



Joint Foreign Chambers of Commerce in Thailand

PROPOSAL FOR LEASEHOLD EXTENSION

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ABOUT JFCCT'S PROPERTY COMMITTEE

The Joint Foreign Chambers of Commerce in Thailand (JFCCT) is the umbrella body for the various Thai-foreign chambers or business associations operating in Thailand. There are 30 chambers and business associations representing some 9,000 companies in this wide membership.

The JFCCT has its own organizational arrangements which are designed to ensure that consensus is built, and that the most constructive proposals and the most relevant experiences come to the fore. There are a number of specialist groups (permanent or ad hoc) and the JFCCT Property Committee is one of them.

The JFCCT Property Committee was set up in April 2009. It aims to contribute to the economic development of Thailand in a positive way, across the Property sectors of the economy. We work with the Royal Thai government and various government agencies such as the Thai Trade Representative and Land Department.

Thailand's property market has great potential and opportunity to develop and grow, both from investment made by local and foreign investors, as well as from consumers. This is due to the attributes which make Thailand an attractive destination for investment in property. However, due to certain legal disadvantages, Thailand is currently running the risk of missing out on this immense opportunity, as well as numerous other potential investments and to for this purpose, the JFCCT's Property Committee would like to propose our first White Paper for Leasehold Extension.

The working committee for this proposal includes :

- Patima Jeerapaet, Chairman, JFCCT Property Committee
- John Svengren, Thai - Swedish Chamber of Commerce
- Sorachon Boonsong, Australian - Thai Chamber of Commerce
- Simon Landy, British Chamber of Commerce Thailand
- Charlie Blocker, American Chamber of Commerce in Thailand
- Vithit Leenutaphong, German - Thai Chamber of Commerce
- Narit Direkwattanachai, Thai - Russian Chamber
- Steve Cheah, Malaysian - Thai Chamber of Commerce
- Rachoij Tawintermsup, Working Committee
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- Beena Kalra, Secretary

EXECUTIVE SUMMARY

Thailand's property market has great potential and opportunity to develop and grow, both from investment made by local and foreign investors, as well as from consumers. This is due to the attributes which make Thailand an attractive destination for investment in property. Year-round tropical climate, beautiful scenery, a culture of friendly hospitality and a service mindset, and relatively low cost of living and labour are some of the qualities that greatly appeal to both investors and consumers in the property market.

One opportunity for growth stems from Europe, as the latest research indicates there are approximately 30,000 people from Scandinavia, the UK and Germany who have acquired second homes in Thailand, generating an estimated Baht 75 billion in revenue. Amazingly, this has the potential to increase to 90,000 second homes in three to five years, which would generate around Baht 150 billion in income for Thailand. This income would not only stimulate the growth of the Thai property market, but also the economy as a whole.

However, due to certain legal disadvantages, Thailand is currently running the risk of missing out on this immense opportunity, as well as numerous other potential investments. Because of these legal disadvantages, Thailand is unable to provide a proper platform to accommodate investment, which ultimately hinders growth and development.

One of the most significant legal disadvantages is the restrictions on long-term leases. Thailand's maximum lease term is 30 years for both Thais and foreigners, with renewal options of further 30 years. However, even though the existing regulation already allows for two lease agreements to be registered at the same time over the same property, the issue concerned is whether two 30 years lease agreements can be registered at the same time over the same property. Due to the general practice of the officers of the Land Department, this proposed lease scheme (30+30) may not be acceptable to the officer, as there is no clear guideline provided in the existing regulations. For most cases, the lessee has to wait until the first lease term has ended before registering the second lease agreement. Moreover, the option to renew the lease term in the lease agreement may not be legally binding on successors to title, thus creating risk and uncertainty pertaining to the renewal of the lease term, as elaborated in detail in the Proposal below.

Therefore, this is the most restrictive and uncertain leasehold law in the region. As a result, investors/developers are put off by the fact that they may have a very short period of time in which to recoup their investments. This is especially true for foreign investors who cannot own land. Meanwhile, foreign consumers who wish to lease property for a second home/retirement home may also feel that such lease period is too short.

