

You Must Follow The Law When Building In Thailand . . .

. . . But There Are Exceptions

One of the most significant land use laws in Thailand is the Building Control Act (1979) (the "Act"). The Act regulates what and where can build in Thailand. To that end it empowers the **Minister** of the Interior to issue ministerial regulations ("MR"). These MR dictate:

- what the shape, size, and site of building can be;
- how far apart buildings must be;
- how much space can be built on;
- how close a building can be to a public road, the seaside, or other public place; and many others.

Each MR is generally effective within a specific geographic location, commonly within one of Thailand's 77 provinces. But what if the MR that is effective where you want to build is either unclear as to whether you can build what you would like to or clearly prohibits it? Are you just out of luck and should forget such plans? Not necessarily.

Let's look at the first situation. Say you want to build your dream house on your seaside plot of land but the relevant MR says: "Nothing may be built within 25 meters of the sea." But the MR does not define where the "sea" begins. Your problem is you do not know exactly where the "sea" is. Is it the low tide line, the high tide line, perhaps the middle line between the two, or something else? You could just choose one of those and even get your building permit issued on the basis of your plans showing that your house will be "25 meters from the sea". But if it turns out later you chose the wrong sea location, your house would be illegal (again even with the building permit issued) and could face demolition (as we have previously explained [HERE](#)). However, in such a case you could seek assistance from your relevant local government administration ("**Local Administration**").

Section 10(1) of the Act allows a Local Administrations to issue a **Consistent Bye-Law**

which further details any applicable MR as long as such bye-law is not contrary to the MR. A Consistent Bye-Law is effective once it is published in the Government Gazette. It can only be revoked or revised if the Minister, with advice from the **Building Control Committee**, later determines that in fact it is contrary to the relevant MR. Thus, if a

building permit is issued under the Consistent Bye-Law while it is in effect, that building will be considered legally constructed.

Thus, returning to our hypothetical, say your Local Administration issued Consistent Bye-Law, which defined "sea" as "where the lowest tide line is". You then applied for a building permit and built your dream house 25 meters from the lowest tide line. Later the Minister finds this Consistent Bye-Law to be contrary to the MR and orders it to be revoked. This would NOT affect the legality of your dream home.

Let's look at the second situation, say your relevant MR clearly prohibits what you want to build. Staying with our hypothetical, say this time "sea" is defined as "25 meters from the highest natural tide line". You want to build within 25 meters of the highest tide line, but more than 25 meters from a permanent sea wall that was recently erected to prevent erosion in that locality including in front of your property. The permanent sea wall well after the relevant MR was issued and clearly the "highest natural high tide line" is well past this manmade obstruction.

Section 10(2) of the Act allows a Local Administration to issue an **Inconsistent Bye-Law**, which is contrary to an applicable MR "*owing to special necessity or special reasons for such locality.*" An Inconsistent Bye-Law must first be submitted to the Building Control Committee, which has 60 days to approve or reject it. If the Building Control Committee does not act within 60 days the Inconsistent Bye-Law is considered approved and must then be sent to the Minister for consideration. If the Minister does not approve or reject it within 30 days, the Inconsistent Bye-Law is deemed approved by the Minister as well and will be effective upon publication in the Government Gazette. However, if the Minister, with advice from the Building Control Committee, later determines that the Inconsistent Bye-Law causes an excessive burden on the public or is a public health risk, the Minister may order the revocation or revision of the Inconsistent Bye-Law. But if a building permit is issued under and Inconsistent Bye-Law while it is effect, that building will be considered legally constructed.

Thus, in our second hypothetical, say your Local Administration were to have an Inconsistent Bye-Law approved perhaps due to the "special reason" in your locality that the permanent sea wall was there for the public good and since it is permanent its location was the highest point the tide would ever reach. You then obtain a building permit and build as planned less than 25 meters from the highest natural tide line but

more than 25 meters from the manmade permanent sea wall. Your dream home would be legal regardless of whether or not that Inconsistent Bye-Law remains effective thereafter.

In closing it should be noted that the Act is not the only land use law to be considered in Thailand when deciding what and where to build. There are other laws to consider particularly those related to environmental protection and town and city planning. And, in fact, the Act itself stipulates that any bye-law whether "consistent" or "inconsistent", as we have termed them, contrary to the law governing town and city planning will be superseded by the latter.

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