

Can you turn an apartment or office building into a hotel or condominium?

With the continued development and proliferation of new hotels and condominiums in the face of many unused or underused older pre-existing office and apartment buildings in places like Bangkok and Phuket, some have wondered if it would not be an environmentally wise as well as an economically prudent move for a prospective hotel or condominium developer to consider refurbishing such a pre-existing structure for their purposes. At the same time it seems there is common misconception that such a conversion of a building is not possible under Thai law.

The Building Control Act (1979) (“BCA”) generally regulates the construction and use of buildings in Thailand. Unless the BCA states otherwise, any construction of any building must be permitted by the relevant Local Administrative Office (*e.g.* Tetsabaan or Or Bor Tor, *etc.*, depending on where you are located in Thailand) that oversees such matters in the area in which the building is located. In order to obtain the building permit, the applicant must, among other things, state the purpose for which the building is intended to be used. Such intended use will then be stated on a building permit; for example, “*residence*” for any residential villa, “*hotel*” for any hotel and “*condominium*” for any condominium, *etc.*

What if the owner of, say an office or apartment building, decided he could have a much more lucrative asset by changing it into a condominium and sell the units or into an hotel and run it as such? Is that “doable” in Thailand? The answer is a qualified “yes”.

Pursuant to Section 32 of the BCA and the 2009 Ministerial Regulation issued thereunder, any “*hotel; condominium; warehouse; hospital; hazardous goods storage room; dormitory or common residential building (e.g. an apartment) that is a “Large Building¹¹”; convention hall or office building having a total floor area of 300 square meters or more; any*

building used for any commercial purpose and having a total floor area of 300 square meters or more; or any building used for any industrial or educational purpose” is a building subject to control over its use (a “Use Controlled Building”).

Section 32 of the BCA further prescribes that on completion of the construction of the Use Controlled Building a notification must be given to the Local Administrative Office to inspect the structure. After the inspection, if the Local Administrative Office determines that the construction was completed in accord with its building permit, permission to use the building will be granted. A Certificate of Use 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.

In addition, Section 33 of the BCA provides that the owner or possessor of the non-Use Controlled Building must not use or allow others to use it for any purpose specifically reserved for Use Controlled Buildings. Neither may a Use Controlled Building be used for any purpose reserved for Use Controlled Buildings other than the purpose for which it was originally permitted. However, the exception to this rule is if a permission for such is granted by the Local Administrative Office.

Thus, to change any non-Use Controlled Building to a Use Controlled Building or one type of Use Controlled Building to another type of Use Controlled Building (regardless of whether or not the building is yet to be constructed, under construction or is already completely built) the following steps must be followed:

- 1) Pursuant to 1985 Ministerial Regulation No. 10 issued under the BCA, the following documents must be submitted to the relevant Local Administrative Office:
 - (a) An application to change the purpose of use of the building (a form of which is called “KHOR. 3”);
 - (b) A copy of any document that legally evidencing who owns or possesses the building;
 - (c) A consent letter from the owner of the building (if the applicant is not the owner, but is the possessor of the building);

- (d) A permit to change a purpose of use of the building (if the change of purpose of use of the building was permitted before);
- (e) A signed copy of the applicant's corporate documents at least 6 months update and the authorized director's identification card and house registration or passport (if the applicant is a company);
- (f) 5 copies of the building plan;
- (g) A calculation report on the building's structure (if the change of purpose of use of the building will decrease the weight-carrying capacity of the building);
- (h) A letter of approval and certification of the calculating engineer and a copy of the Thai engineering license of said engineer (if, pursuant to the BCA, the building requires engineering control); and
- (i) Any other supporting documents required by the Local Administrative Office.

2) Pursuant to the BCA, the Local Administrative Office must then either issue a permit to change the purpose of use of the building (a form of which is called "OR. 5") or deny the issuance thereof and inform the applicant in writing with the reasons for the non-issuance, within 45 days from the date of the application. However, also under the BCA, the local administrative office may extend the deadline for up to two additional 45 day periods for any reasonable cause; if so, the Local Administrative Office is required to notify the applicant in writing of the cause for the extension(s).

It should be noted that any change of purpose of use of a building to a non-controlled use, does not require governmental permission.

In closing, it should also be noted that getting a building permitted and certified for use as a condominium or hotel is not the "end of the regulatory road". There are other legal requirements conditioned on and subsequent to obtaining the correct building permit and use certification before the building can be operated as a condominium or hotel, such as obtaining the requisite condominium or hotel license.

[1] "**Large Building**" means a building having a total floor area of more than 2,000 square meters OR a building 15 meters tall or more and having a total floor area of more than 1,000 square meters but not exceeding 2,000 square meters.

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