

MAYER • BROWN
JSM

Real Estate and Construction in Thailand

Experienced. Insightful. Innovative. Count on Mayer Brown JSM to understand your real estate and construction business in Thailand.



Mayer Brown is a global legal services organisation comprising legal practices that are separate entities ("Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia.

REAL ESTATE AND CONSTRUCTION IN THAILAND

Real estate in Thailand has been an attractive sector for investors and developers in recent years even with legal political issues creating some uncertainties. Tourism, serviced apartment developments and the residential sector generally have been particularly active. Investors must, however, comprehend the complexity of real estate law in Thailand and the regulations and restrictions pertaining specifically to foreign investors and developers. Other challenges include increasing interest rates, price of fuels, raw materials and construction costs. As regulations and government change, foreign participants need to stay abreast of the investment situation and remain flexible. Below we outline some of these challenges and how Mayer Brown JSM can help you in Thailand.

THE DEVELOPMENT LIFE CYCLE

LAND ACQUISITION AND DEVELOPMENT WORK	FINANCING	CONSTRUCTION	REAL ESTATE SALE AND LEASING	CORPORATE AND COMMERCIAL	DISPUTE RESOLUTION
<ul style="list-style-type: none"> ● real estate ownership agreements and structure ● government and regulatory issues and compliance ● planning permits and approvals ● land acquisition ● tendering procedures ● infrastructure projects 	<ul style="list-style-type: none"> ● building mortgage and development financing ● acquisition financing ● syndicated loans secured primarily on real estate or related receivables ● trade financing and general banking facilities secured by mortgage over real estate ● advising and negotiating documentation on borrowing transactions 	<ul style="list-style-type: none"> ● advising on environmental matters ● advising on contracting strategy and procurement options ● drafting and preparing consultants' agreements and design contracts, together with associated tender documentation ● drafting development agreements ● advising on infrastructure planning and building issues ● drafting of general conditions of contract, special conditions of contract and associated tender documents for civils (including reclamation) building, systems and E&M contracts ● preparing ancillary project documentation 	<ul style="list-style-type: none"> ● en bloc or strata title sales of commercial, industrial and residential real estate ● leasing of commercial and residential real estate ● drafting, negotiating and assisting in the execution of project conveyancing transactions and related documentation ● bank mortgages ● tenancy agreements, leases and licences for residential, commercial and industrial real estate; surrender of tenancies and all other tenancy and related matters 	<ul style="list-style-type: none"> ● acquisitions/disposals of assets ● real estate support in M&As, structured finance and insolvency ● management agreements and confidentiality agreements ● professional indemnity and construction related insurances ● establishment of private equity funds investing in real estate, infrastructure and hotel projects ● employment ● intellectual property 	<ul style="list-style-type: none"> ● title disputes, breaches of sale and purchase agreements ● construction disputes ● real estate management disputes ● tax/stamp duty ● breach of agreement ● building management compliance ● debt collection

LAND ACQUISITION AND DEVELOPMENT

While Thailand has beautiful coastlines and continued economic growth, its land statutes are both complicated and restrictive, especially those related to land ownership by foreign investors, titling of land, as well as obtaining proper permits and approvals prior to development.

How we can help

Mayer Brown JSM has had a presence in Thailand since the 1990s and our Real Estate team brings extensive experience in the evolving local real estate laws to advise on complex statutes and give effective legal solutions to complicated matters. We provide comprehensive advice on real estate ownership agreements and structure, government and regulatory issues and compliance, land acquisition, tendering procedures as well as infrastructure projects.

“...one of the best real estate firms in the country.”

Chambers Asia, 2008

Some of our important transactions include advising:

- The developer of **Andara Project**, on the project development of this first class luxury resort in Phuket.
- The developer of **Barama Bay Project**, on its acquisition of Koh Raet island for the development of the project consisting of residential estates, a resort, marina and yacht club on the 80-acre private tropical island off the northeast coast of Phuket.
- **Dhevatara Properties** — an international real estate developer, on the development and sale of their high-end luxury villas.
- **HKR Asia-Pacific** — one of the leading real-estate investors in Asia, on some of their hotels and condominium investments in Thailand.
- **Jupiter International Group** — the asset management arm of Commerzbank, on the acquisition of land and a condominium through a property fund.
- **MBK Properties and Development** — one of Thailand’s largest resort complex development companies, on a strategy for foreign purchasers to acquire real estate in a major resort development.
- A **large international real estate developer**, on its bid for the site offered for tender by the British Government.
- A number of **offshore developers and individual buyers**, on the structure of business vehicles to purchase land for the development of residential villas in Phuket and Koh Samui.



