration at the land office and issuance of a certificate that is similar to a lease. It is applicable only to land ownership (ie, chanote) titles, buildings on such titles, and condominium units. The duration cannot exceed 30 years. It allows the holder to use the real estate as outlined in its certificate. It is inheritable and transferable without the consent of the owner. Furthermore, it allows the holder to make additions and alterations to the real estate without the owner's consent. The certificate holder can also mortgage their right.

### 6.2 Types of Commercial Leases

All leases are governed by the CCC as a specific contract.

Apart from standard lease provisions, the Hire of Immovable Property for Commerce and Industry Act introduces a specific form of commercial lease. The Act defines commercial purposes with regard to leasing commercial property. A lease that qualifies under the Act as "commercial" must be:

- for a commercial or industrial purpose, as defined by the Act;
- for a property located in an area designated by the Act; and
- registered.

The commercial lease under such Act may have a term of up to 50 years. The maximum term for any other lease, whether residential or not qualifying under the conditions of the Act is merely 30 years. In addition, a lease under the Act may also be mortgaged as security for a loan. A commercial lease under the Act is automatically inheritable by the tenant's heir. Finally, a commercial lease may be sublet or transferred without the lessor's prior consent.

### 6.3 Regulation of Rents or Lease Terms

Registration requirements exist in relation to the lease term. Any lease term exceeding three years must be registered with the land department in order to be enforceable for the term exceeding three years.

Furthermore, any lease term cannot exceed 30 years (see **6.2 Types of Commercial Leases** for exceptions).

Other terms are only freely negotiable if the lease is not considered a "residential property leasing business", which means a business that leases five or more property units to individual lessees for residential purposes. A residential property leasing business is a controlled business and certain contract terms are required by law. Any violation is subject to a fine and/or imprisonment (see **6.14 Specific Regulations**).

### 6.4 Typical Terms of a Lease

Typically, short-term leases do not exceed a three-year term, in order to avoid the registration requirement. Land leases are usually for a longer term.

Tenants have specific liabilities to the owner of a property and any relevant provisions of their rental contract.

The use of the property is restricted to ordinary purposes or those provided for in the rental contract. A tenant is required to take ordinary care of the property, which includes maintenance and petty repairs as such care would dictate. If the tenant fails to do so, the tenant may be required by the lessor to comply with such requirements. In the case of non-compliance with such request, the lessor may terminate the lease contract.

The tenant is liable for any resulting damage where the tenant fails to advise the lessor of the following, of which the lessor is unaware:

- the rented property is in need of repairs by the lessor;

- a preventive measure is required to protect the property; or
- a third party is encroaching on or claiming a right over the property.

The frequency of rent payments is dependent on the project. Payments are usually made monthly. It is also not uncommon for the full lease amount to be prepaid, which is usually the case with long-term land leases.

### 6.5 Rent Variation

Variation in the rent will depend on the contractual arrangement between the parties.

Additionally, some leases shift the local property tax burden to the lessee. Any changes in the local tax would then affect the financial burden of the lessee.

### 6.6 Determination of New Rent

If the initial lease agreement is silent on this point, the parties are free to negotiate the new lease term and amount.

### 6.7 Payment of VAT

Rental of immovable property is exempted from VAT. However, the lease of any movables, such as furniture, is subject to VAT.

### 6.8 Costs Payable by Tenant at Start of Lease

The following are typically payable by a tenant at the start of a lease:

- security deposit (for rental and service fee);
- security deposit for any fitting-out period; and
- telephone line/internet installation charges.

### 6.9 Payment of Maintenance and Repair of Communal Areas

The total amount payable by a tenant is commonly split into a rental component and a service component. The service component covers the payment for the maintenance and repair of the shared area.

### 6.10 Payment of Utilities and Telecommunications

Utilities and telecoms are typically charged as follows:

- air conditioning is provided at certain hours and is part of the service agreement. Any additional time outside of these fixed hours will be billed separately at the contractually agreed rate;
- electricity will be charged at the agreed rate according to usage;
- water is charged at the agreed rate according to usage; and

# THAILAND LAW AND PRACTICE

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

- telecommunications charges will depend on the telecommunications service provider. However, the owner might charge the installation fee to the tenant.

