

Legal Review — XXXX Villa Investments, Koh Phangan

Field	Detail
To	XXXXXXXXXX
From	XXXXXXXX
Date	2026
Re	Independent review of the villa lease / sublease structure, its legality, the supporting documents, and the developer's proposed buyback (Option 1 vs Option 2)
Land	Koh Phangan, Surat Thani

1. Scope and documents reviewed

You asked for an **independent legal assessment** of your XXXXX villa investments before choosing between **Option 1** (keep the villa(s) and resell) and **Option 2** (the developer's buyback), together with my view on each of the underlying documents — the building agreement, the sublease, the head lease and title deed, the construction permit, the power of attorney, the rental agreement and the buyback. You also asked, specifically: is this genuinely a lease or *something in disguise*; is the lease registered, and if not what happens and what does registration cost; what does it mean that you hold *sub-leasing* rather than *leasing* rights; is the structure legal and would it survive Supreme Court scrutiny; what are the criteria for an illegal *nominee*; and can Supreme Court Decision **4655/2566** on void pre-agreed renewals be applied, by analogy, to pre-arranged subleasing.

This review covers the complete document set now in hand: the **Building Agreement**; the registered **Land Sublease Agreements** for Plot A (XXXXXX) and Plot B (XXXXX), with the Tor Dor 36 Kor registration instrument and the **Power of Attorney**; the **freehold title deed (Chanote)** and its registration history; the **Construction Permit** (XXXXXX); the 30% **Property Rental Agreement**; the **buyback / payment summary**; XXXX's investor-loss reconciliations; and the project brochure and rental price list. Authorities are checked against primary Thai sources.

The headline conclusions

It is a real, registered sublease — not a sham, and the foundation is genuine. The freehold belongs to a Thai family, the developers' head lease is registered, and your subleases are registered for 30 years. This is the lawful leasehold structure, executed.

But value it on 30 years, not 60–90. The pre-agreed renewal is unenforceable under Supreme Court Decision 4655/2566.

And the buyback's payment timing is the principal financial risk — 90% paid only after you surrender your registered rights. That sequence must be fixed before signing.

2. Executive summary

- **Genuine registered leasehold.** You own the building and hold a registered 30-year land sublease. The freehold owner is a real Thai family; the developers' head lease is registered. Lawful in principle and, on the documents, actually executed.
- **Derivative rights.** Your sub-lessors are two French individuals (XXXX and XXXX). A sublease cannot exceed, and dies with, the head lease (CCC s.544–545). For the project the head lease and subleases are co-terminous (2024 to 2054), so there is no term gap; one separate parcel needs a date check (section 4).
- **The 60–90 year horizon is unenforceable.** Sublease clause 9 pre-agrees a 30-year renewal. Under Supreme Court Decision 4655/2566 that is void for breaching the 30-year ceiling in CCC s.540.
- **Nominee risk has largely receded.** The Thai family has owned the land since XXXXX and leased to the developers — the normal lawful pattern, not a nominee red flag. Confirm the same on Chanote XXXX.
- **Permit and licence issues are live.** The construction permit (XXXXXXXX) post-dates the contract by ~6 months, contradicts the "complete before late 2025" deadline, and lapsed on XXXXXX. The buildings are permitted as residential rentals, not a hotel — so short-term letting needs a licence they do not have.
- **The 30% management agreement cripples resale; the buyback payment timing is the main money risk.** Both must be addressed in any exit.

3. Document-by-document assessment

My read on each document, and the flag attached to it:

