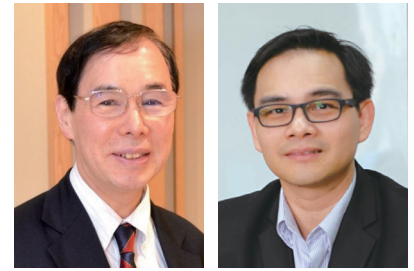


Land Trust Law & Its Importance for Both Public & Private Use

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Land Trust

Land acquisition can be a daunting task for property developers, who must persuade landowners to sell their land to make way for development projects such as commercial buildings, apartments, and infrastructure. In Malaysia, some of the infrastructure projects have to contribute more than 50% of their total costs for land acquisition. Thailand offers a potential solution to this challenge in its recently adopted concept of land trusts. Land trusts allow landowners to retain ownership but lease their land to developers for financial and commercial purposes in exchange for rental fees.

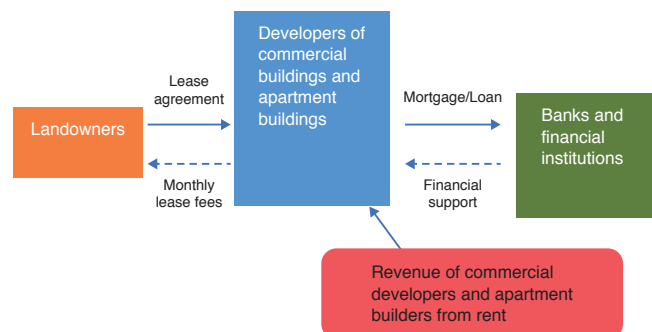
Land trusts have recently been embedded in Thai law through the Right Over Property Act, which was passed on April 30, 2019 and came into effect on Oct. 30, 2019. While the Thai Civil Code mandates that only landowners have the right to use their land to apply for a mortgage from a bank, Section 4 of the Right Over Property Act stipulates that owners can set up a land trust by applying to the Land Authority of Thailand. Following approval, they are free to transfer the land or use it as collateral for any financial purpose, including using it to seek a loan from a bank. As such, the act has transformed traditional land and financial laws, allowing those leasing the land to utilize the land trust for commercial benefit

while still allowing the landowners to retain their land right.

New Land Act to Induce Land Trusts in Private & Public Projects

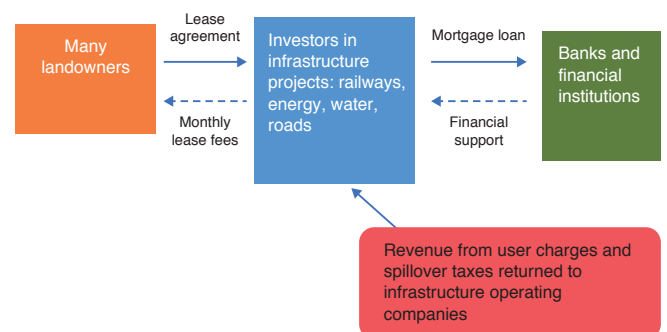
A major benefit of the new land act is that it can facilitate the development of apartments and commercial buildings. Inner-city areas typically have many landowners, making it extremely difficult to negotiate with individual landowners for the construction of large commercial buildings or apartment complexes. Landowners are often hesitant to sell their land if it was inherited or if they wish to pass it on to future generations. In these cases, property developers can utilize land trusts as tools to assist in negotiating the use of the land and for securing loans from banks while allowing the landowners to still receive fees from their lease agreements. Some examples of business models based on land trusts are shown in *Charts 1 & 2* (“High-quality infrastructure and land acquisition for infrastructure development through land trusts” by Naoyuki Yoshino, Umid Abidhadjaev and Nella Sri Hendriyetty, *Global Solutions*, Issue 4, 2019).

CHART 1
Business model of the development of apartment and commercial buildings following Thailand’s Right Over Property Act 2019



Source: Compiled by the authors

CHART 2
Business model of the development of infrastructure projects following Thailand’s Right Over Property Act 2019



Source: Compiled by the authors

Land Trust in Japan

In Japan, trust business can only be carried out by entities licensed under the Trust Business Act (Act No. 154 of 2004, as amended) and financial institutions licensed under the Act for Financial Institutions' Trust Business (Act No. 43 of 1943, as amended). Until the early 1990s, trust business was monopolized by eight financial institutions, of which seven were known as trust banks. Following the reform of the financial system in recent years, today over 200 financial institutions and entities are licensed to carry out trust business in Japan.

1) Difference Between Commercial Bank & Trust Bank

Banks deal with deposits, lending affairs and other money-related businesses. On the other hand, trust banks, in a limited sense, receive trust of the money. They also receive trust of movable property and real property other than the trust of bonds and funds or money. In addition, they take a role in real estate brokerage or appraisal when they are entrusted with the trust of real property. They may deal with inheritance affairs, too.