Consequently, some investors and consumers are deterred from investing, as an investment platform accommodating their need for definitive long-term leases is lacking. Meanwhile, some investors choose to invest elsewhere in the region, particularly in our direct competitors, such as Malaysia and Vietnam, which are prepared to capitalize on foreign investment opportunities, aided by better investment platforms. It is therefore paramount that Thailand find a solution to these legal disadvantages quickly, or risk losing our existing and potential investors/consumers to our competitors.

The most feasible and appropriate solution to the problem is to revise Land Department regulations to specifically and clearly allow 60-year leases, whereby two lease agreements can be registered and enforced in accordance with the Civil and Commercial Code (the "CCC"), on a back-to-back basis, allowing for the 60 year consecutive term to be definite and unambiguous. This solution is both efficient and achievable, and should be sufficient to provide investors/consumers with the appropriate investment platform.

Revising Land Department regulations would be an opportunity to stimulate the property market by encouraging greater investment from domestic and international sources, both by existing investors and potential new ones.

In conclusion, the proposed solution is both suitable and feasible. It will solve the legal disadvantage, provide investors with a more satisfactory investment platform, and will ensure that our competitors do not capitalize on investment opportunities belonging to Thailand. It will also stimulate property investment and the economy as a whole. Failure to eliminate the legal disadvantage promptly will result in lost opportunities.

1. Introduction

Thailand is an established destination for tourism and residence, and is recognized as one of the top destinations in Asia due to its many appealing factors. Among them are the remarkable scenery, relatively low cost of living, reputable culture of friendly hospitality and service orientation, and year-round tropical climate. These attributes not only attract tourists, but investors from all over the globe as well, including prospective foreign investors in property, who find the aforementioned qualities greatly appealing. However, despite all these attractive offerings, Thailand's property market has not realized its full potential, having yet to see an appropriate level of market growth. This is due to, among others, certain legal disadvantages, which deter both locals and foreigners from investing in property in Thailand.

One of the noticeable legal disadvantages is in regard to property leasehold rights. While many countries in the world do not allow foreigners to own land, they usually recognize that leasehold is a good option for investment in the property market. Thailand's maximum leasehold is 30 years for both Thais and foreigners, with renewal options that may not be legally binding on successors to title. This is the most restrictive leasehold law in the region. Typical residential lease terms are 99 years in Singapore, 50-70 years in Vietnam, effectively 60-90 years (through extensions) in Indonesia, effectively 75 years in the Philippines, and 70 years in China. Although the Thai Civil and Commercial Code allows 30-year leases to be renewed for another period of 30 years, this renewal option is still subject to some uncertainty.

Unfortunately, foreigners are not only deterred from investing in the property market by these disadvantages; some are also led to utilize illegitimate methods to circumvent the law when investing in property in Thailand. Therefore, the Thai government should find a way to mitigate the legal disadvantages currently present, to accommodate legitimate investment by foreigners.

The objective of this Proposal for Leasehold Extension (the "**Proposal**") is to identify an appropriate and feasible solution to the legal disadvantages that are hindering the growth and development of Thailand's property market. Pursuant to a detailed analysis of the strengths, weaknesses, opportunities and threats (a *SWOT* analysis) of Thailand's property market, the key solution would be the increase of the legal leasehold term.

The market indicates that the most appropriate and beneficial leasehold term is not less than 90 years. However, as enabling a 90-year or greater leasehold requires an amendment of the law by Parliament, which is time consuming and difficult to accomplish, the following focuses instead on a fast-track solution that is available under existing law.

The more achievable and sensible solution is the revision of the Land Department regulations to ensure that two lease agreements can be registered and enforced in accordance with the CCC, on a back-to-back basis, allowing for a clear, definite 60-year term. Per the analysis, this definite 60-year lease scheme will offer an investment platform that will stimulate investment, essentially mitigating the current disadvantages that are obstructing the growth of the property market. Most importantly, this solution is achievable within a short period of time, as it does not require legislative power to implement, but rather administrative power.

