

# UDON THANI EXPATS CLUB

## SEMINAR 007 incl. Q&A

### LEGAL ISSUES for EXPATRIATES and their THAI PARTNERS

Seminar number: MOSFE 007  
Location: Prajaktra Hotel, 6<sup>th</sup> floor.  
Date: Thursday, August 25, 2016  
Subject: Legal issues for Expatriates and their Partners.  
Participants: See attendance list (*For Administration only*).  
Secretary: J.J. van Spaandonk (Udon Thani Expats Club).

A well organized and informative meeting.

Our special thanks for the, simultaneous, English Interpreter, Mr. Artra Khunthongjan.

**Hosts:** The,

Santi Foundation, Office of the Attorney General and Chulalongkorn University Alumni.

**Organizers:** The,

*“Office of International Peoples' Rights Protection”*

*“Department of Provincial Udon Thani Civil Rights Protection, legal Aid and legal Execution”.*

**Mission:**

To inform the Attendees about those Laws that effect Expatriates and their Partners the most. Where it should be realized that this is only a selection of the total number of Laws that are in effect. Also, only a few issues out of many, many more are highlighted.

In random order:

1. Thai Law on Inheritance
2. Thai Law on Nationality
3. Thai Law on Military Service of Thai Nationals
4. Thai Law on Child Adoption
5. Thai Law on Property Ownership (including land and house)
6. Thai Family Law
7. International Law Concerning Children Protection Cooperation
8. Visa Application and Stamping to enter a Country other than THAILAND
9. Applying and Using Thai Passport for Children with two Nationalities.

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## Opening and Welcome:

- Grand opening and introduction by the Attorney General.

- Welcome Speeches, in order of appearance by the;

- Office of the Attorney,
- Director General for Regional Public Prosecution (Region 4},
- Deputy Governor of Udon Thani,
- Santi Foundation,
- Chief of Immigration
- Chief of Justice Office
- Chief of Land Office
- Chief Inspector of Immigration Udon Thani
- Representatives of Government and Chulalongkorn University Alumni
- Moderator Khun Eng

Note, The Santi Foundation is ready to assist in case a person or persons encounter a problem in finding their way in Government Institutions.

## Photo Session

## Program:

Mr. Sakchai, *Director General of the Department of Civil Rights Protection and Legal Aid*, discussed:

### 1) Thai Law on Inheritance

- The Law on Inheritance comes into effect at the moment a person dies or, in particular cases, when a person disappeared (cannot be found / traced) for a period > 5 years.
- The moment of death is when the Brain and/or the Heart stops functioning.
- The allocation of the inheritance shall be in accordance with the Law
  - At first, the Inheritance shall be defined and proved, following the procedures of the Law;
    - Money, Real Estate, Intellectual Property, Copyrights, a Lease Contract, etcetera

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- It is **not** possible to have some personal rights (f.e. the name) of a deceased person transferred by a Last Will.
- At second, the Heirs will be defined
  - Those could be:
    - Natural heirs; Spouse, Children, Parents, Grandparents etcetera
    - Testament / Last Will
    - Temple
    - The State of Thailand

Because the complexity of procedures which is even grave in the case of an Expat, where foreign interests and foreign laws are coming into effect.

It is strongly advised to make a Last Will and prepare your instructions for your partner or an official person (Attorney, Notary, Lawyer, Amphoe officials, etc).

Make your Last Will official by having it properly signed, registered and saved / filed by an, by the Law authorized person or Institution (Lawyer, Amphoe officials, Consul, etc).

## 2) Thai Law on Nationality

A child with parents of various nationalities, born of Thai mother or Thai father, can have two or even more nationalities. It is not needed for the child to be born in Thailand to receive the Thai nationality.

- It is clear who the mother of a baby is. However,
- The father could be:
  1. Father by marriage: Father because he is married to the mother of the child,
  2. Father by registration: Father because he recognized the child legally,
  3. Father by judicial ruling: Father by virtue of a court decision.

It is evident that it is absolutely necessary to clarify this and to register the situation as it is.

## 3) Thai Law on Military Service of Thai Nationals

In case a person has more than one nationality of which a Thai nationality; that person shall fulfill the legally required period in the Thai army. If not that person is in violation with the Thai Law and risks prosecution.

## 4) Thai Law on Property Ownership (including land and house)

Land ownership is dictated by the LAND CODE and, basically, restricts the Land ownership to Thai-nationals' only.