From a functional perspective, there are four distinctive types of commercial trust in Japan, and applying the basic principles recognized under the Trust Act to any of these types would lead to unwarranted results. (1) Trusts similar to deposit taking and lending: e.g., loan trusts. (2) Trusts for asset management: e.g., money trusts and securities investment trusts. (3) Trusts for securitization: e.g., money claim trusts. (4) Trusts for business: e.g., land trusts.

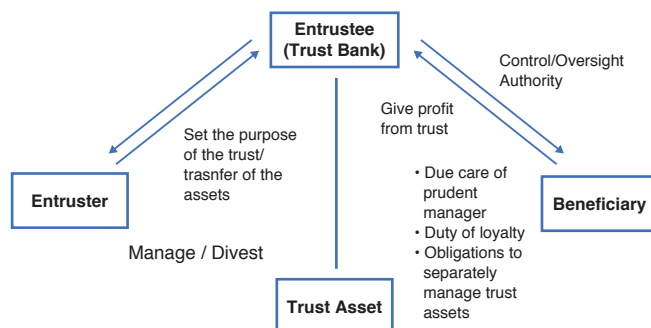
2) Land Trust Structure

There are three bodies in trust: entruster, trustee and beneficiary (Chart 3).

When an entruster has an asset that he wishes to leave to a

CHART 3

Trust Contract / Will



Source: Compiled by the authors

beneficiary, but does not want to give it right away, he may entrust the trustee with the asset with certain conditions for the beneficiary to receive the asset. This method can be used for trust by will.

The trustee must manage the trust asset by following the three rules stated below:

- I) Due care of prudent manager
Trustee must manage the trust asset with care as a prudent manager.
- II) Duty of loyalty
Trustee must manage the trust asset for the beneficiary following the purpose of the trust. Trustee must not use the trust asset for benefit of himself or a third party.
- III) Obligation to separately manage trust assets
Trustee must manage the trust asset apart from the beneficiary's property or any other properties.

3) Trust of Real Estate

In cities like Tokyo, individuals who live in small houses may increase the utility of their land by consolidating the land and building apartments or office buildings on it. To do so, those individuals will need help from a trust bank or trust company. The landowners entrust their land to the trust bank, and the trust bank builds a large building on the land to realize the effective utilization of the land. And those landowners can live in apartments within the building and receive part of the profit as dividends from the trust bank. Individual landowners can gain more profit by this method. It can be applied not only to commercial buildings but also to infrastructure such as roads, electricity and railways (*Land Acquisition in Asia: Towards a Sustainable Policy Framework* by Naoyuki Yoshino and Saumik Paul, Palgrave MacMillan, 2019).

Land Trust in Thailand

In Thailand, too, if banking laws change, banks can change their role from being financiers of infrastructure projects to becoming land trust managers. This can benefit landowners and developers and lead to an increase in successful infrastructure projects. The resulting expansion in economic activity will encourage the construction of commercial buildings, apartments, restaurants, and shopping malls and boost the revenue from property, corporate, income, and sales taxes. In the past, this tax revenue has been collected by central and local governments, but the increased tax revenue can be partly returned to those constructing or investing in the infrastructure projects, together with the user charges, to increase the rate of return and make the projects more attractive to both investors and developers.

Examples of business models related to the concept of land trusts

through the use of trust banks in Thailand are shown in [Chart 4](#).

Overall, the passing of the Right Over Property Act in Thailand has opened a new chapter for land use and land development in the country. Thailand will be able to utilize the land trusts set up by the new act to increase the rates of return on land and infrastructure development projects. This important change in legislation will facilitate the efforts of landowners, the government, banks, and infrastructure developers in the implementation of a variety of land development projects.

Land Trust Law in Thailand

The essential articles of new law – the Right Over Property Act BE 2562 (2019) – are as follows:

Article 4 The owner of property/real property who wishes to establish a right over the property has to submit an application to the officers and has to present the registered land deed or condominium registration to the officers in each case.

Right over property is not to exceed 30 years.

A partial establishment of a right over property on the registered land deed or condominium registration is not permitted.

Establishment of a right over property, that the property is under mortgage or a collateralized agreement under law or any right over the registered land deed or condominium registration, will only be possible with the consent of the mortgagor or the loaner of the

collateral in each case.

Article 12 The right over property is transferable or becomes collateral for any mortgage according to the Thai Civil and Commercial Code.

The right over property is inheritable.

Any juristic act on the right over property must be registered with the officers and when registration is complete, the officer will have to rapidly issue a notification letter to the owner of the real property according to the juristic act and ministerial regulations.

