

Key Legal Considerations for Real Estate Development in Thailand

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INTRODUCTION

Investing in real estate development in Thailand, whether for shopping centers, factories, hotels, condominiums, housing estates, warehouses, or data centers, presents substantial opportunities.

However, navigating this market involves complex legal frameworks and potential pitfalls. These risks include uncertainties regarding land ownership, the legitimacy of title documents, land use restrictions, and regulatory compliance. This article outlines the essential legal considerations to help investors and developers mitigate risks and protect their interests.

IMPORTANCE OF COMPREHENSIVE LAND DUE DILIGENCE

1. Verifying Lawful Ownership and Title Validity

A first priority in any land acquisition, whether freehold or leasehold, is confirming the true owner and ensuring the title deed was legally and properly issued. Entering a transaction with an unauthorized seller or acquiring land with defective title documents can lead to significant consequences, such as:



Legal disputes and lawsuits over deposits



Inability to complete the transaction due to nontransferable land status




Revocation of title deeds by the competent authority

A comprehensive **land search** at the local land office can verify the ownership history, the legality of the title issuance, and detect boundary issues. This review is crucial for identifying overlaps with restricted areas, such as reserved forests or national parks, which may render the title invalid under the **Land Code** and related regulations.


Even where a title appears valid on its face, it may still be challenged if issued in error. For example, encroachment into protected forest areas or inclusion of public land due to mapping mistakes could lead to revocation years after acquisition. Therefore, legal due diligence is not merely optional, it is essential, particularly in sensitive areas like mountains, coastal regions, or near protected natural reserves.

2. Identifying Encumbrances


In addition to confirming ownership, it is vital to identify any **registered encumbrances** such as mortgages, long-term leases, or servitudes. These may severely limit the ability to use, develop, or transfer the land. For example:



A long-term lease may restrict intended development plans



An existing mortgage may block the transfer of ownership until satisfied




A servitude might impose an obligation to provide access to neighboring landowners


Registered encumbrances are typically discoverable through a land search. However, **unregistered encumbrances**, while less common, may still exist and necessitate on-site inspection and deeper investigation. Under Thai law, most significant real estate rights must be formally registered to be enforceable, making this a central focus for legal review.

3. Confirming Legal Access and Site Usability


Regardless of the project type, **legal access to the land** is fundamental for both operational needs and regulatory compliance. Projects may suffer major setbacks if the land:



Lacks direct, legal access to a public road



Contains significant unusable areas, such as canals or isolated, landlocked parcels



Is intersected by land owned by third parties without formal rights of way

These issues can significantly impact project feasibility and cost. A proper land search and thorough site inspection should identify such risks before any commitments are made.

#### 4. Expropriation Risk

Expropriation of real estate by the state constitutes an inherent legal risk, particularly where the state has a legitimate need and a lawful basis to appropriate such property for public use. Nevertheless, any act of expropriation must be executed strictly in accordance with statutory procedures and is subject to legal scrutiny. Accordingly, determining whether a particular parcel is currently subject to, or is at risk of being subjected to, expropriation under prevailing laws is both practical and essential, and must form a fundamental component of legal due diligence.

#### 5. Limitations on the Owner's Capacity

Although a title search may confirm the current party holds lawful title, that ownership may still be subject to legal limitations or encumbrances imposed by law, judicial decisions, or administrative orders. These may include, for example, asset seizure orders, court judgments mandating ownership transfer to a plaintiff, or restrictions arising from the owner's bankruptcy or rehabilitation proceedings. In such circumstances, the owner may be legally restricted from disposing of the property at will. Furthermore, should the relevant land office proceeds with a registration of ownership transfer based on incomplete or inaccurate information, such transfer may later be subject to annulment or revocation. This could force the purchaser to initiate additional legal proceedings to recover the purchase funds from the owner, leading to delays and increased legal risk. Critically, these risks may be mitigated through a preliminary investigation into the property owner's pending or past legal proceedings.

### LAND USE RESTRICTIONS AND ZONING COMPLIANCE

Even if the title is valid and free of encumbrances, **land use regulations** can severely restrict how the land may be developed. These limitations vary significantly across different locations and are governed by several key pieces of legislation:

#### 1. Town Planning Act

This Act governs urban planning and zoning. It requires central and local authorities to issue comprehensive land use plans that consider environmental, economic, and community factors. Certain zones may outright prohibit or severely restrict specific activities, such as certain types of residential, commercial, or industrial use.