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This to protect Thai people for Foreigners to force-up prices and buy all the land.

However, to protect the investments by and of Foreigners, the Law allows for some possibilities.

In random order we mention some of those:

- The Ministry of Interior supports some rules, under strict conditions, to put land on a foreigners' name. (Ownership by a foreigner is possible).
  1. Through an investment
    1. Has to bring > 40 million THB into Thailand to make an investment for a minimum period of 5 years
    2. Investment must be authorized by the Minister of Interior
    3. Has to make use of the land within 2 years after the purchase
    4. Investment in activities specified by the regulations (i.e. activities permitted by the Thai Board of Investment)
  2. Through inheritance (up to 1 Rai)
    1. When a Foreigners' partner dies he/she can inherit the land (max. 1 Rai). The surplus has to be sold within 1 year.
  3. Through juristic person
- A Foreigner can own 49% of the space in a Condominium-Building
  1. He needs a Resident Permit
  2. He must have a Bank Account in Thailand
  3. Etcetera
- Be aware that Nominee Possession is not legal
- In case a Thai-national takes the nationality of his/her foreign partner he/she has to sell the land he/she owns in Thailand.
- When buying land; the purchase, in most of the cases, will be done by his/her partner.
  1. The Foreigner has to declare that all the money for the purchase is yield and belonged solely to the Thai partner
  2. Be aware that no false statements are done.
- It is legally allowed to have a Usufruct (for < 99 years) written on the back of the ownerships' papers.

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1. It needs some bureaucracy to do this and requires a competent adviser to have this fixed.
2. It is not possible to inherit a Usufruct.

#### 5) Thai Law on Child Adoption

Adoption of a child is well possible. Only, the proper papers shall be shown to the officials at the Department of Children and Youth in Bangkok. At the office all detailed information is available.

Those papers shall, among others, be all kind of papers that prove the legitimacy of the natural parents, their parent-ship as well as of the parents to be.

The parents to be shall be married for at least one year. House visits by officials should be expected.

All shall be translated into the Thai language and be officially certified.

It is very IMPORTANT **not** to post any photographs of an adopted child on the social media (Facebook etcetera). That is not legal.

#### 6) International Law concerning Children Protection Cooperation

Thailand agreed upon and respects the Convention on International Child Abduction (the Hague Convention 1980)

The Central Authority under the Convention has duties to carry out an immediate return of an abducted child (parental kidnapping pending the custody dispute or after the divorce settlement). The abducted child will be brought back to his place of "habitual residence".

Thailand's Central Authority under this Convention is the Attorney General.

#### 7) Applying and using the Thai Passport at a Person with two (2) Nationalities

A Thai passport shall be applied for at the Thai Passport Office at the Provincial Court.

Your Certificate of Birth and your ID card are to be brought along.

Children shall be accompanied by both their parents; the Father and the Mother. If one of the parents can't be present, that parent must appoint someone else and issue that person an official power of attorney.

In case a person with more nationalities, among those the Thai nationality; That person should use his Thai passport when leaving and entering Thailand..

In case of a major problem that can't be solved at the local office one has to go to Bangkok.

#### 8) Immigration and Visa

There are two main types of visa. Depending on the purpose of your visit you may have:

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- Long stay for: Marriage, retirement, volunteers, family, experts, investment etc.
- Short stay for: Tourists, transit, visit friend's, to go to Court, etcetera. This type of visa is valid for 30 or 60 days with a possible extension for 30 days. After that, you have to leave the Kingdom and come back, and as long as you have a normal reason, whenever you like. Even as that is the next day. Only in case you are suspected of criminal intentions and the like a new visa will be refused.

N.B.

- When you arrive in Thailand by plane you may get a 30 day visa on arrival. When you arrive by boat or over land you may only get a 15 day visa.
- The penalties on an overstay have increased significant. Take good note of those.