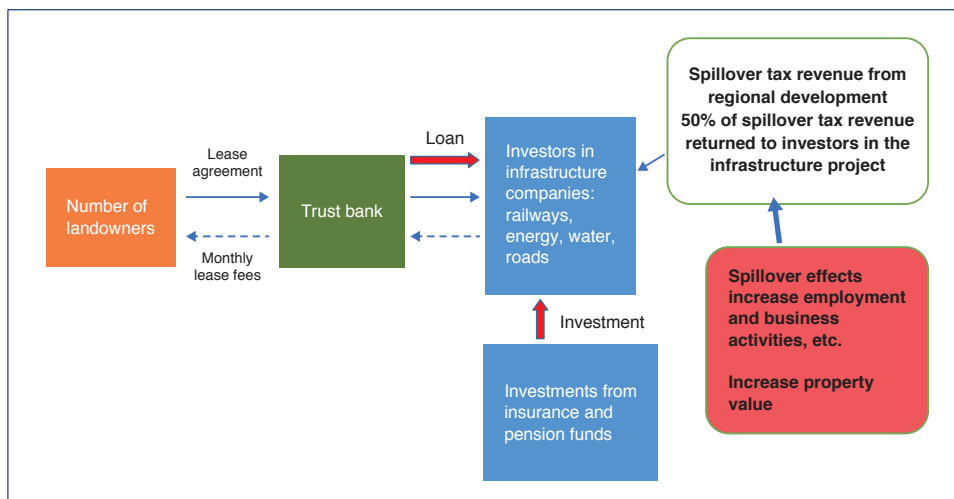
Land Price Evaluation

In many Asian countries, the price of land is negotiated by landowners and buyers of the land for infrastructure and commercial buildings. In some Asian countries, the mafia can benefit enormously by selling land at a very high price to the government or buyers due to the lack of a land evaluation mechanism. Japan has a national examination for real estate evaluation. If one can pass the examination, one can evaluate real estate in Japan. Real estate evaluation looks at both the present discount value of the land by taking its characteristics into account and the actual selling prices around the property. The present discount value can be computed by the future rent which the land would earn. Each site of land has its own location, such as close to a station, school, hospital, etc.

CHART 4

Business model of public infrastructure projects following Thailand's Right Over Property Act 2019

(Scenario in which the Bank of Thailand issues permission to banks and financial institutions to act as trust banks)



Source: Compiled by the authors

IMAGE

Real Estate Transaction-price Search Land General Information System

1 Select period
 Search by screen(since 1st quarter 2014)
 Transaction period
 2nd quarter 2019(Including the past one ye)
 Download file(since 3rd quarter 2005)
 Download

2 Select real estate type
 Residential Land
 Land Only Land and Building
 Agricultural Land
 Forest Land

3 Select Region
 Search by address (select a map) Search by line and station
 Prefecture
 Tokyo(4,126)
 City,Town,Ward,Village
 Area
 Display the above map

3 Click a prefecture to display its map

Search by aerial photo Search by map

Land Transaction Price Overview How to use this website JAPANESE

Land Economy and Construction and Engineering Industry Bureau, Ministry of Land, Infrastructure, Transport and Tourism.
 Address: 2-1-3, Kasumigaseki, Chiyoda-ku, Tokyo 100-8918 Tel: +81-3-5253-8111 Copyright© 2010 MLIT Japan. All Rights Reserved

Source: Land Economy and Construction and Engineering Industry Bureau, Ministry of Land, Infrastructure, Transport and Tourism's website (https://www.land.mlit.go.jp/webland_english/servlet/MainServlet)

Convenience and other qualities of the land have to be added to assess the value of the land. If the economy is in good condition, land prices will rise. On the other hand, land transaction prices will fall in a recession due to lower demand for property. Therefore, the actual price of land traded in nearby areas must also be taken into account together with the present discount value. The land price evaluator must understand these characteristics of land prices when taking the national examination. Each country should set up a training system on how land prices should be evaluated and train land evaluators who can value land all over the country.

Disclosure of Land Prices in Japan

In order to assess the price of land, disclosure of transactions of land prices in each region will be important information for land value evaluation. The *Image* shows a website provided by the

Japanese government on which one can get the price of land by selecting the region. It shows the price of land in each area without identifying the name of the owner, etc. If similar data can be collected in each country and a disclosure system by Internet set up, everybody could access the data, not only land value evaluators but also landowners. This would make it difficult for landowners to ask very high prices for their land when they plan to sell. Collection of such data should be established in each country. Real estate evaluators would be asked to report the prices of each transaction and this would become the basis of the big data set of land price values in the country. These data would facilitate land transactions without concealing their prices.

J.S

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