2. Analysis – Thailand’s Strengths, Weaknesses, Opportunities, and Threats

2.1 Strengths

When an investor looks at overseas property, several factors are taken into account. The most attractive reasons for investing in Thailand are as follows:

- for thousands of people who have worked in Asia for many years, Thailand is an attractive retirement destination, with a familiar living environment;
- Thailand provides retirement visas to foreigners over 50 years of age, provided certain financial requirements are met;
- Thailand has good schools;
- Thailand has an efficient health care system;
- Thailand boasts beautiful mountains, dense forests, and stunning beaches;
- Thailand brings back visitors each year with its tropical climate and friendly culture;
- Thailand provides warm weather for winter holidaymakers;
- the relatively undiscovered nature of Thailand means that property prices here remain far below those in the more established European markets, although they are set to grow quickly;
- Thailand is one of the cheapest places to fly to in Asia;
- the country has strong business links with China and has an excellent infrastructure, as well as world-class facilities in many resort towns;
- rental potential is great, due to increased government spending luring growing numbers of tourists; and
- Thailand was ranked 12th for ease of doing business according to the *Doing Business 2010* report from World Bank, released in September 2009.

2.2 Weaknesses

Restrictions on land ownership for foreigners

Foreigners who wish to own property in Thailand face certain obstacles, since per the Land Code, foreigners are generally not allowed to own land. Although foreigners can set up an entity to own a piece of land, they cannot have more than a 49% ownership in such entity.

The Land Code does provide that foreigners who invest at least Baht 40 million in Thailand (such as in governmental bonds, or property funds for aiding financial institution systems), can acquire land in an amount not exceeding 1 rai (1,600 m²). However, foreign individuals would find this difficult, as the amount they would have to remit to Thailand would be the price of the land *plus* the Baht 40 million investments. This prescribed minimum investment can only be removed or changed by amending the Land Code.

Alternatively, under the Investment Promotion Act B.E. 2520 (1977), foreign investors can receive permission to own land when undertaking particular businesses, and be exempt from obtaining a Foreign Business License under the Foreign Business Act B.E. 2545 (2002), through promotion by the Board of Investment (BOI). However, this benefit is reserved for foreign investors or developers, and is not available for individuals (see section 3(2), *Other Recommendations*).

Long-term lease schemes

As the Land Code prohibits foreign ownership of land, the best legal option available to foreign investors is to lease property. Under the Civil and Commercial Code (the “CCC”), a lease of immovable property must be made in writing and registered with the Land Department (in the case of a lease with a term of greater than three years). A lease term can be as long as the lessee or the lessor’s life, whereby the lease term in such case will be uncertain, and as such, is not beneficial or practical in a commercial sense. A lease can also be without a specified term; however, since the lessor can terminate such lease agreement at any time, foreigners usually choose to fix a certain period for the lease. By law, fixed lease terms cannot exceed 30 years, with another 30 years given as the renewal period (for a total of 60 years).

Enforcement of the law in practice

As mentioned, the CCC specifies a maximum 30-year period for lease agreements, with a further 30-year renewal option available. In order to take advantage of a 60-year lease, two lease agreements must be entered into, with each being registered separately. To elaborate, the parties will enter into and register the first lease agreement, with a 30-year lease term. Then the parties will enter into a second lease agreement, also with a 30-year lease term. The second lease agreement is contracted to commence following the date on which the first agreement ends. The problem, however, is that although such a lease scheme is legal, it may not be honored by the Land Department according to its current practice, as elaborated below.

Land Department regulations and problem concerning Land Officers’ practice

As the competent authority with respect to land lease registration under the CCC, the Land Department issued a Regulation re: *Registration of Land and Other Immovable Property Leases B.E. 2551 (2008)*. This regulation allows the consecutive registration of lease agreements. In other words, investors who wish to invest in property can utilize the 60-year lease term provided under the CCC, by registering two back-to-back lease agreements with the Land Department.