It should be noted that the utility rate must reflect the actual rate paid by the owner if the lease falls under certain regulations issued in accordance with the Consumer Protection Act, which regulates residential structure leases (as further explained in **6.14 Specific Regulations**).

## **6.11 Insuring the Real Estate that is Subject to the Lease**

The tenant is usually required to insure against public damages and might insure its own assets as well.

The landlord effects insurance of the landlord's assets, such as the building, decoration and furniture. Events covered are typically physical loss caused by fire, lightning, explosion, smoke, water damage, hail, windstorms, earthquakes and floods.

## **6.12 Restrictions on Use of Real Estate**

The tenant must use the property for the contractually agreed purpose and refrain from using the property in any way that is not considered ordinary and usual. Further, the tenant has a duty to take care of the property as a person with ordinary prudence would do.

## **6.13 Tenant's Ability to Alter and Improve Real Estate**

The tenant may not alter the property without the permission of the lessor. If a tenant fails to adhere to this, the tenant is required to return the property to its original condition and is further liable for any damage caused.

## **6.14 Specific Regulations**

Leases are generally governed by the CCC. However, there are two specific laws that additionally govern certain leases:

- the Hire of Immovable Property for Commerce and Industry Act defines commercial purposes with regard to leasing commercial property (as described in **6.2 Types of Commercial Leases**); and
- regulations issued under the Consumer Protection Act, which regulates residential structure (eg, house, apartment and condominium) leases in accordance with which any person or company that leases out five or more residential structures (with some limited exceptions) is considered a residential structure "business operator". The regulations' requirements include: that all residential lease agreements between a business operator and the lessee include a readily legible version in Thai; that the details of the physical condition of the property and equipment (if any) be inspected

and acknowledged by the lessee and be attached to the lease agreement.

## **6.15 Effect of Tenant's Insolvency**

A tenant's insolvency would commonly trigger the termination provisions of the rental agreement where the tenant fails to perform its obligation, such as paying the agreed rental amount.

Bankruptcy proceedings cannot be initiated by the debtor. However, a debtor can, under certain circumstances, apply for reorganisation. If the property is essential for the operation of the debtor's business, the owner may not exercise their right to reclaim the property.

## **6.16 Forms of Security to Protect Against Failure of Tenant to Meet Obligations**

A security deposit is usually held to protect the landlord should the tenant fail to meet its obligations. In addition, the landlord might require the tenant to provide a guarantor for the performance of the tenant's obligations.

## **6.17 Right to Occupy After Termination or Expiry of a Lease**

The tenant has no right to occupy the property once the lease has terminated/expired. However, if after expiration of the agreed period the tenant remains in possession of the property with the knowledge of the landlord and the landlord does not object, then it is considered a renewal of the contract for an indefinite period.

Any eviction of the tenant requires an eviction order of the court. Only a court-appointed execution officer is entitled to take possession of the premises.

## **6.18 Right to Assign Leasehold Interest**

An assignment or sub-lease is only possible with the approval of the landlord. An exception to this rule is a legally defined "commercial lease" (as described in **6.2 Types of Commercial Leases**).

## **6.19 Right to Terminate Lease**

According to the CCC, termination of the lease by the landlord requires:

- non-payment of rent (with a notice requirement of not less than 15 days, if the rent is payable in monthly or longer intervals); or
- that after having been given notice to comply, the tenant is using the property for purposes other than those ordinary and usual or agreed in the contract; or



- that after having been given notice to comply, the tenant fails to take care of the property as a person of ordinary prudence would.

A tenant may terminate a lease in accordance with the CCC if:

- the property is delivered in a condition not suitable for the purpose for which it is let; or
- the landlord breaches any of the specific contract conditions outlined in the CCC and does not reimburse the tenant for any necessary and reasonable expenses incurred for the preservation of the property hired (except ordinary maintenance and petty repairs).