Document	What it is / my assessment	Flag
Building Agreement (XXXX)	Sells the villa building (investor option, THB 5,990,000). Developer-favourable off-plan terms. Completion "within 18 months of the permit" AND "before late 2025" — internally contradictory. Delay penalty only a token daily amount (trivial). Disputes go to arbitration; English prevails.	Amber
Land Sublease (XXXX, registered)	Genuine, registered 30-year sublease (XXXXXX). Cross-default clause 7.2 links it to the building/rental/maintenance deals. Clause 9 pre-agrees a further 30 years — unenforceable. Building reverts to sub-lessor on termination.	Amber
Power of Attorney (XXXX)	You appointed a Thai agent (Koh Samui) to register the sublease at the Land Office. It got the job done, but the agent acts within the developer's process, not as your independent counsel.	Amber
Head lease + Title deed (Chanote)	Freehold owned by a genuine Thai family since XXXX; developers' 30-year head lease registered. The lawful foundation. Confirm sublet permission and the owner on Chanote XXXXX.	Green
Construction Permit No. XXXXXX (XXXXXX)	Issued to the developer as lessee on Chanote XXXX for residential-rental buildings; valid only to XXXXXX. Confirms the late start, the deadline contradiction, and the no-hotel-licence problem.	Red
30% Rental / Management Agreement	30 years, exclusive, owner-irrevocable, 30% then 20% of revenue, 2 weeks' owner use. The single biggest drag on resale value.	Red
Buyback / payment summary	Total paid THB XXXXXXXXX (incl. a 5% surcharge on villa payments). Offer: 10% on signing, 90% only at sublease cancellation. Note Plot C / Plot B labelling inconsistency in the invoices.	Red
Investor-loss reconciliations	XXXXXX's own well-argued position (peak-season loss ~THB XXXX; referral ~THB XXXXk; target ~THB XXXXXm). Real legal claims, but disputed and partly built on brochure projections.	Amber
Brochure / rental price list	Marketing projections (up to THB XXXXX/yr net, 80% occupancy, THB XXXXXXXX/night). Not contractual guarantees; undercut by the 30-night licence limit. Possible misrepresentation angle.	Amber

The three documents that matter most. The **construction permit** is the most revealing: it is datedXXXXXXXX, six months after you signed, it was valid for only one year (to late 2025), and it classifies the units as *residential rental* buildings — not a hotel. That single page drives the delay claim, the permit-lapse compliance question, and the short-let licensing problem. The **30% rental agreement** is the biggest obstacle to Option 1, because it binds any future buyer for 30 years. And the **buyback payment schedule** is the biggest obstacle to Option 2, because it asks you to give up registered rights before being paid.

4. The chain of rights — who grants what

Your security runs down a chain. Each link must be valid or the links below it fail:

#	Link	Status on the documents
1	Registered owner of the freehold (Chanote)	VERIFIED on the deed seen: a Thai family (the XXXX family), owners since a XXXXX family transfer. Genuine Thai owner. The Chanote XXXX owner is to be confirmed on the same basis.
2	Head lease: owner → XXXXXXXX (both French)	Registered. The Chanote XXXX head lease is datedXXXXXXXX and "issued by the Koh Phangan Land Office." The separate parcel seen was leased XXXXXXXX. Sublet permission to be confirmed (CCC s.544).
3	Sublease: XXXXXXXX→ you	Registered 30-year sublease, XXXX to XXXX. XXXXXXXX (Plot A): registered May XXXX (Tor Dor 36 Kor). XXXXXXXX (Plot B): POA of April XXXX used to register; registration fee paid. Rent total THB XXXXXX
4	Building ownership + 30% rental + maintenance agreements	Linked to the sublease; breach of any one lets the sub-lessor terminate all (sublease cl. 7.2).

Why the chain matters: you contract only with link 3 (two individuals). Your right to stay on the land for 30 years depends on links 1 and 2, which you are not a party to and cannot control. That is the legal meaning of holding *sub-leasing rights*, *not leasing rights*. The good news is that, on the documents seen, links 1 and 2 are real and registered.

4.1 What the title deed (Chanote) shows

The freehold title deed (a **Nor Sor 4 Jor / Chanote**) carries a registration history (สารบัญจดทะเบียน) on its reverse with two key entries: an **XXXXXXXX family transfer** to theXXXXX family (Thai nationals), and a **registered 30-year lease** from that family to MessrsXXXXXXXXXXXX. A pre-existing Thai family holding leased to the developers is the lawful, non-nominee pattern.

One date to check on each parcel

The parcel on that particular deed was leased to the developers on March XXXX (term ending ~March XXXX). A sublease cannot outlast its head lease (CCC s.544–545), so a villa on that parcel sub-let to XXXX would overhang by ~1 year. For the the project land (Chanote XXXX) the head lease is dated April 2024 and the subleases run to April XXXXX — co-terminous, no gap. We simply confirm, per villa, that the sublease end-date sits within its parcel's head-lease term, and identify which villa the separately-deeded parcel relates to.

