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Intergest Thailand - Newsletter

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Table of Contents

	Page
New studies on the Dawei megaproject	1
Thailand – Condominium Law	2

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DENMARK / Copenhagen
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FRANCE / Sarreguemines
GERMANY / Saarbrücken
GREECE / Athens
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Thailand - Economy

New studies on the Dawei megaproject

Thailand and Myanmar have agreed to revise all development projects in Dawei to make them more realistic and attractive to foreign investment. A wise step in the right direction, but a few fears that the recent published numbers do not reflect the reality. However, new studies on the Myanmar megaproject will cover infrastructure; including roads, a deep-sea port, water, power and industrial estates, and must be completed this month. But compared to cost estimates two years ago, the latest numbers show a rise of 62.5%. It is going to be painful for the taxpayer.

At the third meeting of the Dawei Joint Steering Committee last Wednesday and Thursday it was decided that all development projects needed further review and analysis, so as to ensure an accurate picture of revenue and expenditure for investors. A committee meeting source said that previous projections by Italian-Thai Development Plc. (ITD) showed return on investment for each project to be quite high, while discrepancies remain over project information.

At last week's meeting it was also agreed that a holding firm or special-purpose vehicle (SPV) should be based in Thailand and set up to manage the huge deep-sea port and special economic zone, with subsidiaries in Myanmar to acquire concessions from the local government. Investment will be handled by six joint ventures based in Myanmar to take charge of investment in infrastructure. The joint ventures will be set up and registered in Myanmar to make them eligible for special investment privileges.

Minister Niwatthamrong Bunsongphaisan of the Prime Minister's office said that four countries including Thailand and Myanmar are interested in taking part in the SPV. Of the other two, one is outside Asia. Arkhom Termpittaya-paisith, secretary-general of the National Economic and Social Development Board (NESDB), said Myanmar's government seems to favour Japan. Japan already has massive investment in Thailand, which has become a base for Japanese industry, he said. Mr. Arkhom said Myanmar's government is in the process of designating special economic zones to offer more flexible investment incentives and related infrastructure development such as motorways and telecommunication networks. Earlier this year, an NESDB study commissioned by the House Standing Committee for Industry reported that the investment cost for the Dawei megaproject is estimated to have increased to THB325bn due to higher construction costs. That figure is 62.5% higher than the THB200bn projected by ITD two years ago.

A cursory glance at the numbers shows that an enormous venture is on the way. The first phase of the massive project will require THB205bn and the second phase THB120bn.

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This covers eight projects including the first phase of the deep-sea port costing THB45bn. A road link from Dawei to Ban Phu Nam Ron in Kanchanaburi will cost THB35bn, while THB5bn will be needed for telecommunications. Reservoirs will cost THB14.2bn, and THB65bn will be spent on double-track railways. Some THB20bn will be spent on industrial estates and THB32bn on power plants. The investment in Thailand includes THB45.5bn for a motorway from Nonthaburi's Bang Yai district to Kanchanaburi province and THB9.87bn for a motorway from Kanchanaburi to the Ban Phu Nam Ron border checkpoint. Another THB20bn will be spent on double-track railways. Source: Bangkok Post

Thailand – Condominium Law

Corporations, investors and individuals consider Thailand to be one of the most interesting real estate markets in South East Asia. Governments worldwide try to lure high net worth individuals by offering special new visa schemes. The USA started in 2006 and Australia has just announced a so-called Migrant Investor Visa (the 888 Visa), primarily targeting China. This Visa 888 is available to all nationalities and allows permanent residency if AU$5m is invested in 'appropriate investments'. But Thailand has something to offer which is even better in terms of immigration and visas. In our practice we see foreigners, especially from Mainland China, seeking ownership of condominiums worth more than THB10m (approximately €250k,) simply because the Thai government still grants a one-year visa for condominium ownership, which is held longer than three years. It will automatically be granted to condominium owners and periodically renewed. It seems to be an attractive offer to obtain condominium ownership located near the beach or on an island, and obtain valid visa documents at the same time. Given the current uncertain economic climate, only buyers with a long-term strategy will move forward. Alternatively, proof of investment can also be presented through a fixed deposit of not less than THB10m with a bank registered in Thailand or through the purchase of government bonds with a value of not less than THB10m.

The following brief overview condenses the most important questions concerning real estate in Thailand, and in particular it addresses the eligibility of foreigners to own condominium units.

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Land or condominium ownership has always been an issue for foreigners living in Thailand. Thus, the major question is: Who can buy a condominium in Thailand?

Thailand has very strict real estate law in terms of foreign ownership. Foreign nationals (and under specific circumstances also foreign juristic persons) can own property freehold but not land. Nevertheless, foreigners may own buildings on land as long as a valid lease contract exists.