However, even with this regulation in place, there are only few cases in which the Land Department has allowed for two long-term lease agreements to be registered consecutively. While the regulation generally provides that two lease agreements can be registered at the same time, the second lease agreement will only take effect at the time of commencement specified therein. Thus, the successful registration of a 60-year lease scheme is not guaranteed. This is especially true as the regulation does not entirely prohibit Land Officers from taking other elements into account, when considering whether a lease agreement may be registered legally, thus giving them discretion.

In elaborating this issue, it must first be established that there is already a regulation in place which allows for 60 year lease term to be utilized as mentioned above. However, since the Land Officers can still exercise discretion in whether to allow two lease agreements to be registered consecutively (which effectively ensures that 60 year lease term in total is secured), not all applications to register two lease agreements consecutively have been successful, as it is up to the discretion and general practice of the Land Officers. The problem is that with the current practice of the Land Officers, registration of two lease agreements consecutively are only permitted in very limited and special (or privileged) cases, while for most cases, the Land Officers usually deem that the second lease agreement can only be registered after the end of the first 30 year lease term. Thus, not all applicants can, for certain, utilize the 60 year lease term scheme which the Land Department’s regulation enables.

In this regard, the uncertainty in relation to the ability to secure a definite 60 year lease term by registering two lease agreement consecutively is a weakness which needs to be eliminated. This is in order for all land lessees, domestic and foreign alike, to be confident that they can enjoy the 60 year lease term, already enabled by the regulation, with certainty. This is because unless the Land Officers allow the lessee to register two lease agreements consecutively, the lessee is left with risk pertaining to the ability to renew and register the second lease agreement for the second 30 year lease term, and may end up with only the first 30 year lease term. The aforementioned risk, pertaining to the lessee's ability to register the second 30 year lease term after the first has ended, is elaborated below.

Risk pertaining to the registration of second lease term after the first term has ended

With the current practice of the Land Officers, in most cases, the second lease agreement can only be registered (binding) only after the first lease term has ended, as it is uncertain whether the Land Officers will allow both the first lease agreement and the second (renewal) lease agreement to be registered consecutively. Therefore, in such cases, the second lease agreement is not binding until it is registered, which is after the first lease term ends, and the lessee has to rely on the 'option to renew the lease term' stipulated in the first lease agreement in renewing the lease term. The most significant risk in this regard is that under the current law, the renewal option in the lease agreement may not be binding on the successors to the title, i.e. successor of the land owner, and thus, should the land title be transferred to the successor, the successor may not be obligated to renew the lease after the lease term in the first agreement has ended. Such risk is apparent both in respect of where the lessor transfers to the title to a transferee, or in case where the lessor is a natural person who dies and the title is transferred by the law of succession to his successor.

In case where the lessor transfer the title to the land to a transferee (successor), based on section 569 of the CCC, only the contractual rights and obligations under an immovable property lease agreement are transferred to and are binding on the transferee to the land title. Meanwhile, the 'renewal option' in the agreement is only considered as a 'promise' made by and between the lessor to the lessee, and will not be transferred to the successor/transferee, unless such transferee has accepted to be bound by such promise of 'renewal option'. This is regardless as to whether the lease agreement has specifically stipulated for the renewal option to also be binding on the successor of the lessor.

This is the principle based on numerous Supreme Court's rulings, and in particular, the:

Supreme Court Ruling No. 6491/2539

The court in this case stated that the provision in the lease agreement which stipulates that the lessor agrees to allow the lease term to be renewed by the lessee once the lease term under the lease agreement has ended (renewal option) is merely an agreement specifically between the lessor and the lessee outside of the lease agreement, and is binding only between them, not the successor (transferee) of the lessor, who is a third party that did not agree with the transferor (lessor) to be bound by the same renewal option when accepting the transfer the of the title.

The ruling of the Supreme Court this case is attached herein as section 2.1 of *Appendix II*

Therefore, based on this principle, there are significant uncertainties and risks regarding the renewal option, as it is not deemed by the court as part of the rights and obligations under the lease agreement which will be transferred to the transferee. It is the burden of the lessee to ensure that, when the land title is transferred from the lessor to a transferee, the transferee must accept be bound by such renewal option, otherwise the transferee will not be bound to renew the lease term.