## 6.20 Registration Requirements

Any lease term of more than three years must be registered with the land department that has jurisdiction over the relevant immovable property in order to be enforceable for a term exceeding three years.

The lease will be registered on the land title. The parties to the lease must provide the documents for the relevant transaction in accordance with the Licensing Facilitation Act, which requires that the land department specifies what document must be provided in advance for each transaction. A Thai translation of the lease agreement must further be provided for registration purposes.

To complete the relevant registration, the parties must pay a registration fee and stamp duty equal to 1.1% of the total rental amount of the registered lease term.

## 6.21 Forced Eviction

A tenant is legally required to leave the premises when the underlying right to possess such premises is extinguished, be it by termination or expiration.

However, the eviction of a tenant requires an eviction order from the court against such tenant. After having obtained such order, the landlord will request the appointment of an execution officer who will then have the power to take possession of the premises.

The length of the proceedings varies from case to case.

## 6.22 Termination by Third Party

According to the Immovable Property Expropriation Act, the government has the right to compulsory purchase of real estate and under this, a lease can be terminated by the government. Such expropriation is a lengthy and formal process involving surveys and committees that first need to be established. The

owner and tenant of any expropriated land and building will be compensated by the government.

## 7. Construction

### 7.1 Common Structures Used to Price Construction Projects

The most common structures used to price construction projects are:

- fixed price contract: a lump sum is paid for the completion of the work. The business risk lies with the contractor; and
- cost plus contract: payment of actual expenses and costs on a reimbursable basis, plus percentage or fixed fee. The employer bears the risk.

### 7.2 Assigning Responsibility for the Design and Construction of a Project

The liability for the design and build depends on the contractual arrangements of the parties. If the contractor in a design-build contractual relationship assumes the responsibility for the whole project, such contractor will be the sole responsible party. However, if the owner employs different entities in a design-tender approach, the design and construction will be performed by different parties. In that case, the responsibility of the parties is divided according to their respective contractual performance.

### 7.3 Management of Construction Risk

Indemnification is commonly used in construction contracts. Parties also usually agree to limit their liability to a fixed amount or in the form of a waiver of consequential damages.

Thai law implements consumer protection provisions in relation to agreements for the construction of residential houses. Such contracts cannot include any exclusion or limitation of liability for breach of contract by the contractor. Furthermore, warranty periods are specified and are not freely negotiable: liability for defects, such as five years for structure and one year for component parts and equipment, must be included in a consumer-related construction agreement.

### 7.4 Management of Schedule-Related Risk

Parties typically manage schedule-related risks by implementing milestone payments. Such payments are connected to penalty payments in the case of delay, but also include incentives for early completion. Furthermore, early termination clauses are commonly agreed.

Thai law provides for automatic penalty provisions (ie, regardless of whether these are included in the contract between the parties) in certain commercial projects such as condominium



# THAILAND LAW AND PRACTICE

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

buildings and consumer-related construction agreements. In both cases, any delay in completion of the project is subject to a 0.01% of the total contractual amount daily penalty, limited to 10% of the contractual amount.

## 7.5 Additional Forms of Security to Guarantee a Contractor's Performance

One or more of the following securities is typically provided:

- bank guarantee by the contractor for advance payment received from the owner;
- performance bond by the contractor to secure the owner against the contractor's failings in performance of the contract;
- warranty bond provided by the contractor during the warranty period; and
- retention of part of the payment of each required instalment by the owner until expiration of the warranty period.

## 7.6 Liens or Encumbrances in the Event of Non-payment

By law, a contractor obtains a preferential right on the immovable property for work done on such immovable property. Such preferential right allows the creditor to receive performance of the obligation out of such immovable property in preference to other creditors. Since the preferential right is an ancillary right to the obligation, it will be extinguished by the performance of the obligation.

