

LEGAL ADVISORY REPORT

Structuring Foreign Investment in a Koh Chang Resort

Your legal options to hold the land, own the business, and protect your investment

Prepared for: Priyesh — French national (spouse: UK national)

Matter: Acquisition / development of a resort on or near Koh Chang, Trat Province

Prepared by: ThaiLawOnline

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This report sets out, in plain language, every realistic legal route for a foreigner to develop and operate a resort in Thailand, with the costs, risks and succession features of each, and our recommendation for your situation. Statutory references are given in brackets so your advisers can verify them.

What this report covers

- **The two legal limits** every foreigner faces — land ownership and company ownership.
- **BOI promotion** — the only route to outright company land ownership, and why it is capital-heavy.
- **A Thai company with a genuine Thai partner** — our recommended core, using preference shares for control.
- **What a “nominee” is** under Thai law, and why the 2025–2026 crackdown makes it dangerous.
- **Land and building rights** — lease, superficies, usufruct, Sap-Ing-Sith and mortgage — to secure your money.
- **A side-by-side comparison** and a step-by-step recommended structure.

1. Your situation in brief

You are a French national and you wish to build and run a resort (and/or personal property) on or near Koh Chang, in Trat Province. You are married to a UK national, and you do not currently have a Thai business partner. You have asked us to lay out **all** of the ways you can lawfully establish the project, so you can choose with open eyes. The challenge is the same one every foreign investor in Thai property and tourism faces, and Thailand provides several well-tested solutions — each with a different balance of **control, cost, security and inheritance**.

2. The bottom line (our recommendation, up front)

Recommended path: a Thai limited company with a genuine Thai partner, structured so that you keep control.

Thai law does not let a foreigner own land outright, and it caps foreign ownership of most companies at 49%. There is no single “the foreigner owns everything” solution — but there is a safe, conventional combination that thousands of legitimate resorts use:

- **Incorporate a Thai company** (51% Thai / 49% you) that owns the land and holds the hotel licence;
- **Keep control lawfully** through preference shares with weighted voting, a shareholders’ agreement, and your seat as authorised director;
- **Make the partner genuine** — real money, provable funds, real dividends — so it is not a nominee;
- **Protect your investment** with a registered lease and a superficies (or a Sap-Ing-Sith right) over the buildings, plus a shareholder loan secured by a mortgage;
- **Plan succession** so your shares, your superficies/Sap-Ing-Sith and your buildings can pass to your wife and children.

BOI promotion is the only way a foreign-majority company can own the land outright, but its investment thresholds make it realistic only for a large, well-capitalised resort. We **do not** recommend a nominee arrangement — these are now actively prosecuted.

3. The two legal limits every foreigner faces

Almost every structure below exists to work around one or both of these rules — legally.

Limit 1 — A foreigner cannot own land

Under the Land Code, a foreigner may not own land in Thailand, save for a few narrow exceptions that are rarely granted (see Section 7(g)). You **can** own a building, and you **can** own long-term registered *rights to use* land — but not the land itself.

Limit 2 — A foreigner may hold at most 49% of a company

Under the Foreign Business Act B.E. 2542 (1999) (“FBA”), a foreigner may generally hold no more than 49% of the shares of a company that carries on most businesses. And a company that is foreign-*majority* is itself treated as “foreign,” so it also cannot own land. This is why a Thai-majority company (Limit 2) is normally the vehicle used to own the land (around Limit 1).

4. Option 1 — BOI promotion (outright ownership, but capital-heavy)

What it is. The Board of Investment (“BOI”) can “promote” qualifying projects. A BOI-promoted company is the rare exception that may be **up to 100% foreign-owned** and may **own land for its promoted activity** (Section 27, Investment Promotion Act). It also brings corporate income-tax holidays (up to 8 years), import-duty exemptions, and easier visas and work permits.