5. Is it really a lease — or something in disguise?

5.1 The lawful structure

A foreigner may not own land: **Section 86 of the Land Code B.E. 2497** permits it only by treaty, and none exists. (The narrow **Section 96 bis** exception needs a THB 40m qualifying investment and ministerial approval, capped at 1 rai — not this case.) A foreigner **can** own the building separately and hold a registered land lease or sublease for up to 30 years (CCC s.540). XXXXXX uses exactly this split. The concept is legitimate; the risks are in the detail.

5.2 What your documents actually show

This is a genuine sublease, not a sham. The Building Agreement's "Buyer / Purchaser" wording is loose — you cannot "buy" land — but the land instrument is correctly a **registered sublease** (สัญญาเช่า). XXXXXX's plot was registered by the Tor Dor 36 Kor instrument; XXXXXX's was registered using the 2024 power of attorney. Minor execution untidiness remains: the developers signed personally with witness lines blank (cured by registration), and the developer's invoices label the same villa inconsistently as Plot C and Plot B.

5.3 Is it registered? What if not, and at what cost

The rule (CCC s.538 and s.540)

A lease of immovable property for **more than three years** is enforceable beyond three years **only if registered**. If not, it is good for **three years only**.

Maximum term is **30 years**; longer is cut to 30. Renewal must be made after expiry, not pre-agreed (section 6).

Here, registration has been done. XXXXXX (Plot A): confirmed by the Tor Dor 36 Kor of May XXX. XXXXXX (Plot B): the power of attorney exists for the purpose and the registration fee was paid, so it is registered — we should still obtain her stamped Tor Dor 36 Kor for the file. The Chanote shows head lease is itself registered ("issued by the Land Office"). Cost of registering a sublease is 1% of total rent + 0.1% stamp duty; on the stated aggregate rent of THB XXXXXX that is about THB XXXXx, which clause 5 puts on you — so you have already paid for the protection.

5.4 "Sub-leasing rights, but not leasing rights"

(i) **A sublease is only as strong as the head lease (CCC s.544–545)**. It cannot exceed, and ends with, the head lease. For the project the terms are co-terminous, so there is no gap; but you still depend on the developers honouring their obligations to the Thai owner, and clause 12.1 gives you only a money claim if they default.

(ii) **A right to rental income is not a secured right to the land**. The 30% Rental Agreement lets the manager sub-let your villa and keep 30% (then 20%). That is sub-letting economics, separate from your registered leasehold. You appear to hold both — the registered sublease and the income contract — which is the better position; the point is not to confuse the two when valuing the asset or negotiating an exit.

6. The 30 + 30 renewal problem — Supreme Court Decision 4655/2566

The decision. In **คำพิพากษาศาลฎีกาที่ 4655/2566 (2023)**, parties signed a 30-year land lease and, the same day, a side agreement promising **two further 30-year renewals (90 years total)**, rent prepaid. The Supreme Court held this **circumvented the 30-year ceiling in CCC s.540**. The renewal clauses were **void**; the lessee was ordered to vacate, remove structures and pay THB 30,000/month until compliance.

Holdings you can rely on (4655/2566)

Up-front promises of multiple 30-year renewals **breach CCC s.540** and are void.

Prepaid "extension fees" do **not** create a personal right to a new term.

Courts may order **eviction and damages** even after long occupation.

A renewal is valid **only if agreed after the current term expires**, on market terms.

6.1 Applying it to your sublease (clause 9)

Sublease clause 9 says that when the head lease expires and "both parties agree to extend for another 30 years," the sub-lessee "shall be entitled to extend" for a further 30 years. To the extent XXXXXX marketed this as a guaranteed 60-year right, **4655/2566 is directly against it**. A pre-written entitlement fixed at the outset creates no enforceable right beyond the registered 30 years. Your secure horizon is **2024–2054**.

6.2 The argument you asked for: "pre-done" subleasing is the same vice

1. **Same statutory ceiling.** CCC s.540 caps hire of land at 30 years per term. A sublease is a hire; the cap applies to it as well.
2. **Same anti-avoidance logic.** 4655/2566 condemns structures that *pre-arrange* continuity beyond 30 years to manufacture, today, a right the Code says can only be created afresh later. A stack of subleases and pre-agreed sub-renewals built to deliver 60–90 years is the same device in a new costume.
3. **Substance over label.** Where the bundle (sublease + pre-agreed renewal + building ownership + descendants' use + payment of all land costs and taxes + a developer buyback) is engineered to give a foreigner the practical equivalent of perpetual ownership, a court can look through it. The renewal is void under s.540 and the wider arrangement is exposed under **CCC s.150** (acts circumventing the law are void).
4. **Consequence.** Any price, resale pitch or buyback valuation premised on 60–90 years rests on a right 4655/2566 says you do not securely hold — a point in your favour in the Option 2 negotiation.

