

A Thai government official's opinion about the law does NOT mean that it is legally correct

In Thailand government officials are generally considered much more authoritative than in western countries. Thai culture also considers non-conflict to be a virtue of particularly high regard. Thus, government officials' opinions are also given, what others might consider to be a peculiarly high degree of deference. This can sometimes lead to difficulties for potential investors if such official's opinion is not consistent with the law (or logic). To illustrate, we offer here below examples drawn from our several years of practice in Thailand actual experiences.

1. Building permit:

Suppose your investment was a villa. Imagine you hired a construction company, your "contractor", to build one for you. For convenience purposes the contractor then applied for the building permit so that the construction would legally compliance with land use and building laws. Now you intend to register certain rights on your villa at the land department. In our consistent experience, the official will refuse to do so since you do not have the building permit in your name. Why? Good question! But the official's reasoning is that because you did not receive the administrative permission to build, they do not consider you the owner of your villa *even though* the law very clearly states otherwise; having legal permission to conduct an activity does create ownership rights of the property used in the activity!

2. Land registrations:

Long-term land leases are a common investment component for foreigners in Thailand and points of discrepancy between the relevant law and officials' interpretation are common. For example, *even though* the law clearly provides for an optional renewal of up to and including the 30 year maximum lease term, current administrative practice generally refuses to allow any clause providing for such to be included if you want your lease registered (and you must register it in Thailand in

order for the lease to be enforceable beyond the first three years). Similarly, it is generally not possible to register a lease with a clause providing for an option to purchase the land *even though* Thai Supreme Court precedent has clearly ruled that a foreigner may enter a stand-alone legally enforceable land purchase contract.

In any event, the Land Code specifically provides that the land officials are not allowed to refuse such registrations based merely on their concern that the the action might later be challenged and voided. In such case, the law provides that the official *must* proceed with the registration. The reasoning for this is clear. It is supposed to be the role of the courts, not the role of the administrative officials to rule on issues of law. In Thailand however, we find the role of the former is often usurped by the latter.

Obviously, allowing the official's interpretation to "win the day" in these case is not at all ideal or even acceptable for the potential investor. But in Thai culture the official is often considered almost omniscient and contradicting an official is virtually taboo, including even for many Thai lawyers. However, such difficulties are not always or even usually insurmountable. In many cases, through patient, culturally sensitive and legally knowledgeable negotiations, the officials can be convinced of what the law says *even if* that is something different than what the official thought prior to such discussions. This is an indispensable role of competent legal counsel for the investor and the investor should keep firmly in forefront of mind that having such competent counsel is perhaps all the more paramount when the investment is abroad.

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