The catch (your “500 million” concern). To be promoted as a hotel, the project must generally have **at least 100 rooms, or** involve an investment of **at least THB 500 million** excluding land and working capital. There is a smaller SME / boutique track (broadly 20–99 rooms at roughly THB 1 million per room), but the headline thresholds are high — and the land-ownership privilege attaches only to the promoted hotel itself, not to villas or units you intend to sell.

Koh Chang advantage. Trat is one of Thailand’s 55 designated secondary tourism provinces. A hotel there qualifies for **enhanced tax incentives** (a longer corporate income-tax exemption than in the main cities), which materially improves the economics if you do reach BOI scale.

Verdict. BOI is excellent if you are deploying serious capital into a sizeable hotel — you receive land ownership and tax holidays that no other route offers. If your resort is small, or your budget sits well below the thresholds, BOI is likely impractical, and Option 2 is the realistic path. **We can run a BOI eligibility check** against the current conditions once we know your target room count and budget.

5. Option 2 — A Thai company with a genuine Thai partner (recommended core)

The structure. Incorporate a Thai limited company in which Thai nationals hold at least 51% of the shares and you hold up to 49%. Because the company is Thai-majority, it is treated as Thai and **can own the land** and operate the resort (and hold the hotel licence).

“But then I don’t control my own business?” You can keep control lawfully, even with 49% of the equity, through four levers:

1. **Preference shares with weighted voting.** Thai law lets a company create different classes of shares. A common, lawful design: you hold ordinary shares (1 share = 1 vote); the Thai shareholders hold preference shares with reduced voting (for example, 10 shares = 1 vote). At a 51/49 split with a 10:1 ratio, your 49% of the capital can carry roughly 80%+ of the votes — so you control shareholder decisions.
2. **The director seat.** You are appointed the authorised director whose signature binds the company, so you run day-to-day operations and control the bank account.
3. **A shareholders’ agreement.** A private contract fixing who manages, how profits are shared, transfer restrictions, reserved decisions, deadlock and exit — your real protection on paper.
4. **Dividend structuring.** Share classes can carry different dividend rights, so your financial return need not be limited to a flat 49%.

In plain terms: what are “preference shares”?

Ordinary shares are standard shares — one vote each, and an equal share of profits and assets. **Preference (preferred) shares** are a separate class, created in the company’s Articles, that can be given *different* rights: more or fewer votes, a fixed or priority dividend, or priority if the company is wound up. They are the legal tool that lets a 49% foreign shareholder hold majority **voting** control while Thai shareholders hold majority **equity**. This is entirely legal — **provided the Thai shareholders are real investors, not nominees** (Section 6).

The red line — this only works with a genuine partner

Using preference shares to control a company is legal. Using a Thai shareholder who put in no real money, and who holds shares purely to disguise your ownership, is an illegal **nominee** arrangement. The difference is everything — and the authorities are now looking hard at it. We deliberately calibrate the structure so you have genuine control *without* hollowing out the Thai partner’s real stake, because stripping the Thai side of all economic interest is itself treated as evidence of a nominee.

Where does the partner come from?

We can introduce a vetted Thai partner or investor, or you may bring your own. Either way the partner must **genuinely subscribe and pay for their shares, bear real economic risk, and be able to prove the source of their funds**. We document the relationship so that it is — and is seen to be — a real partnership.

6. What is a “nominee” under Thai law?

Definition. A nominee arrangement is where a Thai national (or Thai company) holds shares in, lends their name to, or otherwise fronts for a foreigner, so that a business which is really foreign-owned or foreign-controlled *appears* to satisfy the 51% Thai rule. In short: a Thai “stand-in” with no genuine investment or economic interest of their own.

The law. Section 36 of the FBA prohibits both (a) the Thai national who assists, supports, or holds shares on behalf of a foreigner to enable a restricted business, and (b) the foreigner who takes part in such an arrangement.

Penalties. Imprisonment of up to three years and/or a fine of THB 100,000 to 1,000,000, with further daily fines until the breach is corrected, and court-ordered **dissolution of the company**. Both the Thai nominee and the foreigner are liable.