This risk and uncertainty can be eliminated by registering the second lease agreement consecutively after the first agreement is registered, which will ensure that the second lease agreement will also be binding on the successor of the lessor. However, as mentioned above, it is the general practice of the Land Officers to only allow the registration of the second lease agreement after the first lease term has

expired, and as such, the lessee is faced with uncertainty and risk regarding the renewal option which may not be binding on the successor of the lessor.

Additionally, as the renewal option is deemed as a ‘promise’ of the lessor, the lessee must express its ‘acceptance’ to such promise (i) before the lessor has died, or (ii) before he becomes aware that the lessor has died. If an acceptance is expressed by the lessee after the lessor has died and after he has already become aware of it, the renewal option will not be binding on the successor of the lessor. This is evidenced by the following rulings of the Supreme Court:

Supreme Court Ruling No. 1602/2548

The Plaintiff was a successor of the lessor’s leased building to the Defendant. In the lease agreement between the lessor and the Defendant, the lessor promised to give an option to renew the agreement for another 3 years. As it appeared to the court that the Defendant had not expressed its acceptance of such option before the lessor died, and that the Defendant had known of the lessor’s death, the promise to give an option to renew by the lessor under the lease agreement had thus expired and does not become an obligation to the Plaintiff as the successor. The Defendant’s letter to accept the option to renew does not constitute a new lease agreement. The Plaintiff can terminate the lease agreement and dispel the Defendant from the disputed building. In this regard, the Defendant, while lingering in the property, which is deemed as dwelling in it without any legal right, has committed an unlawful act against the Plaintiff.

The full ruling of the Supreme Court this case is attached herein as section 2.2 of *Appendix II* and other rulings which support the same principle are attached as section 2.3-2.6 of *Appendix II*.

As mentioned above, the risks and uncertainties with respect to the renewal option can be eliminated through the registration of back to back lease agreement consecutively by the Land Officers. Providing a channel to effectively secure the 60 year lease term will enhance the confidence of all land lessees, as well as providing incentive for investors, both local and foreign, to increase investment in the property market. To achieve this, a possible solution is proposed below in Section 3.

2.3 Opportunities

(a) Opportunity to Encourage Foreign investment

To avoid losing foreign investment, it is paramount that Thailand provide foreign investors with a legitimate means by which to accommodate their needs.

One way to encourage legitimate investment by foreigners is through the use of long-term land lease schemes, an opportunity that is explored in section 3 (*Recommendations/Propositions*). This will encourage foreign investors rather than deter them.

(b) Property Market Development Opportunities

As longer lease terms will extend the time in which both customers and developers can benefit from the use of property, investment will become more attractive. While a 30-year lease period seems long, in the view of both customers and developers, it may not be long enough to be beneficial, in terms of end use and investment.

Regarding end use, lessees of property have to pay for their possession, which lessens the sense of ownership. Terms of longer than 30 years would help balance this inequity: consumers would feel more confident about paying for possession, if the possession were long-term. For the developers, a 30-year period may not yield as great an investment return, since some of that 30-year term is taken up by construction and development of the project. The term in which income is generated is thus lessened, as is the return on such investment.

If longer lease periods are allowed, all participants in the Thai property market will receive greater benefit. The extension of lease terms will strengthen consumer and developer confidence, resulting in a higher number of transactions. This will in turn lead to growth and development, from new customers who are looking for good property investments and new developers who see the chance of making a good return from market growth and a wider range of customers.

Moreover, existing players in the market will be more active as the certainty from legitimate longer lease terms will allow them to adjust their businesses (which might be illegitimate or unfruitful) to respond to greater demands from new customers. Above all, growth of the property market will mean fair and legitimate competition between developers, to offer the best product to customers. This will have an impact on other sectors as well, ultimately encouraging economic growth.

(c) *European Investment Opportunity*

According to research by the Thai-Swedish Chamber of Commerce, around 2,000,000 tourists from Scandinavia, the UK, and Germany visit Thailand per year, generating in the vicinity of Baht 100 billion in tourism income. Four percent of the Swedish population visits each year, making Thailand the preferred long-haul destination.