Foreigners can use such leased land to build offices or condominiums. On the other hand, Thai real estate law recognises several possibilities to protect foreigners who want to possess land.

Thai legislation as a modern jurisdiction accepts rights such as superficies (Sec. 1410 TCCC), usufruct (TCCC Sec. 1417) or limited personal easement (regarded as Arsai Sec. 1402 TCCC).

However, there are several exceptions. Investors can obtain special approval from the relevant Ministry for the purpose of agriculture or for an investment of approximately THB40m. Special privileges can also be obtained from the Board of Investment and the Industrial Estate Authority of Thailand. However, these are simply special cases and will not address the most important issue concerning property transactions in Thailand, which is the purchase of a condominium. The most significant Acts concerning property law are the Condominium Act, Land Development Act, and the Land Code as well as the Investment Promotion Act.

In order to purchase and acquire ownership of condominiums, foreigners need to bring foreign currency into Thailand to settle the payment of the unit (Sec 19 Condominium Law). The payment needs to be shown through a special form called FET. FET stands for Foreign Exchange Transaction form, and it is also deemed as Thor Tor 3. This is a mandatory step for all condominium purchases exceeding USD50k. We assist our clients in the preparation of documents for a licensed bank, which will report the FET form and the relevant transfer to the Bank of Thailand.

It is of utmost importance that only the strict documentation within the precise conveyancing process, often described as “Due Diligence” will finally lead to a successful transaction. It is absolutely critical to investigate the true ownership of the land, because it subsequently leads to proof of evidence of the seller’s ownership or “only” possession rights as mentioned above. It is particularly difficult to investigate title deeds because the relevant land office is the place to start the research, but the various offices are spread all over the country. However, the point cannot be stressed enough that only the land office is the correct place to start conducting the process properly. Every condominium unit has an ownership title deed, issued by the Land Department. The deed provides the relevant

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information about the condominium, including location, plan, name of the owner etc. The critical point is that a proper title deed is mainly issued in urban areas and consequently land offices in rural areas need to be investigated even more thoroughly. The “strongest and safest” title deed is deemed as Chanote and means that the plot of land in question has been declared as being owned 100%. The Thai jurisdiction also recognises other land documents, e.g. Confirmed Certificate of Use (Nor Sor Saam Gor), Certificate of Use (Nor Sor Samm) or a simple document certifying a Right of Possession (Sor Kor Neung).
A condominium can be inherited. Although, the right of ownership of a condominium is granted to a specific individual who is qualified for foreign ownership. Therefore, any foreigner who inherits a condominium must again individually qualify under the abovementioned section 19 of the Condominium Act. Alternatively, he/she must sell the condominium within one year.

There is good news in terms of taxation. Tax does not apply to property as long as the condominium is used for private and residential purposes. For (individual) condominium owners who wish to lease out their property, the Housing and Land Tax applies, and is collected yearly by the local government. In addition, there is a very low Local Land Tax which is estimated on the land value. The Housing and Land Tax is linked to the lease contract and is based on a rate of 12.5% of the yearly rental or the yearly estimated value (whichever is higher). It is worth mentioning that only the first self-occupied condominiums are exempt from home and land tax. Subsequent condominiums purchased will not be exempt from house and land tax.
In general, a foreigner can rent out a condominium without any restrictions, provided it is restricted by the Foreign Business Act or Employment Act. In this respect any rent received is subject to personal income tax and the local authorities must be informed if the condominium is to be rented out.
Furthermore, a condominium owner can sell the property at any time, but certain tax issues need to be taken into consideration. In short, the sale of immovable property is subject to a variety of taxes and fees, e.g. withholding tax, transfer fees, and stamp duty as well as business tax. The transfer fee rate is approximately 2%, stamp duty 0.5%, withholding tax starts at 1% and is dependent on personal income and must be calculated at a progressive rate. The specific business tax rate is 3.3%, but stamp duty does not have to be paid if specific business tax is applicable. The specific business tax is calculated on the appraised value. How are these costs divided between the buyer and seller? Usually, this forms part of the negotiations and what is agreed between the parties in the purchase agreement. Generally, the buyer and seller divide the transfer fees and taxes involved in the purchase. This normally equates to 2% or 3% of the property market value and is shared between the buyer and seller. The seller pays the real estate agent’s commission, which ranges from 3% to 5% of the sale price.

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Taxes must be paid at the land office. For any condominium sold within a period of 5 years after purchase, the re-sale is subject to the afore-mentioned specific business tax calculated over the government appraised value (meaning that every 4 years the assessed market value of the condominium in the opinion of the Land and Treasury Department) or actual sale price of the unit, whichever is higher.
Buyers should always check the credibility of the developer and company managing the development, and engage a competent legal firm to advise on the contract as well as the transaction process.

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