

Real Estate Acquisitions in ASEAN - How to avoid pitfalls as a buyer -

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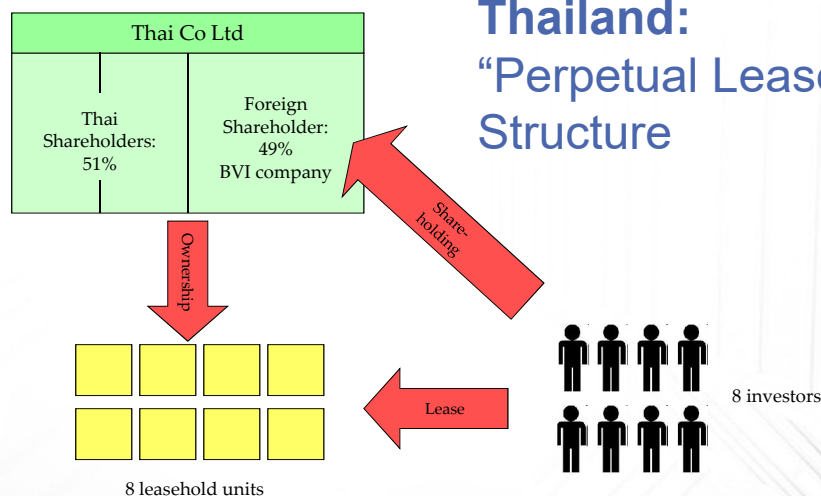
Overview – 5 Benefits of Offshore-Companies:

- **Minimize taxes:** Registering an offshore company will mainly be used for the tax-free collection and repatriation of rental income and gains upon sale.
- **Reduced set-up and administration cost:** The legal obligations of any directors or officers of an offshore company are often much less. The need for accounting, other staff or a physical office can also be overcome with cost-effective virtual office services.
- **Lower capital requirement:** Registering an offshore company will require minimal capital, usually less than what is required for an onshore registration.
- **Marketability:** Shares in an offshore-company are usually easier to sell/transfer than onshore shares/leases and minimize legal risk of seller/buyer in onshore jurisdiction.
- **Confidentiality:** Most offshore financial jurisdictions will not reveal any of this information to any third party.

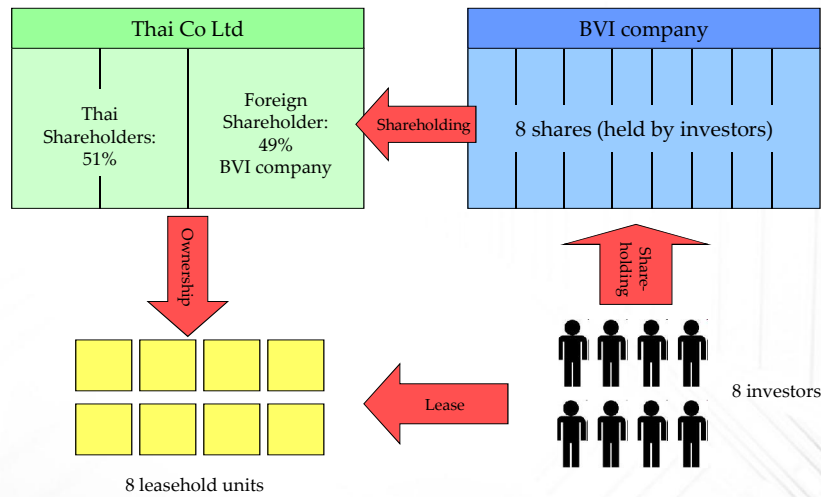
Use of Offshore-Companies – Some Risks:

- **Do your tax due diligence!** Does real-estate (holding) company constitute a “permanent establishment”? Does a withholding tax apply? Does a double-taxation treaty exist, and what does it stipulate?
- **Investors should be prepared for a possible challenge of the offshore-structure by the tax authorities in their home countries (particularly US, with BVI).** Therefore, it is always advisable for investors to liaise with local tax specialists before setting up foreign holding structures.
- **In case investor buys offshore-shares instead of onshore lease/property:** Can the offshore entity issue for investor a “certificate of good standing”? Who is behind the offshore entity (reputation and financial capacity of the developer)