As a direct spin-off from tourism, an estimated 30,000 people from Scandinavia, the UK, and Germany have acquired second homes in Thailand, which generates an estimated additional Baht 75 billion in revenue. This market has the potential to move from its current base of 30,000 second homes in Thailand to 90,000 in a three- to five-year period, generating Baht 150 billion in income for Thailand. However, as current global economic concerns and political volatility in Thailand have brought the second home market to a standstill, stimulation is needed to encourage renewed growth.

2.4 *Threats*

(a) *Competitors*

One of the threats faced in the development of the Thai property sector is competition from other countries, which are equipped to lure foreign investment away from Thailand. For the purpose of this Proposal, the below competitor analysis focuses on two direct competitors in South East Asia, Vietnam and Malaysia.

Vietnam

Overview of Vietnam's real estate market

Despite Vietnam being a socialist state, it has in recent times become more open to investment from overseas, in order to foster development and boost its economy. One of the areas that has shown significant growth (and which has the potential for continuous future growth) is the real estate sector, which has been injected with capital from foreign direct investment (FDI).

According to *The Brief on Investment in South East Asia* by Gide Loyrette Nouel, Issue No. 27, February 2009, Vietnam remains “among the top ranked countries in Asia in FDI attractiveness, and is even considered as the most attractive emerging market destination in several sectors,” pursuant to the 2008 Global Retail Development Index (GRDI) among 30 emerging markets, despite the recent global economic crisis.

One of the most attractive sectors in Vietnam is the real estate sector. This is illustrated by real estate funds having an anticipated 47% return over 24 months from heavy investment in real estate businesses such as hotels and resorts. This is due to Vietnam's real estate sector having seen a decade of continuous price increases prior to the recent economic slump.

Despite the real estate crisis in late 2008, the increase in FDI illustrates that Vietnam's real estate sector is still growing at an enormous rate. In 2008, FDI in this market amounted to USD 28 billion, which is three times the 2007 figure. This growth has in turn led the State Bank of Vietnam to cut policy rates and reserve ratios.

While the Vietnamese real estate sector has shown significant growth in the past, there is plenty of room for further growth. From the perspective of investors, there remains a vast difference between current prices and prospective prices. Therefore, there is still an opportunity at large for investment in the real estate sector, which investors deem to be a 'sleeping giant'.

Platform for foreign investment

Like Thailand, foreigners are not allowed to own land in Vietnam. However, foreign entities can lease land from the State, which is tasked with managing the land use rights granted to individuals and legal entities, through issuance of relevant certificates. The rights granted over land depend on payment of a land use fee and upfront payment of rental fees for the entire lease term. In return for these payments, the foreign entity is entitled to:

- transfer its land use rights and assets attached to the land;
- sublease land and assets on the land;
- use land use rights and the assets attached to land as capital in joint ventures; and
- mortgage or guarantee land use rights and assets to credit institutions in Vietnam, during the term of the lease.

The maximum lease term granted is 70 years.

The relatively long duration of leases, coupled with flexible lease rights, is very attractive to foreign investors. This is especially true as each foreign investor is able to obtain special privileges with regard to its investment, depending on its arrangement with the State. Special privileges are granted in proportion to the size of the investment as well as the technology and know-how such investment would bring to Vietnam, which would help the country's development as a whole.

Summary

The above data illustrate that Vietnam's real estate market has seen a continuous and significant increase in FDI, and that there is still considerable room left for further growth. Assisted by its attractive platform for foreign investment, by virtue of flexible land use rights and long-term leases, the Vietnam property market is seen by foreign investors as highly appealing. Vietnam has been rapidly catching up to Thailand, and has now become a direct competitor in the property market.

Malaysia

Overview of Malaysia's real estate market

Malaysia is another direct competitor to Thailand, as it shares the same attractive geographical advantages. Malaysia's real estate market has been developing and growing consistently in the past, as shown by an average annual growth rate of 7%. Transactions in the property sector have also been increasing consistently, as shown by the amount of loans disbursed to the broader property sector (e.g. USD 16,655 million in 2001, growing to USD 24,366 million in 2005).