7. Nominee risk — who really owns the land

Foreigners may lease land, so the developers holding a 30-year head lease is lawful. The **nominee** risk sits one level up: if the registered **owner** of the freehold holds it *on behalf of* the foreign developers, that breaches **Land Code s.86 and s.96** and the head lease is built on sand.

How Thai courts decide nominee status — substance, not the share register:

- Who **funded** the land and project (source of capital)?
- Who **controls** the business and decisions?
- Who takes the **economic benefit** and bears the **real risk**?
- Any **side agreements, proxy voting, or loans** transferring control to the foreigner despite a 51% Thai shareholding?

For the parcel we have seen, this risk has largely receded

The title deed shows a Thai family that has owned the land since the 1990s, before the project, acquiring by ordinary family transfer, then leasing to the developers. That is the normal, lawful structure, not the classic nominee red flag. Enforcement has hardened (the DBD's AI "IBAS" system since October 2025), so we still confirm the owner of Chanote shows the same clean picture.

8. The 30% Rental / Management Agreement and resale

Heavily manager-weighted, and the main drag on Option 1 (resale):

- **30 years**, "none revokable unless terminated by the Manager" — only they can exit.
- **Exclusive** letting through them; **30%** of revenue for 10 years, then **20%**.
- **Manager may enter at any time** for the first 10 years; **owner use capped at 2 weeks/year**

This owner-irrevocable, exclusive, 30-year, 30% tie travels with the villa to any buyer and depresses resale value. Any genuine exit must **expressly terminate and release** it together with the sublease and building agreement.

9. Construction permit, completion deadline and licensing

The construction permit (No. XXXX, issued September 2XXXX by XXXX Phangan Municipality) is one of the most useful documents in the file:

- **Late issue.** Issued ~6 months after the April XXXXX contract, in the developer's name as lessee on Chanote XXXX. The Building Agreement's two deadlines — "18 months from the permit" (so ~March XXX) and "whole project before late 2025" — **contradict** each other. Read against the drafter, this helps your delay claim.
- **Permit lapse.** It was valid only until September XXX. As handover slipped to XXX, any **construction after that date without a renewal raises a compliance question worth putting to the developer.**

- **Not a hotel.** The units are permitted as **residential rental buildings (อาคารเช่าพักอาศัย)**, not a hotel. Under the **Hotel Act B.E. 2547 (2004)**, business letting for **under 30 nights** needs a hotel licence the project does not have — exactly the limit the developer admitted on late 2025. This undercuts the brochure's nightly-rate and 80%-occupancy projections.

10. Delay, penalties, investor-loss and buyback economics

The Building Agreement sets a a token daily amount delay penalty (subject to weather extension) — small in practice. XXXXXX has quantified a missed-peak-season loss of about THB XXXXXX and a 3% referral claim of THB XXXX (for introducing XXXXXX, who bought Villa A). The developer disputes these. On the buyback, total paid is THB XXXXXX (including a 5% surcharge on the villa payments); the developer offers cost + 7.5% while XXXXXX seeks a mid-teens uplift. The legal claims (delay, referral, the unenforceable renewal) are useful leverage; the quantum is a commercial negotiation.

Projected rental income, resale values and "investor loss" are the clients' own commercial assumptions. This office gives legal advice only and does not give financial or investment advice; the figures are reproduced for legal context.

11. Option 1 (keep & resell) vs Option 2 (buyback)

Issue	Option 1 — Keep & resell	Option 2 — Developer buyback
Core risk	Resale dragged down by the 30% exclusive tie; secure horizon is 30 years, not 60–90.	Counterparty / payment-timing risk: giving up registered rights before being paid (section 12).
Legal certainty needed	Confirm Chanote owner and head-lease sublet right; value/sever the 30% agreement.	A watertight buyback with escrow/simultaneous settlement and release of all linked contracts.
Money	Capital back only on a future sale, net of ~9–11% Thai transaction costs and the manager's cut.	Offer cost + 7.5% (~THB XXXX). XXXXXX seeks ~THB 1.0–1.2m.
Leverage point	Weaker if the chain has any defect.	Stronger: the void renewal (4655/2566), the permit/licence issues and the delay claims reduce what the developer is really buying back.