*The following information has been taken from the previous seminar and added by the secretary for a better understanding.*

#### **Quote;**

The various types of Visa are:

- Diplomatic Visa
- Official Visa
- Non- Immigrant visa
- Tourist Visa
- Transit Visa
- Immigrant Visa
- Non-Quota Immigrant Visa
- Courtesy Visa
- Visa On Arrival
- Special Entry Visa

Some reasons to apply for a long stay Visa may be:

- Retirement
- To become a monk
- Volunteer or officer at a foundation (Mother Theresa, etc)
- Accompanying Thai spouse or family members
- Expert (Teacher, adviser, etc)
- Business

The codes for the different Visa are:

- F Official
- B Business
- IM Investment through BOI (Board of Investment)
- ED Education
- M Mass media of communication
- R Religion
- RS Research and Science
- EX Expert
- O Other

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For details and requirements for all above given visa please contact Immigration or visit a related website or visit the Thai embassy or consulate in your home country.

#### **Unquote.**

#### 9) Thai Family Law

It is recommended to collect some basic information of your partners backgrounds. Such as: The name and address of the children, parents, brothers, sisters, friends etcetera, etcetera. That may prove to be very helpful when a dispute may arise.

In case of a marriage and you want to divorce; Do that in the country where you got married. In any case do it in one country only. Getting a divorce in more then one country may create various conditions that contradict each other and prove to be unsolvable and may lead to very high costs..

#### Lunch Break

All attendees were invited for Lunch at the 4<sup>th</sup> floor of the Prajaktra Hotel., where we were offered an excellent Lunch buffet with a wide variety of dishes.

Many joined and used the opportunity to continue the discussions.

#### Questions & Answers

##### The Yellow Book;

It is recommended that a Foreigner who retired in Thailand or stays for a considerable long period in Thailand should apply for a Yellow House Book. It is not a requirement; to be married.

To do that he/she needs an authorization of the Landlord cq the owner of the House he/she stays.

The Yellow Book makes it much easier to deal with Authorities, Government Institutions, etcetera and, among others, allows to apply for a (pink) Thai ID-card.

##### Some Advises;

Even if there is only one name (Thai individual) on a contract, you are entitled to 50% of the property.

It is helpful that you can show (proof) you paid the money. In addition, your name should be somewhere in the files of the official authorities.

You do not have to be officially married to have that right.

However, when you are officially married, you have much more chance to get your right.

If you wish, you can, with the argument you paid for it, go to the court and claim some of your money back. That could be successful.

Be aware that, in both situations (married or not), you will need a specialized and well experienced lawyer to get your rights.

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An argument about the care of the children, has to be concluded by the court. The court will decide how much and who pays on the income there is and who that income has. That could be both of you.

The right to visit the children after a divorce is normally not discussed in Thailand.

Adopted children have the same right as your own children.

In case your (Thai) partner dies before you; the code Napoleon comes into effect: You become your partner and inherit everything. However, in case of children you have to share with the children.

In case of land, you will also get the land, up to 1 Rai (for the purpose of habitation only). However, because you cannot own land in Thailand you will have to sell the land and receive the money. With the exception that you may keep for yourself and own max. 10 Rai of agriculture land and or 1 Rai of land in an urban area.

You have the right to stay in your house. The children or family cannot move you out.

Always remember, People in Thailand have many rights; Each situation needs to be carefully looked at. It is impossible to generalize.

You can make a business contract 49% Foreigner – 51% Thai.

In case a deeper understanding of a “situation” is needed a competent adviser/counselor (Lawyer) should be consulted.

### Conclusion

We, of Udon Thani Expats Club, would like to thank the Hosts and Organizers for the very successful, hospitable and constructive Seminar, their great initiative and to congratulate them with their success in improving the communications with our community

The choice of subjects and especially the very open and friendly way of the discussions together with the ability of the Speakers is much appreciated.

### Contact Address

For further information you may visit [www.humanrights.ago.go.th](http://www.humanrights.ago.go.th)

For e-mail contact: [humanrights@ago.go.th](mailto:humanrights@ago.go.th)

For a personal visit:

Office of the Attorney General

Government Complex, Building A

Chaeng Wattana Road

Lak Si District, Bangkok 10210

For a telephone contact: 0 2142 1532 3

Or for Udonthani; The Office on Srisuk Road



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## Closing

The seminar has been attended by 23 members of UTEC out of a total of ca. 150+ participants.

The seminar was closed at 14.30 hrs. Next seminar will be published well in advance.

Please, regularly, check the media and the Expat's website at [www.udonexpatsclub.com](http://www.udonexpatsclub.com) for further developments.

Author: J.J. van Spaandonk

Secretary and Spokesman for Udon Thani Expats Club,

September 03, 2016

Signed: Mr. Joop van Spaandonk.  
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