Although FDI in Malaysian real estate in the past stood at 2.5% of the total value property transactions at best, which is much lower than other locations in the region where average FDI is over 30%, Malaysia has since implemented numerous plans to attract foreign investors and consumers.

Formed in 2008, Malaysia Property Inc (“MPI”), a government-private sector initiative to woo FDI in local real estate, has set an investment target of RM 20 billion over the next 10 years, by marketing Malaysia as international real estate investment destination. The organization has since invited over 30 groups of Japanese investors to visit potential residential property for investment.

Meanwhile, the Malaysia My Second Home Programme (“MM2H”), which encourages foreign consumers to own second homes in Malaysia, has also had considerable success, with over 11,000 foreign applicants having been approved to own a second home in Malaysia. The applicants are of various nationalities, with the majority coming from China, Bangladesh, the UK, and Japan. The property bought by foreigners under MM2H has brought approximately RM 550 million into Malaysia, and will in turn bring additional income to the country’s services sector.

Platform for foreign investment

Foreign interests may acquire property valued at not less than RM 500,000 (or RM 250,000 for residential property), with the government’s approval. The maximum lease period is 99 years, subject to the government’s approval. Both of these conditions are highly attractive to foreign investors, especially the 99-year leasehold, which allows investors substantial time in which to recoup their initial outlay.

On the consumer side, MM2H not only allows successful foreign applicants to acquire second homes in Malaysia, but are also entitles them to various additional benefits and privileges under the program, such as visas, work permits, and other licenses. The program has been very effective in luring foreign consumers, both from Asian countries and Europe, to buy second homes in Malaysia for holiday and retirement purposes.

Summary

Malaysia has lately been very active in equipping itself to accommodate foreign investment in the property market. It has taken various initiatives to market and promote itself as a choice destination for both investors and consumers alike, as illustrated by the formation of MPI and MM2H. With this recent government directive to promote foreign investment in the property sector, coupled with attractive legal platforms for foreign investment, Malaysia will be a threat to Thailand’s property market.

With the threat of competition being apparent, as illustrated above, it is essential that Thailand also equip itself to compete in the property market by solving the existing disadvantages. As proposed below, making the consecutive leasehold period of 60 years certain will provide a better platform for investment in property, both for locals and foreigners.

In this respect, attached herein as *Appendix I* is a comparison of the laws in regard to land ownership and lease periods of various Asian countries to those of Thailand.

(1) *Proposed Improvement of Land Department Regulations*

In order to eliminate the ambiguity in current laws and promote Thailand's property market, the Land Department should consider enacting a new regulation or amending current regulations, to specifically support and allow the 60-year lease scheme. The regulation should state clearly that the Land Department will register and enforce back-to-back leases of 30 years each, in accordance with the CCC, allowing the 60-year consecutive lease term. If promotion of the property market is considered of high importance, either the Director-General of the Land Department, or the Minister of the Interior as the overseer of the Land Department, should amend/clarify the existing laws.

(2) *Other Recommendations*

Apart from extending the lease term guaranteed under the law, other actions supporting and/or facilitating the promotion of the property market could be taken.

Ninety-year leases

The longer the lease term, the more beneficial it will be for both customers and developers. Taking this into consideration, as well as the fact that countries surrounding Thailand provide for leases of up to 90 years, allowing a 90-year lease term would be appropriate. It would also be most beneficial in terms of both customer and developer investment. However, as the CCC states that lease terms can be for no longer than 60 years, the only way to provide for a 90-year term is to amend the law.

Leases for commercial and industrial purposes

In addition to the 60-year lease term provided by the CCC, the Hire of Immovable Property for Commercial and Industrial Purposes Act B.E. 2542 (1999) allows the extension of immovable property leases from 30 years up to 50 years, with the possibility of a 50-year renewal, totaling a lease term of 100 years for commercial and industrial purposes. The Minister of the Interior, as empowered by the Act, has issued a Ministerial Regulation to set out projects that fall within the scope of "commercial or industrial purposes." However, the scope of this Act is limited. Our recommendation is that it should extend to "residential purposes."