## 7.7 Requirements Before Use or Inhabitation

Certain "use-controlled buildings" are required to receive "use certification" after completion of construction. Such buildings are hotels, condominiums, warehouses, hospitals, hazardous goods storage rooms, dormitories or common residential buildings (eg, apartment blocks) which are classified as a "large building" under the law, convention halls or office buildings having a total floor area of 300 square metres or more, any building used for any commercial purpose and having a total floor area of 300 square metres or more, or any building used for any industrial or educational purpose is a building subject to control over its use.

On completion of the construction of the use-controlled building, notification must be given to the local government administration to inspect the structure. After the inspection, if the local government administration determines that the construction was completed in accordance with its building permit, permission to use the building will be granted and use certification for the purpose applied for in the building permit will be issued. If, however, the local administrative office does not inspect the building within 30 days of the notification of completion, the owner or possessor of the building may go ahead and use, or

allow others to use, the building for the purpose stated in the building permit.

## 8. Tax

### 8.1 VAT

VAT is not applicable to the sale and purchase of real estate. However, Specific Business Tax (SBT) of 3.3% applies to the sale of immovable property by juristic persons. Exemptions to the SBT requirement may apply to a sale by a natural person. Where SBT is not applicable, stamp duty at a rate of 0.5% applies.

### 8.2 Mitigation of Tax Liability

If the real estate asset to be transferred is the only or main asset of the selling entity, an entire business transfer might be beneficial. The transfer of the real estate asset that is part of an entire business transfer is not subject to SBT. However, in order to take advantage of the tax benefits, the selling entity must be dissolved within the same accounting period as the business transfer takes place.

### 8.3 Municipal Taxes

Municipal taxes do not apply specifically to business premises. However, real estate is subject to property tax, which is a local tax.

### 8.4 Income Tax Withholding for Foreign Investors

Withholding taxes apply to the rental and sale of immovable property.

A "tax resident" of Thailand is any person staying in Thailand for a period or periods aggregating 180 days or more per year. However, it is important to note that the duty to pay tax on rental income in Thailand does not depend on being a tax resident of Thailand or whether the income is received in Thailand. Rental income is considered taxable income regardless of Thai tax residency under the Thai Revenue Code. The relevant law states that a taxpayer (ie, "anyone") who in the previous tax year derived assessable income from a property situated in Thailand must pay tax, whether such income is paid within or outside Thailand. Thus, anyone, tax resident or not, who earns rental income from a property in Thailand, must pay tax on that income, no matter whether the rental income is paid on-shore or off-shore.

It is the duty of the payer of the rent to deduct withholding tax from the rental payment and submit it to the local revenue department. However, both the lessee and the lessor are jointly liable for the payment of this withholding tax.

The amount of withholding tax depends on whether the lessor is a tax resident of Thailand and also whether the lessee is a

juristic person or an individual. If the lessor is not a tax resident of Thailand the withholding tax rate is 15%. The legal status of the lessee does not matter if the owner is not a tax resident of Thailand. If the lessor is a tax resident of Thailand and the lessee is a juristic person, the withholding tax rate is 5%. If the lessor is a tax resident of Thailand and the lessee is a natural person, there is no withholding tax applicable.

The taxation of a “capital gain” on the sale of real estate in Thailand depends on whether the seller is a natural or juristic person.

### **Juristic Person or Company**

When a corporate entity sells an immovable property, withholding tax at the rate of 1% of the sale price is required to be deducted from the sale price and paid to the authorities on transfer. This is a prepayment of the corporate seller’s income tax for that tax year, and it will be credited against any tax owed for that year. However, both parties – the seller and any buyer – jointly bear the legal duty to withhold and pay this tax. A surcharge on any late or inadequate payment of the withholding tax at a rate of 1.5% per month of the late amount is applicable.

Any gain realised on the sale of immovable property must be declared by the selling company in the accounting period when the sale took place. Section 65 of the Revenue Code defines “net profit” as the result of income from business or arising out of business in one accounting year, less certain expenses. In other words, the net profit of the whole accounting year is the basis of taxation and not a single taxable event, such as the sale of immovable property.