#### 2. Building Control Act

Before any construction begins, developers must secure proper building permits under this Act. It ensures that buildings comply with technical requirements regarding height, size, setback distances, materials used, and safety standards. Violations can result in stop-work orders, substantial fines, or demolition orders.

*Please note that building control restrictions may also be influenced by other specialized laws governing specific activities (e.g., hotel and factory operations) or the location of the property (e.g., Air Navigation Safety Zone and Military Safety Zone).*

#### 3. Enhancement and Conservation of National Environmental Quality Act

This law mandates environmental reviews, **Environmental Impact Assessment (EIA) or Environmental Health Impact Assessment (EHIA)**, as applicable, for designated project types with potential community or ecosystem impacts. It also imposes additional controls on building types and land use in environmentally sensitive areas.

Examples of restricted development include:

- Prohibition of high-rise construction within specific distances from the coastline.
- Banning of certain factory operations in environmental conservation zones.

Understanding and fully complying with these regulations is essential for preventing costly delays, forced redesigns, or even project cancellations.

### RECOMMENDED DUE DILIGENCE EXERCISES

Building upon the essential considerations outlined in this article, we recommend the following key exercises for conducting legal due diligence on a target real estate asset:

✓	Examine the state of the title documents, verify any registered encumbrances, and obtain official copies of the title documents, including their historical background, from the relevant land office.
✓	Examine the official survey map of the property to verify the status of public road access.
✓	Analyze any existing restricted areas, such as permanent forest, national reserved forest, national park, and agricultural land reform areas, that may overlap with the property.
✓	Analyze the requirements for complying with applicable zoning, building control, and environmental restrictions.
✓	Analyze any existing governmental acts or plans that indicate an intention to expropriate the target property.
✓	Review the applicable requirements imposed by the Air Navigation Safety Zone and Military Safety Zone.
✓	Determine whether an EIA or EHIA is required and scope the submission accordingly.
✓	Perform a company search against the owner(s) of the property (if a juristic person).
✓	Perform litigation and bankruptcy searches against the owner(s) of the property.

## Conclusion: Why Legal Expertise Matters

Real estate development in Thailand offers immense potential but also involves a complex regulatory maze. Without proper legal guidance, investors risk suffering significant losses due to title disputes, hidden encumbrances, or non-compliance with land use laws.

To effectively protect your investment:

- ✓ Conduct thorough legal **due diligence** prior to acquisition.
- ✓ Verify **ownership, title validity**, and the existence of **encumbrances**.
- ✓ Rigorously assess **land use, zoning, building regulations**, and **environmental requirements**.
- ✓ Seek advice from qualified legal professionals with specialized expertise in Thai property law.

By taking a proactive, legally informed approach, developers and investors can move forward with confidence, ensuring their projects are not only legally sound but also positioned for long-term commercial success.

### About the Weerawong C&P Regulatory and Real Estate Practice

**Weerawong C&P's Regulatory and Real Estate Practice** advises leading global and local companies on the legal boundaries of advertising and promotional campaigns in Thailand. We support clients in designing and executing marketing promotions and ensure that all advertising content complies with applicable laws.

With an in-depth understanding of the regulatory landscape and strong relationships with policymakers, we help clients anticipate risks, adapt to regulatory changes, and achieve their business objectives in a compliant and commercially viable manner. Our practice also advises clients across other highly regulated industries, including healthcare, consumer products, digital platforms, and real estate development.



Rapinnart Prongsiriwattana  
Partner  
[rapinnart.p@weerawongcp.com](mailto:rapinnart.p@weerawongcp.com)



Dittaporn Munsri  
Senior Associate  
[dittaporn.m@weerawongcp.com](mailto:dittaporn.m@weerawongcp.com)



Nakarintr Naka  
Associate  
[nakarintr.n@weerawongcp.com](mailto:nakarintr.n@weerawongcp.com)

**Weerawong, Chinnavat & Partners Ltd.**  
1 Park Silom Tower, 38th - 39th Floor, Convent Road,  
Silom, Bangrak, Bangkok 10500, THAILAND  
Telephone +662 264 8000 | Facsimile +662 657 2222  
[www.weerawongcp.com](http://www.weerawongcp.com)