Furthermore, the effective 100-year lease term guaranteed by the Act has been used rarely, because of its complication in practice. It is our recommendation that the government review why it has rarely been used and decide how to improve the practices under the Act.

Horizontal condominiums

Per the Condominium Act B.E. 2522 (1979) (the "**Condominium Act**"), a "condominium" is a registered building, ownership of which can be divided into personal property and common property. Condominiums are generally high-rise buildings with many units. Although no specific law sets forth the criteria with which a building needs to comply in order for it to be deemed a "condominium," the Council of State has ruled in Ruling No. NorRor 0601/1466 that a condominium under the Condominium Act can be a group of buildings situated under the same title deed. This has led some developers to design villa-style projects, resulting in condominiums comprised of single, low-rise buildings (like groups of detached houses) connected by common areas. This design allows the developer to meet a variety of customer demands, including for luxurious and home-like residences instead of stacks of units in a concrete building.

Even though the Condominium Act does not specifically restrict the registration of a group of low-rise buildings as a condominium, the Minister of the Interior, as authorized under the Condominium Act,

should issue a Ministerial Regulation in support of the Council of State’s ruling, to codify and endorse the validity of horizontal condominium registrations. The regulation should be detailed enough to identify what should be considered a horizontal condominium, as some groups of buildings obviously cannot be considered condominiums even if they are on land under the same title deed.

The Condominium Act limits foreign ownership in a condominium to 49%. This limit could be increased to 70% to open the market to greater investment by foreign customers, but can only be done by amending the Condominium Act. Since foreign demand for condominiums varies by location, the amendment to the law could be selective, permitting increased foreign ownership limits in the locations that have the potential to best attract foreigners.

Immigration

Residency permits for foreigners are very difficult to obtain, due to the numerous conditions and criteria involved in the application process. The applicant, among others, must be able to speak Thai, have been in Thailand on a non-immigration visa with work permit for three consecutive years, and the application must be made for business, investment, or humanitarian reasons. In addition, a government quota of 100 permits per year has been set, making obtaining a permit even more difficult.

One way to make residency permits easier to obtain would be to amend the conditions/requirements, to enable foreigners who own/wish to acquire residential property in Thailand to receive residency permit, by utilizing a mechanism already provided for in the Immigration Act, B.E. 2522 (1979) (the “**Immigration Act**”). Pursuant to the Immigration Act, the Board of the Immigration Committee, which is chaired by the Permanent Secretary of the Ministry of the Interior, has the authority to prescribe conditions and requirements in regard to foreign nationals’ applications for residency permits. In this respect, the Board of the Immigration Committee can revise the current requirements, conditions, and quotas, so that residency permits can be granted to foreigners who show proof that they own residential property in Thailand. The granting of such a permit should be an automatic part of the investment process.

4.	Conclusion
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The amendment of existing laws or enactment of new laws is inevitable if the long-term growth of Thailand’s property market is to be encouraged. While it will not be easy, using legislation to bolster investment in property is certainly an effective, more definitive approach.

The above solution is workable, since existing laws open a channel for the government to allow long-term lease schemes. This will accommodate both customers, i.e. local and foreign individuals who desire long-term lease/stays, and developers, who wish to secure their investments through long-term leases.

An increase in competition from neighboring countries, which are also looking to capitalize on foreign investments, means a definitive solution is more important than ever. The government’s provision of incentives to both customers and developers will do much to help increase both supply and demand in the property market in Thailand.

In conclusion, to implement the solutions proposed herein, the Cabinet, as the supreme body of the government, must enact administrative rules under existing laws to promote the property market, which rules relevant subordinate authorities must follow and promptly put into action. In this respect, the Cabinet may resolve that the Ministry of the Interior enact a Ministerial Regulation guaranteeing the 60-year lease scheme, by ruling that the registration of two consecutive 30-year lease agreements is enforceable under the law. The Minister of the Interior should also order that the Land Department

issue a Regulation stipulating guidelines that land officers must follow when registering leases under the scheme.