FINANCING

While there has been increased publicity regarding the financing of real property, the Bank of Thailand indicates that they are planning on continued robust loan growth to meet the demand for construction in Thailand. Developers and purchasers alike may find themselves having to raise and secure funding from more complex facilities.

How we can help

Mayer Brown JSM advises on all aspects of real estate financing matters, including acquisition financing and syndicated loans and banking facilities secured by real estate. We are also experienced on advising and negotiating documentation on borrowing transactions.

Some of our important transactions include:

- **HSBC**, on a series of loan agreements in connection with the financing of the President Park Condominium in Bangkok.
- **Sumitomo Bank and Thai Kajima**, on the financing, construction and leasing of Ramaland Building.
- A **Thai Bank**, on the financing of the construction of the Second Stage Expressway in Bangkok.
- A **Japanese construction company** based in Thailand, on the financing of its hotel and office development projects.
- Various **offshore banks**, on the restructuring and refinancing of the offshore facilities necessary to complete the Don Muang Tollway Project.



CONSTRUCTION

As the construction market continues to remain relatively stable, there has been a steady increase in the cost of fuel and raw materials, especially steel products. A heightened scrutiny of safety precautions, the extensive work required to complete procedures related to the Environmental Impact Assessments, as well as ensuring contracts are drafted with proper conditions are just a few of the major areas that require the assistance of legal counsel.

How we can help

Mayer Brown JSM's Real Estate team is able to advise companies on all construction and pre-construction matters including those related to Environmental Impact Assessments. We assist in the preparation of ancillary project documentation such as bonds, collateral warranties and guarantees, and in the evaluation of tenders and the award of contracts. We also provide legal services for drafting various agreements, contracts and tender documentation.

We have advised on the following construction related projects in Thailand:

- **Laguna Resort & Hotels** — an international hotels and real estate developer, on real estate and construction matters.
- The main contractor of the **New Bangkok International Airport**, on the construction of the Passenger Terminal Complex as specialist construction adviser.
- **Star Cruises** — an international cruise company, on the acquisition, investment and development of a cruise terminal and hotel at Phuket and Laem Chabang, Chonburi.
- A **Japanese contractor**, on preparing a number of contract documents with its joint venture partner regarding the Bangkok Underground.
- Advising on a number of **luxury hotel developments** in Bangkok, Phuket and Krabi.
- A number of **offshore buyers**, on the construction of the residential villas in the Katamanda project, Phuket.



REAL ESTATE SALE AND LEASING

The laws surrounding land ownership and leasing in Thailand can be complex. Currently, foreign individuals are not allowed to own land in Thailand except for condominiums and apartments. Furthermore, local banks do not provide loans to foreigners for the purchase of real property. While foreign companies are permitted to own land, there are statutes dictating the demographic composition of a building's owners. The sale and leasing of real estate is no simple matter in Thailand for foreign investors.



How we can help

Mayer Brown JSM has considerable experience in advising on the sale and leasing of both commercial and residential real estate. We advise on the drafting, negotiating of project conveyance transactions along with the related documentation. Our Real Estate team also advises on tenancy related matters including agreements, leases and licenses for residential, commercial and industrial real estate.

“[The firm is] one of the most recognisable and reputable outfits around”

Chambers Asia, 2008

Some of our important transactions include advising:

- **Andara Project**, on the preparation of all legal documents and agreements for the leasing of luxury villas.
- **Barama Bay Project**, on Koh Raet Island, on the preparation of all legal documents and agreements for the leasing of residential real estate.
- **City Developments Limited**, on its office and retail space leasing agreements with tenants in the Exchange Tower building in Bangkok.
- The developer of the **Laguna Phuket projects**, on the sale and management of the Allamanda condominium and Banyan Tree project.
- **MBK Properties and Development**, on the preparation of documents such as the Sale and Purchase Agreement and Lease Agreement of land and villas in Baan Suan Loch Palm.
- **Premier International**, on its commercial leases in Bangkok.
- A number of **offshore buyers**, commenting on legal document for the lease of the land in the Katamanda project, Phuket.