Example 1 - Thailand: “Perpetual Lease”- Structure



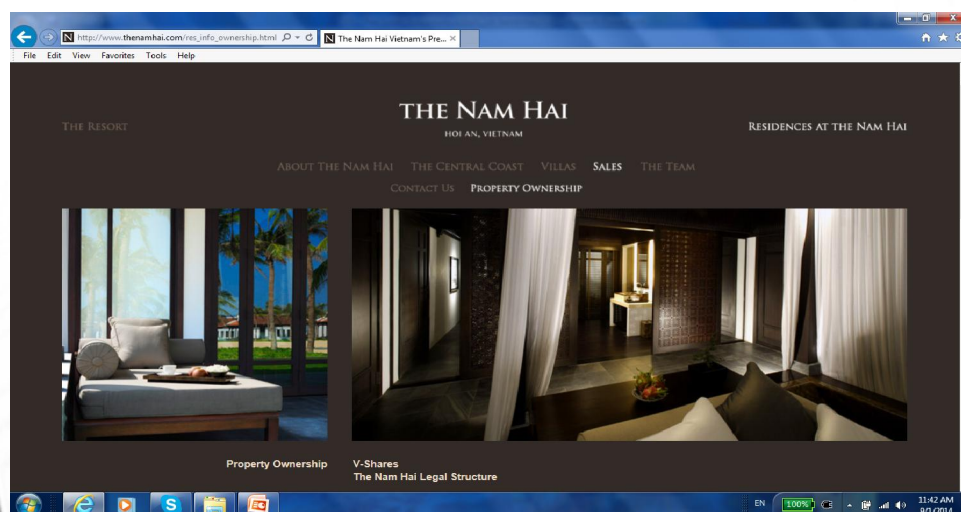
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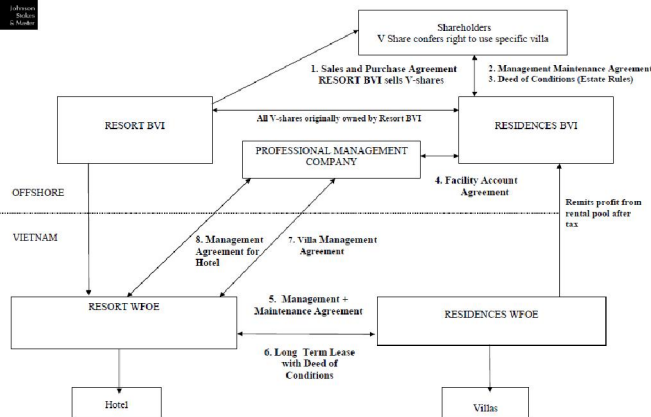


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Example 2: Vietnam: “V-Shares”





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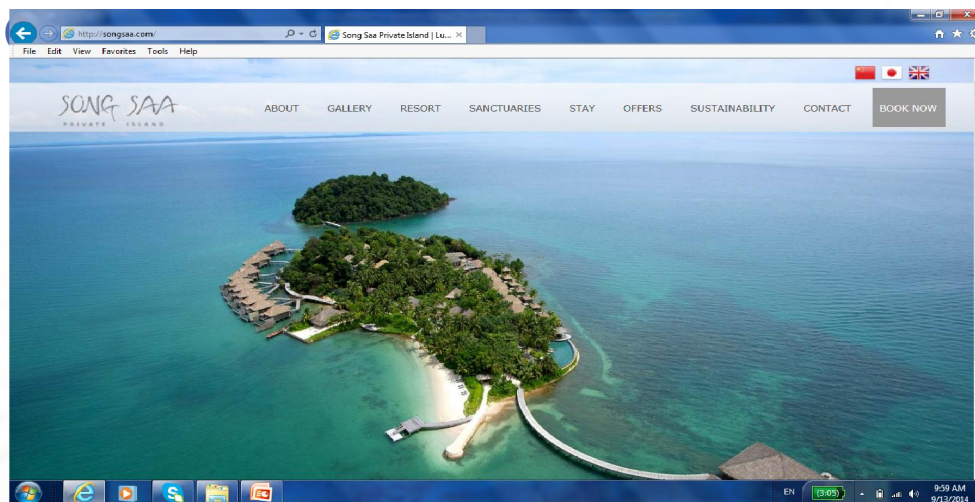
Vietnam – The “Nam Hai”-Structure (I)

- Under this structure a wholly foreign owned enterprise (“WFOE”) is formed by an Offshore entity (“Resort BVI”) in Vietnam, which is licensed to develop a resort Complex consisting of a hotel and a number of villas (“Resort WFOE”).
- Resort WFOE is owned by an offshore BVI company (“Resort BVI”).
- Another WFOE (“Residences WFOE”) is formed by another offshore entity (“Residences BVI”) in Vietnam which is licensed to long-term lease the villas and Indochina Resort Residences (Hoi An) Limited (Residences BVI) in Vietnam which is licensed to long term lease the villas and associated land from Resort WFOE.
- Resort BVI is the sole holder of all the ordinary shares of the offshore entity that owns Residences WFOE and also owns all the special shares (“V Shares”) issued by Residences BVI.