Why this matters right now — the 2025–2026 crackdown

- The Department of Business Development (DBD) and Ministry of Commerce have launched an unprecedented enforcement drive. In 2025 they earmarked roughly **46,900 companies** for inspection, with **tourism, hotels and resorts, and real estate** named as priority sectors — exactly your sector.
- In Phuket in mid-2025, courts fined and **dissolved** nominee-run tourism and land companies, with individual fines and suspended sentences.

- From around **April 2026**, Thai shareholders in companies with foreign participation must **prove the source of their investment funds** (e.g. several months of bank statements), and certain filings require in-person verification.
- There are proposals to give the anti-money-laundering authority power to **seize the assets** of companies found to use nominee structures.

The practical test: genuine partner or nominee?

Ask four questions. Did the Thai shareholder actually pay for their shares with their own money? Can they prove where it came from? Do they receive real dividends and bear real risk? Do they have a genuine role or interest in the business? If yes to all four — a genuine partner. If the honest answer is “they are just lending their name” — that is a nominee, and now a serious criminal and financial exposure.

Our recommended structure is built specifically to pass this test.

7. Securing the land and the buildings

These instruments give you, personally, long-term and secured rights over the land and buildings — even though a Thai company or a Thai national owns the land. They can be **layered on top of Option 2**, or used on their own if you decide not to own through a company at all. They are also how you answer your wish to pass value to your wife and children.

(a) Registered lease — up to 30 years

(Civil and Commercial Code §§537–571.) You, or the company, lease the land for up to 30 years, registered at the Land Office. Renewal clauses are common, but a promise to renew is only a personal contract: it does not automatically bind a future owner, and a lease generally ends on the lessee’s death. Cheap and simple, and a solid baseline — but weaker for long-term security and inheritance.

(b) Superficies — own your buildings on someone else’s land

(CCC §§1410–1416.) A superficies separates the land from what is built on it: the resort buildings can be legally **yours** even though a Thai or the company owns the land. It can be granted for up to 30 years or for your lifetime, and — importantly — it **can be transferred and can pass to your heirs** within its term. This directly serves your wish to leave the buildings to your wife and children. It is usually paired with a registered lease.

(c) Usufruct — use and income, for life

(CCC §§1417–1428.) The right to possess, use, manage and take the income (the “fruits”) of land owned by another — you could run and earn from the property, and even rent it out, for up to 30 years or for your lifetime. But a usufruct is **purely personal: it ends on your death and cannot be inherited**. Excellent for lifetime use and income; not a succession tool.

(d) Right of habitation

(CCC §§1402–1409.) A personal right to live in a dwelling rent-free; not transferable and not inheritable. Of limited use for a commercial resort — noted for completeness.

(e) Sap-Ing-Sith — the strongest long-term right for a foreigner

(Sap-Ing-Sith Act B.E. 2562 / 2019; also called the “Right over Leased Asset.”) A modern, registrable property right available only on **Chanote-titled** land (and the buildings or condos on it). It is the strongest of the long-term rights because, unlike an ordinary lease, a Sap-Ing-Sith right can be:

- **Freely sold or transferred** — without the landowner’s consent;
- **Inherited** — it does not end on death; it passes to your heirs;
- **Mortgaged** — banks accept it as collateral, so it is “bankable” for financing.

The term is up to 30 years (with no automatic statutory renewal). It costs more than a plain lease: an official registration fee of THB 20,000, plus stamp duty / registration tax and issuance of the Sap-Ing-Sith certificate. In practice, budget for registration and tax in the region of **about 2% of the asset value, plus the certificate / title-deed issuance fees (on the order of THB 10,000)** — we confirm the exact figures with the Land Office at registration. For an investor who wants a **sellable, inheritable and mortgageable** right over the land, that premium is usually well worth it.