CORPORATE & COMMERCIAL

Thailand is one of the most popular tourist destinations in Southeast Asia. According to the Tourism Authority of Thailand the number of annual international tourists has consistently increased since 1997 and it is estimated that it will continue to grow year over year. As the tourism industry grows there is a corresponding increased demand for hotels, resorts, homes and office buildings development throughout Thailand.

How we can help

Mayer Brown JSM has considerable years of experience in handling the acquisition and disposal of assets in Thailand. We provide advice on all aspects of corporate and commercial issues including management and confidentiality agreements, professional indemnity and construction related insurances, establishment of private equity funds, employment and intellectual property. We also provide real estate support in mergers & acquisitions, structured finance and insolvency.

We have acted on the following transactions:

- **Dusit Group** — a major Thai Hotel group, on the expansion of their international operations.
- **Embassy of the Republic of Singapore**, on their acquisition of residential real estate for their officials in Thailand.
- **Hampshire Hotels and Resorts**, on the acquisition and expansion of its hotel business in Thailand.
- **HKR Asia-Pacific**, on their Thai operations.
- **MBK Properties and Development**, on the negotiation of management agreements on their behalf for the Sheraton Krabi Beach Resort.
- **Raffles Hotels & Resorts**, on management and investment issues involving a 5-star hotel in Bangkok and a major project in Phuket.



DISPUTE RESOLUTION

Disputes within construction projects are not uncommon. Disputes may stem from many different causes, the most common being inadequate plans and specifications, changes in site conditions, improper supervision of subcontractors, and non payment. Disputes can be costly and delay the completion of the project if they are not resolved timely.

How we can help

Mayer Brown JSM's Real Estate and Construction team can assist and advise on all contentious matters that may arise in any real estate projects, including disputes related to title, construction, real estate management and breach of agreement. We also have extensive experience advising on building management compliance and debt collection.

Some of our major projects include:

- **Bovis Lend Lease**, provide dispute advice for two construction projects.
- **Laguna Resorts & Hotels** — an international hotels and real estate developer, in relation to real estate disputes and construction related issues.
- The principal consortium on the **New Bangkok International Airport**, in relation to any disputes with sub-contractors.
- **Phillip Holzmann**, on the arbitration proceedings in respect of the construction of the Peninsula Hotel, Bangkok.
- A **consortium contractor**, on the arbitration proceedings in a GBP 100 million dispute on Bangkok Wastewater Phase I.
- A **contractor**, on the disputes on the Bangkok Underground project with regards to procurement of rolling stock.

OUR CLIENTS

Mayer Brown JSM has built a vast wealth of real estate-specific knowledge and expertise by acting for real estate owners, developers, contractors, local and overseas corporations, government and financial service organisations in Thailand. A list of some of our key real estate clients is set out below.

- All Seasons Property
 - Bovis Lend Lease
 - City Developments Limited
 - Dhevatar Properties
 - Dusit Group
 - Hampshire Hotels & Resorts
 - HKR Asia-Pacific
 - Kerzner International
 - Laguna Resorts & Hotels
 - MBK Properties and Development
 - Star Cruises
 - Thai Kajima
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About Mayer Brown JSM

On 28th January 2008, Johnson Stokes & Master was renamed as JSM and operates in association with Mayer Brown LLP and Mayer Brown International LLP.

Mayer Brown is a leading global law firm with 1,800 lawyers in offices in key business centres across Asia, Europe and the Americas. The firm's Asia presence was enhanced by its 2008 combination with JSM, one of the largest and oldest Asia law firms. In Asia, the firm is known as Mayer Brown JSM. This unequalled on-the-ground presence in the world's leading markets for legal services enables Mayer Brown to offer clients access to local market knowledge on a global basis.

Mayer Brown is noted for its commitment to client service and its ability to assist clients with their most complex and demanding legal and business challenges worldwide. The firm serves many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100 and DAX companies and more than half of the world's largest investment banks.

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