Vietnam – The “Nam Hai”-Structure (II)

- The “Nam Hai Structure” assures the holder of the V Share a contractual right to use the villas for the entire term of the long-term lease held by Residences WFOE (50 years from issuance).
- The Residences WFOE is licensed in Vietnam and this provides certainty that the long-term lease of the villas is recognized under Vietnamese law and enjoys all the protection of the Investment Law of Vietnam, such as protection against nationalization or changes in Vietnamese laws.
- The lease is protected from the **bankruptcy or creditors of Resort WFOE** by virtue of the laws of Vietnam, which provides that any buyer takes subject to the lease. Resort has recently obtained the right to sell and a structure to allow the V is being explored

Example 3 Cambodia: “Song Saa”



Cambodia – Buying a villa on Song Saa? (I)

- Freehold or Leasehold? **99 year leasehold structure -> Long-term Lease (Master)**
- **Owners sign a sublease and a letting agreement** upon completion.
- The letting agreement is compulsory and it states that the villas are to be used as part of the resort and will be managed by the resort management company.
- Owners are entitled to **30 days usage a year** and in return **receive a return on their investment**.
- Most investors in Song Saa have bought directly, making full payment on the signing of the sublease.
- Some have bought through company names (mainly based in Hong Kong) or under their own private accounts.

Example 3: Cambodia – Buying a villa on Song Saa? (II)

Be careful with “Rental-Management” / “Time-Share” Structures:

- **Are you looking for own-use or investment?**
- Be cautious of rental yield projections, work to conservative scenarios. Reject long term guaranteed rental programmes (1% or 2%?? no thank you!)
- Is the **rental income pooled** or is there a fair usage policy?
- Ask searching questions regarding the commercial and operational project plans, especially when high yield rental income is promised!
- Drill down on contractual items (insurances, currency)
- Look at alternative investment scenarios in ASEAN!

Summary: Investor Due Diligence



Consider Alternative Investments!

- Investing your \$\$ in a Term-Deposit!

- Renting may not be so bad at all! Advantageous if:

- A comparable property (the one you are looking for) is not only for sale but for rent;
- Freehold is not available;
- Price levels on rental markets are proportional to levels on purchase/sales markets;
- The investment saved instead of purchasing the de-facto long-term lease can yield **alternative interest equal the rental cost** (e.g. in a term-deposit account);
- You are avoiding a nominee-scenario (even where it is legal).

Simplified Example:

Assume you have 200k USD cash (no bank loan needed), and want a property for personal use:

- **Alternative 1: You can “buy” your preferred property with your 200k USD.** Risk: What are you buying? What is the legal structure, tax situation? Onshore or offshore? Nominee-Structure? Visa-Issues?
- **Alternative 2: You can rent the same property at 1k USD per month.** But you can yield at the same time: 6% local interest p.a. = 12,000.00 USD (current rate VN, after tax) on a Term Deposit (TD).
- *Clearly, Alternative 2 is superior: Principal (your 200k USD) remain untouched; you are not stuck with uncertainties such as visa situation, nominee structure. Alternative 2 may even be worth a premium (e.g. if yield is not 6% but 4% only).*

Don't be pressured into “buying”!

- Again: What exactly are you “buying” (freehold or leasehold)?
- Again: Who is legally owning? (your wife? / a nominee?)
- Who is Seller/Developer (Reputation / Track record)?
- **Financial DD:** Is it commercially feasible (Also think about re-sale)? / Do you get “value for money” as compared to other ASEAN locations?
- **Tax DD:** Taxation of income / real estate transfer?
- **Legal DD:** Always request a land title search! Always request evidence that all permits and licenses have been granted!

Due Diligence – Legal

Carefully check the ownership-situation / status available for off-shore investors:

- Leasehold or freehold?
- How long?
- Land title registry process?
- All licenses existing?
- Onshore liability for real estate purchased?

Due Diligence – Tax

Carefully check and compare taxation for onshore/off-shore investors:

- **Onshore:** Transfer tax, stamp duty, VAT? Capital gains tax? Capital controls? (money out!)
- **Offshore:** Business tax on rental income / sale? Withholding tax? Double taxation agreement between onshore/offshore real estate holding company and investor's home jurisdiction?
- Reach of investor's home jurisdiction tax authorities? Scrutiny of specific offshore vehicles (e.g. BVI) in home jurisdiction (US investors)?

Due Diligence – The Developer / Seller (I)

Some questions to ask:

- Who are they, what have they done before, how are they funded?
- Do they own 100% own the land or is it leased or optioned?
- Do they have the financial capacity to complete the project if no more sales?
- Which firm is contracted to do the construction – can we see previous builds?
- What happens post construction – what about rental management?
- How are your current projects performing in terms of rental?
- What provision is there for maintenance and what are the costs?

Due Diligence – The Developer / Seller (II)

Be alarmed if:

- Developer or agent cannot answer your questions in detail.
- Ask to talk to existing clients of the developer or agent.
- Don't accept vague answers.
- Don't feel uncomfortable asking about the developer's finances.
- Find out how much your agent really knows about projects he is promoting
- be concerned if you hear "don't worry about that" and be prepared to walk away if you are not satisfied.



Due Diligence – Know your Exit Strategy!

- How robust is the resale market?
- Who is buying? Where are they from?
- Is the market held up by investors?
- Is everyone trying to “flip” with no real buyers in sight?
- How does your purchase price stack up against comparables?
- If you buy well, you should be able to exit with relative ease at any time!
- Understand your exit strategy before you invest... if you don't know how you are going to get out, don't get in!



Thank you! Questions?

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