(f) Mortgage — protecting the money you put in

(CCC §702 onward.) If you fund the company (or a Thai owner) by way of a **loan**, you can secure that loan with a registered mortgage over the land and buildings. You become a **secured creditor**: if the borrower defaults, your debt is protected and ranks ahead of unsecured claims. A mortgagee cannot simply seize the land on default — enforcement is by court-ordered public auction — but the mortgage means your capital is **legally secured rather than merely trusted**. We routinely combine a shareholder loan + mortgage with Option 2.

(g) Section 96 bis (a foreigner owning 1 rai) — why it will not help

The Land Code does let a foreigner who invests THB 40 million in approved Thai assets (held for at least five years) own up to 1 rai (1,600 m²) — but only for **residential** use, only with Ministry of Interior approval, only in restricted zones, and it cannot be inherited. It is rarely granted and useless for a commercial resort. Noted only so you know it was considered and ruled out. That is quite rare in practice.

8. Comparison at a glance

A quick side-by-side. “Your control” and “inherit” assume the structure is properly documented.

Route	Gets you the land?	Max term	Pass to wife / children?	Your control	Relative cost
BOI-promoted company	Yes — owns land for the hotel	Ongoing	Yes — via shares	Up to 100% ownership	High capital + compliance
Thai company + preference shares (recommended)	Yes — the company owns it	Indefinite	Yes — shares + will	Majority of votes via preference shares	Moderate
Registered lease (30 yrs)	No — right to use only	30 years	Weak — ends on death	Contractual only	Low
Superficies	Owens the buildings, not the land	30 yrs or life	Yes — within term	Over the buildings	Low–moderate
Usufruct	No — use & income only	30 yrs or life	No — ends at death	Use / income	Low
Sap-Ing-Sith	No — but a strong, bankable right	30 years	Yes — fully inheritable	Strong; transferable & mortgageable	Moderate–higher (~2% + fees)
Mortgage (security)	No — secures your loan	Loan term	Yes — debt passes to estate	Creditor protection	Low

9. Our recommended structure for you

Bringing it together, this is the combination we propose for your Koh Chang resort:

1. **Form a Thai limited company** with a genuine, vetted Thai partner — 51% Thai / 49% you. The company owns the land and holds the hotel licence.
2. **Take voting control lawfully** — you hold ordinary shares with full votes; the Thai shareholders hold preference shares with weighted-down votes; a shareholders’

agreement and your appointment as authorised director lock in your management and profit share.

3. **Keep the partner genuine** — real subscription money, provable source of funds, real dividends and a real role — so the structure withstands current nominee scrutiny.
4. **Protect your investment in the land** — grant yourself (or a holding vehicle) a registered 30-year lease and a superficies over the buildings; or a Sap-Ing-Sith right if the land is Chanote-titled and you want a sellable, inheritable, mortgageable right; and put your capital in as a secured shareholder loan + mortgage. Doing a Sap-Ing-Sith and company might not be appropriate.
5. **Plan succession now** — because your superficies, your Sap-Ing-Sith and your shares can all pass to your wife and children, we align them with a Thai will so your family inherits smoothly.
6. **Revisit BOI if you scale up** — if the project grows to BOI thresholds, we can apply for promotion to convert to outright company land ownership plus tax holidays.

The result: control of the business, security over the land and buildings, protection of your money, a clean compliance profile, and a clear path to pass everything to your family.

10. What we need from you to proceed

- **Budget and size** — your target investment and number of rooms (so we can test BOI eligibility).
- **The plot** — the specific land, and its title type (is it Chanote? this determines whether Sap-Ing-Sith is available).
- **The partner** — whether you will bring your own Thai partner or would like us to introduce a vetted one.
- **Your family wishes** — what you want your wife and children to inherit, and when.
- **Timeline** — when you would like to incorporate, register rights, and open.

Important notice

This report is general legal information prepared for your circumstances as we understand them, and is current as of June 2026. Thai foreign-investment and land rules are changing quickly — notably the 2026 tightening of nominee enforcement — and all figures, fees and thresholds should be confirmed at the time of filing or registration. This report is not a substitute for formal, engaged legal advice on your final documents. For tailored advice and to proceed, please contact ThaiLawOnline.