### **Natural Person or Individual**

When an individual sells an immovable property, the withholding tax is generally calculated based on the official appraised value of such property, less certain deductions. The deductions depend on the duration of ownership of the property to be transferred. The calculation is done using a specific formula created by the legislature which takes into account how long the property has been owned and the progressive tax rates applicable to individuals, but may be calculated without including any of the seller’s other annual taxable income. It should be noted that even if the transfer of immovable property is without consideration (ie, a gift) by an individual, it will be deemed a sale subject to personal income tax.

### **8.5 Tax Benefits**

The following maximum depreciation rates apply:

- permanent buildings: generally 5% per year. However, under certain conditions 25% in the first year and 5% per year in the following years for the remainder of the value; and
- temporary buildings: 100%.

Land does not depreciate.

Deductions on rental income are applicable and actual expenses may be deducted in the case of houses, buildings or other constructions. If the property is let by the owner, a standard deduction of 30% is allowed as expenses. Rental income tax recipients have the option to define the taxable income by sufficiently documenting their actual rental income-related expenses. If these expenses are higher than the standard 30% deduction, are reasonable and sufficiently documented, then such deduction can be effected.

# THAILAND LAW AND PRACTICE

---

*Contributed by: Olaf Duensing, Jerrold Kippen, Weeraya Kippen and Tippaya Moonmanee, Duensing Kippen, Ltd*

**Duensing Kippen, Ltd** has a real estate team composed of four partners and four qualified lawyers who combine international transactional legal expertise and experience with a keen awareness of local custom and culture. The firm's offices are located in Bangkok and Phuket, the two largest markets in Thailand, but the firm services clients throughout Thailand. Its clients include international investors ranging from individuals and multinational corporates to multibillion USD NYSE-listed companies. The practice draws on its partners' multiple decades of experience in real estate work both in Thailand and

cross-border transactions involving Thailand. The team regularly assists clients in evaluating, negotiating and closing real estate sales and acquisitions, commercial development structuring and implementation, M&A, joint ventures, and related tax matters. Its real estate work is complemented by its other core practices in construction, hospitality, corporate/commercial, tax and dispute resolution. Members of the real estate team regularly publish legal columns and articles and are frequently invited to speak on Thai real estate-related matters in Thailand and abroad.

## Authors



**Olaf Duensing** is a senior partner, a licensed German attorney and an internationally certified arbitrator (FCIArb), who has worked in Thailand as a consultant since 2001. Olaf practises in the areas of real estate, hospitality, corporate/commercial, tax and alternative dispute

resolution. He was a guest lecturer at the summer law programme of the Golden Gate University, San Francisco in Bangkok. His articles are frequently published in local newspapers.



**Jerrold Kippen** is a senior partner and a licensed California attorney. He is also an internationally certified arbitrator (FCIArb) who has been working as a legal consultant in Thailand since 2003. Jerrold has extensive experience assisting clients with their real estate, construction,

hospitality, corporate/commercial and dispute resolution (particularly arbitration) matters in Thailand and Asia. He has published hundreds of legal articles in Thai professional and industry periodicals and newspapers.



**Weeraya Kippen** is a partner at the firm and is also an internationally certified arbitrator (FCIArb). Weeraya specialises in high-end complex real estate transactions and she is an accomplished litigation and arbitration counsellor.



**Tippaya Moonmanee** is a partner at the firm and associate member (ACI Arb) of the Chartered Institute of Arbitrators. She obtained an LLM from Queen Mary University of London in 2010. Tippaya has been practising in the area of real estate, hospitality business, labour law and litigation matters since 2010.

---

## Duensing Kippen, Ltd

Suite 1605, Chartered Square Building  
152 North Sathorn Road, Silom, Bangrak  
Bangkok  
10500 Thailand

Tel: +66 0 22 675 424  
Email: [olaf@duensingkippen.com](mailto:olaf@duensingkippen.com)  
Web: [www.duensingkippen.com](http://www.duensingkippen.com)

