

## Thailand Eases Restrictions on Properties Used for Short-Term Rentals

We have previously explained [HERE](#) (and with a further follow-up [HERE](#)) that most villa or condominium unit owners who are renting out their property on a short-term basis (that is, for periods of less than 30 days) are most likely violating the Hotel Act (2004) if they do so without having received a hotel license. The potential punishment for such violation includes significant fines, or imprisonment, or both.

Historically however, obtaining a hotel license for most such owners has been very difficult – if not impossible. A major reason why is that in order to obtain a hotel license the property must comply with the requirements for certification for use of the property as a hotel under the Building Control Act (1979) (“BCA”).

Yet, many are tempted to, and currently do, invest in properties to participate in this lucrative market without a requisite hotel license. On the other hand, tourism is one the most significant contributors to the Thai economy. This has created a tension between the need to enforce the law and the desire to maintain a robust tourism industry and investment market. As some, including us, have pointed out, one way to accommodate both of these very legitimate, and currently competing, concerns would be to liberalize restrictions applicable to so some number of such properties. Thus, we are pleased to see that the current government has recently taken one such step.

On 19 August 2016, Thailand’s Ministry of Interior *Ministerial Regulation Prescribing Descriptions of Other Types of Building Used for a Hotel Business Operation 2016 under the Building Control Act (1979)* (the “MR”), became effective. The MR should make it easier

for more property owners to obtain a hotel license.

The MR will remain in effect for five years. However, it applies only to buildings that existed before it came into force and whose owners desire to use the property as “Hotel” (as defined by the Hotel Act) with either:

- (a) rooms only; or
- (b) rooms and food service/restaurant facilities.

The three categories of buildings that are eligible for this re-classification are as follows:

Type 1: a building with not more than two floors and not more than 10 rooms;

Type 2: a building that is not a Type 1 building and which does *not* have more than twenty rooms; and

Type 3: a building that is not a Type 1 building and which *does* have more than twenty rooms.

The MR liberalizes the various Hotel usage-building requirements under the BCA for these types of buildings. For example:

BUILDING TYPE	OLD REGULATIONS	UNDER THE MR
<b>Minimum open/unused space</b>		
Type 1, 2, and 3	Equivalent to 30% of " <i>the area of the largest floor of the building</i> " (MR. No. 55 Clause 33)	Equivalent to 10% of " <i>the area of the largest floor of the building</i> "
<b>Minimum width of the walkway</b>		
Type 1	1.5 M (MR. No. 55 Clause 21)	1 M
Type 2		1.2 M
Type 3		1.5 M

Minimum width of stairs		
Type 1	1.2 - 1.5 M Based on area of the upper floor (MR. No. 55 Clause 24)	0.9 M
Type 2		N/A
Type 3		N/A
Minimum Live Load		
Type 1	200kg/SQ M (MR No.6)	150 KG/ SQ M
Type 2		200 KG/ SQ M
Type 3		200 KG/ SQ M

An application to change the usage a building to a hotel under the BCA must be completed within five years from the date the MR came into force. However, if the building requires structural modification before applying to change its usage to a hotel, that application (or notification under Section 39(bis) of the BCA) must be filed within two years.

And it should be noted the building must still comply with other BCA regulations regarding hotel usage, *in force at the time the building was originally constructed (or altered)*, regarding such matters as the building’s height, setback, and parking.

In closing, it should be noted that the MR does not mean that all owners who wish to rent their properties on a short-term basis and who’s properties do or can comply with the MR will now be able to legally do so. There are other laws that need to be considered and which may restrict such use—particularly with regard to condominiums, and all the more so with regard to foreigners. Thus, caution and clarity are advisable before taking steps to take advantage of the MR. That said, the MR is a very welcome step in the right direction for the tourism and real estate investment markets in Thailand.

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