12. The buyback payment structure — principal financial risk

The developer proposes **10% on signing and 90% "at cancellation of the sublease" within ~1 month**. Cancelling your registered sublease at the Land Office **extinguishes your security**; if the 90% is not paid at that moment, you become an unsecured creditor of two individuals.

- Balance and cancellation must be **simultaneous** — same day at the Land Office, or via lawyer-held **escrow** released only on completion. (Do note escrow are rare or not used in Thailand)
- Use escrow or a cashier's cheque against cancellation, never a post-dated promise.
- One buyback agreement releasing **all linked contracts** (sublease, building, rental, maintenance) with a full mutual release.
- Agree who bears transfer fees, taxes and any outstanding land rent before release.

13. Recommendations

1. **Pull the Chanote deed** and confirm the owner, that the head lease is registered and permits subletting, and that each sublease is registered (obtain XXXXXX's Tor Dor 36 Kor).
2. **Map every villa to its parcel** and confirm each sublease end-date sits within its parcel's head-lease term (identify which villa the separately-deeded parcel is).
3. **Value the asset on 30 years only** — treat the clause 9 renewal as unenforceable per 4655/2566.
4. **Press the permit and licence points**: the deadline contradiction, the late 2025 permit lapse, and the missing hotel licence are real leverage and real risks.

5. **Do not sign any buyback** until payment is simultaneous with cancellation and all linked contracts are released together.
6. **Preserve the delay and referral claims** in writing as leverage, without overstating them.

14. Documents we still need

- Certified copy of **Chanote XXXX** (front and reverse for XXXXXX)
- XXXXXX's stamped **Tor Dor 36 Kor** registration instrument for Plot B.
- The Chanote XXXX head lease (owner → developers) showing the sublet permission.
- Confirmation of which villa the separately-deeded "Villas XX" parcel relates to.
- The renewed construction permit (if any) after late 2025; the Tabien Baan; any written buyback draft.

15. Legal authorities

15.1 Legislation

Provision	Relevance
Land Code B.E. 2497, s.86	Foreigners may acquire land only by treaty; none exists. Foreign land ownership prohibited.
Land Code, s.96 bis	Narrow exception (THB 40m investment, approval, ≤1 rai). Not applicable here.
Land Code, s.96 / nominee rules	Holding land via a Thai nominee for a foreigner is prohibited; structures can be unwound and prosecuted.
CCC s.537	Definition of hire of property — foundation of the leasehold/sublease.
CCC s.538	Lease of immovable property over 3 years is enforceable beyond 3 years only if registered; else 3 years only.
CCC s.540	Maximum hire term 30 years; longer reduced to 30; renewal not exceeding a further 30 years.
CCC s.544 / s.545	A lessee may not sublet unless permitted; the sublease depends on, and cannot exceed, the head lease.
CCC s.569	A registered lease survives transfer of ownership; an unregistered long lease does not bind a new owner beyond 3 years.
CCC s.150	A juristic act with an unlawful object or contrary to public order is void — basis for striking disguised circumvention.
Hotel Act B.E. 2547 (2004)	Business letting for under 30 nights requires a hotel licence — relevant to the rental model and the permit classification.
Building Control Act B.E. 2522 / Arbitration Act B.E. 2545	Govern the construction permit and the Building Agreement's arbitration clause respectively.

15.2 Supreme Court — verified

Decision	Holding and use here
คำพิพากษาศาลฎีกาที่ 4655/2566 (2023)	30-year land lease + same-day promise of two 30-year renewals (90 years), rent prepaid. Renewals void for circumventing CCC s.540; tenant ordered to vacate and pay THB XXXXXX /month. Applied to sublease clause 9 and, by analogy, to pre-arranged subleasing (section 6).

16. Important notices

This is a privileged, preliminary legal review for Ms. XXXXXX not to be shared with the developer. It is based on the documents reviewed and is subject to confirmation against Land Office records (Chanote XXXX, the head lease and the owner's identity). It is legal advice only; ThaiLawOnline Co., Ltd. does not provide financial or investment advice. Thai law governs. On completion of the title search we will issue final advice and, if instructed, can act for you in the negotiation or any proceedings.