



Expatriate Counsel

By James Finch and Nilobon Tangprasit

OWNING A HOTEL OR GUEST HOUSE IN THAILAND Part II: Can a foreigner do it?

Last time we talked about how a foreigner could operate a hotel in Thailand. We concluded that the first option, having you as a foreigner run the hotel directly in your name, would not be allowed because of the licensing requirements under the Foreign Business Act (FBA).

The second option is what most people do for a small hotel — put the title to the hotel in the name of a Thai friend or spouse and have the Thai person get the license. Of course, this idea is only as good as the relationship you have with the Thai person, who can walk away from you at any time with (what used to be) your assets.

If you decide to give a Thai person your money to buy something, you should see a lawyer before doing so. Your standing in doing this can be improved by legal vehicles such as leases, usufructs (a right between close relatives such as husband and wife) or mortgages.

You should know that the Thai land authorities have questioned the use of nominal parties to hold land, and recently questioned even outright gifts to these parties. A few weeks ago the director-general of the Land Department was quoted as having said that land held by a Thai spouse for a foreigner who put up the money would be subject to revocation.

Many have argued that the director-general's comments were taken out of context. They reason that the foreign spouse, when the property is registered, must in practice waive the right to have the land included as part of the marital property in the event of divorce or the death of the Thai spouse. Doing so means that the foreign spouse would not be in line to get the land, even if the parties divorced or the Thai spouse died.

Just the existence of this controversy, however, should tell you something — be careful. If you have a Thai party hold the hotel for you, you should be in a position to show that this person had the assets to purchase them before doing so, and is not simply a nominee.

The third option is to have a Thai company in which you own less than a majority of the shares and Thai nationals hold the hotel and get the license. In theory, because a majority of the shares in such a company are owned by Thais, it is considered Thai and no licence under the FBA would be required.

As with individual ownership discussed above, if the Thai shareholders are not really investors and just took the shares to enable the foreigner to get around the requirements of the FBA, both the Thai and foreign parties are exposed to fines of up to one million baht and/or imprisonment of up to three years. A Thai court can also order that the business be dissolved and the shares taken away from the owners. Thus the Thai shareholders should be prepared to show that they had the assets to purchase the shares before doing so.

Next time we'll talk about other options that a foreigner has for hotel ownership in Thailand. These include Board of Investment promotions and a special treaty relationship. Many of the larger investments come under these categories. ■

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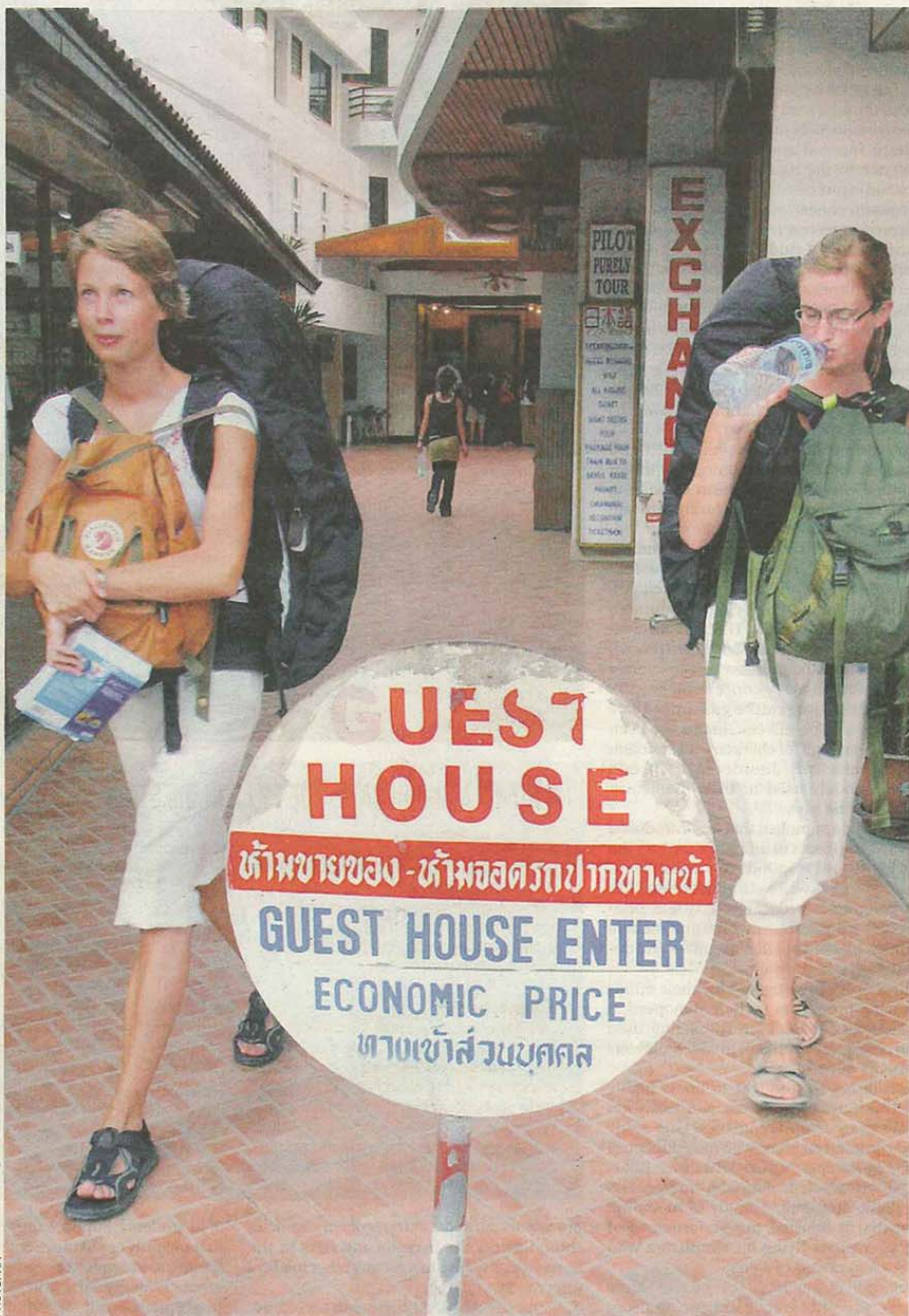


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